

**Coast Community College District
ADMINISTRATIVE PROCEDURE**

Chapter 5
Student Services

AP 5910 SEXUAL MISCONDUCT

References:

California Education Code Sections 67380, 67383, 67385, 67386 67389(a)(1), 67395.7, and 76200 et seq.;

California Penal Code Sections 242, 243, 245, and 261 et seq.;

20 U.S. Code Section 1092(f) - The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)

34 Code of Federal Regulations Section 668.46(b)(11);

Title IX of the Education Amendments of 1972 Implementing Regulations at: 20 U.S.C. 1681 & 34 C.F.R. PART 106);

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SECTION I—DEFINITIONS

Appeal Committee: Means a committee formed to hear a Student's proper appeal, which may follow a determination of Responsible or Not Responsible for violation(s) of the District's Sexual Misconduct Policy. The Appeal Committee hears appeals where Students allege unlawful discrimination, or prejudicial evidence exclusion during the investigation of Title IX complaints, and for the reasonableness of Sanctions imposed following a Sexual Misconduct investigation.

Chair: The Hearing Panel or Appeal Committee's selected (by majority) lead representative responsible for adherence to the administrative process for hearing or appeal.

Complainant: A person(s) alleging that they are the victim of Sexual Misconduct by another person subject to the District's policy on Sexual Misconduct. The District or College shall also be considered a Complainant if the District or College elects to investigate reports of potential violation(s) of the District's policy on Sexual Misconduct. Any person(s), other than the alleged victim (Complainant), who reports possible violation(s) of the District's policy on Sexual Misconduct, shall be identified as a Reporter, as defined herein.

College: Any one of the three Colleges within the District.

College Disciplinary Officer: Means the College official(s) designated by the College President, or designee, to administer the Sanctions under this Administrative Procedure by incorporation of the Sanctions under District Administrative Procedure 5500.

Consent: Consensual sexual activity requires an ongoing, affirmative Consent, for the act in which the participants are involved. More specifically, affirmative Consent means an expressed, affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative Consent of the other, or others, to engage the sexual activity. Lack of protest, or resistance, or silence does not mean Consent. There is no Consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used to obtain Consent. Affirmative Consent must be ongoing throughout a sexual activity, and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never, by itself, be assumed to be an indicator of Consent. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no Consent; this includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious.

Dating Violence: Is the use of physical violence, coercion, threats, intimidation, isolation, or Stalking on another while in a dating relationship, or a social relationship of romantic or sexually intimate nature. Such violence includes other forms of emotional, sexual or economic abuse directed towards a person who is or has been in a dating relationship, or a social relationship of a

romantic or sexually intimate nature with the victim. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Dating Violence can be a single act or a pattern of behavior in relationships.

Day: Means calendar day.

District: Refers to the Coast Community College District.

District Community: Means any employee, contractor, Student, member of the public, or invitee present on District property, or on property being used by the District. For purposes of this definition, a Student is deemed a member of the District Community while enrolled in, or in the process of applying for, enrollment as a Student at any of the Colleges within the District.

District Human Resources Representative: The District's Vice Chancellor of Human Resources, or designee, assigned to work with the Title IX Coordinator in the investigation of Sexual Misconduct cases involving Employees to Student, or Student to Employee, to ensure conformance with applicable District Human Resources/Personnel Policies and Procedures.

Domestic Violence: Use of physical violence, coercion, threats, intimidation, isolation, Stalking, or other forms of emotional, sexual, or economic abuse directed towards (a) a current or former spouse or intimate partner; (b) a person with whom one shares a child; or (c) anyone who is protected from the Respondent's acts under the domestic or family violence laws of California, including Family Code Section 6250 et seq., and any applicable federal law, including the Violence Against Women Act of 1994 (VAWA), as amended. This can include behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Domestic Violence can be a single act or a pattern of behavior in relationships.

Gender-based Harassment: Unwelcome Conduct of a nonsexual nature based on a Student's actual or perceived gender, including conduct based on gender identity, gender expression, or nonconformity with gender stereotypes.

Hearing Panel: Means a panel formed by the College Title IX Coordinator or designee to make a determination and finding of whether a Student is Responsible or not for alleged violations of Sexual Misconduct.

Hostile Environment: Exists when Unwelcome Conduct of a sexual or gender-based type is sufficiently serious and/or pervasive to deny or limit a person's ability to fully participate in or benefit from the College's programs or activities. A Hostile Environment can be created by anyone involved in a College's program or activity (e.g., administrators, faculty members, staff, Students, or campus visitors). In determining whether conduct has created a Hostile Environment, the District considers the conduct in question from both objective and subjective perspectives. The District will base findings on a variety of factors, including the severity,

persistence, or pervasiveness of the conduct. The more severe the conduct, the less need there is to show a repetitive series of incidents to find a Hostile Environment. Likewise, a series of incidents may be sufficient even if the conduct is not particularly severe.

Not Responsible: Means, based on the applicable evidence collected during the investigation, it is not more likely than not that the Student did not commit a violation of BP/AP 5910 – Sexual Misconduct.

Party/Parties: Means either the Complainant or the Respondent, involved in the alleged violation of this BP/AP 5910 – Sexual Misconduct. The term Parties means both the Complainant and the Respondent collectively.

Reporter: Any person(s), other than the Complainant, who reports potential violation(s) of the District’s policy on Sexual Misconduct.

Respondent: A person/s who are alleged to have violated the District’s policy on Sexual Misconduct.

Responsible: Means, based on the applicable evidence collected during the investigation, that it is more likely than not that the Student committed one or more violation(s) of the District’s Board Policy 5910 – Sexual Misconduct, or Administrative Procedure 5910 – Sexual Misconduct.

Retaliation: Any act of reprisal against a person who is involved in an allegation of Sexual Misconduct including but not limited to the Complainant, the Respondent, witnesses, investigators, and Hearing Panel, or Appeal Committee. Examples of actions that might be Retaliation against a Complainant, witness, or other participant in the complaint process include: a) Singling the person out for harsher treatment; b) lowering a grade or evaluation; c) failing to hire, failing to promote, withholding pay increase, demotion, or discharge; d) providing negative information about the person in order to interfere with his or her prospects for employment, admission, or academic program.

Sanctions: Those disciplinary measures available to the College Disciplinary Officer or designee to impose upon a Student upon the finding of the Student’s responsibility for violation(s) of the Student Code of Conduct or of this administrative procedure.

Sex: For purposes of this administrative procedure, sex may refer to gender designation as male or female gender or based on a perceived association with a particular gender/s; or to a physical act of a sexual nature, depending upon the context in which the term is used in this procedure.

Sexual Assault: Actual or attempted sexual contact with another person without that person’s Consent. Sexual Assault includes, but is not limited to: 1) intentional touching of another person’s body in a sexual nature without that person’s Consent; 2) other intentional sexual contact with another person without that person’s Consent; 3) coercing, forcing, or attempting to

coerce or force a person to touch another person's body in a sexual nature without that person's Consent; or 4) rape, which is penetration, no matter how slight, of the vagina, or anus of a person by any body part of another person, or by an object, or the mouth of a person, or by a sex organ of another person, without the other person's Consent.

Sexual Exploitation: Occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without the other person's Consent. Examples of behavior that could rise to the level of Sexual Exploitation include:

- Prostituting another person;
- Recording images (e.g. video, photograph) or audio of another person's sexual activity, body when recorded for a sexual reason, or nakedness without that person's Consent;
- Disturbing images (e.g. video, photograph) or audio of another person's sexual activity, images of another's body for sexual purposes, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not Consent to such disclosure and objects to such disclosure; and
- Viewing or distributing images of an individual's sexual activity, body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's Consent to have the image shared, or advance Consent to view such an image, and for the purposes of arousing or gratifying sexual desire.

Sexual Harassment: Unwelcome Conduct of a sexual nature, including but not limited to unwelcome sexual advances; requests for sexual favors; or other verbal or nonverbal conduct of a sexual nature, including rape, Sexual Assault, and Sexual Exploitation. In addition, depending on the facts, Dating Violence, Domestic Violence, and Stalking may also be forms of Sexual Harassment.

Sexual Misconduct: Comprises a broad range of unwelcome behaviors focused on Sex and/or gender that may or may not be sexual in nature. Any intercourse or other intentional sexual touching or activity without the other person's Consent is Sexual Assault, and is a form of Sexual Misconduct under this Policy. Sexual Misconduct encompasses Sexual Harassment, Sexual Assault, Sexual Exploitation, or Gender-based Harassment, which is a form of Harassment based on gender identity, gender expression, or non-conformity with gender stereotypes. Sexual Misconduct may also encompass acts of a sexual nature, including acts of Sexual Stalking, Domestic Violence, and Dating Violence, intimidation, or for Retaliation following an incident where alleged Sexual Misconduct or has occurred.

Sexual Misconduct can occur between strangers or acquaintances, or people who know each other well, including between people involved in an intimate or sexual relationship, can be committed by anyone regardless of gender identity, and can occur between people of the same or different Sex or gender.

Stalking: Stalking behavior in which a Student repeatedly engages in a course of conduct directed at another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her family; where the threat is reasonably determined by the College Disciplinary Officer to create substantial emotional distress, torment, create fear, or to terrorize the person.

Sexual Stalking: Course of conduct directed at a specific person that would cause a reasonable person to feel fear or suffer substantial emotional distress due to another's sexual interest or gender interest. Sexual Stalking involves repeated and continued harassment of a sexual or gender-based nature, against the expressed Consent of another individual, which causes the targeted individual to feel emotional distress, including fear or apprehension. Such Sexual Stalking behaviors may include: pursuing or following; unwanted communication or contact—including face-to-face encounters, telephone calls, voice messages, electronic messages, web-based messages, text messages, unwanted gifts, etc.; trespassing; and surveillance or other types of observation.

Student/Students: Means any person(s) who has applied for admission, who is or has been enrolled, or who has expressed their intent to enroll for any program within the District for the period in which the misconduct occurred.

Title IX Coordinator: The designated person(s) responsible for oversight and implementation of Title IX compliance at each College for the effective oversight of the District's Sexual Misconduct Policy and Procedures, and for the responsibilities outlined in this Administrative Procedure.

Title IX Deputy: The Title IX Coordinator's designated person(s) responsible for assisting in the oversight and implementation of Title IX compliance at each College for the effective oversight of the District's Sexual Misconduct Policy and Procedures.

Title IX Investigator(s): The Title IX Coordinator's designated person(s) responsible for the investigation of complaints of Sexual Misconduct at each College.

Unwelcome Conduct: Conduct of a sexual, gender-based, or harassing nature, which is not solicited, invited, or Consented to. Such conduct would be deemed unwelcome if the person receiving it did not request or invite it, and considered the conduct to be undesired, or offensive. Such conduct may take various forms, including name-calling, graphic or written statements (including the use of cell phones or the Internet), hazing, bullying, offensive, or other conduct that may be physically or psychologically threatening, harmful, or humiliating. Unwelcome Conduct does not have to include intent to harm, or directed at a specific target, or involve repeated incidents. Unwelcome Conduct can involve persons of the same or opposite Sex. Participation in the conduct or the other Party's failure to complain does not mean that the conduct was welcome.

SECTION II—JURISDICTION

Pursuant to Board Policy BP 5500 – Student Code of Conduct, and Administrative Procedure AP 5500 – Student Code of Conduct, the District’s jurisdiction concerning alleged Student Code of Conduct violations extends to District or any of its activities occurring on District property. This jurisdiction includes, but is not limited to, its main and satellite campuses, and to any other property used by District or its Colleges. This jurisdiction may also apply to Student-to-Student or Student-to-employee off-campus conduct and/or actions, including electronic activity (such as e-mail, texting, telephone contact, social media), when the College Administrator, or designee, determines that the off-campus conduct affects, disrupts, or interferes with the educational mission of the campus.

SECTION III—DISTRICT COMMUNICATIONS RELATING TO GENDER-BASED DISCRIMINATION/SEXUAL MISCONDUCT NOTICE AND INVESTIGATIONS

The District’s primary correspondence and notification mechanism with Students shall be through the Student’s District assigned email account. At the District’s discretion, Students may be notified via U.S. certified mail, delivery in person, or by an alternate email on record as shown on record from the Student.

SECTION IV—STANDARD OF PROOF

A Student will be found either Responsible or Not Responsible based on a preponderance of the evidence meaning that it is more likely than not that the Student has violated the District’s BP/AP 5910. The determination of Responsible or Not Responsible shall be based upon the thorough investigation of allegations and the weighing of evidence in totality by the Title IX Coordinator, or his or her designee.

SECTION V—REPORTING SEXUAL MISCONDUCT

All employees of the District, except the excluded employees as noted below, are designated as mandatory Reporters for the purpose of this administrative procedure.

Excluded employees:

- Student workers
- Those employees whose primary assignment is at one of the Colleges’ Student Health Centers to render medical or counseling care to Students, are excluded from being mandatory Reporters. The exclusion of these employees rendering medical or counseling

care in the Student Health Centers is intended to provide Students with a mechanism to confidentially report incidents of Sexual Misconduct.

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- This section, though, is not intended to negate any other mandatory reporting responsibilities required under the law, such as in California Welfare and Institutions Code Sections 15630 et seq. and California Penal Code Sections 11164 et seq.

5.1 Timeframe for Reporting a Complaint

The District does not limit the time for filing a complaint of Sexual Misconduct. However, incidents that are not reported while evidence is still available may reduce the District's ability to effectively investigate and respond to such complaints.

5.2 Methods for Reporting Sexual Misconduct

Employees are required, under this Section, to report known or reasonably suspected incidents of Sexual Misconduct to the Title IX Office at their campus/location. Employees may submit reports online via the incident reporting feature at the College the employee works at, or in person to the Colleges' designated Title IX Coordinator, Director of Personnel Services, or to the Campus Safety Office. Students may report incidents of Sexual Misconduct directly to the Title IX Coordinator, the Director of Personnel Services, the Campus Safety Office, or to the local law enforcement where the incident occurred. Students may also report incidents of Sexual Misconduct to the Student Health Center if they wish to remain confidential (see Confidentiality section below).

The District's Colleges each have an optional form for Students to use in the reporting of Sexual Misconduct complaints. Students may also file an Unlawful Discrimination Form directly to the California Community College State Chancellor's Office or the District's Chief Human Resources Officer.

5.3 Confidentiality in Connection with a Report of Sexual Misconduct

When the College or District becomes aware of Sexual Misconduct, the College may have an obligation to proceed with an investigation, regardless of a Complainant's wishes to the contrary, in order to ensure the safety of the District Community. Complainants are not required to participate; however, this may limit the College or District's ability to effectively respond to the incident. If a person requests that their name or other identifying information not be used in an investigation, the College or District will weigh requests for confidentiality against its duty to provide a safe and nondiscriminatory environment for all members of the District Community. In most cases, information including the person's name may be shared with the Respondent, witnesses and with College or District officials who have a legitimate need to know or law enforcement as applicable. Beyond that, the College or District will take steps to reasonably protect the person's identity and the identity of all individuals involved.

The College or District may publicly disclose results of disciplinary proceedings if a Student is found to have committed a crime of violence, or non-forcible Sex offense, as determined under these administrative procedures.

The Student Health Centers at Orange Coast College and Golden West College provides confidential counseling and health services on campus for all registered Students attending these institutions. Coastline Students shall be referred to the College's third-Party health services provider for supportive services.

SECTION VI—INVESTIGATIONS OF SEXUAL MISCONDUCT

6.1 Timeframe for Investigating Sexual Misconduct Complaints

The District will investigate and communicate its findings within 60 Days of the date in which the complaint was filed unless there are extenuating circumstances that prohibit the timeliness of the completion of the investigation. If an extenuating circumstance exists that prohibits the completion of an investigation within 60 Days, the District will inform the Complainant and the Respondent in writing of such delay.

The Title IX Coordinator, or designee, shall use reasonable, diligent efforts to resolve Sexual Misconduct reports within 60 Days of an initial report, not including appeals. The District's intended timeline, barring unexpected delay or complex investigations, is as follows:

- Review and investigation process begins within 7 Days after the date of the initial report
- Investigation is completed within 25 Days after the investigation begins
- Hearing, if any (as defined in the District's Student Code of Conduct BP/AP 5500) is held within 20 Days after the conclusion of the investigation
- Determination of the hearing is issued within 7 Days after the completion of the hearing
- Notice of Sanction(s) issued within 7 Days after the completion of the hearing
- Notice of appeals filed by either or both Complainant and Respondent to the College Disciplinary Officer within 7 Days after the notice of determination and sanction(s)
- Appeal hearing is held within 20 Days after Complainant and/or Respondent's notice of appeal was received
- Determination of appeal hearing by the President, or designee, is issued within 7 Days after the completion of the appeal hearing

6.2 Alcohol and Drug Use Are Not Barriers to Reporting Sexual Misconduct

The District understands that Students may be reluctant to file complaints of Sexual Misconduct when alcohol and/or drugs were used. Whenever possible, the College will respond educationally, rather than punitively, to the use of drugs and/or alcohol so as to promote the reporting of Sexual Misconduct. However, the College reserves the right to other remedies dependent upon the severity of the alcohol or drug use.

6.3 Reports Involving Unknown/Non-College Offenders

The District will investigate reports of Sexual Misconduct incidents allegedly committed by Students against other Students, committed by a District employee against a Student, or by a non-Student against a Student. The District will also investigate reports of Sexual Misconduct incidents allegedly committed by Students against District employees, or Students against non-Students.

The District will investigate reports of Sexual Misconduct where the identity of the victim is not known to the extent it is able, and take appropriate actions designed to protect affected Students and members of the District Community. When appropriate, the College will offer reasonable supportive remedies, such as class scheduling alternatives, escort services, and medical and counseling care to the Complainant.

Sexual Misconduct investigations are subject to the jurisdictional limitations of the District as set forth herein.

6.4 Anti-Retaliation/Anti-Intimidation

Any form of Retaliation or intimidation against anyone who has complained of or formally reported discrimination, harassment, or Sexual Misconduct, or has participated in an investigation of such a complaint, regardless of whether the complaint relates to the complaining person or someone else, will not be tolerated, and violates Board Policy, this procedure, and applicable law.

6.5 Parallel Student Conduct Proceedings

Title IX investigations and/or Student Conduct Code proceedings are independent from court or other administrative proceedings. Discipline may be instituted against a Respondent also charged in civil or criminal courts based on the same facts that constitutes the alleged violation of the Student Code of Conduct or other applicable Board Policy or collective bargaining agreement. The District may proceed before, concurrently with, or after any judicial, criminal, or administrative proceedings, except in cases involving Sexual Misconduct. In Sexual Misconduct cases, the District shall proceed with investigation without undue delay, typically within 14 Days, in accordance with federal and state law requirements, and District Policies and Procedures.

6.6 Steps in the Administrative Process

Step One—Notice

Once a complaint of Sexual Misconduct has been received by the Title IX Coordinator, the Personnel Director, or the Campus Safety Office, or designee, will provide a notice in writing to involved Parties with the following information:

- A description of the alleged violation(s);
- A description of the applicable policies;

- A statement of the potential Sanctions/responsive actions that could result; and
- A required date, time, and location for a review, an interview, or hearing

If any Party does not appear at the scheduled review, investigation, or hearing, the meeting will be held in his/her absence. For compelling reasons, the Title IX Coordinator, or designee, may reschedule the meeting.

Time frames for reviews, investigations, and hearings may vary depending on the details of a case and at certain times of the academic year for possible violations that occur near, during, or after District holidays, breaks, or the end of an academic terms, in which meetings will be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by this policy and procedures.

Step 2—Interim Accommodations and Sanctions

Once the Title IX Coordinator or designee has received a complaint of Sexual Misconduct, the College will make an interim assessment to determine if any immediate remedies are warranted, pending investigation. The College will work with Students affected by the Sexual Misconduct report to ensure their safety and promote their well-being. Sometimes this assistance will take the form of immediate interim actions or accommodations to support and protect the involved Students in the immediate aftermath of an incident and while an investigation or disciplinary action is pending.

The Title IX Coordinator, or designee, may assign a victim’s advisor to the person who reported the complaint or the Complainant may choose his/her own. Likewise, the Title IX Coordinator may determine other remedies, such as, but not limited to, accommodations relating to changing academic schedules, Public Safety escort services, restrictions on the alleged perpetrator pending investigation, and other remedies to promote the well-being, safety, and restoration of alleged victim.

Interim Actions and Requests to Stay

As set forth in the District’ Student Code of Conduct (BP/AP 5500), a Student may be subject to interim actions pending investigation of a complaint. The College Disciplinary Officer, Title IX Coordinator, or designee, may impose interim Sanctions deemed reasonably necessary to protect the Student, or the campus community. The Student shall be notified of any interim action in accordance with the Student Code of Conduct.

Upon notice of an Interim Suspension by the College Disciplinary Officer, Title IX Coordinator, or designee, the Student has 3 calendar Days (from the date of the notice) to submit reason(s) for a Request to Stay to the Vice President of Student Services or their designee. The Vice President of Student Services or their designee will render a decision on providing a stay, with or without modifications to the Student’s request. The Vice President of Student Services or their designee will provide the Student with a decision within 1 business Day of the received Request for Stay.

The Interim Suspension remains in effect until a decision from the Vice President of Student Services or designee is rendered.

Step 3—Investigation

The District, through a trained Title IX Investigator or Coordinator, will investigate all reports of alleged violations of Sexual Misconduct. The investigators will interview the Complainant, Respondent, and any witnesses (if appropriate). The investigator will also gather information, documents, and materials (if any) that are relevant to the case.

Once sufficient evidence has been collected, the College Title IX Coordinator, Deputy Title IX Investigators, or Hearing Panel makes a determination of Responsible or Not Responsible based on the preponderance of the evidence that there has been a violation of College District BP/AP 5910 (see Step 4—Determination of Findings).

Informal Resolution Options

If appropriate, the District's Title IX Officers may seek to resolve certain Sexual Misconduct cases through an informal process involving both the Complainant and Respondent, subject to the Complainant's agreement to do so.

Declining/Reluctance to Participate in an Investigation

A Complainant and/or Respondent may decline to participate in the investigation and hearing. In these cases, the investigation and adjudication process will continue and a determination of Responsible or Not Responsible will be made without the benefit of the Complainant and/or Respondent's input.

As a Complainant/victim of an incident of Sexual Misconduct, Students may inform the College that they are unwilling to participate further in any investigation and/or disciplinary action against the Student(s) who has been accused (Respondent). The District has an obligation to investigate to the extent of the information that is available and known. If during the investigation the investigator finds corroborating information, it may be determined that it is necessary to move forward with the Student conduct process without the involvement of the Complainant or to implement other appropriate remedies. If a Complainant does not wish to participate in the Student conduct process, the District is obligated to record the incident for Clery Act reporting compliance. When a report is being recorded into a document, there will be no personally identifying information about the Complainant within the document. The Complainant will be notified of any actions by the District, coupled with a letter stating the choice to participate in the investigation and/or Student conduct process.

Step 4—Determination of Findings

Once the Title IX Coordinator, Deputy, or Investigator(s) have concluded their investigation, they will make a determination based on the preponderance of the evidence that the Respondent is Responsible or Not Responsible for the alleged violation of Sexual Misconduct. Depending

on the case, the Title IX Coordinator will determine if a Hearing Panel will be used to determine the findings (see use of Hearing Panel for Determination of Findings).

Responsible—if after the conclusion of an investigation, the preponderance of the evidence indicates that it is more likely than not that the Respondent violated District BP/AP 5910, the Respondent will be found Responsible for the violation. Both the Complainant and the Respondent will be informed of the outcome and the investigatory report will be forwarded to the College Discipline Officer for applicable Sanctions. The Title IX Coordinator, the Deputy, or Investigator(s) may make a recommendation to the College Discipline Officer as to the Sanctions that should be imposed based on the severity of the violations. Both the Complainant and the Respondent will be advised of their right to appeal (see Section VII Appeal Process).

Not Responsible— if after the conclusion of an investigation, the preponderance of the evidence indicates that it is NOT more likely than not that the Respondent violated the District policy, the Respondent will be found Not Responsible for the violation. Both the Complainant and the Respondent will be informed of the outcome, and advised of their right to appeal (see Section VII Appeal Process).

Use of Hearing Panel for Determination of Findings

Depending on the severity and/or pervasiveness of the alleged Sexual Misconduct, the Title IX Coordinator, or designee, may use a Hearing Panel to determine if the Respondent is Responsible/Not Responsible. The Hearing Panel will consist of an odd number of members, typically 3 or 5 trained District personnel, who will weigh the evidence provided by the Deputy Investigator/s assigned to the case. The Hearing Panel will make a determination of Responsible/Not Responsible based on a majority vote.

The District shall make reasonable efforts to give the Student(s) an opportunity to refute the accusation or otherwise provide relevant information to the Hearing Panel regarding the alleged violation(s).

The hearing is closed to all persons except the: 1) the Title IX Deputy Investigator/s who conducted the investigation; 2) Respondent; 3) Student's Legal Counsel; 4) an attorney or other professional, expert, or consultant retained by the District; 5) a court-certified interpreter at the Student's own expense; 6) members of the Hearing Panel, and 7) witnesses, for the limited purpose of providing relevant testimony. In some cases, a campus safety officer may be present to ensure safety and security during the hearing. Likewise, the Title IX Coordinator, or designee, may be present to ensure a fundamentally fair process and compliance. Panel members for a Hearing Panel will consist of trained District employees only. Students will not serve on any Hearing Panel due to the sensitive nature of the subject matter.

In cases where the Student is a dependent minor, the Student's parent or legal guardian must be present at the hearing.

Guidelines Used During Interviews, Hearings, and Determination of Findings

- **Information Regarding Romantic or Sexual History.** The Hearing Panel will not consider the romantic or sexual history of either the Complainant or the Respondent in cases involving allegations of Sexual Misconduct, except for testimony offered by one or the other about the Complainant's and Respondent's shared sexual history that the Hearing Panel deems relevant. The existence of a sexual relationship between the Complainant and Respondent may not support the inference of Consent to alleged Sexual Misconduct.
- **Prior Conduct Violation.** The Hearing Panel will not consider the Respondent's prior conduct violations, unless 1) the Respondent was previously found to be Responsible, and 2) the previous incident was substantially similar to the present allegation(s) and/or the information indicates a pattern of behavior by the Respondent.
- To minimize victim reticence, to encourage the reporting of Sexual Misconduct offenses, and to encourage participation in investigations, the use of audio or video recording devices, including, but not limited to cell phones and other devices is prohibited during investigations, hearings, or appeals.

Step 5—Sanctions

If the College Disciplinary Officer receives an investigation report finding that a Respondent is Responsible for violating the District Sexual Misconduct Policy, the College Disciplinary Officer will follow the District's Student Code of Conduct, or other applicable board policy, to impose Sanctions and to notify the Respondent of the imposed sanctions and their right to appeal. Once the Sanctions have been imposed, the Title IX Coordinator will notify the Complainant of the imposed Sanctions and their right to appeal.

Sanctions issued shall be:

- Fair and appropriate given the facts of the particular case;
- Consistent with the individual College's handling of similar cases;
- Adequate to protect the safety of the District Community; and
- Reflective of the seriousness of the Sexual Misconduct.

The relevant factors that are considered, as applicable to the specifics of each type of Sexual Misconduct, when imposing Sanctions are:

- 1) the specific Sexual Misconduct at issue (such as penetration, touching, unauthorized recording, etc.);
- 2) the circumstances accompanying the lack of Consent (such as force, threat, coercion, incapacitation, etc.);
- 3) the Respondent's state of mind (intentional, knowing, bias-motivated, reckless, etc.);

- 4) the impact of the offense on the Complainant;
- 5) the Respondent's disciplinary history;
- 6) the safety of the District Community; and
- 7) the Respondent's conduct during the disciplinary process.

Impact Statements

The purpose of impact statements is to allow the Complainant and Respondent, during the sanctioning process, to describe to the Hearing Panel how this violation has had an impact on them. The College Disciplinary Officer and/or the Title IX Coordinator may use information from these statements to help determine an appropriate sanction(s).

Impact statements may provide information about damage to Complainant/Respondent that would otherwise have been unavailable to the Hearing Panel. A Complainant is not required to appear before a Hearing Panel, but is empowered by the Hearing Panel, if the Complainant so desires, to convey her/his experience(s) in the case to the Hearing Panel in written form.

Step 6—Appeals of the Investigation Process or Imposed Sanctions

Both the Respondent and the Complainant have the right to submit an appeal for review of the investigation process and/or the imposed Sanctions (refer to Section VII Appeal Hearing Process). Appeals must be submitted in writing to the Title IX Coordinator or the College Disciplinary Officer within 7 Days of the notice of findings.

Step 7—Ongoing Accommodations for Complainants

Whatever the outcome of the informal resolution, investigation, or hearing process, a Complainant may request ongoing or additional accommodations. In consultation with other campus departments, a determination will be made on whether such measures are appropriate. Potential ongoing accommodations include:

- Providing an escort by Public Safety
- Changing the Complainant's academic schedule
- Adjusting the Complainant's on campus job work schedule
- Allowing the Complainant to withdraw from or retake a class without penalty
- Providing access to tutoring or other academic support, such as extra time to complete or re-take a class

The District's Colleges may also determine that additional measures are appropriate to respond to the effects of the incident. Additional responses for the benefit of the District Community may include:

- Revision of the District's policies and procedures regarding Sexual Misconduct
- Additional training and education materials for Students, faculty, and staff

- Increased monitoring, supervision, or security at locations or events where the Sexual Misconduct occurred
- Ensuring relevant climate surveys that focus on safety, security, inclusion are gathered to improve on developing a culture that is intolerant of Sexual Misconduct

SECTION VII—APPEAL HEARING PROCESS

Within 7 Days of the notice of the findings either the Complainant or the Respondent or both may appeal the determination of findings and/or Sanctions. The request for an appeal must be submitted to the Title IX Coordinator or College Disciplinary Officer within 7 Days of receipt of Notice of Findings. The Parties are entitled to only one appeal of findings or Sanctions arising from a single investigation of a complaint or series of related complaints.

Disagreeing with the finding of the sanction is not, by itself, grounds for appeals. Students are allowed one appeal. The decision of an Appeal Committee is final.

7.1 Specific Grounds for Appeal:

1. A substantive procedural error or omission occurred, which materially and significantly affected the weighing of evidence by the Title IX Coordinator (or designee), Title IX Deputy Investigators, or the Hearing Panel which substantively affected the outcome of the hearing (i.e., substantiated bias, material deviation from established procedures, etc.).
2. To consider new evidence, unavailable or not considered during the original hearing or investigation, that could subsequently impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
3. Excessive or insufficient Sanctions in relation to the violation(s) the Respondent was found Responsible for committing.
4. Evidence of unlawful discrimination by an Investigator, Title IX Coordinator, a member(s) of the Hearing Panel, or the College Disciplinary Officer towards a Party.

7.2 Appeal Hearing

The appeal hearing is closed to all persons except the: 1) College Disciplinary Officer; 2) Respondent; 3) Advisor - An attorney or other professional, expert, or consultant retained by the District, Respondent, or Complainant; 4) Witness (es) (while testifying); 5) a court-certified interpreter; 6) members of the Appeal Committee; and 7) any person requested by the Appeal Committee Chair to assist the Appeal Committee. In some cases, a Campus Safety Officer may be present to ensure safety and security during the hearing. Likewise, the Title IX Coordinator, or designee, may be present to ensure a fundamentally fair process and compliance. Hearing Panel members for an appeal hearing will consist of District employees only. Students will not serve on any Appeal Committee due to the sensitive nature of the subject matter.

In cases where the Student is a dependent minor, the Student's parent or legal guardian must be present at the hearing.

Selection of the Appeal Committee

The following process determines possible members of an Appeal Committee. Members must be employees of the District. All members participating on an Appeal Committee are oriented and trained to adjudicate cases of Sexual Misconduct. The College Disciplinary Officer, in consultation with the Title IX Coordinator, or designee, will form the Appeal Committee. The Appeal Committee will consist of any odd number of members, typically 3 or 5 members. The Appeal Committee shall not include any person who was a participant in the event out of which the Disciplinary action had arose, nor shall it include any person who has had a past association with the Student or any other Party to the hearing which could impede the individual's ability to act in a fair and impartial manner. A Committee member who is chosen must disclose any potential or actual conflict of interest.

At the time of disclosure of the members of the Appeal Committee, the Complainant or Respondent believes that any member of the Appeal Committee has a potential or actual conflict of interest; she/he can make a request in writing of the reason(s) believed to be a conflict. This request must be submitted to the College Disciplinary Officer within 3 Days after the date of notification of the Appeal Committee's membership. Prior to starting the hearing, the Appeal Committee will select a Chair to run the appeal process by a majority vote of the Appeal Committee members.

Hearing Procedures for Appeal

1. Chair will call the appeal hearing to order, explain the procedures of the hearing, and have all Parties introduce themselves.
2. The Chair will define the expectations of behavior during the hearing to maintain the orderly progress of the hearing, make certain that all Parties respect the right of others to make statements, and to ensure confidentiality.
3. The College Disciplinary Officer (when applicable), Title IX Coordinator or his/her designee, the District's Human Resources Representative (when applicable) and any of her/his witness(es), shall have up to 30 minutes in total to present relevant evidence conducted by the investigator and witnesses (if applicable) to support the determination of a sanction by the College Disciplinary Officer or the investigation process.
4. The Respondent may question any witnesses presented by the College Disciplinary Officer. Members of the Appeal Committee may also question any witness(es) presented by the College Disciplinary Officer. Questioning by the Student or the committee shall not be considered part of the time allotted for presentation of the College Disciplinary

Officer's evidence. It is within the discretion of the Chair to impose a timeline on questioning.

5. The Respondent, and if applicable her/his witness(es), shall have up to 30 minutes in total, if necessary, to present relevant evidence bearing on the accusation. The College Disciplinary Officer may question any witnesses represented by the Student. Members of the Appeal Committee may also question witnesses. Questioning by any member of the Appeal Committee shall not be considered part of the time allotted for presentation of the Student's evidence.
6. The College Disciplinary Officer, and then the Respondent may make a closing statement to the Appeal Committee. These closing statements shall be limited to a maximum of 5 minutes each. The Chair shall have the authority to extend the time limits, but must ensure equal time.

Once all information has been collected, the Chair, or designee, will:

7. Reiterate the alleged policy violation(s);
8. Remind all Parties involved of the Standard of Proof (Clear and Convincing Evidence);
9. Remind all Parties of confidentiality and of all imposed interim Sanctions that are active and must be adhered to;
10. Remind all Parties to review the Student Code of Conduct Board Policy and Administrative Procedure BP/AP 5900, and the Sexual Misconduct Board Policy and Administrative Procedure BP/AP 5910, and any other applicable board policy, and to understand each Party's' rights and responsibilities;
11. Inform all Parties of the Appeal Committee decision-making process, and the projected timeline for notification of the Parties; and
12. Notify the Respondent and the Complainant of the Appeal Committee's decision in pursuant to Section III.

Guidelines Used by Appeal Committee During an Appeal Hearing

- **Information Regarding Romantic or Sexual History.** The Appeal Committee will not consider the romantic or sexual history of the either the Complainant or the Respondent in cases involving allegations of Sexual Misconduct, except for testimony offered by one

or the other about the Complainant's and Respondent's shared sexual history that the Appeal Committee deems relevant. The existence of a sexual relationship between the Complainant and Respondent does not support the inference of Consent to alleged Sexual Misconduct.

- **Prior Conduct Violation.** The Appeal Committee will not consider the Respondent's prior conduct violations, unless 1) the Respondent was previously found to be Responsible, and 2) the previous incident was substantially similar to the present allegation(s) and/or the information indicates a pattern of behavior by the Respondent.
- **Use of Cell Phones and Recording Devices.** Cell phones and other video or audio recording devices may not be used in the investigation meetings and hearings.

SECTION VIII—COMPLAINANT AND RESPONDENT RIGHTS

Students are entitled to a fundamentally fair process, including reasonable notice of allegations of violations of Sexual Misconduct, the opportunity for the person to be heard and to afford the person the opportunity to present evidence prior to the administrative determination of the alleged violations, except when immediate interim suspensions or restrictions are deemed necessary pending an investigation and determination of the matter. All Sanctions set forth within AP 5500 – Student Code of Conduct are applicable to Parties found Responsible for Sexual Misconduct.

Throughout this process, both the Complainant and Respondent have the following rights:

- To be treated with respect by District officials
- To take advantage of campus support resources, such as mental health services, Health Services, etc. to help remedy and restore
- To experience a safe education and work environment
- To have an advisor during an adjudication process
- To be free of Retaliation
- To have complaints heard in accordance with policy and procedures
- To fully participate in any process whether the injured Party is serving as the Complainant, or where the institution is serving as Complainant
- To be informed in writing of the progress of the investigation.
- To be notified concurrently, and in writing, of the outcome/resolution of the complaint, of any Sanctions imposed, and the basis for the determination, and the right of appeal (when applicable).

8.1 Student Right to Review Records

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of Student education records. The law applies to all

schools that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the Student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are eligible Students. California Education Code Section 76200 et seq. also provides additional guidance concerning the privacy of Student records.

Parents or eligible Students have the right to inspect and review the Student's education records maintained by the College. Colleges are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible Students to review the records. The District may charge a fee for copies.

8.2 Special Requests/Accommodations

Any Party may have an interpreter attend the investigation meeting, Hearing Panel, or Appeal Committee. An interpreter accompanying a Student must provide evidence of his/her certification as a certified interpreter to the Investigator and/or College Disciplinary Officer at least 5 Days prior to the interview, hearing, or appeal. The interpreter may only interpret for the Party who requested them,, and shall not expand or enhance the Party's testimony. Likewise, the use of assistive technology must be reviewed and approved by the Investigator and/or College Disciplinary Officer at least 5 Days prior to the commencement of the hearing.

8.3 Advisors

Sexual Misconduct proceedings are not formal court hearings, but instead are administrative actions imposed by the District. Although District-related Sanctions may be imposed, the process is intended to provide an opportunity of learning. Both the Complainant and the Respondent may elect to be accompanied by an Advisor, including a collective bargaining representative, as permitted by existing bargaining agreements, to any meeting(s) or interview(s). The advisor's role is limited to observing and consulting with and providing support to the Complainant or Respondent. An Advisor may not participate (speak) in the investigation and hearing processes on the Student's/Complainant's behalf. The advisor should also maintain confidentiality.

8.4 Victim Advocates

Information about victim advocate resources will be made available to assist victims of crime, Sexual Assault, and domestic violence.

8.5 Legal Counsel (*Not an Advisor*)

An attorney duly licensed to practice in the State of California may accompany a Party to any interview, hearing or appeal. The attorney shall not make any statements or presentations at the interview, hearing, or Appeal; examine or cross-examine any witnesses, or present evidence or any written material to the Hearing Panel or Appeal Committee. An attorney may not in any way disrupt or interfere with the hearing process. Any violation of this section shall result in the immediate removal of the attorney. An attorney shall provide the College Disciplinary Officer

with a retention letter confirming that he/she has been retained by the Student at least 5 Days before the hearing so that the necessary arrangements can be made for an attorney for the District to be present at the hearing. The attorney's retention letter shall include the attorney's State Bar number and telephone number.

SECTION IX—EDUCATION AND TRAINING PROGRAMS

9.1 Prevention and Education

The District is committed to educating the District Community of the impact that Sexual Misconduct has on an individual and the District Community. Therefore, the District will:

- Provide campus-wide awareness programs and initiatives (fall and spring) on Sexual Misconduct, bystander intervention, and affirmative Consent.
- Publish an online video on Sexual Misconduct, bystander intervention, and affirmative Consent for all new Students entering our College campus.
- Communicate effectively with faculty, staff, and Students regarding Sexual Misconduct policies, protocols, and any federal/state legislation changes through an interactive campus website.
- In collaboration with the Office of Institutional Effectiveness and the Office of the President, collect, assess, and devise campus-wide strategies to improve campus climate among faculty, staff, and Students.
- Develop sustainable partnerships with outside agencies to promote awareness and increase services for faculty, staff, and Students, and/or provide victim advocacy to Students impacted by gender-based discrimination and any other forms of Sexual Misconduct.
- Provide Hearing Panel and Appeal Committee training for faculty and staff participating in Sexual Misconduct adjudication processes.
- In collaboration with District Human Resources, provide gender-based discrimination and other forms of Sexual Misconduct awareness and reporting training for all District employees.

9.2 Title IX Coordinator Responsibilities

The Title IX Coordinator at each campus will be responsible for the following:

- Providing information to Students during orientations regarding the District's Sexual Misconduct Policies and Procedures
- Updating information on the College website
- Providing updates for the College catalog
- Publishing brochures and other related publications regarding the District's Sexual Misconduct Policy and Procedures

- Scheduling campus events to promote awareness and safety (including information about by-standers)
- Conducting a bi-annual climate survey
- Ensuring that Deputy Investigators and Title IX Coordinators are properly trained in Title IX Regulations and understand how to conduct investigations of Sexual Misconduct.
- Affirming that Sexual Misconduct Hearing Panels and Appeal Committees are properly trained on Title IX Regulations, District Board Policies, and procedures for conducting hearings.

The Title IX Coordinator will be responsible for conducting an annual evaluation and report to the College President as follows:

- 1) Verification that the District's Sexual Misconduct Policy and Procedures are accurately published on the College website and College catalog.
- 2) Verification that the name, title, and contact information for the campus Title IX Coordinator are published on the College website, catalog, and other related materials.
- 3) A report of the various trainings provided during the academic year
- 4) A report on the awareness events provided to Students, faculty, and staff
- 5) A list of the College's trained Deputy Investigators
- 6) A list of the College's trained Hearing Panel and Appeal Committee Members
- 7) The number of Title IX cases reported during the academic year

SECTION X—SEXUAL MISCONDUCT PROCESS FLOW CHART

