



Administrative Procedure

Chapter 3 – General Institution

AP 3434 – RESPONDING TO HARASSMENT BASED ON SEX UNDER TITLE IX

1. INTRODUCTION

The San Diego Community College District (“District”) is committed to providing an environment that is free of sexual harassment, including sexual assault and stalking, for its students, employees, and applicants for admission or employment. This procedure outlines protections for students, employees, and applicants in educational programs and activities, and in employment activities of the District.

The purpose of this Administrative Procedure is to fulfill this commitment, as well as to meet the District’s obligations under Title IX of the Education Amendments of 1972 (“Title IX”), the Violence Against Women Act (“VAWA”), California SB 493, and relevant provisions of the California Education Code.

This procedure only applies to conduct defined as sexual harassment under Title IX and applicable federal regulations that meet Title IX jurisdictional requirements. The District will respond to sexual harassment and sexual misconduct that falls outside that definition and outside the jurisdiction of the Title IX federal regulations using California law and applicable District policies and procedures. In implementing the procedures below, the District will provide supportive measures, training, and resources in compliance with California law, unless Title IX regulations preempt them.

2. DEFINITIONS

The following definitions apply to this Administrative Procedure:

- a. Student – As defined in Administrative Procedure, *AP 5520, Student Disciplinary Procedures*.
- b. Employee – As defined in Board of Trustees Policy, *BP 7210, Academic Employees*; Board of Trustees Policy, *BP 7230, Classified Employees*; Board of Trustees Policy, *BP 7240, Confidential Employees*; Board of Trustees Policy, *BP 7260, Educational Administrators*; and Board of Trustees Policy, *BP 7260, Classified Supervisors and Managers*.
- c. Parties – As used in this procedure, includes both the Complainant and Respondent.

- d. Complainant – An individual who alleges that they are the victim of conduct that could constitute sexual harassment.
- e. Respondent – An individual reported to be the perpetrator of conduct that could constitute sexual harassment.
- f. Reporting Party – An individual who submits an incident report alleging conduct that could constitute sexual harassment, whether they are the victim of that conduct or a witness to that conduct.
- g. Advisor – Throughout the grievance process, both the Complainant and Respondent have a right to an Advisor of their choice. If a Party does not have an Advisor at the time of the hearing, the District must provide the Party an Advisor of its choice, free of charge.
- h. Consent – Affirmative, conscious, voluntary, and revocable, mutual agreement to engage in sexual activity. Both Parties must give affirmative consent to sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Lack of protest, lack of resistance, or silence does not indicate consent. Affirmative consent must be ongoing throughout a sexual activity and one can revoke their consent at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them is not an indicator of consent. The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable, based on the facts and circumstances the Respondent knew, or reasonably should have known, at the time of the incident. A Respondent's belief is not a valid defense where:
 - 1) The Respondent's belief arose from the Respondent's own intoxication or recklessness;
 - 2) The Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented; or
 - 3) The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
 - a) Asleep or unconscious;
 - b) Unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
 - c) Unable to communicate due to a mental or physical condition.

Note: Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication. Whether an intoxicated person (as a result of alcohol or other drugs) is incapacitated depends on the extent to which the alcohol or other drugs impact the person's decision-making ability, awareness of consequences, and ability to make informed judgements.

Sexual activity with a minor (a person under 18 years old) is not consensual, because a minor is considered incapable of giving consent due to age.

- i. Hearing Officer – The person or persons who will oversee Title IX hearings and make the determination of responsibility. The District may have one Hearing Officer determine whether the Respondent is responsible, and another Hearing Officer determine the appropriate level of penalty for the conduct. The Hearing Officer cannot be the Title IX Coordinator or the Title IX Investigative Analyst.
- j. Formal Complaint – A written complaint signed by the Complainant or Title IX Coordinator, alleging prohibited conduct, and requesting an investigation. If the Title IX Coordinator signs the formal complaint, they will not become a Party to the complainant.
- k. Sexual Harassment – For the purposes of Title IX and this procedure, the District has adopted the following definitions of sexual harassment in order to address the unique environment of an academic community. One definition is required by federal law, and the other by state law. Both apply, and while they overlap, they are not identical.
 - 1) California Sexual Harassment Definition – For a complete list of definitions of sexual harassment under California law, see Appendix A.
 - 2) Title IX Sexual Harassment Definition – Conduct that satisfies one or more of the following as defined in 34 CFR § 106.30:
 - a) A District employee conditions the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (*quid pro quo* harassment);
 - b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity (hostile environment sexual harassment); and/or
 - c) Sexual assault, including the following:
 - (1) Sex Offenses – Any sexual act directed against another person,

without the consent of the victim, including instances where the victim is incapable of giving consent.

- (2) Rape (except Statutory Rape) – The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the genital or anal opening of the body of another person.
- (3) Sexual Assault with an Object – To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age, or their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything the offender uses other than the offender's genitalia (e.g., a finger, bottle, handgun, stick.)
- (4) Fondling – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age, or /their temporary or permanent mental or physical incapacity.
- (5) Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse:
 - (a) Incest – Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - (b) Statutory Rape – Non-Forcible sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
- (6) Dating violence – Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a relationship will be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (7) Domestic Violence – Violence committed:
 - (a) By a current or former spouse or intimate partner of the victim;

- (b) By a person with whom the victim shares a child in common;
 - (c) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - (d) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; and/or
 - (e) By any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws of California.
- (8) Stalking – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

3. OTHER DEFINITIONS

- a. Confidential Resources – Employees who receive information about prohibited conduct in their confidential capacity and are not required to report to the Title IX Coordinator:
 - 1) Mental Health Counselors; and
 - 2) Employee Assistance Program (EAP)

Individuals designated as a Confidential Resource are responsible for provisions outlined in state law (SB 493 66281.8(a)(2)(C)(ii)) and shall inform each student who provides them with information regarding sexual harassment of the student's ability to report to a responsible employee and direct the student to those specific reporting resources.

Designation as a "Confidential Resource" under this procedure only exempts a person from reporting to the Title IX Officer. It does not affect other mandatory reporting obligations under UC CANRA (Child Abuse and Neglect Reporting Act) Policy, the Clery Act, and other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.

- b. Supportive Measures – Non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a formal complaint has been filed. The District will provide the Complainant and Respondent with supportive measures as appropriate, and as reasonably available, to restore or preserve equal access to the District's education programs or activities. These measures are designed to protect the safety of all Parties, protect the District's educational environment, and deter sexual harassment. The District will provide supportive measures on a

confidential basis and will only make disclosures on a need-to-know basis in order to enable the District to provide adequate services. Support measures may include counseling, extensions of deadlines other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Parties, changes in work or housing locations, leaves of absence, increased security and monitoring of specified areas of the campus, and other similar measures.

- c. Sexual Assault and Domestic Violence Counselors – For further information about services provided by sexual assault and domestic violence counselors on campus, see Administrative Procedure, *AP 3540, Sexual and Other Assaults on Campus*.
- d. Preponderance of the Evidence – A standard of proof that requires that a fact be found when its occurrence, based on evidence, is more likely than not. This means that the greater weight of the evidence 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 an investigation conducted pursuant to this procedure.
- e. Responsible Employee – Any District employee who is not a confidential resource. If a Responsible Employee learns, in the course of employment, that a student may have experienced prohibited conduct, they should promptly notify the Title IX Office or designated Official with Authority.

Employees who do not have a duty to report are Confidential Recourses, as identified above.

- f. Official with Authority – A District employee with the responsibility to oversee the Title IX process and/or enforcement. District Officials with Authority are not confidential resources and are required to report allegations of prohibited conduct to the Title IX Coordinator. The District has designated the following employees as Officials with Authority:

Title IX Coordinator (District Office)
President (each institution)
Vice President, Student Services (each institution)
Vice President, Instruction (each institution)
Vice President, Administration (each institution)
Dean of Student Affairs (each institution)
DSPS Coordinator (each institution)
504 Officer (each institution)
Site Compliance Officer (each institution)
Dean/Director of Athletics (each institution)
District Diversity Officer (District Office)
Director of Legal Services and EEO (District Office)

Human Resources/Employee Relations (District Office)

Officials with Authority are required to report all relevant information they know about sexual harassment including the name of the Respondent, the Complainant, and other witnesses, and the date, time and location of the alleged incident. Officials with Authority participate in annual Title IX Training.

- g. Pregnant/Parenting – Pregnancy, childbirth, breastfeeding, or any related medical condition.
- h. Gender – Sex, including gender identity, gender expression, and transgender, as well as sex stereotyping:
 - 1) Gender Identity – A person’s identification as male, female, a gender different from the person’s sex at birth or transgender.
 - 2) Gender Expression – A person’s gender-related appearance or behavior whether or not stereotypically associated with the person’s assigned sex at birth.
 - 3) Sex Stereotype – An assumption about a person’s appearance or behavior or about an individual’s ability or inability to perform certain kinds of work based on a myth, social expectation, or generalization about the individual’s sex.
 - 4) Transgender – A general term referring to a person whose gender identity differs from the person’s sex at birth.

4. JURISDICTIONAL REQUIREMENTS – APPLICATION OF PROCEDURES

These procedures cover acts of prohibited conduct committed by District students, employees, and third parties (such as contractors, vendors, visitors, guests, and volunteers), and acts of prohibited conduct committed against students, employees, and third parties, of the conduct meets the following three (3) jurisdictional requirements:

- a. The conduct took place in the United States;
- b. The conduct took place in connection with a District “educational program or activity.” This includes locations, events, or circumstances over which the District exercised substantial control over both the Respondent and the context in which the harassment occurred, including on-campus and off-campus property and buildings the District owns or controls, or which student organizations officially recognized by the District own or control.
- c. The conduct meets the definition of “sexual harassment” as defined in Section 2.n. of this procedure.

Not every report of prohibited conduct will result in a resolution process as described in this procedure. The Title IX Coordinator may close some reports after making an initial assessment.

5. GRIEVANCE PROCESS FOR REPORTS THAT DO NOT MEET JURISDICTIONAL REQUIREMENTS OF TITLE IX (“Alternative Process”)

a. Alternative Process

A report that must be dismissed because it does not meet the jurisdictional requirements outlined in Section 4, may be assessed under Alternative Process, as determined by the Title IX Coordinator. Alternative Process encompasses prohibited conduct that meets the following requirements:

- 1) Unwelcome conduct that is sufficiently severe or pervasive as defined in Board of Trustees Administrative Procedure, *AP 3430, Prohibition of Harassment*; and/or
- 2) Conduct that occurred at a non-District location and not within the context of a District-sponsored program or activity, if there is a “sufficient nexus,” as defined below, between the conduct and a District program or activity.
 - a) Sufficient Nexus means that there exists a likelihood that the Complainant may reasonably encounter the Respondent, within District activities and programs, in a manner sufficient to deprive the Complainant of their ability to enjoy the benefits of the District activity or program in question (e.g., when the continued presence or participation of the Respondent may reasonably be expected to create a hostile environment for the Complainant).

Alternative Process will also apply to reports that involve other sex-based misconduct as defined below:

- 1) Sexual Batter – The intentional touching of another person’s intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent or using a person’s own intimate part to intentionally touch another person’s body without consent.
- 2) Sexual Exploitation – Taking sexual advantage of another person for the benefit of anyone other than that person without that person’s consent, including, but not limited to, any of the following acts:
 - a) The prostituting of another person, including the use of threat, coercion, or abduction to force another person to perform sexual acts with others in exchange for payment;

- b) The trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion;
 - c) The recording of images, including video or photograph, or audio of another person's sexual activity or behavior, intimate parts, or in any state of undress, without that person's consent;
 - d) Intentionally observing, spying on, or listening to person(s) involved in sexual activity or behavior or in any state of undress, without their consent;
 - e) The distribution, sharing, or posting of images, including video or photograph, or audio of another person's sexual activity or behavior, intimate parts, 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 the disclosure;
 - f) The viewing of another person's sexual activity or behavior, intimate parts, or allows others to observe another person in any state of undress, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire;
 - g) Removing a condom during sexual intercourse without the consent of the other person; or the act of intentionally misleading another person to believe a condom is being used during sexual intercourse;
 - h) Inducing incapacitation of another by providing drugs, alcohol, or other substances—with or without their knowledge—with the intent to impair their ability to withhold consent or their ability to knowingly consent to sexual activity or behavior, regardless of whether sexual activity or behavior actually occurs. If sexual activity or behavior does occur, such conduct may also constitute Sexual Assault; and/or
 - i) Indecent Exposure which is exposing one's intimate parts, such as genitalia, groin, breast, and/or buttocks to someone without their consent. This behavior is the deliberate showing of intimate parts of the body and may, but does not necessarily have to, include a sexual act. Engaging in sexual activity in public, witnessed by non-consenting person(s), is also a form of Indecent Exposure.
- 3) Discrimination, including harassment, because of sex or gender, gender identity (including transgender), gender expression, marital status, sexual orientation, sex stereotype, pregnancy and/or breastfeeding (or any related

medical condition), and other inappropriate conduct that does not meet the criteria as defined by the Title IX regulations.

Reported conduct that does not meet the definition of “sexual harassment” in Section 2.n. of this procedure, or not encompassed in Alternative Process will be addressed pursuant to alternative District policies and procedures.

b. Alternative Process – Investigation Process

Following intake, receipt of notice, or a report of an alleged violation the Title IX Coordinator will make an initial assessment to promptly evaluate whether the report or complaint details describe a violation under Alternative Process and if the matter has not been resolved by other means.

Based on the initial assessment, the Title IX Coordinator will initiate one of these responses:

- 1) Supportive Response – Measures to help restore the Complainant’s education access, as described in Section 3.b. of this procedure.
- 2) Informal Resolution – Typically used for less serious offenses and only when all parties agree to Informal Resolution, or when the Respondent is willing to accept responsibility for violating policy.
- 3) Administrative Resolution – Investigation of policy violation(s) and recommended finding, subject to a determination by the Title IX Coordinator and the opportunity to appeal to an Appeal Decision-maker.

a) The Title IX Investigative Analyst shall:

- (1) Reach out to the Complainant to offer supportive measures;
- (2) If not already done, request to meet with the Complainant to collect all relevant information and a list of relevant witnesses;
- (3) Meet with witnesses identified by or for the Complainant, to the extent deemed germane in the discretion of the Title IX Office;
- (4) Provide written notification to the Respondent of the allegations and schedule a meeting at which the Respondent may provide responsive information and a list of relevant witnesses;
- (5) Meet with witnesses identified by or for the Respondent, as deemed germane in the discretion of the Title IX Office;
- (6) Make a determination by the preponderance of the evidence whether

discrimination exists and if so, impose a sanction or other supportive measures that shall not include a suspension of more than 10 days;

- (7) Provide notification of the determination made by the Title IX Office and any sanction to be imposed, including the rationale for the determination; such notification shall be provided to both Parties, in writing, within five (5) business days, and shall be deemed made when transmitted via email or U.S. mail to the last known address for each Party.

Note: If the Respondent is a student, the written rationale shall be submitted to the Dean of Student Affairs and the Vice President of Student Services or designee. If the Respondent is an employee, the written rationale shall be submitted to Human Resources Labor Relations or designee, and the Respondent's dean, director, or next-level supervisor who was not involved in the underlying dispute. If it is determined that reasonable grounds establish a violation of this procedure or related policy, appropriate disciplinary or corrective action to address the conduct will be taken by Human Resources.

6. PROTECTION OF COMPLAINANTS, RESPONDENTS, AND WITNESSES

- a. Amnesty – To encourage reporting, the District will not discipline Complainants or witnesses for student conduct policy violations that occur around the time of alleged prohibited conduct unless the District determined the violation was egregious. Examples of egregious violations include conduct that risked someone's health or safety.

Complainants may be particularly afraid to report prohibited conduct when alcohol, drugs, or other intoxicants were involved (for example, when there was underage drinking). This amnesty provision applies to alcohol- and drug-related student violations.

- b. Retaliation – The District prohibits retaliation against someone for reporting possible prohibited conduct or participating or not participating in a process under this procedure.
- c. Privacy and Confidentiality – The District must balance the privacy interests of people involved in a report of prohibited conduct against the need to gather information, ensure a fair process, and stop, prevent and remedy prohibited conduct. In this context, the District tries to protect people's privacy to the extent permitted by law and District policies. The District otherwise keeps confidential the identities of parties, witnesses, and those who report prohibited conduct, except as required by law or permitted by FERPA, and protects the privacy of personally identifiable information per all applicable state and federal privacy laws, and District policies.

7. PROCEDURES

a. Procedures for Reporting and Responding to Reports of Sexual Harassment

The Title IX Coordinator is required to respond to reports of sexual harassment or misconduct. The Title IX Coordinator will handle information received with the utmost discretion and will share information with others on a need-to-know basis. For example, the Title IX Coordinator may need to address public safety concerns on campus, comply with state and federal legal requirements, or share information to implement supportive measures.

A report of sexual harassment to the Title IX Coordinator does not necessarily lead to a full investigation, as discussed more fully below. However, the Title IX Coordinator will make an assessment to determine if there is a safety risk to the campus. If the Title IX Coordinator finds there is a continued risk, the Title IX Coordinator will file the formal complaint without the Complainant's consent or cooperation.

While the Title IX Office has responsibility for oversight of the reporting and response processes, other offices at each location will be involved and consulted as necessary. The specific procedures for investigating and resolving complaints of prohibited conduct may depend on the respondent's identity and relationship to the District.

A Respondent may be a:

- 1) Student;
- 2) Faculty member;
- 3) Classified Professionals;
- 4) Non-faculty academic employee; or
- 5) Third party

b. Reporting Options

Any person may report prohibited conduct, including anonymously. A person may report sexual harassment to the District's Title IX Coordinator, any Responsible Employee, or an Official with Authority. The person or office that receives the report must forward it to the Title IX Coordinator. Upon receipt of a report of prohibited conduct, the Title IX Office will attempt to contact the Complainant, if known, to inform them of their rights, options, and resources.

The District will document reports of sexual harassment in compliance with the Jean-Clery Act ("Clery Act"), a federal law requiring data collection of crime within the campus geography. Under the Clery Act, the District does not document

personal information; the District reports the type of conduct, and the time, date and location of the alleged incident.

c. Timeline for Making Reports

There is no time limit for reporting, and people should report incidents even if significant time has passed. However, the District strongly encourages prompt reporting of prohibited conduct under this procedure. Prompt reporting better enables the District to respond to the report, determine relevant issues, and provide an appropriate remedy and/or action. Prompt reporting allows for the collection and preservation of evidence, including physical evidence, digital media, and witness statements. A delay may limit the District's ability to conduct an investigation or take appropriate remedial action.

Individuals have the opportunity to decide whether they want to pursue a formal Title IX complaint. Reporting sexual harassment to the Title IX Coordinator does not automatically initiate an investigation under this procedure. A report allows the District to provide a wide variety of support and resources to impacted individuals and to prevent the recurrence of the conduct. A Complainant or the Title IX Coordinator filing a formal complaint will initiate an investigation.

If there are parallel criminal and Title IX investigations, the District will cooperate with the external law enforcement agency and will coordinate to ensure that the Title IX process does not hinder legal processes or proceedings.

8. INTAKE AND PROCESSING OF REPORT

a. Receipt of Report and Initial Assessment

As soon as practicable, after receiving an incident report, the Title IX Coordinator will make an initial assessment, including a limited factual inquiry when appropriate, to determine how to proceed. The Title IX Office will contact the Complainant and invite the Complainant to a meeting to explain their rights under this policy and procedure and discuss supportive measures. If the Complainant is not the reporting party, the Title IX Office may contact the reporting party for more information.

The Title IX Coordinator will first assess the report to determine whether the alleged conduct is conduct prohibited under this procedure. If the conduct does not meet any of the definitions of Prohibited Conduct under this procedure or related policy, the Title IX Coordinator will assess if the conduct is covered by another applicable District Policy.

The Title IX Office may consult with other offices as necessary. This may include Student Affairs Offices for complaints involving students, and Human Resources or Employee Labor Relations Offices for complaints involving staff and faculty.

The Title IX Coordinator, in consultation with the Complainant when possible, will:

- 1) Make an immediate assessment of the health and safety of the Complainant and the campus community;
- 2) Determine and oversee supportive measures that are immediately necessary (including Mutual no contact directives); and
- 3) Provide Complainant a written explanation of rights and reporting options (including the right to report to police), and available campus and community resources.

b. Removal of Respondent

Upon receiving a report regarding prohibited conduct, the Title IX Coordinator will make an immediate assessment concerning the health and safety of the Complainant and campus community as a whole. Based upon this assessment the District has the right to order emergency removal of a Respondent, or if the Respondent is an employee, place the employee on administrative leave.

1) Emergency Removal

The District may remove a non-employee Respondent from the District's education program or activity on an emergency basis after it conducts an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of prohibited conduct justifies removal. The District Vice Chancellor of Educational Services or designee will conduct the individualized safety and risk analysis.

The District may not use emergency removal to address a Respondent's threat of obstructing the sexual harassment investigation or destroying relevant evidence. Emergency removal is only available to address health or safety risks against individuals arising out of prohibited conduct allegations, not to address other forms of misconduct that a Respondent might commit pending the processing of a complaint.

If the Vice Chancellor of Educational Services determines emergency removal is appropriate, they or their designee will provide the person being removed from campus with notice and opportunity to challenge the basis of their removal in writing. The Vice Chancellor of Educational Services or designee will determine whether the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal.

2) Administrative Leave

The District may place a non-student employee Respondent on administrative leave during the pendency of a grievance process as described in Section 8.b. The District will follow relevant policies, procedures, collective bargaining agreements, and state law in placing an employee on administrative leave.

c. Closure after Initial Assessment

Not all reports the Title IX Office receives are reports of prohibited conduct that can be resolved through the grievance process described below. This includes reports for which the Title IX Coordinator determines that:

- 1) Even if true, the alleged conduct is not sexual harassment, defined in this procedure;
- 2) The conduct is not covered by this procedure or related policy;
- 3) There is not enough information to carry out the grievance process (for example, the identities of the people involved);
- 4) A Complainant's request that no investigation occur can be honored; or
- 5) There is not enough nexus between the conduct and the District to carry out the grievance process (for example, the conduct did not occur in the context of a District program or activity and involved only third parties).

The Title IX Coordinator will close such matters per written guidelines issued by the Title IX Office. The Title IX Coordinator will still, when appropriate, take steps to stop the reported conduct, prevent its escalation or recurrence, and address effects. Such steps may include offering resources and supportive/mitigating measures to the Complainant and providing target preventive education (including to the Respondent) and training programs.

When the reported conduct does not fall under prohibited conduct, as defined in this procedure (such as harassment that is not sex-based), the Title IX Coordinator will, if appropriate, refer the matter to the relevant office for review and resolution.

Reports of prohibited conduct that proceed through the initial assessment may be addressed through alternative resolution, formal investigation, a separate employee grievance or complaint process, or other inquiry, as described herein.

9. ALTERNATIVE/INFORMAL RESOLUTION

Alternative/Informal resolution is not available when the Complainant is a student and the Respondent is an employee and/or if the allegations involve sexual violence. In order cases, after an initial assessment of the alleged facts, the Title IX Coordinator may—if the Complainant and Respondent agree in writing—begin an alternative/informal resolution process. The Title IX Coordinator will, if appropriate, begin the process in consultation with other offices depending on whether the Complainant and Respondent are faculty, other academic appointees, staff, student employees, or students; an alternative/informal resolution may include, but is not limited to:

- a) Separating the parties;
- b) Providing for safety of the parties;
- c) Referring the parties to counseling;
- d) Mediation (except in cases of sexual violence)
- e) Referral for disciplinary action;
- f) An agreement between the parties;
- g) Conducting targeted preventative educational and training programs; and
- h) Conducting a follow-up review to ensure that the resolution had been carried out effectively.

Alternative resolution may be especially useful when:

- a) An investigation is not likely to lead to a resolution;
- b) Both parties prefer an informal process; or
- c) A case involves less serious allegations

The Title IX Coordinator has the discretion to determine whether the complaint is appropriate for alternative resolution, to determine the type of resolution to pursue, and to stop the process at any time before its conclusion and move to a formal investigation.

Participation in alternative resolution is voluntary, meaning both the Complainant and the Respondent must agree to participate. If alternative resolution is selected, the Title IX Coordinator will provide timely written notice to both parties that include information:

- a) About the allegations;
- b) That the Title IX Office has begun the process;
- c) That the process is voluntary and will end upon either party's request;
- d) That termination of the process may result in a Formal Investigation;
- e) That they may be accompanied by an advisor throughout the process; and
- f) That the process is private but not confidential, the Title IX Office will maintain a record of the process and may share information with others if needed to carry out the resolution, and information shared by the parties may be considered in any subsequent Resolution Process.

The Title IX Coordinator will oversee the alternative resolution process promptly, typically within 30 to 60 business days of notifying the parties in writing of starting the process. However, the Title IX Coordinator may extend past 60 days for good cause. The Title IX Coordinator will notify the parties in writing of the reason for any extension and the projected new timeline. The actual time required will depend on the specific circumstances, including the complexity of the allegations and the nature of the alleged conduct.

Once the parties have agreed to the terms of an alternative resolution, the District will not conduct a formal investigation unless the Title IX Coordinator determines that the Respondent failed to satisfy the terms of the alternative resolution, or that the alternative resolution was unsuccessful in stopping the prohibited conduct or preventing its recurrence.

The Title IX Office will keep records of all reports and conduct addressed through alternative resolution.

10. FORMAL COMPLAINT GRIEVANCE PROCESS

Before the start of any resolution process, the Title IX Coordinator will meet with the Complainant and discuss their right to file a formal complaint, the different resolution options, and the District's rules of conduct during the process.

a. Filing a Formal Complaint

Any student or employee may file a formal complaint to the Title IX Office reporting sexual harassment, as defined in this procedure.

1) Formal Complaint Requirements

The Complainant may submit a formal complaint to the Title IX Coordinator. The date the complaint is received is considered to be the complaint filing date. The Title IX Coordinator will offer reasonable accommodations to Complainants who are unable to submit a written complaint because of a qualified disability.

The Complainant may complete the formal complaint form available through the Title IX Office or may submit a written signed statement containing the following information:

- a) The Complainant's full name, address (including email address) and telephone number(s);
- b) The name of the Respondent and job title, position, or student status (if known);
- c) The basis for any alleged discrimination, harassment, or retaliation, the Respondent's activity that is that basis for the alleged retaliation, or

- whether dating or domestic violence, or stalking is alleged;
- d) A clear, concise statement of the facts that constitute the allegations including pertinent date(s) and sufficient information to identify any individual(s) who may provide relevant information during the course of any investigation;
 - e) A statement verifying that the information provided is true and accurate to the best of the Complainant's knowledge;
 - f) The term and year of the Complainant's most recent active academic status or the term and year in which the Complainant sought admission to the San Diego Community College District;
 - g) The Complainant's signature; and
 - h) The date on which the complaint is submitted.

b. Dismissal of Formal Complaint

The District must investigate the allegations in a formal complaint. However, the District must dismiss the formal complaint and will not process the complaint under the formal grievance process outlined in Sections 10 and 11 of this procedure if any of the following three (3) circumstances exist:

- 1) If the conduct alleged in the formal complaint does not constitute sexual harassment as defined in this procedure;
- 2) If the conduct alleged did not occur in a District educational program or activity; and/or
- 3) If the conduct alleged did not occur against a person in the United States.

The District has the discretion to dismiss a formal complaint or any allegation under the following circumstances:

- 1) If at any time during the investigation or hearing the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations;
- 2) If the Respondent is no longer enrolled or employed by the District; and/or
- 3) If there are specific circumstances that prevent the District from gathering evidence sufficient to reach a determination regarding responsibility as to the formal complaint or allegations.

If the District dismisses the formal complaint or any allegations under this section, the Title IX Coordinator shall simultaneously provide the Parties with written notice of the dismissal and reason. The District will also notify the Parties of their right to appeal.

The District may commence proceedings under Alternative Process, if appropriate, or under other policies and procedures after dismissing a formal complaint.

c. Initiation of Formal Complaint Grievance Process

The Title IX Office will begin a formal investigation when they decide not to close a report after their initial assessment, a formal complaint is filed, the alleged conduct meets the definition of sexual harassment in Section 2.n. of this procedure (or all the jurisdictional requirements listed in Section 4 of this procedure are met) and either alternative resolution and other inquiry are not appropriate, or the parties do not agree to participate in alternative resolution or the alternative/informal resolution process ends before the parties agree on terms.

The Title IX Office may coordinate the investigation with other offices, depending on the identities of the Complainant and the Respondent (that is, faculty, other academic appointees, staff, or students).

If the Complainant does not want an investigation, the Title IX Coordinator will seriously consider this preference. The Title IX Coordinator may, however, determine an investigation is necessary despite the Complainant's request and may file a formal complaint on behalf of the Complainant. The Title IX Coordinator will provide the Complainant with all information required by this procedure unless the Complainant states in writing that they do not want it.

If at the request of the Complainant, the Title IX Office does not begin an investigation, they will inform the Complainant that possible remedies are limited without such investigation. The Title IX Office will nonetheless provide supportive measures as appropriate and consistent with the Complainant's privacy and the absence of an investigation.

1) Notice to Parties

Upon receipt of a formal complaint, the Title IX Coordinator will provide the following in writing, to the Parties:

- a) A copy of the District's Title IX grievance process, an explanation of the Parties' rights, and available resources;
- b) A written summary of the allegations of alleged prohibited conduct with sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- c) Statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is

made at the conclusion of the grievance process;

- d) Notice that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney;
- e) Notice that the Parties may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a Party or other source. The Parties have the right to identify evidence and witnesses, but the District bears the burden of proof and of gathering evidence sufficient to reach a determination regarding responsibility; and
- f) Inform the Parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

During an investigation, if the District decides to investigate allegations about the Complainant or Respondent that were not included in the initial notices as stated above, the Title IX Coordinator will provide notice in writing of the additional allegations to the Parties.

d. Timeline for Completion

The District will undertake its grievance process promptly and as swiftly as possible. The District will typically complete the investigation and its determination regarding responsibility within 60 to 90 business days from the date of the notice of charges. The Title IX Coordinator is responsible to oversee investigations to ensure timely resolution and compliance with Title IX and this procedure.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the 60 to 90 business day period to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the unavailability of witnesses or delays by the Parties, to account for District breaks or vacations, or due to the complexity of the investigation. The District will provide notice of this extension to the Complainant and Respondent in writing and include the reason for the delay and anticipated timing of completion.

A Party may request an extension from the Title IX Coordinator in writing by explaining the reason for the delay and the length of the continuance requested. The Title IX Coordinator will notify the Parties and document the grant or denial of a request for extension or delay as part of the case recordkeeping.

e. Right to an Advisor

Both the Complainant and the Respondent have the right to an advisor of their choice. The role of the Advisor is to provide support and assistance throughout the investigative process.

The Advisor may not testify in or obstruct an interview or disrupt the process. The Title IX Coordinator has the right to determine what constitutes appropriate behavior of an Advisor and take reasonable steps to ensure compliance with this procedure.

A Party does not have a right to self-representation at the hearing; an Advisor must conduct any cross-examination. The District must provide an Advisor of its choice, free of charge to any Party without an Advisor in order to conduct cross-examination unless a party waives their right to an Advisor. If a party waives their right to an Advisor, the Title IX Coordinator will notify them of the potential implications. If an Advisor fails to appear at the hearing, the District will provide an Advisor to appear on behalf of the non-appearing Advisor. To limit the number of individuals with confidential information about the issues, each Party may identify one Advisor.

f. Other Considerations

1) Confidentiality Agreements

To protect the privacy of those involved, the Parties and Advisors are required to sign a confidentiality agreement prior to attending an interview or otherwise participating in the District's grievance process. The confidentiality agreement restricts dissemination of any of the evidence subject to inspection and review or use of this evidence for any purpose unrelated to the Title IX grievance process. The confidentiality agreement will not restrict the ability of either Party to discuss the allegations under investigation.

2) Consolidation of Formal Complaints

The District may, but is not required to, consolidate formal complaints as to allegations of prohibited conduct against more than one Respondent, or by more than one Complainant against one or more Respondent, or by one Party against the other Party, where the allegations of prohibited conduct arise out of the same facts or circumstances.

3) Equitable Treatment of the Parties

The District's determination of responsibility is a neutral, fact-finding process. The District will treat Complainants and Respondents equitably. The

procedures will apply equally to both Parties. The District will not discipline a Respondent unless it determines the Respondent was responsible for prohibited conduct at the conclusion of the grievance process.

4) Statement of Presumption of Non-Responsibility

The investigation is a neutral, fact-finding process. The District presumes all reports are in good faith. Further, the District presumes the Respondent is not responsible for the alleged conduct. The District makes its determination regarding responsibility at the conclusion of the grievance process.

5) Bias or Conflict of Interest

The District's Title IX Coordinator, Deputy Title IX Coordinators, Title IX Investigative Analysts, Hearing Officers, or any persons designated by the District to facilitate a formal or informal resolution process, will not have potential actual bias or conflict of interest in the investigatory, hearing, sanctioning, or appeal process, or bias for or against Complainants or Respondents generally. Actual bias is an articulated prejudice in favor of or against one Party or position; it is not generalized concern about the personal or professional backgrounds, positions, beliefs, or interests of the Hearing Officer in the process. The District will ensure that the Title IX Coordinator, Deputy Title IX Coordinators, Title IX Investigative Analysts, Hearing Officers, and any persons designated by the District to facilitate a formal or informal resolution process, receives training on:

- a) The definition of sexual harassment in this procedure;
- b) The scope of the District's education program or activity for the purpose of establishing jurisdiction;
- c) How to conduct an investigation;
- d) The grievance process including conducting hearings, appeals, and informal resolution processes; and
- e) How to serve impartially, including avoiding: prejudgment of the facts at issue; conflicts of interest; and bias.

6) Use of Privileged Information

The District's formal complaint process does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally-recognized privilege (e.g., attorney-client privilege, doctor-patient privilege, spousal privilege, etc.), unless the person holding the privilege provides voluntary, written consent to waive such privilege.

7) Trained investigators

The District will investigate Title IX formal complaints fairly and objectively. Individuals serving as investigators under this procedure will have adequate training on what constitutes sexual harassment and how the District's grievance procedures operate. The District will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence and complies with this procedure.

8) Gathering Evidence and Burden of Proof

The District, not the Parties, has the responsibility to gather information and interview witnesses. When the Hearing Officer evaluates the evidence, they will do so using the preponderance of the evidence standard. After considering all the evidence gathered, the Hearing Officer will decide whether it is more likely than not that reported conduct occurred.

9) Notice of Investigative Interview

The District will provide written notice of the date, time, location, participant(s), and purpose of all investigative interviews to a Party whose participation is invited or expected, with sufficient time for the Party to prepare to participate.

10) Evidence Review

Both Parties have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a Party or other source.

Prior to the investigator preparing an investigative report, the District will send to each Party and the Party's Advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The Parties will have at least ten (10) days to submit a written response. The investigator must consider this written response prior to completing the investigative report.

g. Investigation Process

The Title IX Coordinator shall promptly investigate the complaint or assign this task to another investigator on a case-by-case basis. If assigned to another investigator, the Title IX Coordinator shall monitor, supervise, and oversee all such delegated tasks, including reviewing all investigation draft reports before they are final to ensure that the investigation was sufficient, appropriate, impartial and in compliance with this procedure. Both Parties have the right to have an

Advisor present at every meeting described in this section.

The Complainant and the Respondent shall have equal opportunities to present relevant witnesses and evidence in connection with the investigation. Witnesses, as distinguished by the Parties, who are employees of the San Diego Community College District are strongly encouraged to cooperate with and participate in the District's investigation and Resolution Process. Student witnesses and witnesses from outside the District community are encouraged to cooperate with District investigations and to share what they know about a complaint.

Upon inquiry, the Complainant and Respondent shall be advised of the status of the investigation.

Before reaching a final conclusion, or issuing a final investigation report, the Investigator shall have:

- 1) Advised the Parties, or have offered to do so verbally or in writing, of any evidence upon which the findings will be based; and
- 2) Given the Parties an opportunity to respond to the evidence, including presenting further relevant evidence, information or arguments that could affect the outcome.

The Investigator will not reach a final conclusion or issue an investigation report until giving careful consideration to any such relevant evidence and information or arguments provided by the Parties. The Investigator retains discretion and authority to determine relevance.

The investigation shall be completed no later than 60 to 90 business days after the intake interview, unless the timeline has been extended for good cause.

On occasion, a criminal investigation may be initiated by a law enforcement agency over the same allegations that are reported in a complaint filed under this procedure. A pending (College or local) police investigation is a separate investigation and it does not relieve the District of its responsibility to timely investigate complaints under this procedure. Thus, the District may not wait until the conclusion of a police investigation to commence its own investigation. Although it may be necessary to temporarily delay the investigation while the police are gathering evidence, once notified that the police have completed the fact-gathering portion of their investigation, the District must promptly resume and complete its own investigation.

h. Investigative Report

The results of the investigation of a formal complaint will be set forth in a written

report that will include at least all of the following information:

- 1) A description of the circumstances giving rise to the formal complaint, including the factual allegations and alleged policy violations;
- 2) A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- 3) Statements of the Parties;
- 4) A summary of the testimony of each witness the investigator interviewed;
- 5) An analysis of relevant evidence collected during the investigation, including a list of relevant documents;
- 6) An explanation of why any offered evidence was not relied upon;
- 7)
- 8) A table of contents if the report exceeds ten (10) pages; and
- 9) Any other information deemed appropriate by the District.

The investigator will not make a determination regarding responsibility. At the end of the investigation, the Title IX Coordinator will simultaneously provide the Parties the investigation report. The Title IX Coordinator will also inform the Parties in writing of the outcomes of the investigation and its rationale, and any available appeal rights.

The investigator may redact information not directly related to the allegations or privileged information. However, the investigator will keep a log of information they do not produce to the Parties. The investigator will provide this log only to the Title IX Coordinator. The Title IX Coordinator will not disclose the log to the Parties but will maintain the log in the Title IX Coordinator's file, in the event it later becomes relevant.

At least ten (10) days prior to a hearing or other time of determination regarding responsibility, the District will send the investigative report, in electronic format or a hard copy format, to each Party and their Advisors, if any. The Parties will have at least ten (10) days to submit a written response. Either party may submit a request for more time to respond to the written report. The request shall be in writing and submitted to the Title IX Coordinator for approval.

i. Pre-Hearing and Hearing Process

After completing an investigation and prior to completing a determination

regarding responsibility, the District will hold a hearing to provide the Complainant and Respondent an opportunity to respond to the evidence gathered before a Hearing Officer. Neither Party may choose to waive the right to a hearing, but the Parties can choose whether to participate in the hearing or answer some or all cross-examination questions.

The Title IX Coordinator/Deputy Title IX Coordinator (Hearing Coordinator) will be responsible for coordinating the hearing process. The Hearing Coordinator's duties will include: scheduling the hearing; notifying witnesses of the hearing; ensuring that the Hearing Officer is provided with appropriate materials including a copy of the report and any exhibits; coordinating video conferencing (if necessary); and securing a location for the hearing. The Hearing Coordinator will also act as a liaison between the Parties and the Hearing Officer on procedural matters.

1) Notice of Hearing

Parties will be given written notice of the date, time, and location of the hearing as well as the identity of the Hearing Officer, all participants, and the purpose of the hearing with sufficient time for the Parties to prepare to participate. Notification of the hearing will be sent to the designated recipient's e-mail address unless the recipient has specifically requested in writing to the Hearing Coordinator that notice be given to a different e-mail address.

Communications will be deemed received on the date sent. The hearing will not be set sooner than 20 business days after the date of notice of hearing.

2) Hearing Officer

The Hearing Officer will lead the hearing. The Hearing Officer will ensure that the hearing is conducted in a timely and orderly manner.

The Hearing Officer may ask the Parties and the witness(es) questions during the hearing. The Decision-Maker must objectively evaluate all relevant evidence both inculpatory and exculpatory and must independently reach a determination regarding responsibility without giving deference to the investigative report.

The Hearing Officer must receive training on issues of relevance, how to apply the rape-shield protections for Complainants, and any technology to be used at the hearing. They will be free from conflict of interest or bias, including bias for or against Complainants or Respondents.

Any objections to an appointed Hearing Officer will be made in writing to the Hearing Coordinator within five (5) business days after notice of the identity of the Hearing Officer has been provided.

The objection must be based on an actual conflict of interest. A conflict of interest exists if the Hearing Officer has a personal relationship with one of the Parties or witnesses or has demonstrated actual bias towards a Party or witness. The fact that a Hearing Officer has previously served as a Hearing Officer in District proceedings will not constitute a conflict of interest. The Hearing Coordinator will determine if a conflict of interest exists. In that event, the Parties will be notified in writing of the name of the new Hearing Officer. The date for the hearing may need to be rescheduled. Any objection to the new Hearing Officer will be made in accordance with this section.

3) Pre-Hearing Procedure

a) No later than 15 business days before a Hearing, each Party shall:

- (1) Provide to the Hearing Coordinator the name of, and contact information for, the Party's Support Advisor and support person (if any);
- (2) Make any requests to the Hearing Coordinator to consolidate pending cases for hearing;
- (3) Provide to the Hearing Coordinator a proposed witness list that includes the names of, and current contact information for, that Party's proposed witnesses as well as an explanation of the relevance of each proposed witness's testimony and the disputed issue to which the witness's testimony relates. Absent extenuating circumstances, such witnesses should have been identified to the investigator during the investigation process and referenced in the investigation report.

The Hearing Officer will make all determinations regarding pre-hearing matters, including witness participation and questions, and will promptly notify the Hearing Coordinator who, in turn, will promptly notify the Parties.

b) No later than **10 business days** before the hearing, the Hearing Coordinator will:

- (1) Share a final witness list with the Parties; and
- (2) Notify each witness of the date, time, and location of the hearing. Witnesses will be instructed to attend the hearing and to promptly direct any questions or concerns about their attendance at the hearing to the Hearing Coordinator.

c) No later than **5 business days** prior to the hearing, the Parties will submit a list of proposed questions to the Hearing Coordinator.

- d) No later than **3 business days** before the hearing, the Parties will submit to the Hearing Coordinator any:
 - (1) Objections to, or questions about, the witness list; or
 - (2) Requests for permission to participate in the hearing remotely or out of the physical presence of the other Party.

All communications will be in writing.

- e) No later than **1 business day** before the hearing, the Hearing Officer will resolve all pending requests regarding participation at the hearing. The Hearing Coordinator will give prompt notice to the Parties (and witnesses) as appropriate.
- f) The hearing is closed to all persons except the Parties; the Parties' respective Advisors; one support person per Party; appropriate witnesses while they are testifying; the Title IX Investigative Analyst while they are testifying; Title IX Coordinator; Deputy Title IX Coordinators, Hearing Officer; and Hearing Coordinator. A District administrator may also be present, but will not participate in the hearing. Campus police or a security officer may also be present if deemed appropriate or necessary by the Vice President of Student Services, Hearing Coordinator, or Hearing Officer. The District will take reasonable steps to instruct witnesses employed by the District to attend the hearing, and to arrange for such witnesses to be available to attend, provided that such employee witnesses are timely identified to the Hearing Coordinator in accordance with this procedure.
- g) The District will instruct Student witnesses to attend the hearing, provided that such Student witnesses are timely identified to the Hearing Coordinator in accordance with this Procedure. Students who fail to comply may be subject to discipline, depending on the circumstances. The District will take reasonable steps to accommodate Student witnesses including arranging for them to be excused from class attendance, if necessary.

j. Hearing Format

The hearing will commence with an overview of the hearing process given by the Hearing Officer, after which the Parties will be given an opportunity to ask questions about the hearing process. Generally, the Investigator or the Title IX Coordinator (if not the Investigator) will be the first witness and will describe the complaint, investigation process, and summarize the evidence. Each Party will be given an opportunity to make an opening statement that will last no longer

than 10 minutes. A Party's advisor and any support person are not permitted to make the opening statement or speak during the hearing. The Parties will not make closing statements.

The Hearing Officer may ask questions of the Complainant, Respondent, Title IX Investigative Analyst, any District official (e.g., Title IX Coordinator), and any witness.

The Complainant and Respondent may be present at all times during the hearing unless the Hearing Officer determines that a Party should be excused for extraordinary circumstances.

As set forth above, the Parties will give the Hearing Coordinator a written list of any questions that they would like the Hearing Officer to ask the witnesses. The Parties may also propose follow-up questions to the Hearing Officer during the hearing, at appropriate times designated by the Hearing Officer.

The Hearing Officer will ask the questions proposed by the Parties except for questions that:

- 1) Seek information about the Complainant's sexual history with anyone other than the Respondent (unless such evidence about the Complainant's sexual behavior is offered to prove that someone other than the Respondent committed the alleged misconduct);
- 2) Seek information about the Respondent's sexual history with anyone other than the Complainant, unless such information is used to prove motive or pattern of conduct;
- 3) Seek information that is unreasonably duplicative of evidence in the Hearing Officer's possession; or
- 4) The Hearing Officer determines are not relevant to material disputed issues, are argumentative or harassing or unduly intrude on a witness's privacy.

The Hearing Officer has the discretion to modify or change the wording of a question proposed by a Party (for example, when a question is unclear or inappropriate in tone) as long as the substance of the question is preserved.

The Parties will address any questions or concerns about a question (or line of questioning) to the Hearing Officer who will use their discretion to resolve any issues consistent with the Procedure. Except for cross-examination, a Party's advisor may not speak on behalf of a Party.

Formal rules of evidence applied in courtroom proceedings (e.g., California Evidence Code) do not apply in the hearing. All information that responsible

persons are accustomed to rely upon in the conduct of serious affairs is considered.

Hearsay may be considered, but will only be given the weight appropriate under all of the circumstances, with due consideration given to the importance of credibility assessment. Absent extenuating circumstances, the Hearing Officer will not rely on prior statements made by the Parties or witnesses during the investigation whose credibility is central to the determination unless those Parties or witnesses make themselves available for examination by the Hearing Officer.

The Hearing Officer will not, prior to preparing the Hearing Officer's Report (described below), have substantive communications about the facts of the case with either Party or the Investigator unless in the presence of both Parties and a District official (e.g., Hearing Coordinator, or Title IX Coordinator).

New evidence not reasonably available at the time of the investigation to the Party seeking to introduce the evidence may be considered in the Hearing Officer's discretion.

The Hearing Officer will make an official audio recording of the hearing. The recording is District property. No other recording of the hearing is permitted. The audio recording will be retained by the Hearing Coordinator or designee in accordance with the Campus records/information retention and disposition schedule.

If either Party fails to appear at the hearing without good cause the hearing will nevertheless proceed. Whether good cause exists is determined by the Hearing Officer.

The Respondent will not be found to have violated District policy solely because the Respondent failed to appear at the hearing. Nor will the Respondent be found not to have violated the District policy solely because a Complainant or other witness failed to appear at the hearing.

Abusive or otherwise disorderly behavior that causes a material disruption is not tolerated. The Hearing Officer may eject or exclude anyone (including either Party, their advisor, or support person) whose behavior causes a material disruption.

The Hearing Officer controls the hearing, is responsible for maintaining order during the hearing, and makes whatever rulings are necessary to ensure a fair hearing. The Hearing Officer's decisions in this regard are final.

Where there is more than one Respondent or Complainant in connection with a single occurrence or related multiple occurrences, the Hearing Officer and the Parties may agree to a single hearing. A Party may request consolidation with

other cases, or the Title IX Office may initiate the consolidation (subject to FERPA and other applicable privacy laws). All such requests will be made in accordance with timelines set forth in this section. The Hearing Officer makes consolidation decisions, which are subject to review by the Vice President of Student Services or designee.

k. Presenting Witnesses

The District will provide the Complainant and Respondent an equal opportunity to present witness(es), including fact and expert witnesses, and other inculpatory and exculpatory evidence. Witnesses, like Parties, are not required to participate in the live hearing process.

Only relevant evidence will be admissible during the hearing. The Hearing Officer will make ruling on whether evidence is relevant. Relevant evidence means evidence, including evidence relevant to the credibility of a Party or witness, having any tendency in reason to prove or disprove any disputed fact material to the allegations under investigation.

l. Cross-Examination

The Party's Advisor must conduct cross-examination directly, orally, and in real-time. A Party may never personally conduct cross-examination.

Advisors may only ask relevant cross-examination questions of a Party or witness. Before a Complainant, Respondent, or witness answers a cross-examination question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Hearing Officer need not provide a lengthy or complicated explanation in support of a relevance determination. If a Party or witness disagrees with a relevance determination, that individual has the choice of either (1) abiding by the Hearing Officer's determination and answering the question, or (2) refusing to answer the question.

A Party or witness may decline to answer a question during cross-examination. The Hearing Officer cannot rely on any statement on which that Party or witness has declined to answer the cross-examination question(s). A Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

m. Determinations of Responsibility

The Hearing Officer will issue a written determination regarding responsibility or non-responsibility, no later than 20 business days after the date that the hearing

ends.

When making a determination, a Hearing Officer will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. The Hearing Officer may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness. In evaluating the evidence, the Hearing Officer will use the preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that sexual harassment occurred.

The written determination will include:

- 1) Identification of the allegations potentially constituting sexual harassment as defined in these procedures;
- 2) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including who conducted the investigation and gave notifications to the Parties. The determination will also state when, where, and the date the investigator interviewed the Parties and witness(es), conducted site visits, and the methods used to gather other evidence. The procedural section should also discuss the dates and how the Parties were provided the opportunity to review and inspect evidence and the date of any hearings held and who attended the hearing;
- 3) Findings of fact supporting the determination. In making these findings, the Hearing Officer will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility;
- 4) Conclusions regarding the application of the District's Code of Conduct to the facts;
- 5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility or non-responsibility;
- 6) A statement of, and rationale for, any disciplinary sanctions the District imposes on the Respondent;
- 7) A statement of whether the District will provide the Complainant with remedies designed to restore or preserve equal access to the District's education program or activity;
- 8) The District need not disclose to the Respondent remedies that do not affect them as part of the written determination. The District can inform the Respondent that it will provide remedies to the Complainant. However, the District will inform the Complainant of the sanctions against the Respondent; and

- 9) The District's procedures and permissible bases for the Complainant and Respondent to appeal.

The District will provide the written determination to the Parties simultaneously. The determination regarding responsibility or non-responsibility becomes final either on the date that the District provides the Parties with the written determination of the result of the appeal, if the Parties file an appeal, or if the Parties do not file an appeal, the date on which an appeal would no longer be timely.

11. DISCIPLINARY SANCTIONS AND REMEDIES

The District must have completed the grievance procedures (investigation, hearing, and any appeal, if applicable) before imposing disciplinary sanctions or any other actions that are not supportive measures against a Respondent. If the Hearing Officer determines the Respondent was responsible for conduct that constitutes sexual harassment, the District will take disciplinary action against the Respondent and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense. Remedies for the Complainant might include, but are not limited to:

- a. Providing an escort to ensure that the Complainant can move safely between classes and activities;
- b. Ensuring that the Complainant and Respondent do not attend the same classes or work in the same work area;
- c. Providing counseling services or a referral to counseling services;
- d. Providing medical services or a referral to medical services;
- e. Providing academic support services, such as tutoring;
- f. Arranging for a Complainant, if a student, to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and
- g. Reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant's discipline.

Possible disciplinary sanctions for student Respondents include written or verbal reprimand, required training or counseling, non-academic probation, suspension, and expulsion. Possible disciplinary sanctions for employee Respondents include written or verbal reprimand, required training or counseling, reduction in pay,

demotion, suspension, or discharge.

12. APPEAL OF DISMISSAL OF A FORMAL COMPLAINT OR OF THE DETERMINATION OF RESPONSIBILITY

A Complainant or Respondent may appeal the District's determination regarding responsibility or the dismissal of a formal complaint or any allegations. A Complainant or Respondent must submit a written appeal within five (5) business days from the date of the notice of determination regarding responsibility or from the date of the District's notice of dismissal of a formal complaint or any allegations.

a. Grounds for Appeal

The Vice Chancellor of Educational Services will serve as the Hearing Officer on Appeal. In filing an appeal of the District's determination regarding responsibility or the District's dismissal of a formal complaint, the Party must state the grounds for appeal and a statement of facts supporting those grounds.

The grounds for appeal are as follows:

- 1) A procedural irregularity affected the outcome;
- 2) New evidence was not reasonably available at the time the District's determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome; and/or
- 3) The District's Title IX Coordinator, Title IX Investigative Analyst, or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

b. Appeal Procedure

If the Complainant or Respondent submit an appeal to the District, the District will:

- 1) Notify the other Party in writing within five (5) business days of receiving a Party's appeal; and
- 2) Allow the non-appealing Parties at least ten (10) business from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome.

The Officer on Appeal will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 45 business days after the

Officer on Appeal receives the response to the appeal or the last day to provide a response. The District will provide the written decision simultaneously to both Parties.

The Officer on Appeal may extend or otherwise modify the deadlines provided above. Either Party may seek an extension by submitting a written request to the Officer on Appeal explaining the need for the extension and the proposed length of the extension. The Officer on Appeal will respond to the request within 48 hours in writing and will inform the Parties simultaneously whether the extension is granted.

13. RETALIATION

The District prohibits any intimidation, threats, coercion, or discrimination against any individual who made a report or complaint of prohibited conduct, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.

Individuals who experience retaliation based upon their participation in the Title IX process may file a complaint using the formal complaint process described above.

14. DISSEMINATION OF POLICY AND PROCEDURES

The District will provide its policy and procedures related to Title IX on its website and in each handbook or catalog provided to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining with the District.

When hired, employees are required to sign acknowledging that they have received the policy and procedures. The District will place the signed acknowledgment of receipt in each employee's personnel file.

a. Training

The District will provide training to Title IX Coordinators, Deputy Title IX Coordinators, Title IX Investigative Analysts, Hearing Officers, and any individual who facilitates a formal or informal resolution process, on the definition of sexual harassment, the scope of the District's education program or activities, how to conduct trauma-informed investigations and the grievance process including hearings, appeals, informal resolution processes, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Any materials used to train the District's Title IX Coordinator, Deputy Title IX Coordinators, Title IX Investigative Analysts, Hearing Officers, and any person who facilitates a formal or informal resolution process, will not rely on sex

stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

The District officers prevention awareness training for all students and new employees. Some student populations are required to complete training based on their involvement in specific educational programs and activities.

b. File Retention

The District will retain on file for a period of at least seven (7) years after closing the case copies of:

- 1) The original report or complaint;
- 2) Any actions taken in response to the complaint, including supportive measures;
- 3) The investigative report including all evidence gathered and any responses from the Parties;
- 4) The District's determination regarding responsibility;
- 5) Audio or audiovisual recording or transcript from a hearing;
- 6) Records of any disciplinary sanctions imposed on the Respondent;
- 7) Records of any remedies provided to the Complainant;
- 8) Any appeal and the result;
- 9) Any informal resolution and the result; and
- 10) All materials used to train Title IX Coordinators, Deputy Title IX Coordinators, Title IX Investigative Analysts, Hearing Officers, and any person who facilitates an informal resolution process. The District will make these training materials publicly available on its website.

The District will make these documents available to the U.S. Department of Education Office for Civil Rights upon request.

References: Education Code Sections 67380 et seq.;
34 Code of Federal Regulations Parts 106.1 et seq.;
20 U.S. Code Sections 1681 et seq.

Approved: 10/01/19 (AP 3100.2, Interim Title IX Procedures Addendum)

Revised: AP 3434 – 8/14/20, 3/6/23, 12/7/23

Replaces all previous versions of AP 3434, etc.