



Cabinet 1st Review: 08/13/24
Cabinet 2nd review: 09/03/24
DGC 1st Review: 09/04/24
DGC 2nd Review:
Board 1st Review:
Board 2nd Review:

Board Policies and Administrative Procedures Chapter 3 – General Institution

The following **new** Board Policies and Administrative Procedures are being put forth for **1st review** as part of the Board’s ongoing 6-year comprehensive review of all Board policies and procedures:

Category 2 Policies and Procedures New and/or revisions to policies and/or procedures in response to legal and/or regulatory requirements.

BP 3433.1 Prohibition of Sex Discrimination under Title IX

On April 19, 2024, the Department of Education released its final rule regarding Title IX, to become effective August 1, 2024. The final rule requires that any incident **which occurred prior to August 1, 2024**, be processed through current District policies and procedures and that incidents **which occur after August 1, 2024**, be subject to the new final rules released by the Department of Education. This requires that the District to retain existing published policies and procedures to address sex-based harassment and sex-based discrimination complaints that occurred **prior to August 1, 2024**, and to establish new policies and procedures to address sex-based harassment and sex-based discrimination **which occur after August 1, 2024**. These new Policies and procedures are presented with numbering as subsections to the existing BP and AP. Changes required by the Department of Education in the new policies and procedures are to the term “Sexual Harassment” to “Sex Discrimination” and to the hearing process for addressing complaints. Both policies and procedures must run concurrently in order to address complaints based on when they occurred.

AP 3433.1 Prohibition of Sex Discrimination under Title IX

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AP 3434.1 Responding to Sex Discrimination under Title IX

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SAN DIEGO COMMUNITY COLLEGE DISTRICT

CITY COLLEGE • MESA COLLEGE • MIRAMAR COLLEGE • CONTINUING EDUCATION

Board Policy

Chapter 3 – General Institution

BP 3433.1 – PROHIBITION OF SEX DISCRIMINATION UNDER TITLE IX

The San Diego Community College District (“District”) is committed to providing an academic and work environment that respects the dignity of individuals and groups. All forms of sexual harassment are contrary to basic standards of conduct between individuals. State and federal law and this policy prohibit sexual harassment, and the District will not tolerate sexual harassment. The District shall be free of sexual harassment and all forms of sexual intimidation and exploitation, including acts of sexual violence.

All forms of sex discrimination including sex-based harassment are contrary to basic standards of conduct between individuals. State and federal law and this policy prohibit sex discrimination and the District will not tolerate sex discrimination including sex-based harassment. The District is committed to providing an academic and work environment that respects the dignity of individuals and groups. The District shall be free of sex discrimination.

The District seeks to foster an environment in which all employees, students, applicants for employment, and applicants for admission, and other individuals participating or attempting to participate in the District’s education program or activity feel free to report incidents of sex discrimination in violation of this policy and Title IX, without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation, including peer retaliation, against any person for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported possible sex discrimination, made a sex-discrimination complaint, or participated or refused to participate in any way in the District’s Title IX process. The District will investigate all allegations of Title IX retaliation pursuant to its Title IX procedures. If the District determines that someone has retaliated, it will take reasonable steps within its power to stop such conduct. Individuals who engage in Title IX retaliatory conduct are subject to disciplinary action, up to and including termination or expulsion.

Effective August 1, 2024, any employee, student, applicant for employment, or applicant for admission and other individuals participating or attempting to participate in the District’s education program or activity who believes he/she/they has been discriminated or retaliated against in violation of this policy should immediately report such incidents by following the procedures described in AP 3434.1 Responding to Sex Discrimination under Title IX. The District requires supervisors to report all incidents of harassment and retaliation that come to their attention.

To this end, the San Diego Community College District shall ensure that the institution undertakes education and training activities to counter sex discrimination and to prevent,

minimize, or eliminate any sex discrimination including sex-based harassment that impairs access to equal education opportunity or impacts the terms and conditions of employment.

The San Diego Community College District shall establish procedures that define sex discrimination and sex-based harassment. The San Diego Community College District shall further establish procedures that provide for the investigation and resolution of complaints regarding sex discrimination in violation of this policy, and procedures to resolve complaints of sex discrimination in violation of this policy. State and federal law and this policy prohibit retaliation against any person for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations.

The District will publish and publicize this policy and related written procedures (including the procedure for making complaints) to administrators, faculty, staff, students, applicants for employment, and applicants for admission, particularly when they are new to the institution. The District will make this policy and related written procedures (including the procedures for making complaints) available in all administrative offices and will post them on the District's website.

Employees who violate the policy and procedures may be subject to disciplinary action up to and including termination. Students who violate this policy and related procedures may be subject to disciplinary measures up to and including expulsion. Volunteers or unpaid interns who violate this policy and related procedures may be subject to disciplinary measure up to and including termination from the volunteer assignment, internship, or other unpaid work experience program.

References: Title IX of the Education Amendments Act of 1972;
34 Code of Federal Regulations Part 106

Adopted: ___/___/___
Revised: ___/___/___

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SAN DIEGO COMMUNITY COLLEGE DISTRICT

CITY COLLEGE • MESA COLLEGE • MIRAMAR COLLEGE • CONTINUING EDUCATION

Administrative Procedure

Chapter 3 – General Institution

AP 3433.1 - PROHIBITION OF SEX DISCRIMINATION UNDER TITLE IX

The District is committed to providing an academic and work environment free of unlawful sex discrimination, including sex-based harassment under Title IX. This procedure defines sex discrimination and sex-based harassment.

This procedure and the related policy protects students, employees, applicants for admission or employment, and other individuals participating or attempting to participate in the District's education program or activity. This procedure is for any incidents which are reported after August 1, 2024.

Definitions

1. **Sex Discrimination:** Any discrimination based on sex, including, but not limited to, sex-based harassment. Sex discrimination includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
2. **Sex-Based Harassment under Title IX:** A form of sex discrimination that includes sexual harassment and harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity. Sex-based harassment includes the following:
 - a. **Quid pro quo harassment:** A District employee, agent, or other person authorized by the District to provide an aid, benefit, or service under the District's education program or activity explicitly or impliedly condition the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
 - b. **Hostile environment harassment.** Unwelcome sex-based conduct that, based on a totality of the circumstances, is subjectively and objectively offensive and is so severe, or pervasive that it limited or denies a person's ability to participate in or benefit from the District's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
 - 1) The degree to which the conduct affected the Complainant's ability to access the District's education program or activity;
 - 2) The type, frequency, and duration of the conduct;

- 3) The parties' ages, roles within the District's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
 - 4) The location of the conduct and the context in which the conduct occurred; and
 - 5) Other sex-based harassment in the District's education program or activity;
- c. Sexual assault, including the following:
- 1) **Sex Offenses.** Any sexual actⁱ 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 his/her/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) **Statutory Rape.** 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.
 - 4) **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 his/her/their age or because of his/her/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.
 - 5) **Fondling.** The touching of the private bodyⁱⁱ 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 his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
 - 6) **Incest.** Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d. Dating violenceⁱⁱⁱ. Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where 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.
- e. Domestic Violenceⁱⁱⁱ. Violence committed:
- 1) By a current or former spouse or intimate partner of the victim;
 - 2) By a person with whom the victim shares a child in common;
 - 3) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - 4) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; or

- 5) 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.
- f. Stalking. Engaging in a course of conduct^{iv} directed at a specific person that would cause a reasonable person to fear for his/her/their safety or the safety of others or suffer substantial emotional distress.

References:

Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e;
Title IX Education Amendments of 1972
Title 5 Sections 59320 et seq.;

Approved: __/__/____

Revised: __/__/____

(This is a new Procedure)

ⁱ A sexual act is defined by federal regulations to include one or more of the following:

Rape:

- The carnal knowledge of a Complainant OR 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 their consent,
- including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.”
- Rape under CA penal code – is non-consensual sexual intercourse by means of threat, force or fraud (CA Pen.C – section 261)

Sodomy:

- Oral or anal sexual intercourse with a Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their 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.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of the Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their 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.

Fondling:

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their 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.

ⁱⁱ California Penal Code defines “intimate body part” as “the sexual organ, anus, groin, or buttocks of any person, and the breast of a female;” and includes touching through the clothing of the victim. (See California Code, Penal Code, PEN § 243.4).

ⁱⁱⁱ California defines “domestic violence” as an abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement

relationship. In California, dating violence is included within the definition of domestic violence. California Penal Code section 13700 defines violence as abuse, which is to intentionally or recklessly cause or attempt to cause bodily injury, or place another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

California Penal Code § 646.9(f) – the California Criminal Stalking statute defines course of conduct as- “For the purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

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SAN DIEGO COMMUNITY COLLEGE DISTRICT

CITY COLLEGE • MESA COLLEGE • MIRAMAR COLLEGE • COLLEGE OF CONTINUING EDUCATION

Administrative Procedure

Chapter 3 – General Institution

AP 3434.1 – RESPONDING TO SEX DISCRIMINATION UNDER TITLE IX

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 Administrative Procedure is only applicable to alleged incidents that occur after August 1, 2024. For alleged incidents of sexual harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Title IX Coordinator and at this link:<https://www.sdccd.edu/students/titleix/policies-procedures-titleix>.

This procedure applies to all faculty, employees, students, and other individuals participating in or attempting to participate in the District’s program or activities, including education and employment.

Title IX Coordinator

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding Title IX (or other items described in this Administrative Procedure) may be referred to the District Title IX Coordinator whose contact information is below.

The District’s Title IX Coordinator is Amber Eckert and the Title IX Coordinator’s contact information is:

3375 Camino del Rio South, Suite 385, San Diego, CA 92108-3883
619-388-6660
titleix@sdccd.edu

The Title IX Coordinator is required to respond to reports of sex discrimination including sex-based harassment. 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 sex discrimination including sex-based 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 evaluate a Complaint to determine whether to investigate a Complaint pursuant to these procedures.

Jurisdictional Requirements – Application of Procedures

These procedures apply if the conduct meets the following jurisdictional requirements:

- The conduct took place in the United States.
- The conduct meets the definition of Title IX sex discrimination; and
- The conduct took place in a District “education 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 student organizations officially recognized by the District own or control; or,
- The conduct contributes to a hostile environment in the District’s education program or activity in the United States.

Definitions

The following definitions apply to this Administrative Procedure:

Student: As defined in Administrative Procedure, AP 5520, Student Disciplinary Procedures.

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.

Advisor: The Parties may each have an Advisor (friend, mentor, family member, attorney, employee organization representative, or any other individual a party chooses) present with them for all meetings and interviews within the Grievance Process, including intake. The District may establish restrictions regarding the extent to which the Advisor may participate in the proceedings as long as the restrictions apply equally to both Parties.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Title IX Coordinator with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a Confidentiality Agreement for the new Advisor must be submitted.

The District may permit Parties to have more than one Advisor if one Advisor is an employee organization representative, or an Advisor and a support person, upon special request to the

Title IX Coordinator. The decision to grant this request is at the Title IX Coordinator's sole discretion and will be granted equitably to all Parties.

Parties have the right to consult with an attorney, at his/her/their own expense, at any stage of the grievance process if he/she/they wishes to do so. An attorney may serve as an advisor. If a party requests that all communication be made through their attorney Advisor instead of to the party, the District will agree to copy both the party and their Advisor on all communications.

The District cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not, or cannot afford an attorney, the District is not obligated to provide an attorney to advise that party.

The role of the Advisor is to provide support and assistance in understanding and navigating the grievance process. Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to ask and respond to questions on their own behalf throughout the grievance process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

The District generally expects an Advisor to adjust their schedule to allow them to attend meetings/interviews when planned, but the District may change scheduled meetings/interviews to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The Advisor may not 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. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview may be ended, or other appropriate measures implemented, including the Title IX Coordinator requiring the party to use a different Advisor.

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 also applies to alcohol and drug related student violations.

Burden of Gathering Evidence: The burden is on the District - not on the Parties - to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination/sex harassment/sex-based misconduct occurred. The burden of proof is by a preponderance of the evidence, (see Preponderance of Evidence definition below).

Collateral Misconduct: Collateral misconduct is defined to include potential violations of other District policies not incorporated into Board Policy 3433 – Prohibition of Sexual Harassment Under Title IX that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all charges. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Title IX Coordinator may consult with District and/or College officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of the Title IX Coordinator. All other allegations of misconduct unrelated to incidents covered by Board Policy 3433 – Prohibition of Sexual Harassment Under Title IX will typically be addressed separately through procedures described in San Diego Community College District Board Policies and Administrative Procedures.

Complainant: A Complainant is (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations; or (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the District’s education program or activity at the time of the alleged sex discrimination.

Complaint: An oral or written request to the recipient that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX or its regulations.

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 unauthorized disclosure of information and evidence obtained solely through the grievance procedure. The confidentiality agreement will not restrict the ability of either Party to discuss the allegations under investigation.

Consent: Consent means affirmative, conscious, and voluntary 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 he/she/they has 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 his/her/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.

Consolidation of Complaints: The District may consolidate Complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

Counter-Complaints: The District is obligated to ensure that the resolution process is not abused for retaliatory purposes. Although the District permits the filing of Counter-Complaints, the Title IX Coordinator will use an initial evaluation to assess whether the allegations in the Counter-Complaint are made in good faith. When Counter-Complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of the Policy. Counter-Complaints determined to have been reported in good faith will be processed using the Resolution Processes in this Administrative Procedure. At the Title IX Coordinator's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial Complaint.

Confidential Resources: District employees who receive information about prohibited conduct in their confidential capacity and are not required to report to the Title IX Coordinator. 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; and,
- 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.

Decision-Maker: The person who will question the parties and witnesses, and make a determination of whether sex discrimination occurred. The District may have one Decision-Maker determine whether the Respondent is responsible for sex discrimination and another Decision-Maker determine the appropriate level of disciplinary sanctions for the conduct.

Disciplinary sanctions: Consequences imposed on a Respondent following a determination under Title IX or its regulations that the Respondent violated the District's prohibition on sex discrimination.

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 imminent and serious threat to the health and safety of a Complainant or any students, employees, or other individual arising from the allegations of sex discrimination justifies removal.

The District's Vice Chancellor of Educational Services or designee will conduct the individualized safety and risk analysis. This risk analysis may be done in conjunction with the Behavioral Intervention Team using its standard objective violence risk assessment procedures.

If the Vice Chancellor of Educational Services determines emergency removal is appropriate, he/she/they or designee will provide the person the District is removing from campus on an emergency basis with a notice and opportunity to attend a meeting and challenge the basis of his/her/their removal. The Vice Chancellor of Educational Services or designee will determine whether continuing the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal.

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

Evidence: The District will objectively evaluate all evidence that is relevant and otherwise permissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the District to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether the evidence or question is relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the

- privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or Witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or Witness, unless the District obtains that Party's or Witness's voluntary, written consent for use in its grievance procedures; and,
 - Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Neither the investigation nor determination of responsibility will consider incidents not relevant or not directly related to the possible violation(s) unless they evidence a pattern.

Within the boundaries outlined herein, the investigation and determination can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may not be used unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility, assuming the Recipient uses a progressive discipline system. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

Student Complainants should be aware that any evidence available but not disclosed during the investigation might not be considered later in the grievance process.

Written evidence submitted by a Party is limited to 30 pages, unless further written information is requested by the investigator.

Gender: Sex, including gender identity, gender expression, and transgender, as well as sex stereotyping:

- Gender Identity – A person's identification as male, female, a gender different from the person's sex at birth or transgender.
- Gender Expression – A person's gender-related appearance or behavior whether or not stereotypically associated with the person's assigned sex at birth.
- 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.
- Transgender – A general term referring to a person whose gender identity differs from the person's sex at birth.

No-Contact Directive: When requested by a Complainant or otherwise determined to be appropriate, the District shall issue a no-contact directive prohibiting the Respondent from

contacting the Complainant during the pendency of the investigation. The District shall not issue a mutual no-contact directive automatically, but instead shall consider the specific circumstances of each report of sexual harassment to determine whether a mutual no-contact directive is necessary or justifiable to protect a Party's safety or well-being, or to respond to interference with an investigation. If the District issues any no-contact directive, the District shall provide the Parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action. If the District issues a mutual no-contact directive, the District shall also provide the Parties with a written justification for the directive.

Parties: As used in this procedure, this means the Complainant and Respondent.

Participation: The District will provide to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate. The District will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

- The District will not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding.
- The District may establish restrictions regarding the extent to which the advisor may participate in these grievance procedures, as long as the restrictions apply equally to the Parties.

Pattern: Charging of a Pattern Offense Any of the offenses contained herein can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

Pregnant/Parenting: Pregnancy, childbirth, breastfeeding, termination of pregnancy, or any related medical condition.

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.

Privacy: The District will take reasonable steps to protect the privacy of the Parties and Witnesses during its grievance procedures. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures.

Relevant: Related to the allegations of sex discrimination under investigation as part of these grievance procedures. Questions are relevant when the question seeks evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision-maker in determining whether the alleged sex discrimination occurred.

Remedies: Measures provided, as appropriate, to a complainant or any other person the District identifies as having had their equal access to the District's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the District's education program or activity after the District determines that sex discrimination occurred.

Respondent: A Respondent is a person who is alleged to have violated the District's prohibition on sex discrimination.

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. Failure of a Responsible Employee, as described above in this section, to report an incident of discrimination, harassment, or retaliation of which they become aware is a violation of District Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is a Responsible Employee. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy. A Responsible Employee who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

Retaliation: Intimidation, threats, coercion, or discrimination against any person by the District, a student, or an employee or other person authorized by the District to provide aid, benefit, or service under the District's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations. The District prohibits retaliation against someone for reporting possible prohibited conduct or participating or not participating in a process under this procedure.

Sexual Assault and Domestic Violence Counselors: For further information about services provided by sexual assault and domestic violence counselors on campus, see AP 3540 Sexual and Other Assaults on Campus and in Campus Programs.

Sex-Based Harassment Under Title IX: A form of sex discrimination (as defined in AP 3433). Sex-based harassment includes sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity that satisfies one or more of the following:

- 1) **Quid Pro Quo Harassment.** An employee, agent, or other person authorized by the District to provide an aid, benefit, or service under the District's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- 2) **Hostile Environment Harassment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe, or pervasive that it limits or denies a person's ability to participate in or benefit from the District's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- a) The degree to which the conduct affected the Complainant's ability to access the District's education program or activity;
 - b) The type, frequency, and duration of the conduct;
 - c) The parties' ages, roles within the District's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
 - d) The location of the conduct and the context in which the conduct occurred; and,
 - e) Other sex-based harassment in the District's education program or activity.
- 3) **Sexual Assault**, including the following:
(Refer to AP 3433 for detailed definitions of the following list)
- a) 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. Sex offenses include sexual exploitation.
 - b) 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 his/her/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.
 - c) Statutory Rape: 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.
 - d) 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 his/her/their age or because of his/her/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.
 - e) 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 his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
 - f) Incest: Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- 4) **Dating Violence**: Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where 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.

- 5) **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; 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.

- 6) **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her/their safety or the safety of others or suffer substantial emotional distress.

California Sexual Harassment Definition – For a complete list of definitions of sexual harassment under California law, see Appendix A.

Supportive Measures: Non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a 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.

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of the District's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the definition of supportive measures in § 106.2 of the federal Title IX Regulations. The District will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances change materially. The District typically renders decisions on supportive measures within ten (10) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator.

Witnesses: The Complainant and the Respondent shall have equal opportunities to present relevant witnesses and evidence in connection with the investigation. Employees (not including

Complainant and Respondent) are required to cooperate with and participate in the Recipient's investigation and Resolution Process. Student witnesses and witnesses from outside the Recipient community cannot be required to participate but are encouraged to cooperate with Recipient investigations and to share what they know about a Complaint.

Section 1: Grievance Procedures for Complaints of Sex Discrimination under Title IX

(For Complaints of sex-based harassment involving students, see the section entitled, "Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Parties.")

Basic Requirements of Title IX Grievance Procedures for Complaints of Sex Discrimination

The District will treat complainants and respondents equitably.

The District requires that any Title IX Coordinator, investigator, or decision-maker not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. As long as there is no conflict of interest or bias, a decision-maker may be the same person as the Title IX Coordinator or investigator.

The District presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

Who May File a Complaint:

The following people have a right to make a Complaint of sex discrimination, including Complaints of sex-based harassment, requesting that the District investigate and make a determination about alleged discrimination under Title IX:

- A "complainant," which includes:
 - A student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
 - A person other than a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in the District's education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or,
- The District Title IX Coordinator.

With respect to Complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a Complaint:

- Any student or employee of the District; or
- Any person other than a student or employee who was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination.

Emergency Removal of Respondent Pending Final Determination

Upon receiving a report of sex discrimination, the Title IX Coordinator will make an immediate assessment concerning the health and safety of the Complainant and campus community as a

whole. 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.

Timeframes and Extensions

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 110 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 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. The District shall grant a student Party's reasonable request for an extension of a deadline related to a Complaint during periods of examinations or school closures.

- Complaint evaluation: The District will determine whether to dismiss or investigate a Complaint within 10 business days.
- Complaint investigation: The District will complete an adequate, reliable, and impartial investigation of Complaints within 60 business days.
- Questioning the Parties and Witnesses: The District will complete the process that enables the Decision-Maker to question the Parties and Witnesses no later than 20 business days after the date that the investigation concludes.
- Determination Whether Sex Discrimination Occurred: The District will issue a written determination whether sex discrimination occurred no later than 20 business days after the date that the Decision-Maker completes the process that enables the Decision-Maker to question the Parties and Witnesses.

Written Notice of Allegations

Upon initiation of these grievance procedures, the District will notify the Parties of the following with sufficient time for the Parties to prepare a response before any initial interview:

- The District's Title IX grievance process and any informal resolution process;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited; and,
- For student Parties, notice regarding appropriate counseling resources the District has developed and maintains.

- The Parties are entitled to an equal opportunity to access the relevant and otherwise permissible evidence or an accurate description of this evidence.

If, in the course of an investigation, the District decides to investigate allegations of sex discrimination by the Respondent toward the Complainant that are not included in the written notice provided or that are included in a consolidated Complaint, the District will provide notice in writing of the additional allegations to the Parties.

Dismissal of a Complaint

The District may dismiss a Complaint of sex discrimination if:

- The District is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in the District's education program or activity and is not employed by the District;
- The Complainant voluntarily withdraws in writing any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and the District determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex discrimination under Title IX even if proven; or,
- The District determines the conduct alleged in the Complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the Complaint, the District will make reasonable efforts to clarify the allegations with the Complainant.

If the District dismissed the Complaint or any allegations, 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. Upon dismissal, the District will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the District will notify the Parties of the dismissal and the basis for the dismissal simultaneously in writing.

The District may commence proceedings under other policies and procedures after dismissing a Complaint.

The District will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then the District will also notify the Respondent that the dismissal may be appealed.

Investigations

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.

The District will provide for adequate, thorough, reliable, prompt, and impartial investigation of Complaints Investigations involve interviews with all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

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.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

Opportunity to Present Witnesses and Evidence

The District will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and otherwise permissible.

Evidence

The District will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

The District will provide each Party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and otherwise permissible, in the following manner:

- The District will provide an equal opportunity to access either the relevant and otherwise permissible evidence;
- The District will provide a reasonable opportunity to respond to the evidence; and,
- The District will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint of sex discrimination are authorized.

Evidence of Past Sexual History

An investigator or Decision-Maker shall not consider the past sexual history of a Party except in the limited circumstances described below:

- The investigator or Decision-Maker shall not consider the prior or subsequent sexual history between the Complainant and anyone other than the Respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual; or
- The investigator or Decision-Maker shall not consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent unless the evidence is relevant to how the Parties communicated consent in prior or subsequent consensual sexual relations.
 - Where the investigator or Decision-Maker allows consideration of questions or evidence about a dating relationship or prior or subsequent

consensual sexual relations between the Complainant and the Respondent, the mere fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

Before allowing the consideration of any evidence proffered pursuant to this section, the investigator or Decision-Maker shall provide a written explanation to the Parties as to why consideration of the evidence is consistent with this procedure.

Investigative Report

The results of the investigation of a complaint will be set forth in a written report that will include at least all of the following information:

- A description of the circumstances giving rise to the Complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony of each witness the investigator interviewed;
- A description of all evidence gathered through the investigation;
- A table of contents if the report exceeds ten pages; and
- Any other information deemed appropriate by the District.

The investigator will not make a determination regarding responsibility.

The District will provide each Party and the Party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and otherwise permissible, in the following manner:

- The District will provide an equal opportunity to access either the relevant and otherwise permissible evidence, or the same written investigative report that accurately summarizes this evidence. The District will further provide the Parties with an equal opportunity to access the relevant and otherwise permissible evidence upon the request of any Party.
- The District will provide the Parties with a reasonable opportunity to review and respond to the investigative report.
- The District will take reasonable steps to prevent and address the Parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-discrimination grievance procedures.

Questioning the Parties and Witnesses

The District will provide a process that enables the Decision-Maker to question Parties and Witnesses to adequately assess a Party's or Witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

The District will use the following steps to complete this process:

The Decision-Maker will request the Parties participation in meetings to question the Party and invite the Parties to submit questions for the Decision-Maker's consideration when meeting with the Parties.

The Decision-Maker will schedule and conduct separate meetings with the Parties. The meetings will be in-person or with technology enabling the Party and Decision-Maker to see and hear each other in real time. During each meeting, the Decision-Maker will ask questions of the Party and allow the Party to comment on the evidence collected during the investigation.

The Decision-Maker may meet with a Party more than once, based on the Decision-Maker's judgment. The Decision-maker will meet with other witnesses, if needed based on the Decision-Maker's judgment.

Determinations Whether Sex Discrimination Occurred

Following an investigation and evaluation of all relevant and otherwise permissible evidence, the District will:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the Decision-Maker to evaluate relevant and otherwise permissible evidence for its persuasiveness. If the Decision-Maker is not persuaded by a preponderance of the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the Decision-Maker will not determine that sex discrimination occurred.
- Notify the Parties simultaneously in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the Complainant and Respondent to appeal.
- Not impose discipline on a Respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the Respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
 - Coordinate the provision and implementation of remedies to the Complainant and other people the District identifies as having had equal access to the District's education program or activity limited or denied by sex discrimination;
 - Communicate the grievance outcome to the appropriate entity with authority to coordinate the imposition of any disciplinary sanctions on the Respondent, including notification to the Complainant of any such disciplinary sanctions; and
 - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the District's education program or activity.
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against the Respondent; and,
- Not discipline a Party, Witness, or others participating in the Title IX grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

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.

1) 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:

- a) A procedural irregularity affected the outcome;
- b) 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;
- c) 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.

2) Appeal Procedure

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

- a) Notify the other Party in writing within five (5) business days of receiving a Party's appeal; and,
- b) Allow the non-appealing Parties at least ten (10) business days 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.

If a Party appeals, the District will:

- Ensure that the Decision-Maker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint; and
- Ensure that the Decision-Maker for the appeal has been trained consistent with the Title IX regulations.

Any additional procedures or bases for appeal the District offers will be equally available to all Parties.

If a Complaint is dismissed, the District will:

- Offer supportive measures to the Complainant as appropriate;
- If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the District's education program or activity.

Informal Resolution

In lieu of resolving a Complaint through the District's Title IX grievance procedures, the Parties may instead elect to participate in an informal resolution process. The District will not offer informal resolution to resolve a Complaint when such a process would conflict with Federal, State, or local law. The District will inform the Parties in writing of any informal resolution process it offers and determines is appropriate, if any.

Before the initiation of an informal resolution process, the District will explain in writing to the Parties:

- The allegations;
- The requirements of the informal resolution process;
- That any party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
- That if the Parties agree to a resolution at the end of the informal resolution process, the Parties cannot initiate or resume grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and,
- What information the District will maintain and whether and how the District could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator at any time prior to a final determination, or the Title IX Coordinator may offer the option to the Parties, in writing. The Title IX Coordinator will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

The District offers four categories of Informal Resolution:

- 1) **Supportive Resolution.** When the Administrator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation. The Title IX Coordinator will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to the Recipient's education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. This option is available when the Complainant does not want to engage the other resolution options, and the Administrator does not initiate a Complaint.
- 2) **Educational Conversation.** When the Title IX Coordinator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant in their desire to confront the conduct. The Complainant(s) may request that the Title IX Coordinator address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive.
- 3) **Accepted Responsibility.** When the Respondent is willing to accept responsibility for violating District Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and Recipient are agreeable to the resolution terms. The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Title IX Coordinator will determine whether all Parties and the Recipient are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of District Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate administrator(s), as necessary.

- 4) **Alternative Resolution.** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.).

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-maker, or Appeal Decision-maker.

It is not necessary to pursue Informal Resolution first in order to pursue the grievance process. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the grievance process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the grievance process should Informal Resolution not be successful, unless agreed to by all Parties.

If an investigation is already underway, the Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Disciplinary Sanctions and Remedies

Following a determination that sex discrimination occurred, the District may impose disciplinary sanctions or any other actions that are not supportive measures against the Respondent. The action will be prompt, effective, and commensurate with the severity of the offense.

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.

The District may also provide remedies, which may include, but are not limited to:

- Providing an escort to ensure that the Complainant can move safely between classes and activities;
- Ensuring that the Complainant and Respondent do not attend the same classes or work in the same work area;
- Providing counseling services or a referral to counseling services;
- Providing medical services or a referral to medical services;
- Providing academic support services, such as tutoring;
- 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
- 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.

Section 2: Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Parties

(For complaints of sex discrimination not including sex-based harassment involving students or complaints of sex-based harassment not involving students, see the preceding section entitled, "Grievance Procedures for Complaints of Sex Discrimination under Title IX.")

Introduction

The District has adopted the following Title IX grievance procedures that provide for the prompt and equitable resolution of complaints of sex-based harassment involving a student complainant(s) or a student respondent(s). These procedures ensure trauma-informed and impartial investigation of complaint of sex-based harassment.

Any individual may report sexual harassment to the District's Title IX Coordinator.

The District strongly encourages prompt reporting of sexual harassment. 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 effectively investigate and respond.

Who May File a Complaint

The following people have a right to make a Complaint of sex-based harassment, requesting that the District investigate and make a determination about alleged sex-based harassment under Title IX:

- A "complainant," which includes:
 - A student or employee of the District who is alleged to have been subjected to conduct that could constitute sex-based harassment under Title IX; or
 - A person other than a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex-based harassment under Title IX at a time when that individual was participating or attempting to participate in the District's education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
- The District's Title IX Coordinator.

Note that a person is entitled to make a Complaint of sex-based harassment only if he/she/they is alleged to have been subjected to the sex-based harassment, if he/she/they has a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a Complaint consistent with Title IX regulations.

Regardless of whether a Complaint has been filed under this procedure, if the District knows, or reasonably should know, about possible sexual harassment involving individuals subject to the District's policies at the time, the District shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond if the District determines that an investigation is not required.

Obligations of Employees

All District Employees who are Responsible Employees are not confidential resources and are required to report allegations of sexual harassment to the District's Title IX Coordinator promptly. Responsible Employees are required to report all relevant information they know about sex-based harassment including the name of the Respondent, the Complainant, any other Witnesses, and the date, time, and location of the alleged incident.

Emergency Removal of Respondent Pending Final Determination

Upon receiving a report of sex discrimination, the Title IX Coordinator will make an immediate assessment concerning the health and safety of the Complainant and campus community as a whole. 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.

Student Complainant Requests for Confidentiality

If a student complainant requests confidentiality when reporting sexual harassment, which could preclude a meaningful investigation or potential discipline of the Respondent, if found responsible, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the District shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the Complainant. The District shall normally grant the request when possible. In determining whether to disclose a Complainant's identity or proceed to an investigation over the objection of the Complainant, the District may consider whether any of the following apply:

- There are multiple or prior reports of sexual misconduct against the Respondent;
- The Respondent reportedly used a weapon, physical restraints, or engaged in battery;
- The Respondent is a faculty or staff member with oversight of students;
- There is a power imbalance between the Complainant and Respondent;
- The Complainant believes that the Complainant will be less safe if the Complainant's name is disclosed or an investigation is conducted; and,
- The District is able to conduct a thorough investigation and obtain relevant evidence in the absence of the Complainant's cooperation.

If the District determines that it can honor the student-Complainant's request for confidentiality, it shall still take reasonable steps to respond to the Complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating an investigation or revealing the identity of the Complainant. The District shall also take immediate steps to provide for the safety of the Complainant while keeping the Complainant's identity confidential as appropriate. The District shall notify the Complainant that the request for confidentiality will limit the steps the District will take to respond to the report of sexual harassment.

If the District determines that it must disclose the student-Complainant's identity to the Respondent or proceed with a Complaint, it shall inform the Complainant prior to making this disclosure or initiating the investigation. The District shall also take immediate steps to provide for the safety of the Complainant where appropriate. In the event the Complainant requests that the District inform the Respondent that the Complainant asked the District not to investigate or seek discipline, the District shall honor this request.

Basic Requirements of Title IX Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Parties

The District will treat complainants and respondents equitably.

The District requires that any Title IX Coordinator, investigator, or decision-maker not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. As long as there is no conflict of interest or bias, a decision-maker may be the same person as the Title IX Coordinator or investigator.

The District presumes that the Respondent is not responsible for the alleged sex-based harassment until a determination is made at the conclusion of its grievance procedures.

The investigation and adjudication of alleged sex-based harassment under this procedure is not an adversarial process between the Complainant, the Respondent, and the Witnesses, but rather a process for the District to comply with its obligations under existing law. The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

Because individuals may be deterred from reporting incidents of sex-based harassment if alcohol, drugs, or other violations of District or campus rules were involved, the District will inform individuals that the primary concern is for student safety and that use of alcohol or drugs never makes a Complainant at fault for sex-based harassment. An individual who participates as a Complainant or Witness in an investigation under this procedure will not be subject to disciplinary sanctions for a violation of the District's student conduct policy at or near the time of the incident, unless the District determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

Timeframes and Extensions

The District has established the following timeframes for the major stages of the grievance procedures:

- **Complaint evaluation:** The District will determine whether to dismiss or investigate a Complaint within 10 business days.
- **Complaint investigation:** The District will complete an adequate, reliable, and impartial investigation of Complaints within 90 business days.
- **Questioning the Parties and Witnesses:** The District will complete the process that enables the Decision-Maker to question the Parties and Witnesses no later than 25 business days after the date that the investigation concludes.
- **Determination Whether Sex-Based Harassment Occurred:** The District will issue a written determination whether sex-based harassment occurred no later than 20 business days after the date that the Decision-Maker completes the process that enables the Decision-Maker to question the Parties and Witnesses or the date that the live hearing (if any) concludes, whichever occurs later.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the timeline(s) identified in the preceding paragraph 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 Parties 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.

Written Notice of Allegations

Upon initiation of these Title IX grievance procedures, District will notify the Parties in writing of the following with sufficient time for the parties to prepare a response before any initial interview:

- The District's Title IX grievance procedures and any informal resolution process;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex-based harassment, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited;
- The Respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures. Prior to such a determination, the Parties will have an opportunity to present relevant and otherwise permissible evidence to a trained, impartial decision-maker;
- The Parties may have an Advisor of their choice who may be, but is not required to be, an attorney;
- The Parties are entitled to an equal opportunity to access the relevant and otherwise permissible evidence and an investigative report that accurately summarizes this evidence; and,
- The District's employee policies and BP 5500 Student Rights, Responsibilities, Campus Safety and Administrative Due Process, section 3 prohibit providing false information in the course of an investigation.
- For a student Party, notice regarding appropriate counseling resources the District developed and maintains.

If, in the course of an investigation, the District decides to investigate additional allegations of sex-based harassment by the Respondent toward the Complainant that are not included in the written notice or that are included in a consolidated Complaint, the District will provide written notice of the additional allegations to the Parties.

Dismissal of a Complaint

The District may dismiss a Complaint of sex-based harassment involving student parties if:

- The District is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in the District's education program or activity and is not employed by the District;
- The Complainant voluntarily withdraws in writing of any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and District determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex-based harassment under Title IX even if proven; or,
- The District determines the conduct alleged in the Complaint, even if proven, would not constitute sex-based harassment under Title IX. Before dismissing the Complaint, the District will make reasonable efforts to clarify the allegations with the Complainant.

Upon dismissal, the District will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the District will notify the Parties of the dismissal and the basis for the dismissal simultaneously in writing.

The District will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then the District will also notify the Respondent that the dismissal may be appealed. For more information on the right to appeal, see the Appeals section below.

If a Complaint is dismissed, the District will:

- Offer supportive measures to the Complainant as appropriate;
- If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and,
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex-based harassment does not continue or recur within the District's education program or activity.

Investigation

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.

The District will provide for adequate, thorough, reliable, prompt, and impartial investigation of Complaints. Investigations involve interviews with all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

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.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

Burden of Gathering Evidence

The burden is on the District - not on the Parties - to conduct an investigation that gathers sufficient evidence to determine whether sex-based harassment occurred.

Opportunity to Present Witnesses and Evidence

The District will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and otherwise permissible. The District has discretion to determine whether the Parties may present expert witnesses as long as the determination applies equally to the Parties.

Evidence

The District will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is permissible regardless of relevance.

The District will provide each Party and the Party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex-based harassment and otherwise permissible, in the following manner:

- The District will provide an equal opportunity to access either the relevant and otherwise permissible evidence, or the same written investigative report that accurately summarizes this evidence. The District will further provide the Parties with an equal opportunity to access the relevant and otherwise permissible evidence upon the request of any Party;
- The District will provide the Parties with a reasonable opportunity to review and respond to the evidence or the investigative report; and,
- The District will take reasonable steps to prevent and address the Parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-based harassment grievance procedures.

Evidence of Past Sexual History

An investigator or Decision-Maker shall not consider the past sexual history of a Party except in the limited circumstances described below:

- The investigator or Decision-Maker shall not consider the prior or subsequent sexual history between the Complainant and anyone other than the Respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual; or,
- The investigator or Decision-Maker shall not consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent unless the evidence is relevant to how the Parties communicated consent in prior or subsequent consensual sexual relations.
 - Where the investigator or Decision-Maker allows consideration of questions or evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent, the mere fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

Before allowing the consideration of any evidence proffered pursuant to this section, the investigator or Decision-Maker shall provide a written explanation to the Parties as to why consideration of the evidence is consistent with this procedure.

Investigative Report

The results of the investigation of a complaint will be set forth in a written report that will include at least all of the following information:

- A description of the circumstances giving rise to the Complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony of each witness the investigator interviewed;
- A description of all evidence gathered through the investigation;
- A table of contents if the report exceeds ten pages; and,
- Any other information deemed appropriate by the District.

The investigator will not make a determination regarding responsibility.

The District will provide each Party and the Party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex-based harassment and otherwise permissible, in the following manner:

- The District will provide an equal opportunity to access either the relevant and otherwise permissible evidence, or the same written investigative report that accurately summarizes this evidence. The District will further provide the Parties with an equal opportunity to access the relevant and otherwise permissible evidence upon the request of any Party.
- The District will provide the Parties with a reasonable opportunity to review and respond to the investigative report.
- The District will take reasonable steps to prevent and address the Parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-based harassment grievance procedures.

Questioning the Parties and Witnesses

The District will provide a process that enables the Decision-Maker to question Parties and Witnesses to adequately assess a Party's or Witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment.

The District's process for proposing and asking relevant and otherwise permissible questions and follow-up questions of the Parties and Witnesses, including questions challenging credibility, will:

- Allow the Investigator or Decision-Maker to ask such questions during individual meetings with a Party or Witness;
- Allow each Party to propose such questions that the Party wants asked of any Party or Witness and have those questions asked by the Investigator or Decision-Maker during one or more individual meetings, including follow-up meetings, with a Party or Witness, subject to the procedures for evaluating and limiting questions discussed below; and,
- Provide each Party with an audio or audiovisual recording or transcript with enough time for the Party to have a reasonable opportunity to propose follow-up questions.

Procedures for the Decision-Maker to evaluate the questions and limitations on questions

The Decision-Maker will determine whether a proposed question is relevant and otherwise permissible before the question is posed and will explain any decision to exclude a question as

not relevant or otherwise impermissible. Questions that are repetitive, unclear, or harassing of the Party or Witness being questioned will not be permitted. The Decision-Maker will give a Party an opportunity to clarify or revise a question that the Decision-Maker determines is unclear or harassing. If the Party sufficiently clarifies or revises the question, the question will be asked.

Refusal to respond to questions and inferences based on refusal to respond to questions

The Decision-Maker may choose to place less or no weight upon statements by a Party or Witness who refuses to respond to questions deemed relevant and permissible. The Decision-Maker will not draw an inference about whether sex-based harassment occurred based solely on a Party's or Witness's refusal to respond to such questions.

Determination Whether Sex-Based Harassment Occurred

Following an investigation and evaluation of all relevant and otherwise permissible evidence, the District will:

- Use the preponderance of the evidence standard of proof to determine whether sex-based harassment occurred. The standard of proof requires the Decision-Maker to evaluate relevant and otherwise permissible evidence for its persuasiveness. If the Decision-Maker is not persuaded by a preponderance of the evidence that sex-based harassment occurred, whatever the quantity of the evidence is, the Decision-Maker will not determine that sex-based harassment occurred.
- Notify the Parties simultaneously in writing of the determination whether sex-based harassment occurred under Title IX including:
 - A description of the alleged sex-based harassment;
 - Information about the policies and procedures that the District used to evaluate the allegations;
 - The Decision-Maker's evaluation of the relevant and otherwise permissible evidence and determination whether sex-based harassment occurred;
 - When the Decision-Maker finds that sex-based harassment occurred, any disciplinary sanctions the District will impose on the Respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by the District to the Complainant, and, to the extent appropriate, other students identified by the District to be experiencing the effects of the sex-based harassment; and,
 - The District's procedures and permissible bases for the Complainant and Respondent to appeal.
- The District will not impose discipline on the Respondent for sex-based harassment prohibited by Title IX unless there is a determination at the conclusion of the Title IX grievance procedures that the Respondent engaged in prohibited sex-based harassment.
- If there is a determination that sex-based harassment occurred, as appropriate, the Title IX Coordinator will:
 - Coordinate the provision and implementation of remedies to the Complainant and other people the District identifies as having had equal access to the District's education program or activity limited or denied by sex-based harassment;

- Coordinate the imposition of any disciplinary sanctions on the Respondent, including notification to the Complainant of any such disciplinary sanctions; and,
- Take other appropriate prompt and effective steps to ensure that sex-based harassment does not continue or recur within the District's education program or activity.
- Comply with the Title IX grievance procedures before the imposition of any disciplinary sanctions against a respondent; and,
- Not discipline a Party, Witness, or others participating in the Title IX grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex-based harassment occurred.

The determination regarding responsibility becomes final either on the date that the District provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

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.

1) 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:

- a) A procedural irregularity affected the outcome;
- b) 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;
- c) 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.

2) Appeal Procedure

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

- a) Notify the other Party in writing within five (5) business days of receiving a Party's appeal; and,

- b) Allow the non-appealing Parties at least ten (10) business days 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.

If a Party appeals, the District will:

- Ensure that the Decision-Maker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint; and
- Ensure that the Decision-Maker for the appeal has been trained consistent with the Title IX regulations.

Any additional procedures or bases for appeal the District offers will be equally available to all Parties.

Informal Resolution

In lieu of resolving a Complaint through the District's Title IX grievance procedures, the Parties may instead elect to participate in an informal resolution process. The District will not offer informal resolution to resolve a Complaint when such a process would conflict with Federal, State, or local law. The District will inform the Parties in writing of any informal resolution process it offers and determines is appropriate, if any. Before the initiation of an informal resolution process, the District will explain in writing to the Parties:

- The allegations;
- The requirements of the informal resolution process;
- That any party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
- That if the Parties agree to a resolution at the end of the informal resolution process, the Parties cannot initiate or resume grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and,
- What information the District will maintain and whether and how the District could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator at any time prior to a final determination, or the Title IX Coordinator may

offer the option to the Parties, in writing. The Title IX Coordinator will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

The District offers four categories of Informal Resolution:

- 1) **Supportive Resolution.** When the Administrator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation. The Title IX Coordinator will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to the Recipient's education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. This option is available when the Complainant does not want to engage the other resolution options, and the Administrator does not initiate a Complaint.
- 2) **Educational Conversation.** When the Title IX Coordinator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant in their desire to confront the conduct. The Complainant(s) may request that the Title IX Coordinator address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive.
- 3) **Accepted Responsibility.** When the Respondent is willing to accept responsibility for violating District Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and Recipient are agreeable to the resolution terms. The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Title IX Coordinator will determine whether all Parties and the Recipient are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of District Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate administrator(s), as necessary.

- 4) **Alternative Resolution.** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-maker, or Appeal Decision-maker.

It is not necessary to pursue Informal Resolution first in order to pursue the grievance process. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the grievance process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the grievance process should Informal Resolution not be successful, unless agreed to by all Parties.

If an investigation is already underway, the Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Supportive Measures

The District will offer and coordinate supportive measures as appropriate for the Complainant and Respondent to restore or preserve that person's access to the District's education program or activity or provide support during the District's Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more Parties; leaves of absence; changes in class, work, District-provided housing, or extracurricular or any other activity, regardless of whether there is a comparable alternative; and training and education programs related to sex-based harassment.

When requested by a Complainant or otherwise determined to be appropriate, the District shall issue an interim no-contact directive prohibiting the Respondent from contacting the Complainant during the pendency of the investigation. The District shall not issue an interim mutual no-contact directive automatically, but instead shall consider the specific circumstances of each case to determine whether a mutual no-contact directive is necessary or justifiable to protect a Party's safety or well-being, or to respond to interference with an investigation. If the District issues any no-contact directive, the District shall provide the Parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action. If the District issues a mutual no-contact directive, the District shall also provide the Parties with a written justification for the directive.

Disciplinary Sanctions and Remedies

Following a determination that sex-based harassment occurred, the District may impose disciplinary sanctions on a student respondent including written or verbal reprimand, required training or counseling, non-academic probation, suspension, and expulsion. Following a determination that sex-based harassment occurred, the District may impose disciplinary sanctions on an employee respondent including written or verbal reprimand, required training or counseling, reduction in pay, demotion, suspension, or discharge. The District may also issue a no-contact directive against the Respondent following a determination that sex-based harassment occurred.

The District may also provide remedies, which may include, but are not limited to:

- Providing an escort to ensure that the Complainant can move safely between classes and activities;

- Ensuring that the Complainant and Respondent do not attend the same classes or work in the same work area;
- Providing counseling services or a referral to counseling services;
- Providing medical services or a referral to medical services;
- Providing academic support services, such as tutoring;
- 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,
- 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.

Section 3: Grievance Process For Reports That Do Not Meet Jurisdictional Requirements of Title IX ("Alternative Process")

Alternative Process

A report that must be dismissed because it does not meet the jurisdictional requirements outlined in Section 1 or 2, 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.

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 specified in BP 5500 - Student Rights, Responsibilities, Campus Safety, and Administrative Due Process (section 3.K.) and as defined below:

- 1) **Sexual Battery** – 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.

Reported conduct that does not meet the definition of "sexual harassment" or "sex discrimination" of this procedure, or not encompassed in Alternative Process will be addressed pursuant to alternative District policies and procedures.

Alternative Process Actions

Following intake, receipt of notice, or a report of an alleged sex-based misconduct 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,
- 2) Informal Resolution – Typically used for less serious offenses and only when all parties agree to Informal Resolution
- 3) Administrative Resolution – Investigation of policy violation(s) and recommended finding, subject to a determination by a Decision Maker and the opportunity to appeal to an Appeal Decision-maker.

Administrative Resolution under Alternative Process

For cases that fall under this section, the Title IX Office will use the same process, timeframes, and procedures to investigate and render a determination as described under “Section 1: Grievance Procedures for Complaints of Sex Discrimination under Title IX.”

Dissemination of Policy and Procedures

The District will provide its policy and procedures related to Title IX on its website and in each handbook, catalog, announcement, bulletin, and application form that is makes available to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the District. The District will also provide its policy and procedures related to Title IX to all volunteers who will regularly interact with students and each individual or entity under contract with the District to perform any service involving regular interaction with students.

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.

Training

The District will provide a comprehensive trauma-informed training program to all employees on the District’s obligation to address sex discrimination in its education program or activity, the scope of conduct that constitutes sex discrimination including sex-based harassment under Title IX, and all applicable notification and information requirements under Title IX regulations. The District will ensure that its Title IX Coordinator(s), investigators, Decision-Makers, facilitators of an information resolution process, and other persons who are responsible for implementing the District’s grievance procedures or have the authority to modify or terminate supportive measures, have training on topics requires by Title IX regulations and State law and regulations. Materials for this training must include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience

sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity. The District will make these training materials available upon request for inspection by members of the public.

File Retention

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

- For each complaint of sex discrimination: records documenting the informal resolution process (if any) or the grievance procedures, and the resulting outcome;
- For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this part, including notifications under 106.44(c)(1) or (2), records documenting the actions the District took to meet its obligations under Title IX regulations; and,
- All materials used to provide training pursuant to Title IX regulations.

Complaint Reporting

The Chancellor shall provide the Board of Trustees, upon request, a report of complaints filed pursuant to this procedure. This report must disaggregate the complaints by complaint type (Student Complainant and Student Respondent, Student Complainant and Employee Respondent, Employee Complainant and Student Respondent, Employee Respondent and Employee Respondent, etc.). This report must also disaggregate the complaints by the Complainant's race, age, gender, religion, or any other characteristic identified by the Board.

REFERENCES: Education Code Sections 212.5, 66262.5, 66281.8, and 67380 et seq.;
34 Code of Federal Regulations Parts 106.1 et seq.;
20 U.S. Code Sections 1681 et seq.

Approved:

Revised:

(This is a new Administrative Procedure)

NOTE for all documents: The **red ink** signifies language that is **legally required** and recommended by the Policy & Procedure Service and its legal counsel (Liebert Cassidy Whitmore). The language in **black ink** is from current adopted board policies. The language in **blue ink** is included for consideration.