

## ADMINISTRATIVE PROCEDURE NO. 3434

### San Mateo County Community College District

**Subject:** AP 3434 Responding to Harassment Based on Sex under Title IX  
**Adoption Date:** New 7/20; Revised 10/20, 4/21, 10/21, 4/22  
**References:** 20 U.S. Code Sections 1681 et seq.; 34 Code of Federal Regulations Parts 106.1 et seq.; Education Code Sections 67380 et seq.

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#### I. INTRODUCTION

The District encourages members of the District community to report sexual harassment. This procedure only applies to conduct defined as sexual harassment under Title IX and applicable federal regulations and that meets Title IX jurisdictional requirements. The District will respond to sexual harassment and sexual misconduct that falls outside that definition and outside the jurisdiction of the Title IX federal regulations using California law and applicable District policies and procedures. In implementing these procedures discussed below, the District will also provide supportive measures, training, and resources in compliance with California law, unless they are preempted by the Title IX regulations.

#### II. TITLE IX COORDINATOR

Questions concerning Title IX may be referred to the District Title IX Coordinator whose contact information is below.

**The District's Title IX Coordinator:**

**Mwanaisha Sims**  
3401 CSM Drive  
San Mateo, CA 94402  
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[simsm@smccd.edu](mailto:simsm@smccd.edu)

The Title IX Coordinator may designate a Deputy Title IX Coordinator at the District's respective campuses to assist with coordinating the District's responsibilities under Title IX and this administrative procedure. All Deputy Title IX Coordinators report to the Title IX Coordinator in their capacity as a Deputy Title IX Coordinators. The designated Deputy Title IX Coordinators are:

**The College Deputy Title IX Coordinators are:**

Max Hartman  
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BLDG 09-135  
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**Deputy Title IX Coordinator of Athletics**

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

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

References in this procedure to the "Title IX Coordinator" are intended to include the Title IX Coordinator or Deputy Title IX Coordinators who are handling a particular case.

### III. JURISDICTION

#### **Title IX Harassment Complaints, Investigations, and Hearings**

These Title IX sexual harassment procedures and the related policy protect students, employees, applicants for employment, and applicants for admission.

#### **Jurisdictional Requirements – Application of Procedures**

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

- The conduct took place in the United States;
- 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.
- The conduct meets the definition of Title IX “sexual harassment.”

### IV. DEFINITIONS

**Advisor:** Throughout the grievance process, both the Complainant and Respondent have a right to an Advisor of their choice. If a Party does not have an Advisor at the time of the hearing, the District must provide the Party an Advisor of the District’s choice, free of charge. 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.

While the regulations only require the District to provide an Advisor to conduct cross-examination, the District will provide an Advisor for the entire hearing, if the Party does not identify his/her/their own private Advisor.

**Complainant:** A Complainant is an individual who alleges he/she/they is the victim of conduct that could constitute sexual harassment, as defined herein.

**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. In California, a minor (meaning a person under the age of 18) cannot consent to sexual activity.

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:

- The Respondent’s belief arose from the Respondent’s own intoxication or recklessness;
- The Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented; or
- 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:

- asleep or unconscious;
- unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
- unable to communicate due to a mental or physical condition.

**Decision-Maker:** The individual or group of people designated to oversee the live hearing and make a determination of responsibility. The Decision-Maker cannot be the Title IX Coordinator or the investigator.

**Formal Complaint:** A written complaint signed by the Complainant or Title IX Coordinator alleging sexual harassment and requesting an investigation. If the Title IX Coordinator signs the formal complaint, he/she/they will not become a Party to the complaint. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the District.

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

**Preponderance of the Evidence:** The standard of proof used throughout the grievance procedure. A *preponderance of the evidence* means that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side. This is a qualitative, not quantitative, standard. Thus, the Decision-Maker(s) will decide whether alleged facts are more likely than not to be true.

**Respondent:** A Respondent is an individual reported to be the perpetrator of conduct that could constitute sexual harassment, as defined herein.

**Sexual Harassment under Title IX:** Conduct that satisfies one or more of the following:

- Quid Pro Quo Sexual Harassment- A District employee conditions the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct);
- Hostile Environment Sexual Harassment- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity;
- Sexual assault, dating violence, domestic violence, or stalking, as defined herein::
  - **Sexual assault means** any sexual act (forcible or non-forcible) directed against another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent. Sexual acts including the following:
    - **Rape** (except Statutory Rape). The carnal knowledge of a person, without **the consent of the Complainant, including instances where the Complainant is incapable** of giving consent because of his/her/their age or 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.
    - **Sodomy**. Oral or anal sexual intercourse with another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
    - **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 Complainant, including instances where the Complainant 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.
- **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Complainant, 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.
  - **Incest.** Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - **Statutory Rape.** Non-Forcible sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
- **Dating violence.** Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. 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. Dating violence does not include acts covered under the definition of domestic violence.
  - **Domestic Violence.** Violence committed:
    - By a current or former spouse or intimate partner of the Complainant;
    - By a person with whom the Complainant shares a child in common;
    - By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
    - By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California; or
    - By any other person against an adult or youth Complainant protected from that person's acts under the domestic or family violence laws of California.
  - **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. For the purposes of this definition: (a) A course of conduct is two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property; (b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant; and (c) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## V. REPORTING OPTIONS

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.

Because individuals may be deterred from reporting incidents of sexual 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 and employee safety. Accordingly, to foster participation in the grievance procedures, an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the District's student conduct policy at or near the time of the alleged 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.

Reporting sexual harassment to the Title IX Coordinator does not automatically initiate an investigation under these procedures. A report allows the District to provide a wide variety of support and resources to impacted individuals and to prevent the reoccurrence of the conduct. A Complainant or the Title IX Coordinator filing a formal complaint will initiate an investigation.

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

The District will document reports of sexual harassment in compliance with the Clery Act, a federal law requiring data collection of crime within the campus geography. Under the Clery Act, the District does not document personal information; the District reports the type of conduct, and the time, date, and location. (Also see BP/AP 3540 Sexual and Other Assaults on Campus)

Complainants may also file nonemployment-based complaints with the Officer for Civil Rights (OCR) and employment based complaints with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the Department of Fair Employment and Housing (DFEH) where such complaints are within the jurisdiction of those agencies.

#### **District Employees and Officials with Authority**

District Officials with Authority are not confidential resources and are required to report allegations of sexual harassment to the Title IX Coordinator promptly. All other employees are encouraged to report allegations to the Title IX Coordinator but are not required to do so.

The District has designated the following employees as Officials with Authority:

- The chancellor;
- The Presidents of each College;
- All vice chancellors and vice presidents;
- Deans, department heads and supervisors who have the authority to hire, discharge, discipline or effectively recommend such actions.

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

## **VI. INTAKE AND PROCESSING OF REPORT**

### **A. Receipt of Report**

After receiving a report of sexual harassment, even if a formal complaint is not filed, the Title IX Coordinator shall contact the Complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, and explain to the Complainant the process for filing a formal complaint. The Title IX Coordinator will also notify the Respondent of the complaint and offer to meet with the Respondent to review and discuss the complaint. The Title IX Officer will discuss supportive measures with the Parties.

**B. Timeframe for Reporting**

To promote timely and effective review, the District strongly encourages individuals to report sexual harassment as soon possible because a delay in reporting may affect the ability to collect relevant evidence and may affect remedies the District can offer.

**C. Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a formal complaint has been filed. The District will provide such measures to Complainant and Respondent as appropriate and as reasonably available to restore or preserve equal access to the District's education program or activities without unreasonably burdening the other party. These measures are designed to protect the safety of all Parties, or protect the District's educational environment, or deter sexual harassment. The District will provide supportive measures on a confidential basis and will not disclose that the District is providing supportive measures except to those with a need to know to enable the District to provide the service. Supportive measures may include, but are not limited to, counseling, extensions of deadlines or 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 absences, increased security and monitoring of certain areas of the campus, and other similar measures.

**D. Removal of Respondent Pending Final Determination**

Upon receiving a report regarding sexual harassment, 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.

**i. Emergency Removal**

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

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

The Title IX Coordinator or designee will conduct the individualized safety and risk analysis and determine whether emergency removal is appropriate.

If the Title IX Coordinator or designee determines emergency removal is appropriate, he/she/they 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 President of Student Services or designee will hear any challenge to the removal, and determine whether the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal.

**ii. Administrative Leave**

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

## **VII. FORMAL COMPLAINT GRIEVANCE PROCESS**

### **A. Notice to Parties**

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

- Notice of the District's Title IX grievance process;
- Notice of the allegations of alleged sexual harassment with sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- The specific policies implicated;
- Statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- A statement of the potential sanctions/responsive actions that could result;
- Notice that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney. The District may provide suggestions for ways to identify an Advisor;
- Detail on how the party may request disability accommodations during the grievance process;
- Notice that the Parties may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a Party or other source;
- The name(s) of the Investigator(s), if known, along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have;
- Inform the Parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process; and
- An instruction to preserve any evidence that is directly related to the allegations. .

If, in the course of an investigation, the District decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided above, the Title IX Coordinator will provide notice in writing of the additional allegations to the Parties.

### **B. Dismissal of Formal Complaint**

The District must investigate the allegations in a formal complaint. However, the District must dismiss the formal complaint and will not process the complaint under these procedures if any of the following three circumstances exist:

- If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in this procedure, even if proven;
- If the conduct alleged did not occur in an educational program or activity controlled by the District;
- If the conduct alleged did not occur against a person in the United States.

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

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



Upon dismissal, the Title IX Coordinator shall promptly, and simultaneously to the Parties, send written notice of the dismissal and the reasons for the dismissal. The Title IX Coordinator shall also notify the Parties of their right to appeal the dismissal.

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

**C. Consolidation of Formal Complaints**

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

**D. Equitable Treatment of the Parties**

The District's determination of responsibility is a neutral, fact-finding process. The District will treat Complainants and Respondents equitably. The procedures will apply equally to both Parties. The District will follow the grievance process described herein before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

**E. Statement of Presumption of Non-Responsibility**

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

**F. Bias or Conflict of Interest**

The District's Title IX Coordinator, investigator, Decision-Maker, or any person designated by the District to facilitate an informal resolution process, will not have potential actual bias or conflict of interest in the investigatory, hearing, sanctioning, or appeal process or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent. *Actual bias* is an articulated prejudice in favor of or against one Party or position; it is not generalized concern about the personal or professional backgrounds, positions, beliefs, or interests of the Decision-Makers in the process. The District will ensure that the Title IX Coordinator, Deputy Title IX Coordinators, investigators, Decision-Makers, and facilitators receive training on:

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

**G. Timeline for Completion**

The District will undertake its grievance process promptly and as swiftly as possible. The District will complete the investigation and its determination regarding responsibility or the informal resolution process within **180 calendar days** calendar days from the date of the Notice of Investigation and Allegations is issued to the Parties.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the **180 calendar 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 requested continuance. The Title IX Coordinator will notify the Parties and document the decision to grant or deny a request for extension or delay as part of the case recordkeeping.

#### **H. Role of Advisor**

The Parties may each have an Advisor of their choice and a support person present with them for all meetings, interviews, and hearings within the grievance process. The role of the Advisor is to provide support and assistance in understanding and navigating the grievance process.

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

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

#### **I. Confidentiality Agreements**

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

#### **J. Use of Privileged Information**

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

#### **K. Investigations**

The Title IX Coordinator is responsible for overseeing investigations to ensure timely resolution and compliance with Title IX and this procedure.

Both Parties have the right to have an Advisor present at every meeting described in this section. The parties shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The Parties shall not be restricted from discussing the allegations under investigation or to gather and present relevant evidence.

##### **i. Trained Investigators**

The District will investigate Title IX formal complaints fairly and objectively. Individuals serving as investigators under this procedure will have adequate training on what constitutes sexual harassment and how the District's grievance procedures operate. The District will also ensure that investigators receive

training on issues of relevance to create an investigative report that fairly summarizes relevant evidence and complies with this procedure.

**ii. Burden of Gathering Evidence**

The District, not the Parties, has the responsibility to gather information and interview witnesses. As part of the District's burden of gathering evidence, the District's investigator will create an investigative report that fairly summarizes relevant evidence, whether it is inculpatory or exculpatory. The investigator shall not make findings or determinations of law or fact.

**iii. Notice of Investigative Interview**

The District will provide written notice of the date, time, location, participants, 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.

**iv. Evidence Review**

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

Before concluding the investigation, the Title IX Coordinator or Investigator will send the Parties and their Advisors, if any, a Draft Report of Evidence containing evidence directly related to the allegations, in electronic format or a hard copy. Any evidence the District does not intend to rely on in reaching a determination regarding responsibility must also be provided to each party, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The Parties will have at least 10 calendar days to inspect, review, and submit a written response to the evidence. The investigator must consider this written response prior to completing the investigative report.

**v. Investigative Report**

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

- A description of the circumstances giving rise to the formal 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;
- An analysis of relevant evidence collected during the investigation, including a list of relevant documents;
- A table of contents if the report exceeds 10 pages; and
- Any other information deemed appropriate by the District.

The investigator will not make a determination regarding responsibility.

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

At least 10 days prior to a hearing, the District will send to each Party and their Advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

## **VIII. HEARING**

After completing an investigation and prior to completing a determination regarding responsibility, the District will hold a live hearing to provide the Complainant and Respondent an opportunity to respond to the evidence gathered before a Decision-Making panel or designated Decision-Maker. The Parties may choose whether to participate in the hearing or answer some or all cross-examination questions. The District may decide not to go forward with a hearing if the Parties both knowingly and voluntarily waive the right to a hearing as a result of the informal resolution process.

### **A. Notice**

If the District proceeds to a hearing, the District will provide all Parties written notice of the date, time, location, participants, and purpose of the hearing with sufficient time for the Party to prepare to participate. The Notice will include an invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

### **B. Hearing Format**

The District may provide a live hearing with all Parties physically present in the same geographic location or, at the District's discretion if either Party requests, the District may provide any or all Parties, witnesses, and other participants the ability to appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other in real time.

The District will make the information reviewed during the Evidence Review available at the hearing for reference and consultation. The District will not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence.

All live hearings will be closed to the public and witnesses will be present only during their testimony. For live hearings that use technology, the Decision-Maker(s) shall ensure that appropriate protects are in place to maintain confidentiality.

The District will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review.

### **C. Decision-Maker**

The Decision-Maker(s) will be free from conflict of interest or bias, including bias for or against Complainants or Respondents. In cases where the Complainant or Respondent objects to a Decision-Maker based on a conflict of interest, the Complainant or Respondent may request the Title IX Coordinator select a different Decision-Maker. The Complainant or Respondent must make this request to the Title IX Coordinator in writing at least five business days prior to the hearing. The Title IX Coordinator will consider such requests but is not obligated to grant the requests.

The Decision-Maker(s) may ask the Parties and the witnesses questions during the hearing. The Decision-Maker(s) must objectively evaluate all relevant evidence both inculpatory and exculpatory and must independently reach a determination regarding responsibility without giving deference to the investigative report. The Decision-Maker(s) must receive training on issues of relevance, how to apply the rape-shield protections for Complainants, and any technology to be used at the hearing.

#### **D. Witnesses and Questioning**

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

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

The District shall permit each Party's Advisor to ask the other Party and any witness relevant questions, including questions challenging credibility. The Party's Advisor must conduct cross-examination directly, orally, and in real time. A Party may never personally conduct cross-examination.

Before a Complainant, Respondent, or witness answers a question, the Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-Maker need not provide a lengthy or complicated explanation in support of a relevance determination.

If a Party or witness disagrees with a relevance determination, that individual has the choice of either (1) abiding by the Decision Maker's determination and answering the question or (2) refusing to answer the question.

The Decision-Maker(s) may consider statements made by the parties and witnesses during the investigation, as well as statements contained in other relevant evidence, regardless of whether the parties or witnesses submit to cross-examination at the live hearing. The Decision-Maker(s) cannot draw an inference about the determination of responsibility based solely on a Party's or witness's absence from the live hearing or refusal to submit to cross-examination or to answer any question.

The Decision-Makers may also ask any Party or witness questions. If a Party or witness refuses to respond to a Decision-Maker's questions, the Decision-Maker is not precluded from relying on that Party or witness' statements.

#### **IX. DETERMINATIONS OF RESPONSIBILITY**

When the Decision-Maker(s) makes a determination of responsibility or non-responsibility, the Decision-Maker will deliver to the Title IX Coordinator a written determination regarding responsibility, no later than **30 calendar days** after the date that the hearing ends.

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

The written determination will include:

- Identification of the allegations potentially constituting Title IX sexual harassment as defined in these procedures;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including who conducted the investigation and gave notifications to the Parties. The determination will also state when, where, and the date the investigator(s) interviewed the Parties

and witnesses, conducted site visits, the methods used to gather other evidence. The procedural section should also discuss the dates and how the Parties were provided the opportunity to review and inspect evidence and the date of any hearings held and who attended the hearing;

- Findings of fact supporting the determination. In making these findings, the Decision-Maker(s) will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility;
- Conclusions regarding the application of the District's code of conduct, policies and procedures to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- A statement of, and rationale for, any disciplinary sanctions the District imposes on the Respondent;
- A statement of whether the District will provide the Complainant with remedies designed to restore or preserve equal access to the District's education program or activity;
- The District need not disclose to the Respondent remedies that do not affect him/her/them as part of the written determination. The District can inform the Respondent that it will provide remedies to the Complainant. However, the District will inform the Complainant of the sanctions against the Respondent;
- The District's procedures and permissible bases for the Complainant and Respondent to appeal.

The District's Title IX Coordinator will provide the written determination to the Parties simultaneously within three (3) business days of receipt. The determination regarding responsibility becomes final either on the date that the District provides the Parties with the written determination of the result of the appeal, if the Parties file an appeal, or if the Parties do not file an appeal, the date on which an appeal would no longer be timely.

#### **X. DISCIPLINARY SANCTIONS AND REMEDIES**

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

Remedies for the Complainant 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.

In cases involving student Respondents, the hearing process detailed herein shall serve as the due process hearing outlined in Administrative Procedure 7.69.1. Possible disciplinary sanctions for student

Respondents include written or verbal reprimand, required training or counseling, non-academic probation, suspension, and expulsion. Employee Respondents shall be afforded due process as required by any applicable collective bargaining agreements, Education Code, and policies and procedures. Possible disciplinary sanctions for employee Respondents include written or verbal reprimand, required training or counseling, reduction in pay, demotion, suspension, or discharge.

## **XI. 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 therein. A Complainant or Respondent must submit a written appeal within **10 calendar days** from the date of the notice of determination regarding responsibility or from the date of the District's notice of dismissal of a formal complaint or any allegations.

### **A. Grounds for Appeal**

The **Appeal Officer** for an appeal will be a trained decision-maker who has not been involved in any aspect of the process as Title IX Coordinator, Advisor, Investigator or Decision-Maker. 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 procedural irregularity affected the outcome;
- New evidence exists that 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; or
- The District's Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

### **B. Appeal Procedure**

If the Complainant or Respondent submit an appeal to the Title IX Coordinator, the Title IX Coordinator will:

- Notify the other Party in writing within **5 business days** of receiving a Party's appeal;
- Allow the non-appealing Party at least **10 calendar days** from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome;

The Appeal Officer will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within **30 business days** after the Appeal Officer receives the non-appealing party's response to the appeal or the last day for the non-appealing party to provide a response. The District's **Title IX Coordinator** will provide the written decision simultaneously to both Parties.

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

## **XII. INFORMAL RESOLUTION**

If the District's Title IX Coordinator determines that a formal complaint is appropriate for informal resolution, he/she/they may provide the Parties with the opportunity to participate in an informal resolution

process, including, but not limited to, mediation, at any time prior to reaching a determination regarding responsibility.

The District's Title IX Coordinator will provide the Complainant and Respondent written disclosure of the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The District's Title IX Coordinator must obtain the Parties' voluntary, written consent to the informal resolution process. If the Parties reach an agreement, the District does not have to complete a full investigation and adjudication of a report of sexual harassment. At any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

The informal resolution process is not available to resolve allegations that an employee sexually harassed a student.

### **XIII. RETALIATION PROHIBITED**

The District prohibits any intimidation, threats, coercion, or discrimination against any individual who made a report or complaint of sexual harassment, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Individuals who experience retaliation may file a complaint using the formal complaint process described above. The exercise of rights protected under the First Amendment does not constitute retaliation.

### **XIV. DISSEMINATION OF POLICY AND PROCEDURES**

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

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

### **XV. TRAINING**

The District will provide a comprehensive trauma-informed training program to Title IX Coordinators, investigators, District appointed Advisors, Decision-Makers, and any individual who facilitates an informal resolution process, on the definition of sexual harassment herein, the scope of the District's education program or activities, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Any materials used to train the District's Title IX Coordinator, investigators, Decision-Makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

### **XVI. FILE RETENTION**

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

- The original report or complaint;
- Any actions taken in response to the complaint, including supportive measures;



- The investigative report including all evidence gathered and any responses from the Parties;
- The District's determination regarding responsibility;
- Audio or audiovisual recording or transcript from a hearing;
- Records of any disciplinary sanctions imposed on the Respondent;
- Records of any remedies provided to the Complainant;
- Any appeal and the result;
- Any informal resolution and the result; and
- All materials used to train Title IX Coordinators, investigators, Decision-Makers, and any person who facilitates an informal resolution process. The District will make these training materials publicly available on its website.

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

#### **XVII. COMPLAINT REPORTING**

The **Chancellor** shall provide the Board of Trustees, upon request, a report of complaints filed pursuant to AP 3434. 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.