



EL PASO COMMUNITY COLLEGE PROCEDURE

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Effectiveness: (915) 831-6740

FFDA-1 Sexual Assault, Dating Violence, Domestic Violence, and Stalking
(Working Draft: Considered official)

APPROVED:
Year of last review: 2021
AUTHORIZING BOARD POLICY: FFDA (see also DIAA)

Classification: Institutional
Vice President or Associate Vice President: Vice President of Student and Enrollment Services
Designated Contact: EPCC Police Department

OBJECTIVE: The El Paso County Community College District (EPCCCD) is committed to fostering an environment in which all members of our campus community are safe, secure, and free from sexual misconduct of any form, including but not limited to, sexual assault, dating violence, domestic violence, and stalking. The EPCCCD expects that all interpersonal relationships and interactions, especially those of an intimate nature, be grounded upon mutual respect, open communication, and clear consent.

The EPCCCD has adopted the following standards of conduct for all members of our community, students, faculty*, administrators, staff, vendors, contractors, and third parties with respect to sexual assault, dating violence, domestic violence, and stalking. These standards apply to all regardless of gender, sexual orientation, or gender identity of any of the individuals involved. By providing resources for prevention, education, support, investigation, and a fair disciplinary process, the EPCCCD seeks to address and ultimately reduce or eliminate sexual violence.

PROCEDURE:

General: H.B. No. 699 amended Section 1. Subchapter Z, Chapter 51, Education Code, by adding Section 51.9363: In this section, "institution of higher education" has the meaning assigned by Section 61.003.

Process: In accordance with H.B. No. 699, and the Violence Against Women Act, the El Paso County Community College District (EPCCCD) shall take the following actions:

I. Definitions:

A. Consent: Consent is a clear, affirmative, unambiguous and freely given agreement to engage in a specific sexual activity. Consent is demonstrated verbally or through actions that clearly indicate a willingness to engage in the specific sexual activity. Consent for a specific activity does not imply consent for any other activity. Use of alcohol, drugs, or other intoxicants does not diminish one's responsibility to obtain consent.

Consent must be knowing and voluntary. To give consent, a person must be awake, of legal age, and have the capacity to reasonably understand the nature of his/her actions. Consent cannot be given by an individual who is mentally or physically incapacitated through the effect of drugs, alcohol or other intoxicants or for any other reason. Consent cannot be given when it is coerced, forced, or obtained by use of duress, fear, threats, or violence. Consent is not implied by the existence of a prior or current relationship or participation in prior sexual activity. Consent to engage in sexual activity may be withdrawn at any time and is automatically withdrawn by a person who is no longer capable of giving consent.

B. Dating Violence: Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement with consideration of the following factors: the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse, or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

* Note: The word "faculty" denotes instructors, counselors and librarians.

- C. **Domestic Violence:** Domestic violence is a felony or misdemeanor crime of violence committed by:
1. A current or former spouse or intimate partner of the victim;
 2. A person with whom the victim shares a child in common;
 3. A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
 4. A person similarly situated to a spouse of the victim under the domestic or family violence laws of Texas; or
 5. Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Texas.
- D. **Retaliation:** Any act of reprisal, including materially adverse or otherwise unwarranted treatment, related to the reporting of, or participation in, a complaint of sexual assault, dating violence, domestic violence, or stalking.
- E. **Sexual Assault Offenses:** Any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will, where the victim is incapable of giving consent, including:
- **Rape** -- The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim;
 - **Fondling** -- The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
 - **Incest** -- Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - **Statutory Rape** -- Sexual intercourse with a person who is under the statutory age of consent.
- F. **Sexual Assault:** A sexual offense that meets the definition of rape, fondling, incest, or statutory rape established in the Texas Penal Code.
- G. **Stalking:** Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
1. Fear for the person's safety or the safety of others, or
 2. Suffer substantial emotional distress. A course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property.

II. Prohibited Conduct

The EPCCCD does not tolerate, and therefore prohibits, sexual assault, dating violence, domestic violence, and stalking. Such conduct violates the values and principles of our institution and disrupts the learning and working environment for students, faculty, staff, and other community members. Any attempt to commit an act identified in this procedure, as well as assisting or willfully encouraging any such act, is also considered a violation of this procedure.

III. Retaliation

The EPCCCD prohibits any form of retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities under this procedure, or otherwise being involved in the process of responding to, investigating, or addressing allegations of sexual assault, dating violence, domestic violence or stalking.

IV. Confidentiality

The EPCCCD recognizes that confidentiality may be particularly important to victims of sexual assault, dating violence, domestic violence, and stalking. If a victim chooses to make a disclosure to the EPCCCD personnel, the victim should have informed expectations concerning privacy and confidentiality. The EPCCCD cannot guarantee confidentiality and must evaluate any request for confidentiality in the context of its responsibility to provide a safe and nondiscriminatory environment. When a victim makes a disclosure to any the EPCCCD personnel, the EPCCCD will treat the information with the utmost sensitivity. As a general matter, information will only be reported to the appropriate personnel to investigate the alleged crime, where necessary to provide accommodations and protective measures and ensure the safety and security of the campus community.

Reporting incidents of sexual assault, dating violence, domestic violence, and stalking is necessary to ensure victims of such conduct receive appropriate services and information, to track incidents or identify patterns, to protect the EPCCCD community from future incidents, and to fulfill the College's reporting obligations under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. The EPCCCD conducts its publicly available recordkeeping, including Clery Act reporting and disclosures, without the inclusion of personally identifiable information of either the complainant or the respondent. Victims should be aware that there are resources available to them which they can use if they wish to maintain complete confidentiality. These resources can be located through Student Services.

V. Sanctions

In appropriate cases, complaints will lead to the initiation of disciplinary procedures as referenced above. For students, sexual assault, dating violence, domestic violence, and stalking are violations of the Student Code of Conduct, subjecting the respondent to disciplinary sanctions outlined in the Code, up to and including expulsion from the EPCCCD.

Employees who violate this procedure will be subject to discipline according to the applicable EPCCCD policies and procedures, up to and including termination of employment.

The EPCCCD shall provide simultaneous notification in writing, to both the complainant and the respondent of:

- A. The result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking and
- B. The EPCCCD's procedures for the respondent and/or the victim to appeal the result for the institutional disciplinary proceeding, if available,
- C. Any change to the result, and
- D. When the results of the investigation or disciplinary proceeding become final.

VI. Reporting and Investigations

The EPCCCD strongly encourages all individuals to report incidents of sexual assault, dating violence, domestic violence, and stalking to a College official. Further, all the EPCCCD employees are obligated to report sexual misconduct of which they become aware, unless they have a legally recognized confidentiality privilege such as physicians and healthcare counselors. After an incident of sexual assault, dating violence, domestic violence, and/or stalking the victim should consider seeking medical attention and/or law enforcement assistance as soon as possible in order to preserve any important evidence that may assist in proving that an alleged criminal offense occurred or may be helpful in obtaining a protective order.

Victims may notify any local law enforcement authorities, including the EPCCCD Police Department or the local Police or Sheriff's Department. Students may also choose to be assisted by the EPCCCD personnel in notifying law enforcement authorities. Additionally, although the EPCCCD strongly encourages all members of its community to report violations of this policy to law enforcement, the victim may choose to decline to notify such authorities.

Reports of incidents of sexual assault, dating violence, domestic violence, and stalking may also be made to EPCCCD's Title IX Co-Coordinator for students or employees. When making a complaint, a victim should include dates, times, places, witnesses, and specifics of what was said and done. The complaint should also list any proposed resolutions, accommodations or protections requested by the student regardless of whether the incident was reported to law enforcement. The EPCCCD will provide resources to support persons who have been victims of sexual assault,

dating violence, domestic violence, and/or stalking and will apply appropriate disciplinary procedures to those who violate this policy. Investigations will be handled according to the Sexual Harassment Complaint and Investigation Procedures, and, in the case of an accused student, the Student Code of Conduct.

Any investigative or disciplinary proceedings that arise from a complaint of sexual assault, dating violence, domestic violence and/or stalking will be determined by a preponderance of available evidence. Such proceedings will be conducted by officials who receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and/or hearing process that protects the safety of victims and promotes accountability. The complainant, respondent, and appropriate officials will be provided timely and equal access to any information that will be used during informal and formal disciplinary meetings and hearings. Further, in any proceedings under this provision, the complainant and the respondent shall have the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. While the EPCCCD may establish restrictions regarding the extent to which the advisor may participate in the proceedings, it will not limit the choice or presence of the advisor of either the complainant or the respondent.

VII. Employee Training

Mandated training for all employees is continually conducted and provided regarding all forms of employment discrimination, including sexual harassment, Title IX, and VAWA, as part of the College's **Equal Employment Opportunity and Equal Educational Opportunity** training program. Employees are required to participate in workshop sessions and/or on-line courses within the first 30 days of employment, and thereafter every two (2) years. The on-line courses are available online at the Employee Relations Department webpage: (<http://www.epcc.edu/EmployeeRelations/Pages/default.aspx>) for employees who have previously attended a face-to-face training session. Moreover, information regarding employment discrimination, Title IX, and the Violence Against Women Act (VAWA) is available in the *Employee Handbook*: (<http://www.epcc.edu/EmployeeRelations/Pages/default.aspx>).

VIII. Student Training

The College shall require each entering student, including transfer students, to attend an orientation on the College's policy on sexual assault before or during the first semester or term in which the student is enrolled at the institution. The Office of the Vice President of Student and Enrollment Services shall establish the format and content of the orientation.