

MEMORANDUM

TO: Board of Trustees
FROM: Dr. Cesar Maldonado, Chancellor
CC: Ashley Smith, General Counsel
Melissa Mihalick, Board Counsel
David Cross, Title IX Coordinator
DATE: May 7, 2020
SUBJECT: Introduction of Chief Executive Officer Report Under Tex. Educ. Code § 51.253(c)

Ref: CM20-090
File: LLA

During the 86th Legislative Session in 2019, Senate Bill 212 (SB 212) was passed. This bill relates to “a reporting requirement for certain incidents of sexual harassment, sexual assault, dating violence, or stalking at certain public and private institutions of higher education; creating a criminal offense; authorizing administrative penalties.” SB 212 was codified under Texas Education Code (TEC) §51.251 – §51.259 (collectively referred to as TEC§51 Subchapter E-2) and became law September 1, 2019 with an effective reporting date of January 1, 2020, placing certain requirements on Houston Community College (HCC).

Noteworthy elements of TEC§51 Subchapter E are:

- TEC §51.252 imposes a mandatory reporting obligation on any HCC employee who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student or an employee of HCC at the time of the incident.
- TEC §51.255 imposes penalties on an employee who fails to report an incident of sexual misconduct. Such employees may be subject to a misdemeanor criminal offense, and HCC is required to terminate the employment of any such employee. Importantly, HCC employees have received notice of SB 212 to ensure that they are aware of their reporting obligations and the implications of non-compliance.
- TEC§51 Subchapter E imposes additional reporting and compliance obligations on post-secondary institutions, requiring the Title IX Coordinator (Mr. David Cross) to submit a written report no less than every three months to my office regarding the investigation and disposition of reports by employees pursuant to TEC §51.252.
- TEC §51.253(c) requires me to submit a written report, at least once during either the fall or spring semester, to the Board of Trustees and post on the HCC website information regarding the investigation and disposition of reports received from employees regarding incidents of “sexual harassment”, “sexual assault”, “dating violence”, or “stalking” as defined in TEC §51.251.



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- TEC §51.258 requires me to submit an annual certification of compliance with TEC §51 Subchapter E-2 to the Texas Higher Education Coordinating Board (THECB). The THECB may assess a penalty of up to \$2 million if it determines that the institution is not in substantial compliance with TEC§51 Subchapter E.

Training materials regarding SB 212 (TEC§51 Subchapter E) were provided to the Board on April 15, 2020 and included in the self-study report at the Board Regular Meeting on May 6 (Agenda Item S).

My first report to the Board pursuant to TEC §51.253(c) was prepared using the recommended THECB template and is attached to this memorandum as CM20-091.

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David Cross, Title IX Coordinator
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SUBJECT: Chief Executive Officer Report Under Tex. Educ. Code § 51.253(c) and SB 212

Ref: CM20-091
File: LLA

Under the Texas Education Code (TEC), Section 51.253(c), the institution's Chief Executive Officer is required to submit a data report at least once during each fall or spring semester to the institution's governing body and post on the institution's internet website a report concerning the reports received by employees under the TEC, Section 51.252 the type of incident described in the employee's report constitutes "sexual harassment," "sexual assault," "dating violence," or "stalking" as defined in the TEC, Section 51.251, and any disciplinary actions taken under TEC, Section 51.255.

For the purposes of complying with the Chief Executive Officer's reporting requirements under TEC, Section 51.253(c), the attached summary data report¹ (Appendix A) includes all of the required reporting information to the Houston Community College Board of Trustees for the 2019-2020 academic year, as of March 31, 2020. The summary data in Appendix A is categorized based on the reporting requirements under TEC, Section 51.253(c). The reports received may be applicable in multiple reporting categories, and therefore, the summary data in the categories may not add up to the totals of other categories.

The summary data report is also posted on the Houston Community College Title IX Webpage as per the public reporting requirements under TEC, Section 51.253(c).

Explanatory note: The three (3) investigations listed under heading "Texas Education Code, Section 51.252" in Appendix A were in progress on March 31, 2020 and therefore do not reflect a disposition.

Note: Any additional reports received by the Title IX Coordinator that do not meet the required reporting criteria in the Texas Education Code have been omitted for the compliance purposes of this specific report.²

¹ When identifiable, duplicate reports were consolidated and counted as one report in the summary data, and confidential employee reporting is noted as a sub-set to the total number of reports received.

² For example, reports made by students and all other non-employees (including incidents under 3.5(d)(3)) are excluded from Appendices A and B. Additionally, if a Title IX Coordinator or Deputy Coordinator determines that the type of incident described in a report, as alleged, does not constitute "sexual harassment," "sexual assault," "dating violence," or "stalking" as defined in the TEC, Section 51.251, the report is excluded from Appendices A and B. It is the responsibility of the Title IX Coordinator or Deputy Title IX Coordinator to assess each report received and determine whether it is properly included in this report, and if so, to correctly identify the type of incident.



**Appendix A
 Summary Data Report
 2019-2020 Academic Year
 January 1, 2020 – March 31, 2020**

Texas Education Code, Section 51.252	
Number of reports received under Section 51.252³	4
Number of confidential reports ⁴ under Section 51.252	0
Number of investigations conducted under Section 51.252	3
Disposition ⁵ of any disciplinary processes for reports under Section 51.252:	
a. Concluded, No Finding of Policy Violation ⁶	0
b. Concluded, with Employee Disciplinary Sanction	0
c. Concluded, with Student Disciplinary Sanction	0
d. SUBTOTAL	0
Number of reports under Section 51.252 for which the institution determined not to initiate a disciplinary process ⁷	1

Texas Education Code, Section 51.255	
Number of reports received that include allegations of an employee’s failure to report or who submits a false report to the institution under Section 51.255(a)	1

³ Reports made by students and all other non-employees (including incidents under 3.5(d)(3)) are excluded from Appendices A and B. Additionally, if a Title IX Coordinator or Deputy Coordinator determines that the type of incident described in a report, as alleged, does not constitute “sexual harassment,” “sexual assault,” “dating violence,” or “stalking” as defined in the TEC, Section 51.251, the report is excluded from Appendices A and B. It is the responsibility of the Title IX Coordinator or Deputy Title IX Coordinator to assess each report received and determine whether it is properly included in this report, and if so, to correctly identify the type of incident.

⁴ “Number of confidential reports” is a sub-set of the total number of reports that were received under Section 51.252, by a confidential employee or office (e.g., Counseling Center, Student Health Center, Victim Advocate for Students, or Student Ombuds).

⁵ “Disposition” means “final result under the institution’s disciplinary process” as defined in the Texas Higher Education Coordinating Board’s (THECB) rules for TEC, Section 51.259 [See 19 Texas Administrative Code, Section 3.6(3) (2019)]; therefore, pending disciplinary processes will not be listed until the final result is rendered.

⁶ “No Finding of a Policy Violation” in this section refers to instances where there is no finding of responsibility after a hearing or an appeal process; investigations completed with a preponderance of evidence not met are excluded, because it would not have moved forward into a disciplinary process.

⁷ The institution may have determined “not to initiate a disciplinary process.” The reasons for not initiating a discipline process can include, but are not limited to: case dismissal; insufficient information to investigate; confidential employee reporting (no identifiable information); the respondent’s identity was unknown or not reported; the respondent was not university-affiliated; the complainant requested the institution not investigate the report; informal resolution was completed; investigation is ongoing; or investigation was completed with a preponderance of evidence not met.