

Supplemental Materials

AGENDA ITEM VII-A

Consideration of adopting the Sexual Assault Policy Advisory Committee's recommendation to the Board relating to the proposed new Chapter 3, Subchapter A, Sections 3.11 - 3.15 of Board rules concerning electronic reporting and amnesty for students reporting incidents of sexual assault

RECOMMENDATION: Approval

Background Information:

Senate Bills 968 and 969, 85th Texas Legislature, Regular Session, required the Commissioner to convene an advisory committee to recommend rules on sexual assault reporting and amnesty at all Texas institutions of higher education, including public 2- and 4-year institutions, and private/independent colleges and universities. Coordinating Board staff recommend having rules in place by December 1, 2017 in order to allow institutions of higher education to implement policies by January 1, 2018.

Staff convened the advisory committee on August 11, 2017, and the committee developed a set of recommended rules. Staff posted the proposed rules for public comment in the Texas Register on September 7, 2017 for a comment period that began on September 22, 2017 and ended on October 22, 2017. Because the end date fell upon a Sunday, staff accepted comments through end of business Monday, October 23, 2017.

Staff shared the comments with the advisory committee. A majority of the committee members responding agreed that no changes were necessary to the text of the rules based on the comments received.

Two public comments were received.

Comment: The law firm of Guenther, Jordan & Price, representing a private institution of higher education in Texas, commented, in effect, on the statute and did not directly address the proposed rules. The firm commented on Texas Education Code (TEC) §51.9363, which requires each postsecondary educational institution to adopt a policy, approved by its governing board, on sexual assault applicable to students and employees of the institution. The firm stated that most institutions already have such policies in place. The firm questioned whether an institutional website may contain only state-mandated policies, or if it may contain other Title IX information.

The firm commented on TEC §51.9365(a) and §51.9366(a), which establish definitions for dating violence, sexual assault, sexual harassment, and stalking, stating that institutions already have multiple sets of such definitions to accommodate.

The firm commented on TEC §51.9365(c), which mandates that the electronic reporting option provided under the law must enable a student or employee to report the alleged offense anonymously. The firm objects, saying that forcing universities to allow anonymous reporting by employees is contrary to the best employment practices encouraged by the Equal Employment Opportunity Commission, the courts, and legal advisors.

The firm commented on TEC §51.9366(b), which requires an institution to provide amnesty to any student who in good faith reports to the institution being the victim of, or a witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking. The law firm suggested that the rules should limit the amnesty for witnesses to persons who voluntarily approach the university to make a report of a sexual assault before themselves coming under investigation for a disciplinary violation.

Staff response: Staff took no action as a result of this comment because the proposed rules largely mirror the statutory language. Statutory change would require legislative action.

Comment: The University of North Texas (UNT) System commented on the definitions in the rules. The UNT System objected to the proposed definition of sexual harassment found in proposed rule 3.13(d), saying that it creates separate standards for sexual harassment for employees and students.

Staff response: Staff took no action as a result of this comment because the proposed rules largely mirror the statutory language. Statutory change would require legislative action.