

**Coast Community College District**  
**ADMINISTRATIVE PROCEDURE**  
Chapter 5  
Student Services

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**AP 5910 Sexual Misconduct**

**References:**

California Education Code §§ 210-214, 66260-66264, 66271.2-66271.3, 66271.5-66281.7, 67380-67386, 67390-67393

California Penal Code §§ 240-248, 261-269, 639-653.2, 11160-1163.6, 11164-11174.3, 13700-13702

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681

34 Code of Federal Regulations Part 106 and § 668.46

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## SECTION I - DEFINITIONS

**Advisor:** The Parties may elect to be accompanied by an Advisor of their choice to any meetings or proceedings regarding the allegations. The Advisor's role is to provide consultation and support to the Parties, inspect and review evidence, and pose questions on behalf of the Parties during any hearing. Refer to Section VIII for more information.

**Affirmative Consent<sup>1</sup>** means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure they have the Affirmative Consent of the other participant(s) to engage in the sexual activity. Lack of protest, resistance, or silence does not mean Affirmative Consent.

Affirmative Consent must be ongoing throughout the sexual activity and can be withdrawn or revoked at any time. Once one party withdraws or revokes consent, the sexual activity must stop immediately. Affirmative Consent to one form of sexual activity (or one sexual act) does not constitute Affirmative Consent to other forms of sexual activity. Affirmative Consent given to sexual activity on one occasion does not constitute Affirmative Consent on another occasion. The existence of a dating or social relationship between those involved, or the fact of past sexual activities between them, should never by itself be assumed to indicate Affirmative Consent.

Affirmative Consent must be voluntary (an act of free will), and given without force, coercion, threats, or intimidation. For purposes of this definition:

- Force means the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion (unreasonable pressure for sexual activity) that overcomes free will or resistance or that produces consent.
- There is no requirement for a person to resist the sexual advance or request, but resistance is a clear demonstration of non-consent.

It shall not be a valid excuse that the Respondent believed that the Complainant consented to the sexual activity if the Respondent knew or reasonably should have known the Complainant was unable to consent to the sexual activity under any of the following circumstances:

- The Complainant was asleep or unconscious.
- The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity.
- The Complainant was unable to communicate due to a mental or physical condition.

It shall not be a valid excuse that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:

- The Respondent's belief in Affirmative Consent arose from the intoxication or recklessness of the Respondent. A person's own intoxication or incapacitation from drugs, alcohol, or medication does not diminish that person's responsibility to obtain Affirmative Consent before engaging in sexual activity.
- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

Sexual activity with a minor (under 18 years old) is never consensual because a minor is incapable of giving legal consent due to age.

This Title IX procedure is applicable regardless of the sexual orientation and/or gender identity of the participants engaging in the sexual activity.

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<sup>1</sup> See California Education Code § 67386(a)(1).

**Complaint:** A verbal or written report of sex discrimination, including Sexual Harassment, made in person, by mail, telephone, email, or through the District’s online reporting form. Any person may submit a complaint at any time. Refer to Section 9.6 for formal Complaint requirements.

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment. The District recognizes the legal rights of parents or guardians to act on behalf of the Complainant (including filing a Formal Complaint). Any person(s), other than the Complainant, who reports Sexual Harassment shall be identified as a Reporter, as defined herein.

**College:** Refers to any one of the three colleges (i.e., Coastline College, Golden West College, and Orange Coast College) within the District.

**College Disciplinary Officer** performs the duties prescribed in District BP/AP 5500. The College Disciplinary Officer or designee will serve as the decision-maker (Hearing Chair) during any hearing and impose appropriate sanctions on the Respondent following the determination of responsibility for violating this Title IX procedure.

**Dating Violence<sup>2</sup>:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of a romantic or intimate relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**Day** means calendar day unless otherwise stated. “Business Day” means a day that the District or College are open for business to the public, and excludes holidays and weekends.

**District:** Refers to the Coast Community College District and each of its Colleges.

**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 Harassment cases involving Employees to Student, or Student to Employee, to ensure conformance with applicable District Human Resources/Personnel Policies and Procedures.

**Domestic Violence:** A felony or misdemeanor crime of violence committed by:

- A current or former spouse or intimate partner of the Complainant;
- A person with whom the Complainant shares a child in common;
- A person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
- A person similarly situated to a spouse of the Complainant under California law; or
- Any other person against an adult or youth Complainant who is protected from that person’s acts under California law.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**Employee** means a person hired by the District, under supervision, to perform work for a prescribed rate of pay.

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<sup>2</sup> See 34 C.F.R. § 668.46.

**Gender**<sup>3</sup> means sex, and includes a person’s gender identity, gender expression, and transgender status. It also includes sex stereotyping.

**Sex**<sup>4</sup> includes, but is not limited to pregnancy, childbirth, breastfeeding, or any related medical conditions.

**Gender identity** means a person’s identification as a man, woman, genderqueer, two-spirit, a gender different from the person’s assigned sex at birth, or transgender.

**Gender expression**<sup>5</sup> means a person’s gender-related appearance or behavior whether or not stereotypically associated with the person’s assigned sex at birth.

**Sex stereotyping** means an assumption about a person’s appearance or behavior or about a person’s ability or inability to perform certain kinds of work based on a myth, social expectation, or generalization about the person’s sex.

**Transgender** is a general term that refers to a person whose gender identity differs from the person’s sex assigned at birth. A transgender person may or may not have a gender expression that is different from the social expectation of the sex assigned at birth.

Gender and sex are a **Protected Status**.

**Hearing Chair:** The Hearing Chair is the decision maker (College Disciplinary Officer or designee), responsible for facilitating the hearing pursuant to this Title IX procedure.

**Not Responsible:** Means, based on the Preponderance of Evidence standard, that the Respondent did not violate this Title IX procedure.

**Party or Parties:** Means either the Complainant or the Respondent. The term Parties means both the Complainant and Respondent collectively.

**Preponderance of the Evidence** means the greater weight of the evidence (i.e., the evidence on one side outweighs, preponderates over, or is more than the evidence on the other side). The Preponderance of the Evidence is the applicable standard for demonstrating facts and reaching conclusions in a hearing conducted pursuant to this Title IX procedure.

**Protected Status** includes age, disability (physical or mental), Gender (or sex), gender identity (including transgender), gender expression, genetic information, marital status, medical condition, national origin, race or ethnicity (including color or ancestry), religion or religious creed, Sexual Orientation, and veteran or military status.

**Reporter:** Any person(s), other than the Complainant, who reports potential violation(s) of this Title IX procedure.

**Respondent:** An individual who has been reported to be the perpetrator of the conduct that could constitute Sexual Harassment. The Respondent must be a participant in the education program or activity of the District/College. The District recognizes the legal rights of parents or guardians to act on behalf of the Respondent.

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<sup>3</sup> See California Education Code § 210.7 and § 66260.7.

<sup>4</sup> See California Government Code § 12926(r).

<sup>5</sup> See California Education Code § 210.7 and § 66260.7.

**Responsible:** Means, based on the Preponderance of Evidence standard, that the Respondent violated this Title IX procedure.

**Retaliation:** The District strictly prohibits retaliation against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual participated or refused to participate in any investigation, proceeding, or hearing under Title IX. Refer to Section XIV for more information.

**Sanctions:** Board Policy 5500 and Administrative Procedure 5500 outline the Sanctions the Hearing Chair/decision-maker (College Disciplinary Officer or designee) may impose on the Respondent following the determination of responsibility for violating this Title IX procedure.

**Sexual Assault<sup>6</sup>:** A sex offense is any sexual act directed against another person, without consent of the Complainant, including instances where the Complainant is incapable of giving consent. Sex offenses include forcible sex offenses<sup>7</sup> and non-forcible sexual intercourse<sup>8</sup>.

**Sexual Exploitation:** In addition to the forms of Sexual Harassment (i.e., Sexual Assault, Dating Violence, Domestic Violence, and Stalking), which fall within the coverage of Title IX, the District additionally prohibits Sexual Exploitation, outside of Title IX, when the act is based upon the Complainant's actual or perceived membership in a Protected Status.

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another person for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other Sexual Misconduct offenses. Examples of Sexual Exploitation include, but are not limited to the following:

- Invasion of sexual privacy;
- Non-consensual digital, video, or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video, or audio recording of nudity or sexual activity;
- Prostituting another person;
- Engaging in voyeurism;
- Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent;

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<sup>6</sup> See California Penal Code § 240 for Assault; § 242 for Battery; §§ 261-263.1 for Rape, and 34 C.F.R. § 668.46

<sup>7</sup> Sexual Offenses, Forcible:

- (1) Sex Offenses, Forcible: any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent;
- (2) Forcible Rape: 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 Complainant;
- (3) Forcible Sodomy: oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually, or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity);
- (4) Sexual Assault with an Object: the use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body or another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>8</sup> Sexual Offenses, Non-forcible:

- (1) Incest: non-forcible sexual intercourse, between person who are related to each other, within the degrees wherein marriage is prohibited by California law;
- (2) Statutory Rape: non-forcible sexual intercourse, with a person who is under the statutory age of consent of 18 years old.

- Knowingly exposing someone to or transmitting a sexually transmitted infection, sexually transmitted disease, or human immunodeficiency virus to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances or inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

**Sexual Harassment:** Acts of Sexual Harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Sexual Harassment, as an umbrella category, includes offenses of Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking, and is defined as:

1. Quid Pro Quo, criteria must include:
  - A District employee,
  - Conditions the provision of an aid, benefit, or service of the District,
  - On an individual's participation in unwelcome sexual conduct; and/or
2. Hostile Environment, criteria must include:
  - Unwelcome conduct,
  - Determined by a reasonable person,
  - To be so severe, and
  - Pervasive, and
  - Objectively offensive,
  - That it effectively denies a person equal access to the District's education program or activity.

**Sexual Orientation**<sup>9</sup> means a person's preference in sexual partners and includes heterosexuality, homosexuality, or bisexuality. Sexual Orientation is a Protected Status.

**Stalking**<sup>10</sup> is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or to suffer substantial emotional distress. For purposes of this definition:

- 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.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

**Student:** Means any person 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 Sexual Harassment occurred.

**Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Parties to restore or preserve access to the District's education program or activity, including measures designed to protect the safety of the Parties or the District's educational environment, and/or deter Sexual Harassment. Refer to Section 9.4 for more information.

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<sup>9</sup> See California Education Code § 212.6 and § 66262.7.

<sup>10</sup> See California Penal Code § 646.9 and 34 C.F.R. § 668.46.

**Title IX Coordinator** is responsible for oversight and coordination of Title IX, Board Policies and Administrative Procedures regarding Title IX, and other related state and federal laws prohibiting Discrimination, Harassment, and Retaliation based on Gender or sex. If the Title IX Coordinator delegates an investigation, they shall monitor, supervise, and oversee the investigation to ensure that it is conducted in accordance with the standards, procedures, and timelines set forth in this Title IX procedure.

**Title IX Investigator** is the College designated person to investigate a Formal Complaint of Sexual Harassment. Referred as the Investigator(s) throughout this Title IX procedure, the Investigator shall not be within the administrative control or authority of the Parties.

**Title IX Team**, includes but not limited to the Title IX Coordinator, Investigator(s), Hearing Chair, Appeal Designees, and District-appointed Advisors.

## SECTION II - PROCEDURE STATEMENT

The District is committed to equal opportunity in educational programs, employment, and access to institutional programs and activities. The District embraces the principle of diversity and values community differences in age, disability (physical or mental), Gender (or sex), gender identity (including transgender status), gender expression, genetic information, marital status, medical condition, national origin, race or ethnicity (including color or ancestry), religion or religious creed, Sexual Orientation, veteran or military status, and other characteristics that make our community unique.<sup>11</sup>

Students, staff, administrators, and faculty are entitled to an educational and working environment free from gender or sex-based discrimination and harassment. Sexual Harassment, including Sexual Assault, Dating Violence, Domestic Violence, and Stalking, is unlawful sex discrimination.

In response to recent decisions made by the California Court of Appeals and U.S. Department of Education's Office for Civil Rights, the District hereby implements the following Title IX procedure to address alleged violations of Sexual Harassment by Students pending changes to District BP/AP 5910. Section 2.4 describes the process for Complaints against Employees. This Title IX procedure supersedes the grievance process under Administrative Procedure 5910 with respect to cases that fall under the jurisdiction of Title IX.

No provision of this Title IX procedure shall be interpreted to prohibit conduct that is protected under academic freedom as defined in BP 4030, or the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

### 2.1 Prohibited Conduct

The District prohibits:

1. Gender-based (or sex-based) Discrimination or Harassment, including Sexual Harassment;
2. Retaliation for filing a complaint, reporting misconduct, or for participating in any related investigation or proceeding;
3. Dating and Domestic Violence, and Stalking; and
4. Sexual Assault

The term Sexual Harassment is used throughout this Title IX procedure as an umbrella category, to include offenses of Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

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<sup>11</sup> Key capitalized terms are defined in Section I Definitions of this Procedure. Terms contained within this Procedure are intended to be gender neutral.

## **2.2. Board Policy and Administrative Procedure on Nondiscrimination**

The District strives to be free of all forms of Discrimination because of a Protected Status (i.e., age, disability (physical or mental), Gender (or sex), gender identity (including transgender status), gender expression, genetic information, marital status, medical condition, national origin, race or ethnicity (including color or ancestry), religion or religious creed, Sexual Orientation, and veteran or military status).

The District does not discriminate unlawfully in providing educational or employment opportunities to any person on the basis of a Protected Status. Refer to Board Policy 3410 and Administrative Procedure 3410:

[https://www.cccd.edu/\\_assets/documents/board/BP/BP\\_3410\\_Prohibition\\_of\\_Discrimination\\_and\\_Harassment.pdf](https://www.cccd.edu/_assets/documents/board/BP/BP_3410_Prohibition_of_Discrimination_and_Harassment.pdf)

[https://www.cccd.edu/\\_assets/documents/board/BP/AP\\_3410\\_Prohibition\\_of\\_Discrimination\\_and\\_Harassment.pdf](https://www.cccd.edu/_assets/documents/board/BP/AP_3410_Prohibition_of_Discrimination_and_Harassment.pdf)

## **2.3 Board Policy and Administrative Procedure on Prohibition of Harassment**

Students, staff, administrators, and faculty are entitled to a working and educational environment free from discrimination and harassment. Unlawful Harassment is prohibited by state and federal law, as well as to Board Policy 3435 and Administrative Procedure 3435:

[https://www.cccd.edu/\\_assets/documents/board/BP/BP\\_3435\\_DiscriminationHarassment\\_Investigations.pdf](https://www.cccd.edu/_assets/documents/board/BP/BP_3435_DiscriminationHarassment_Investigations.pdf)

[https://www.cccd.edu/\\_assets/documents/board/BP/AP\\_3435\\_Discrimination\\_Harassment\\_Investigations.pdf](https://www.cccd.edu/_assets/documents/board/BP/AP_3435_Discrimination_Harassment_Investigations.pdf)

## **2.4 Board Policy and Administrative Procedure on Sexual and Other Assaults on Campus**

The District does not tolerate acts of sexual assault, including Domestic Violence, Dating Violence, and Stalking. Complaints against Employees, which may include Student Employees, where the Complaint arises out of their employment, shall be governed by Board Policy 3540 and Administrative Procedure 3540:

[https://www.cccd.edu/\\_assets/documents/board/BP/BP\\_3540\\_Sexual\\_and\\_Other\\_Assaults\\_on\\_Campus.pdf](https://www.cccd.edu/_assets/documents/board/BP/BP_3540_Sexual_and_Other_Assaults_on_Campus.pdf)

[https://www.cccd.edu/\\_assets/documents/board/BP/AP\\_3540\\_Sexual\\_and\\_Other\\_Assaults\\_on\\_Campus.pdf](https://www.cccd.edu/_assets/documents/board/BP/AP_3540_Sexual_and_Other_Assaults_on_Campus.pdf)

Employees are subject to the terms of their respective bargaining agreements to the extent that those agreements do not conflict with federal or state law.

## **SECTION III - OVERSIGHT OF TITLE IX PROCESS**

The District's Title IX Coordinator is Crystal Crane, Executive Director, Human Resources and Employee/Employer Relations, (714) 438-4708, ccrane@ccd.edu, located at the District Office (1370 Adams Avenue, Costa Mesa, CA 92626).

The District has also authorized Title IX Coordinators at each College with coordinating the District's responsibilities under Title IX and this Title IX procedure.

- Coastline College Title IX Coordinator is Leighia Fleming, Director, Student Equity and Title IX, (714) 241-6130, lfleming5@coastline.edu, located on the second floor of the College Center, room 228 (11460 Warner Ave, Fountain Valley CA 92708).
- Golden West College Title IX Coordinator is Dr. Carla Martinez, Dean of Students, (714) 895-8781, cmartinez@gwc.cccd.edu, located on the third floor of the Learning Resources Center (15744 Goldenwest St, Huntington Beach CA 92647).



- Orange Coast College Title IX Coordinator is Shannon Quihuiz, Associate Dean, Student Relations and Title IX, (714) 432-5930, squihuiz@occ.cccd.edu, located on the second floor of the Student Union, suite 202 (2701 Fairview Road, Costa Mesa CA 92626).

### **Independence and Conflict-of-Interest**

The Title IX Coordinator advises the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Title IX procedure. The members of the Title IX Team are trained to ensure they are not biased for or against any Party in a specific case, or for or against complainants and/or respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator or report misconduct or discrimination committed by the Title IX Coordinator, contact the District Vice Chancellor of Human Resources or the College's President. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

## **SECTION IV - JURISDICTION**

This Title IX procedure applies to the education programs and activities of the District/College. Education programs or activities refers to locations, events, or circumstances over which the District exercised substantial control over the context in which the Sexual Harassment occurred, including, but not limited to the District, the Colleges, its property (including offsite locations owned, rented, leased, or operated by the District or the Colleges), on-campus student housing facilities, through online services, and at District-sponsored/College-sponsored programs, activities, and travel. The Respondent must be a participant in the education program or activity of the District/College in order for this Title IX procedure to apply.

If the Respondent is unknown or is not a member of the District community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report. This Title IX procedure can also be applicable to the effect of off-campus misconduct that effectively deprives someone of access to the District's educational program.

## **SECTION V - STANDARD OF PROOF**

The Preponderance of the Evidence is the standard for demonstrating facts and reaching conclusions in an investigation. Preponderance of the Evidence means the greater weight of the evidence (i.e., the evidence on one side outweighs, preponderates over, or is more than the evidence on the other side).

The Respondent will be found either responsible or not responsible for violating this Title IX procedure based on the Preponderance of the Evidence.

## **SECTION VI - CORRESPONDENCE**

The District/College shall deliver all correspondence to Students and Employees at their District-assigned email address. At the discretion of the District/College, Students may be notified by another primary email address linked to the Student's account, mailing address, or by in-person delivery.

## **SECTION VII - REASONABLE ACCOMMODATIONS**

### **7.1 Reasonable Accommodations of Disabilities**

Accommodation requests are facilitated by Disabled Student Programs and Services (“DSPS”). A Student must be registered with DSPS to request accommodations, including but not limited to sign language or the use of assistive technology. Any Student not currently registered with DSPS requesting any accommodation should first contact the College’s respective DSPS which coordinates services for Students with disabilities.

### **7.2 Interpreters**

An interpreter may be used to improve communications for Parties with limited language proficiency. The Parties may have an interpreter present during any meeting or proceeding at their own expense; the District/College is not obligated to provide one. An interpreter shall not be considered the Parties’ Advisor. An interpreter may explain the meaning of words only to the Parties who requested them. An interpreter shall not expand or enhance the Parties’ statements.

If the Parties choose to have an interpreter present, the Parties must notify the Title IX Coordinator no later than five Days prior to any meeting and proceeding.

## **SECTION VIII - ADVISOR**

The Parties may each elect to be accompanied by an Advisor to all meetings and proceedings regarding the allegations. The Parties may select an Advisor of their choice, who may be, but is not required to be, an attorney (e.g., a friend, family member, mentor, sexual assault/domestic violence advocate).

The Advisor’s role is to provide consultation and support to the Parties. The Advisor may inspect and review all evidence directly related to the allegations and the investigative report that summarizes relevant evidence.

The Advisor is responsible for conducting direct, oral questioning (cross-examination) on behalf of their Party during any hearing. Parties cannot conduct direct, oral questioning (cross-examination). This may include asking the other Party and witness(es) relevant questions and follow-up questions, including those challenging credibility.

The Parties must notify the Title IX Coordinator of their advisor seven Business Days prior to any hearing so that the necessary arrangements can be made. If the Parties choose an attorney as their Advisor, notification of the attorney’s name, address, phone number, and state bar number should be given to the Title IX Coordinator. If a Party does not have an Advisor for any hearing, the District shall provide District-appointed Advisor, without fee or charge, for the purpose of conducting questioning.

## **SECTION IX - REPORTING SEXUAL HARASSMENT**

### **9.1 Timeframe for Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, reports should be brought forward as soon as possible after the conduct occurs to better enable the District/College to investigate, respond, and provide Supportive Measures.

## 9.2 Reporting Options

Any person may report sex discrimination, including Sexual Harassment, (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or Sexual Harassment) at any time. Reports may be made using any of the following options:

1. Report directly to the College Title IX Coordinator in person, by mail, by telephone, or by email using the contact information in Section III above;
2. Submit an electronic reporting form available on the College's Title IX website;
3. Report to any District employee who has authority to institute corrective measures on behalf of the District, refer to Section 9.11 and 9.12 to learn more about employee obligations
4. Report to the College Campus/Public Safety Office (who will notify the College Title IX Coordinator);
5. Report to the College Director of Human Resources (who will notify the College Title IX Coordinator); or
6. Local law enforcement (who may not notify the College Title IX Coordinator); refer to Section 9.9 Local Law Enforcement.

## 9.3 Response to Reports of Sexual Harassment

The District/College will provide prompt and equitable response to any report of Sexual Harassment made to the Title IX Coordinator or District employee with authority to institute corrective measures.

Upon receiving a report of Sexual Harassment, the Title IX Coordinator or designee will:

- Inform the Complainant of the availability of Supportive Measures, with or without the filing of a formal complaint;
- Consider the Complainant's wishes with respect to Supportive Measures; and
- Explain the process for filing a formal complaint.

## 9.4 Supportive Measures

The Title IX Coordinator or designee shall offer and implement appropriate and reasonable Supportive Measures to the Parties upon notice of Sexual Harassment, including before or after the filing of a formal complaint and where no formal complaint has been filed.

Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Parties to restore or preserve access to the District's education program or activity, including measures designed to protect the safety of the Parties or the District's educational environment, and/or deter Sexual Harassment.

Supportive Measures may include, but are not limited to:

- Academic assistance (e.g., excused absence, permit late assignments, retake assignments, grade change, withdraw, leaves of absence, tutoring) in consultation with the faculty/Dean;
- Campus/Public Safety escort;
- Education and training;
- Implementing contact limitations (no contact orders) between the Parties;
- Increased security and monitoring of certain areas on campus;
- On-campus employment assistance (e.g., adjustments to work schedule or assignment) in consultation with Human Resources;
- On-campus housing assistance (e.g., altering room assignment), if available;
- Other measures deemed appropriate by the Title IX Coordinator;
- Referral to counseling, medical, and/or other healthcare services;
- Referral to the Employee Assistance Program, if an Employee;
- Referral to off-campus community-based service providers;
- Safety planning;
- Timely warnings; and
- Trespass orders.

The District shall maintain the privacy of the Supportive Measures, provided that privacy does not impair the District's ability to provide the Supportive Measures. The District will act to ensure as minimal an academic impact on the Parties as possible. The District will implement Supportive Measures in a way that does not unreasonably burden the other Party.

### **9.5 Emergency Removal**

The District can act to remove a Respondent who is a Student entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. The individualized safety and risk analysis is performed by the Title IX Coordinator in conjunction with the Behavioral Intervention/Assessment Team using its standard violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible to show cause why the action/removal should not be implemented or modified.

This meeting is not a hearing on the merits of the allegations, but rather an administrative process intended to determine solely whether the emergency removal was appropriate. When this meeting is not requested (in a timely manner), objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This Section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal two Business Days prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has the sole discretion under this Title IX procedure to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include suspension. The Title IX Coordinator will implement the least restrictive emergency action possible in light of the circumstances and safety concerns.

### **Employee Administrative Leave**

The District can act to remove a Respondent who is an Employee by placing an Employee on administrative leave during the grievance process, and will conform to all relevant statutes, regulations, personnel policies and regulations, including the provisions of any applicable collective bargaining agreement.

### **9.6 Formal Complaint**

A formal complaint is a document filed and signed by the Complainant or signed by the Title IX Coordinator, alleging Sexual Harassment against a Respondent and requesting that the District/College investigate the allegations. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by email using the contact information in Section III above or through the electronic reporting form on the College's website.

### **Formal Complaint Criteria**

- A Complainant must be enrolled as a Student or employed by the District or attempting to enroll or apply for an education program or activity of the District;
- The Respondent must be a participant in the education program or activity of the District/College;
- The allegations of Sexual Harassment in the complaint must have occurred in the District's education program or activity in the United States. Education program or activity includes locations, events, or circumstances over which the District exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurred;
- A document filed by the Complainant. The document must contain the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint; and
- A statement requesting that the District investigate the allegation of Sexual Harassment.

### **When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be disclosed, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator.

The Title IX Coordinator has ultimate discretion over whether the District proceeds when the Complainant does not wish to do so. In these instances, the Title IX Coordinator may sign a formal complaint to request that the District investigate the allegations of Sexual Harassment over the wishes of the Complainant, if it is clearly not reasonable in light of the known circumstances.

### **9.7 Dismissal of Formal Complaints**

A formal complaint must be dismissed by the District under this Title IX procedure based on one or more of the following factors:

- The conduct alleged in the formal complaint do not meet the definition of Sexual Harassment under this Title IX procedure;
- If the conduct did not occur in the District's education program or activity;
- The conduct did not occur against the Complainant in the United States; or
- If at the time of filing a formal complaint, the Complainant is not participating in or attempting to participate in the education program or activity of the District.

The District may also dismiss a formal complaint, if at any time during the investigation or hearing:

- A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by the District; or
- Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

### **9.8 Notification of Dismissal**

The District must send written notice of the dismissal and reasons for the dismissal simultaneously to the Parties. This written notification must also include the Parties right to appeal the District's dismissal of a formal complaint based only on one or more of the appeal issues as identified in Section XIII of this Title IX procedure.

### **9.9 Local Law Enforcement**

Any person has the right to file a civil or criminal complaint based on the same facts that constitute an alleged violation of this Title IX procedure. It is important to take steps to preserve and collect evidence; doing so preserves the full range of options available through the criminal process.

Under these circumstances, the local law enforcement criminal investigation is independent from proceedings of the District/College. A pending police investigation is a separate investigation, and it does not relieve the District/College of its responsibility to perform a timely investigation of a formal complaint. Thus, the District/College may not wait until the conclusion of a police investigation to commence its own investigation if a formal complaint is filed by a Complainant or signed by the Title IX Coordinator. Although it may be necessary to temporarily delay the District/College investigation while the police are gathering evidence, once notified that the police have completed the fact-gathering portion of their investigation, the District/College must promptly resume and complete its own investigation.

### **9.10 Amnesty<sup>12</sup>**

The District/College will not initiate student disciplinary proceedings with a Complainant or witness for violations of the Student Code of Conduct (e.g., underage drinking) that occur at or near the time of the incident. However, if the alleged violations of the Student Conduct Code were egregious (e.g., imminent threat to the health or safety of others or academic dishonesty), the District/College may initiate student disciplinary proceedings and impose sanctions pursuant to District BP/AP 5500.

### **9.11 Employee Obligations - Duty to Report**

The District/College will provide prompt and equitable response to any report of Sexual Harassment made to the Title IX Coordinator or any District employee with authority to institute corrective measures. Employees are expected to report actual or suspected Sexual Harassment to an appropriate official immediately, though there are some limited exceptions outlined below.

### **9.12 Employee Obligations - Confidential Reporting**

Some employees are required by law to maintain near or complete confidentiality with limited exceptions discussed below. This means these Employees can offer options and advice without any obligation to inform the Title IX Coordinator, unless the Complainant requests their information to be disclosed. If the Complainant would like the details of an incident to be kept confidential, they should speak with Employees designated below.

The Employees who do not have a duty to report are listed here:

- Health service providers and staff in the College's Student Health Center whose primary assignment is to render medical treatment;
- Licensed professional counselors and staff in the College's Student Health Center whose primary assignment is to render mental health treatment or counseling;
- Sexual assault and domestic violence counselors and advocates who work or volunteer on-campus;
- Off-campus (non-employees):
  - Licensed professional counselors
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - An ordained person in a religion

### **Exceptions**

Under California law, health practitioners are required to make a report to local law enforcement if medical services are provided for a physical condition to a patient whom the practitioner knows or reasonably suspects is suffering from (1) a wound or physical injury inflicted by a firearm, or (2) any wound or physical injury the result of assaultive or abusive conduct.<sup>13</sup>

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<sup>12</sup> See California Education Code § 67386(b)(10)

<sup>13</sup> See California Penal Code §§ 11160-11163.6.

Employees may have additional reporting requirements as mandatory child abuse and neglect reporters.<sup>14</sup>

Finally, some of these Employees may also have reporting obligations under California law to (1) local law enforcement in cases involving threats of immediate or imminent harm to self or others where disclosure of the information is necessary to prevent the threatened danger,<sup>15</sup> or (2) to the court if compelled by court order or subpoena in a criminal proceeding related to the incident.

## **SECTION X - INFORMAL RESOLUTION**

The District may offer an informal resolution process to the Parties only after a formal complaint has been filed. Both Parties must give their voluntary, informed, and written consent to the informal resolution process. Informal resolution options vary and may include, but are not limited to, facilitated discussions with the Parties, facilitated resolution by the Title IX Coordinator, separating the Parties, mediation, and conducting educational prevention and training programs.

The informal resolution process is intended to resolve a formal complaint without a full investigation and adjudication process. The informal resolution process must not be used to resolve allegations that a District employee sexually harassed a student.

Prior to initiating the informal resolution process, the District must provide the Parties with written notice of the following:

- The allegations within the formal complaint;
- The right to withdraw from the informal resolution process at any time prior to agreeing to a resolution; and
- That participation in the informal resolution process precludes the Parties from resuming a formal complaint arising from the same allegations.

If a resolution is reached, the matter shall be considered closed, and the terms will be put in writing and maintained by the District/College. The Title IX Coordinator may notify the College Disciplinary Officer if any Sanctions were part of the resolution.

## **SECTION XI - INVESTIGATION PROCESS**

### **11.1 Investigation of Formal Complaint**

The District shall promptly investigate every formal complaint of Sexual Harassment, unless the Parties give their mutual consent to informal resolution, as set forth above in Section X.

### **11.2 Investigation Timeline**

Investigations are completed expeditiously, normally within 90 Business Days, however some investigations take more time depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The Title IX Coordinator may extend the timeline to complete an investigation for any reason deemed legitimate. The District will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the investigation.

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<sup>14</sup> See California Penal Code §§ 11164-11174.3; see also Board Policy 3518 and Administrative Procedure 3518.

<sup>15</sup> See California Evidence Code § 1024.

### **11.3 Notice of Investigation**

The Title IX Coordinator or designee will provide written Notice of Investigation (the “NOI”) to the Complainant and the Respondent upon commencement of the investigation process. The NOI shall contain the following information:

- A description of the District’s grievance process, including any informal resolution process;
- A description of the alleged conduct constituting Sexual Harassment, including the date and location of the alleged incident and sufficient details of the misconduct being alleged;
- The identities of the Parties involved;
- A list of policies allegedly violated that are the subject of the investigation;
- A statement that the District presumes that the Respondent is not responsible until a determination regarding responsibility is made at the conclusion of the grievance process;
- The District’s use of the Preponderance of Evidence standard;
- A statement that determinations of responsibility are made at the conclusion of the process, and that the Parties (and their Advisors) will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period;
- A statement of the potential sanctions/responsive actions that could result;
- Notification of the Parties’ right to have an Advisor of their choice;
- A statement informing the Parties that District policy prohibits knowingly making false statements, including knowingly submitting false information during the grievance process;
- Notification of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest; and
- Date, time, and location of the investigatory interview or information and timeframe to schedule this interview.

### **11.4 Investigation Procedures**

All investigations are thorough, reliable, impartial, prompt, and fair. The Investigator(s) must gather sufficient evidence, including interviewing the Parties and witnesses and obtaining available, relevant evidence. The District may not restrict the ability of the Parties to discuss the allegations under investigation or to gather and present relevant evidence.

The Parties have a full and fair equal opportunity to present witnesses and expert witnesses (and suggest questions they wish the Investigator(s) to ask), inculpatory and exculpatory evidence, and to fully review and respond to all evidence. The Parties shall receive written notice of the date, time, location, and purpose of any investigation interview or meeting with sufficient time for the Parties to prepare and participate. The Investigator(s) may decline a Party’s request to gather information if the request seeks access to privileged information. Witnesses (as distinguished from the Parties) are expected to cooperate and participate in the investigation.

The investigation does not consider: (a) incidents not directly related to the possible violation, unless they evidence a pattern; (b) the character of the Parties; or (c) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent. Credibility determinations may not be based solely on an individual’s status or participation as a Complainant, Respondent, or witness.

The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their investigative report. Prior to the completion of the investigative report, the Investigator(s) shall send the Parties and their respective Advisors (if so desired by the Parties) an electronic or hard copy of the evidence directly related to the allegations, including evidence upon which the Investigator(s) do not intend to rely in reaching a determination



regarding responsibility, for a ten Business Day review and written comment period so that each Party may meaningfully respond to the evidence. The Parties may elect to waive the full ten Business Days.

The Investigator(s) will incorporate relevant elements of the Parties' written responses to the final investigative report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) may elect to respond in writing in the investigative report to the Parties' submitted responses and/or to share the responses between the Parties for additional responses. The Investigator(s) should document all rationales for any changes made after the review and comment period.

The finalized investigative report that fairly summarizes relevant evidence shall be disclosed to the Parties and their respective Advisors (if so desired by the Parties) at least ten Business Days prior to a Hearing for a review and written comment period so that each Party may meaningfully respond prior to the Hearing determining responsibility. The Title IX Coordinator shall review all investigative draft reports before they are final.

## **SECTION XII - HEARING PROCESS**

Provided that the formal complaint is not resolved through Informal Resolution, once the final investigative report is disclosed to the Parties, the Title IX Coordinator will refer the matter for a Hearing.

The Hearing cannot be less than ten Business Days from the conclusion of the investigation when the final investigative report is provided to the Parties and the Hearing Chair (decision-maker).

The Title IX Coordinator will designate a single decision-maker (College Disciplinary Officer or designee), referred to as the Hearing Chair. The Hearing Chair will not have had any previous involvement with the investigation. Those who have served as Investigator(s) will be witnesses in the Hearing and therefore may not serve as Hearing Chair. The Title IX Coordinator may not serve as a Hearing Chair, but may serve as an administrative facilitator of the Hearing, if their previous roles in the matter do not create a conflict of interest.

The Title IX Coordinator or designee shall be responsible for managing the Hearing process and the necessary logistics (scheduling, notifying witnesses, providing the Parties and Hearing Chair with appropriate documentation and evidence, coordinating the location of the hearing, and any other support that is necessary for the Hearing to run smoothly).

### **12.1 Evidence Considered during the Hearing**

Any evidence that the Hearing Chair determines is relevant and credible may be considered. The Hearing does not consider:

- Incidents not directly related to the possible violation, unless they evidence a pattern;
- The character of the Parties; or
- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Any witness scheduled to participate in the Hearing must have been first interviewed by the Investigator(s), unless all Parties and the Hearing Chair assent to the witness's participation in the Hearing. The same holds true for any evidence that is first offered at the Hearing. If the Parties and

Hearing Chair do not assent to the admission of evidence newly offered at the Hearing, the Hearing Chair will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

Previous disciplinary action involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

The Parties may each submit a written impact statement to describe how this violation has affected them prior to the Hearing for the consideration of the Hearing Officer at the sanction stage of the process once a determination of responsibility is reached.

## **12.2 Notice of Hearing**

The Title IX Coordinator or designee will provide written Notice of Hearing (the “NOH”) to the Complainant and Respondent no less than ten Business Days prior to the Hearing. The NOH shall contain the following information:

- A description of the alleged violations;
- A list of policies allegedly violated;
- A description of the District’s grievance process with respect to the Hearing process;
- A statement of the potential sanctions/responsive actions that could result;
- Date, time, and location of the Hearing and a reminder that attendance is mandatory;
- A statement that if any Party or witness does not appear at the scheduled Hearing, the Hearing may be held in their absence, and the Party’s or witness’s testimony and any statements given prior to the Hearing will not be considered by the Hearing Chair. For compelling reasons, the Hearing Chair may reschedule the Hearing.
- Notification about the option for the Hearing to occur with the Parties located in separate rooms using technology that enables the Hearing Chair and Parties to see and hear each other. Such a request must be raised to the Title IX Coordinator at least five Business Days prior to the Hearing.
- Notification that the Parties are required to have an Advisor present at the Hearing to conduct questioning. The Parties’ have the right to an Advisor of their choice. If a Party does not have an Advisor, they must notify the Title IX Coordinator who will appoint one.
- A statement informing the Parties to submit a written impact statement prior to the Hearing for the consideration of the Hearing Chair at the sanction stage of the process;
- Notification of the Hearing Chair, along with a process to identify, in advance of the Hearing, to the Title IX Coordinator any conflict of interest;
- Notification that the Hearing will be recorded; and
- A copy of all the materials provided to the Hearing Officer about the matter, unless they have been provided already.

## **12.3 Hearing Location**

Hearings may be conducted with the Parties physically present in the same geographic location or virtually, with technology enabling them to see and hear each other. If a Party prefers not to attend in person, the Party should request alternative arrangements from the Title IX Coordinator at least five Business Days prior to the Hearing. The Title IX Coordinator or designee can arrange to use technology to allow remote testimony without compromising the fairness of the Hearing.

## **12.4 Pre-Hearing Preparation**

The Title IX Coordinator will give the Hearing Chair a list of the names of all Parties, witnesses, and Advisors at least five Business Days in advance of the Hearing. Any Hearing Chair who cannot make an objective determination must recuse themselves from the proceedings. If the Hearing Chair is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

The Parties will receive the names of the persons who will be participating in the Hearing, all pertinent documentary evidence, and the final investigative report. During the ten Business Day period prior to the Hearing, the Parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be disclosed to the Hearing Chair at the Hearing and will be exchanged between each Party by the Hearing Chair.

The Hearing Chair may convene a pre-Hearing meeting with the Parties and their respective Advisors to invite them to submit the questions or topics they (the Parties and their Advisors) wish to ask or discuss at the Hearing, so that the Hearing Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the Hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the Hearing for a reconsideration based on any new information or testimony offered at the Hearing. The Hearing Chair must document and disclose their rationale for any exclusion or inclusion at this pre-Hearing meeting.

The Hearing Chair, only with full agreement of the Parties, may decide in advance of the Hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigative report or during the Hearing.

## **12.5 Hearing Procedures**

The Hearing Chair is responsible for conducting an impartial Hearing and issuing a written determination regarding responsibility to the Parties without bias or conflict of interest.

Participants at the Hearing will include the Hearing Chair, the Investigator(s) who conducted the investigation, the Parties, Advisors to the Parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

Hearings may be conducted with the Parties physically present in the same geographic location or virtually, with technology enabling them to see and hear each other. Refer to Section 12.3.

The Hearing Chair explains the procedures and introduces the participants. The Hearing Chair then conducts the Hearing according to the hearing script. During the Hearing, all logistics and administrative elements are managed by the Title IX Coordinator or designee.

Hearings (but not deliberations) are recorded by the District for purposes of inspection and review. The Parties may not record the proceedings and no other unauthorized recordings are permitted.

### **Investigative Report**

The Investigator(s) will present a summary of the final investigative report, including items that are contested and those that are not, and will be subject to questioning by the Hearing Chair and the Parties (through their Advisors). The Investigator(s) will be present during the entire Hearing process, but not during deliberations.

Neither the Parties nor the Hearing Chair should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and Parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Hearing Chair will direct that it be disregarded.

### **Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the Parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the

Hearing Chair. The Parties/witnesses will submit to questioning (cross-examination) by the Hearing Chair and then by the Parties through their Advisors.

All questions are subject to a relevance determination by the Hearing Chair. The Advisor, never by a Party personally, will pose the question orally. The proceeding will then pause to allow the Hearing Chair to consider it and the Hearing Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Hearing Chair may consider arguments regarding relevance with the Advisors, if the Hearing Chair so chooses. The Hearing Chair will then state their decision on the question for the record and advise the Party/witness to whom the question was directed, accordingly. The Hearing Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Hearing Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Chair has final say on all questions and determinations of relevance, subject to any appeal. The Hearing Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Hearing Chair has ruled on a question.

### **Refusal to Submit to Questioning**

If a Party or witness chooses not to submit to questioning (cross-examination) during the Hearing, either because they do not attend the Hearing, or they attend but refuse to participate in questioning, the Hearing Chair may not rely on any prior statements made by that Party or witness at the Hearing (including those contained in the investigative report) in the ultimate determination of responsibility. The Hearing Chair must disregard those statements. The Hearing Chair may not draw any inference solely from a Party's or witness's absence from the Hearing or refusal to answer cross-examination or other questions.

### **12.6 Deliberation, Decision-making, and Standard of Proof**

The Hearing Chair will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The Preponderance of the Evidence standard of proof is used.

When there is a finding of responsibility on one or more of the allegations, the Hearing Chair may consider the Party's impact statements and any pertinent conduct history in determining appropriate sanction(s).

The Hearing Chair will then prepare a written determination regarding responsibility and deliver it to the Title IX Coordinator, detailing the findings of fact, determination about whether the alleged violations occurred, the rationale, the evidence used in support of its determination, any evidence disregarded, and any sanction(s) imposed on the Respondent.

### **12.7 Notice of Hearing Outcome**

Using the written determination regarding responsibility, the Title IX Coordinator will work with the Hearing Chair to prepare a Notice of Hearing Outcome. The Notice of Hearing Outcome will be disclosed to the Parties simultaneously within five Business Days of receiving the Hearing Chair's written determination regarding responsibility.

The Notice of Hearing Outcome shall contain the following information:

- Identification of the allegations constituting Sexual Harassment;
- A description of the procedural steps taken by the District from the receipt of the formal complaint to the determination, including any and all notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and Hearings held;

- Findings of fact that support the determination;
- Conclusions regarding the application of the District policy to the facts at issue;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- Any sanctions imposed on the Respondent, to the extent the District is permitted to disclose such information under California and federal law;
- Any remedies provided to the Complainant designed to restore and preserve equal access to the District's education program or activity, to the extent the District is permitted to disclose such information under California and federal law (this information is not typically disclosed to the Respondent unless the remedy directly relates to the Respondent);
- A statement that the results do not become final until the period of time to file an appeal has lapsed or an appeal has been exhausted; and
- Notification of the right to appeal as set forth in Section XIII.

### **12.8 Sanctions (Discipline and Corrective Action)**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history in which they were found responsible;
- Previous allegations or allegations involving similar conduct;
- Consistency among the College's disposition of similar cases;
- The need to bring an end to the behavior, prevent future recurrences, and remedy the effects;
- The impact on the Parties; and
- Any other information deemed relevant by the Hearing Chair.

For Respondents that are a Student, the possible Sanctions are described in District BP/AP 5500. For Respondents who are an Employee, the Sanctions will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.

## **SECTION XIII - APPEAL**

A Complainant or Respondent may submit an appeal, following the dismissal of a formal complaint or the determination of responsibility, to the Title IX Coordinator no later than the ten Business Days of the delivery of the Notification of Dismissal or Notice of Hearing Outcome Appeals must be based on one or more grounds as set forth in Section 13.1. Opposing the dismissal of a formal complaint or the determination of responsibility is not, by itself, grounds for appeal.

### **13.1 Grounds for Appeal**

All appeals must be in writing and must contain detailed information supporting the grounds for appeal. The appeal must specify the ground(s) on which the appeal is based.

Appeals must be based on one or more of the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time that the formal complaint was dismissed or at the time of the determination regarding responsibility, that could affect the outcome of the matter; and
- A member of the Title IX Team had a conflict of interest or bias for or against complainants or respondents generally, or for or against individual Complainant or Respondent, that affected the outcome of the matter.

### **13.2 Appeal Procedures**

The Title IX Coordinator or designee shall appoint a three-member Appeal Committee, selected from a pool of trained District Employees. The Appeal Committee shall then designate an Appeal Committee Chair.

Any member of the Appeal Committee with past association with the Parties, with a conflict of interest in the matter, or who is a percipient witness to the events giving rise to the matter is ineligible to serve on that particular Appeal Committee. Any member of the Appeal Committee who is selected must disclose any potential or actual conflicts of interest.

The appeal will be forwarded to the Appeal Committee Chair for consideration. The Appeal Committee Chair will review the appeal to determine if it was timely filed and whether it identifies grounds for appeal. This review is not a review of the merits of the appeal.

If the appeal is not filed by the deadline and/or fails to specify proper grounds for appeal, the Appeal Committee Chair will dismiss the appeal. The Parties will be notified in writing of the dismissal of the appeal and the underlying dismissal of a formal complaint, the hearing outcome, and/or the sanctions will become final and binding.

If the appeal is filed by the deadline and specifies proper grounds for appeal, the Appeal Committee Chair will approve the appeal to proceed and will notify the Title IX Coordinator or designee to initiate an Appeal Committee Review.

### **13.3 Appeal Committee Review**

When an appeal proceeds, the Title IX Coordinator or designee will notify the other Party in writing and provide a copy of the appealing Party's request with the approved grounds. The other Party will be given three Business Days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded to all Parties for review and comment.

The non-appealing Party may also choose to raise a new ground for appeal during this timeframe. The Appeal Chair will review any such appeal to determine if it was timely filed and meets the grounds for appeal, and then either dismiss or approve the appeal. If approved, the Appeal Chair shall notify the Title IX Coordinator or designee who will forward the appeal with the approved grounds to the Party who initially submitted an appeal. This Party will be given three Business Days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded to all Parties for review and comment.

Neither Party may submit any appeals after this time period. The Title IX Coordinator or designee will collect all documentation regarding the approved grounds, subsequent responses, and any additional information needed and provide it to the Appeal Committee.

The Appeal Committee will review all appeals and corresponding responses. The Appeal Committee may, at its discretion, interview the Parties to clarify the appeal and corresponding responses. If the Appeal Committee interviews one Party, they shall extend the same opportunity to the other Party to ensure that the Parties are given equal opportunity to participate. The Appeal Committee may, at its discretion, interview any Title IX personnel for the sole purpose of clarifying the Party's appeal and corresponding responses.

The Appeal Committee shall notify the Parties concurrently of the outcome of the appeal within five Business Days of the conclusion of their review. The Notice of Appeal Outcome shall contain a summary of approved ground(s) raised on appeal and the rationale for each decision, the finding on each ground for

appeal (which may include specific instructions for remand or reconsideration and/or sanctions that may result) and any rationale supporting essential findings. The decision rendered by the Appeal Committee is final and concludes the appeal process.

### **13.4 Appeal Considerations**

The following principles govern the Appeal Committee's review of an appeal:

- All decisions of the Appeal Committee are by majority vote and the Preponderance of the Evidence standard is used.
- Appeal decisions are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the specific grounds for appeal.
- Appeals granted based on new evidence will normally be remanded to the original Investigator(s) and/or Hearing Chair for reconsideration.
- An appeal is not an opportunity for the Appeal Committee to substitute their judgment for that of the Hearing Chair merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Sanction(s) become final once the period of time to file an appeal has lapsed or appeal rights have been exhausted.
- Once an appeal is decided, the outcome is final. Further appeals are not permitted.

## **SECTION XIV - RETALIATION**

The District strictly prohibits retaliation against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual participated or refused to participate in any investigation, proceeding, or hearing under Title IX.

Retaliatory acts, may include: (1) intimidation, (2) threats, (3) coercion, (4) discrimination, or (5) charging an individual with code of conduct violations that do not involve Sexual Harassment, but arise out of the same facts or circumstances as a report or formal complaint of Sexual Harassment are specifically prohibited by the District.

The exercise of rights under the First Amendment does not constitute retaliation for purposes of this Title IX procedure.

Materially False Statements: The District may charge an individual with a code of conduct violation for making a materially false statement in bad faith in the course of the grievance process. A determination regarding responsibility, alone, is not sufficient to conclude that any individual made a materially false statement.

A complaint of retaliation may be filed according to the District's Unlawful Harassment and Discrimination Prevention and Complaints policy and procedure (Refer to BP/AP 3435).

### **14.1 Confidentiality**

The District must keep confidential the identity of any Complainant, any Respondent, or any witness except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding under this Title IX procedure.

## **SECTION XV - STATEMENT OF THE RIGHTS OF THE PARTIES**

This list is intended to help the Parties understand their rights and options. Throughout the process, the Parties shall have the following:

- The right to an educational and working environment free from Gender-based (or sex-based) Discrimination and Harassment, including Sexual Harassment, Retaliation, Sexual Assault, Dating Violence, Domestic Violence, and Stalking.
- The right to be treated with respect by District/College officials.
- The right to be informed of and have access to support services, including Supportive Measures to redress the harm to the Parties and the community and to prevent further violations.
- The right to be informed by District/College officials of options to report Sexual Harassment.
- The right to have reports responded to promptly and with sensitivity by District/College officials.
- The right to have the District/College policies and procedures followed without material deviation.
- The right to be fully informed of the nature and extent of the alleged violations contained with the formal complaint, applicable District Policies, and possible sanctions (i.e., Notice of Investigation and Notice of Hearing).
- The right to be accompanied by an Advisor of the Parties' choosing to all meetings or proceedings regarding the allegations.
- The right to a thorough, reliable, impartial, prompt, and fair investigation, hearing, and appeal process.
- The right to present relevant information, witnesses, and evidence regarding the alleged violations during the investigation and hearing process.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to inspect and review the evidence upon which the investigative findings will be based and given the opportunity to respond.
- The right to participate during the hearing and have questions facilitated through their advisor.
- The right to submit an impact statement.
- The right to be promptly informed of the hearing outcome and sanction of the resolution process in writing, without undue delay between the notifications to the Parties (i.e., Notice of Hearing Outcome).
- The right to appeal.
- The right to have all Title IX Team trained.
- The right to petition that any District/College representative in the process be recused on the basis of demonstrated bias and/or conflict of interest.

## **SECTION XVI - STUDENT RECORD**

In implementing this procedure, records of all allegations, investigations, and resolutions will be maintained by the Title IX Coordinator, or designee, in the District/College electronic database. The privacy of records shall be held in accordance with the Family Educational Rights and Privacy Act. Parties have the right to inspect and review their educational record maintained by the District/College. The District/College is not required to provide copies of records unless it is impossible for the Parties to review the records (e.g., great distance). The District/College may impose a reasonable fee for copies.

## **SECTION XVII - PREVENTION, EDUCATION, AND TRAINING**

Each College must implement prevention, education, and training programs for Students and Employees in the areas of Gender-based (or sex-based) Discrimination and Harassment, including Sexual Harassment, Retaliation, Sexual Assault, Dating Violence, Domestic Violence, and Stalking.



Prevention and education programs shall be comprehensive, multi-pronged, and interconnected in a strategic way to increase awareness and influence a change in behavior. Prevention and education programs (e.g., educational workshops, empowerment programming, awareness raising campaigns, social marketing campaigns) are intended for (1) new Students and Employees (e.g., during orientation programs), (2) returning Students and Employees, (3) Student athletes and coaches, (4) members of student organizations including the student organization's advisors, (5) Students and Employees who live or work in on-campus housing, and (6) Campus/Public Safety Officers.

Prevention and education programs for Students may include the following information:

- Rights and responsibilities under Title IX;
- Definitions of Affirmative Consent and the behaviors that violate this Policy;
- Common myths and facts about Sexual Assault and misconduct;
- How to recognize warning signs associated with Dating Violence, Domestic Violence and Stalking;
- Information on risk reduction, including considerations when alcohol, drugs, or medications are involved;
- What someone should do if they have experienced or witnessed any unwanted behavior described in this policy;
- Bystander intervention;
- Safe and effective strategies for bystanders to prevent harm or intervene when there is a potential risk;
- Available on-campus support services, including Supportive Measures, and off-campus community resources;
- Reporting options and confidential reporting;
- The District/College's obligation to take reasonable steps to eliminate the behavior, prevent future recurrence, remedy the effects, and the District/College procedure for processing reports; and
- Information regarding the potential consequences for violating this policy.

Employees shall receive training on how to appropriately respond to reports. All Employees are expected to report actual or suspected Sexual Harassment to an appropriate official immediately, though there are some limited exceptions outlined in Section 9.12. Their training should explain what information to include in a report and consequences for failing to report. Additional training components may include practical information on how to prevent and identify behavior, attitudes of bystanders, effects on the complainant (e.g., impact of trauma on victims), and appropriate methods for responding (e.g., nonjudgmental language).

Title IX Team, including but not limited to the Title IX Coordinator, Investigator(s), Hearing Chair, Appeal Designees, and District-appointed Advisors, must receive annual training in addressing and analyzing reports, the procedure for processing reports, how to conduct an investigation, confidentiality issues, and how to conduct the hearing process that protects the safety of the Parties and promotes accountability.

## **SECTION XVIII - TITLE IX COORDINATOR**

Each College is required to designate one Title IX Coordinator with primary responsibility to monitor, supervise, and oversee overall College-wide implementation of and compliance with Title IX and this Title IX procedure, including coordination of training, education, communications, complaint procedure administration, investigations, and other compliance procedures. The Title IX Coordinator shall have authority across all College-based divisions and programs. The designated Title IX Coordinator should be

someone without other institutional responsibilities that could create a conflict of interest and should report directly to a vice president or higher. The Title IX Coordinator must have the qualifications, authority, and time to address all complaints throughout the College involving Title IX issues.

The Title IX Coordinators, Investigators, Hearing Chairs, Appeal Designees, and District appointed Advisors, and any other designee must have adequate training annually.

The Title IX Coordinator's duties include:

- Coordinate training, education, and preventive programs in the areas of Gender-based (or sex-based) Discrimination or Harassment, including Sexual Harassment, Retaliation, Sexual Assault, Dating Violence, Domestic Violence, and Stalking.
- Provide annual training for Title IX Team, including the Investigators, District-appointed Advisors, Hearing Chair, and Appeal designees.
- Monitor, supervise, and oversee all complaints of Gender-based (or sex-based) Discrimination or Harassment, including Sexual Harassment, Retaliation, Sexual Assault, Dating Violence, Domestic Violence, and Stalking, including related investigations, reports, Supportive Measures, resolution, and appeals.
- Oversight and Coordination of prompt and equitable grievance procedures to stop the behavior, prevent future recurrence and remedy the effects.
- Review all investigation reports before they are final to ensure that they are prompt, adequate, reliable, and impartial and in compliance with this Title IX procedure.
- Provide reasonable Supportive Measures, if requested and available.
- Notify students, employees, applicants for admission and employment, all unions or professional organizing holding collective bargaining or professional agreements of the following:
  - Notice of the District's nondiscrimination policies that the District does not discriminate on the basis of sex in its education program or activity.
  - Notice of the Title IX Coordinator's contact information and prominently display on the website.
- Recommend appropriate revisions of policies and procedures.
- Recommend appropriate memoranda of understanding or other agreements with community-based organizations to make services and assistance available to students.
- Assist the College in developing a method to survey the school climate, coordinate the collection and analysis of information from that survey, and identify and address any systemic or other patterns and implement corrective measures, as appropriate.
- Maintain a website, publications, and other resources related to Title IX.
- Oversee gender equity in athletics in consultation with Athletic Director, or appropriate administrator, to measure participation compared to enrollment data in three distinct areas: (1) participation; (2) scholarships; and (3) other benefits, including the provision of equipment and supplies, scheduling, travel, tutoring, coaching, locker rooms, facilities, medical and training facilities, and services, publicity, recruiting, and support services.
- Serve as the point of contact for government inquiries regarding Gender-based (or sex-based) Discrimination and Harassment, including Sexual Harassment, Retaliation, Sexual Assault, Dating Violence, Domestic Violence, and Stalking.

### **Annual Report**

Each Title IX Coordinator will report the following annually to the College President or Chancellor, without disclosing any information that would reveal the identities of the Parties involved:

1. The number of reports received during the academic year;
2. The number of reports investigated, including whether the Respondent was found responsible and the final Sanction(s), if applicable;
3. A description of the action taken for reports resolved without an investigation;

4. A list of the College's Title IX personnel (i.e., Investigators, Hearing Chairs, District appointed Advisors, and Appeal Designees), including a description of their annual training; and
5. A report of the various training, education, and preventive programs provided to students, staff, administrators, and faculty during the academic year.

Ratified June 17, 2015

Ratified August 5, 2020

Ratified November 4, 2020