



**AP 3400      Nondiscrimination and Prohibition of Harassment**

References: Education Code Sections 212.5, 44100, 66250 et seq., 66252, 66281.5, 72010 et seq., and 87100 et seq.; Title 2 Sections 10500 et seq.; Title 5 Sections 53000 et seq. and 59300 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e Penal Code Section 422.55; Government Code Sections 12926.1, 12940 et seq., and 12950.1; Labor Code Section 1197.5; CA SB 493; ACCJC Accreditation Eligibility Requirement 20 and ACCJC Accreditation Standard Catalog Requirements

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## I. Glossary

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the Resolution Process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any.
- *Appeal Decision-maker* means the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.
- *Complainant means* an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected characteristic, or retaliation for engaging in a protected activity.
- *Confidential Resource* means an employee who is not a [Mandated Reporter](#) of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when the District is in normal operation.
- *Decision-maker* means the person or panel who hears evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.
- *Directly Related Evidence* is evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-maker. Compare to [Relevant Evidence](#), below.
- *Education Program or Activity* means locations, events, or circumstances where the District exercises substantial control over both the Respondent and the context in which the harassment, discrimination, and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by the District.
- *Final Determination* is a conclusion by the standard of proof that the alleged conduct did or did not violate Policy.
- *Finding* is a conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a "finding of fact").
- *Formal Complaint* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging a Respondent engaged in harassment or discrimination based on a protected characteristic or retaliation for engaging in a protected activity and requesting that the District investigate the allegation(s).
- *Formal Grievance Process* means a method of formal resolution designated by the District to address conduct that falls within the procedure included below, and which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act § 304.
- *Grievance Process Pool* includes any Investigators, Hearing Decision-makers, Appeal Decision-makers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same complaint).
- *Informal Resolution* a complaint resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a formal Final Determination being reached.
- *Investigator* means the person(s) authorized by the District to gather facts about an alleged violation of Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of Relevant Evidence and a file of Directly Related Evidence.

- *Mandated Reporter* means a District employee who is obligated by procedure to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator and their supervisor.<sup>1,2</sup>
- *Notice* means that an employee, student, or third party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means a District employee who has responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the District.
- *Parties* means the Complainant(s) and Respondent(s), collectively.
- *Postsecondary Institution* means a campus of the University of California, the California State University, or the California Community Colleges, a private postsecondary educational institution, or an independent institution of higher education that receives state financial assistance.
- *Process A* means the Formal Grievance Process detailed [below](#) and defined above.
- *Process B* means the administrative resolution procedures detailed in AP 3435 and/or AP 5520 that only apply when Process A does not, as determined by the Title IX Coordinator.
- *Relevant Evidence* is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- *Remedies* are post-Final Determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the District's education program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected characteristic, or retaliation for engaging in a protected activity under this Procedure.
- *Responsible Employee*<sup>3</sup> means an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority.
- *Resolution* means the result of an Informal Resolution or Formal Grievance Process.
- *Sanction* means a consequence imposed on a Respondent who is found to have violated Policy.
- *Sexual Harassment* is an umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence. See [Section 17.B.](#) for greater detail.
- *Student* means any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing educational relationship with the District.
- *Title IX Coordinator* is at least one official designated by the District to ensure compliance with Title IX and the District's Title IX program. References to the Coordinator throughout this procedure may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator, any deputy coordinators, and any member of the [Grievance Process Pool](#).

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<sup>1</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this procedure.

<sup>2</sup> The administrator designated to receive information from Mandated Reporters may vary depending upon the type of alleged discrimination, harassment, or retaliation (e.g., on the basis of sex, on the basis of race, on the basis of disability).

<sup>3</sup> Responsible employee is defined in CA Educ. Code Sect. 66281.8.

## **II. Rationale for Procedure**

The District is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are safe and free from discrimination and harassment based on a protected characteristic, and retaliation for engaging in a protected activity.

The District values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, the District has developed policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of a protected characteristic, and for allegations of retaliation.

## **III. Applicable Scope**

The District's primary concern is student and employee safety and the core purpose of this Procedure is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. At other times, discrimination takes the form of harassment, or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When alleged violations Policy are reported, the allegations are subject to resolution using the District's Formal Grievance Process as detailed below.

When the Respondent is a member of the District's community, a Formal Complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the District's community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, vendors, contractors, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed and investigated in accordance with this Procedure.

The District recognizes that reports and/or Formal Complaints under this Procedure may include multiple forms of discrimination and harassment as well as violations of other District policies; may involve various combinations of students, employees, and other members of the District's community; and may require the simultaneous attention of multiple District departments. Accordingly, all District departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable District policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination and harassment or retaliation.

## **IV. Dissemination**

The District provides this Procedure 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 agreements with the District. The District also provides this Procedure to each volunteer who regularly interacts with students and each individual or entity under contract with the District to perform any service involving regular interaction with students at the institution.

The District provides training to all employees on the identification of sexual harassment, including the person to whom it should be reported.

## **V. Title IX Coordinator**

The Title IX Coordinator oversees implementation of this Procedure.

The Title IX Coordinator has the primary responsibility for coordinating the District's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this Procedure. The Title IX Coordinator understands how the institution's grievance procedures operate and has received training on what constitutes sexual harassment and trauma-informed investigatory and hearing practices.

All parties will be provided with a comprehensive electronic brochure detailing options and resources, which the Title IX Coordinator may also review with the parties in person.

## **VI. Independence and Conflict of Interest**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Procedure. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific complaint, or for or against Complainants and/or Respondents, generally.

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

## **VII. Administrative Contact Information**

Complaints or notice of alleged Policy violations, or inquiries about or concerns regarding this Procedure, may be made internally to:

Office of the Title IX Coordinator  
3536 Butte Campus Drive  
Oroville, CA 95965  
530-893-7487  
[titleix@butte.edu](mailto:titleix@butte.edu)

The District has determined that the following administrators are Officials with Authority (OWAs) to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX office listed above, these OWAs may also accept notice or complaints on behalf of the District.

- Superintendent/President
- Vice President for Student Services
- Title IX Coordinator
- Human Resources Director

The District has also classified most employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on [Mandated Reporting](#) details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

**Office for Civil Rights (OCR)**

U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

**San Francisco Office - Office for Civil Rights (OCR)**

U.S. Department of Education  
50 United Nations Plaza  
Mailbox 1200, Room 1545  
San Francisco, CA 94102  
Telephone: [415-486-5555](tel:415-486-5555)  
FAX: [415-486-5570](tel:415-486-5570)  
TDD: [800-877-8339](tel:800-877-8339)  
Email: [ocr.sanfrancisco@ed.gov](mailto:ocr.sanfrancisco@ed.gov)

For complaints involving employee-on-employee conduct: [Equal Employment Opportunity Commission](#) (EEOC)

California Department of Fair Employment & Housing  
2218 Kausen Drive, Ste 100  
Elk Grove, CA 95758  
(800) 884-1684  
(800) 700-2320 TDD Only  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)

**VIII. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a report or Formal Complaint with, or give verbal notice to, the Title IX Coordinator, Officials with Authority, or Responsible Employee. Such a report or Formal Complaint may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail, to the office listed for the Title IX Coordinator or any other official listed.
- 2) Report online, using the reporting form posted at <http://www.butte.edu/titleix/report>. Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. The District tries to

provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant.

Because reporting carries no obligation to initiate a formal response, and because the District respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of confidentiality by making a report that allows the District to discuss and/or provide supportive measures.

## **IX. Obtaining Help and Support<sup>4</sup>**

When feasible, the District will enter into memoranda of understanding, agreements, or collaborative partnerships with institutional and community-based organizations to assist and/or provide services to Complainants and Respondents. This includes referrals and services related to counseling, health, mental health, advocacy, and legal resources. For information on any memoranda that are in place, please contact the Title IX Coordinator and see <http://www.butte.edu/services/safepacewellnessprogram/about.html>.

## **X. Prevention and Outreach Programs<sup>5</sup>**

The District has implemented comprehensive prevention and outreach programs to address issues of sexual harassment, sexual violence, domestic violence, dating violence, and stalking. These programs include, but are not limited to, information about District policies and procedures, rights and responsibilities, the practical implications of an affirmative consent standard, empowerment programming, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction programs. Prevention and outreach programs are included as part of incoming student and new employee orientation. In addition, all employees must complete ongoing prevention and intervention training and education.<sup>6</sup>

## **XI. Supportive Measures<sup>7,8</sup>**

The District will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

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<sup>4</sup> Under CA Educ. Code Sect. 67386 (SB 967) this information is not required to be included in the District's procedure however, the bill requires institutions to enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations, to the extent feasible, to receive state funds for student financial assistance.

<sup>5</sup> Under SB 967, this information is not required to be included in the institution's procedure however, the bill requires institutions to implement comprehensive prevention and outreach programs for students that address sexual violence, domestic violence, dating violence, and staking to receive state funds for student financial assistance.

<sup>6</sup> California harassment law AB 1825 requires employers to provide supervisory employees (including faculty) with at least two hours of sexual harassment prevention training every two years, and non-supervisory employees at least one hour of training every other year in compliance with SB 1343.

<sup>7</sup> CA Educ. Code Sect. 66281.8 (SB 493) requires institutions to consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the institution's policies.

<sup>8</sup> CA Educ. Code, Sect. 66281.8 requires institutions to outline the possible interim measures that may be in place during the pendency of an investigation, the supportive measures that may be provided in the absence of an investigation, and the disciplinary outcomes, remedial measures, and systemic remedies that may follow a final finding of responsibility.

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

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the District will inform the Complainant, in writing, that they may file a Formal Complaint with the District either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The District will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the District's ability to provide those supportive measures. The District will act to ensure as minimal an academic/occupational impact on the parties as possible. The District will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- No contact orders
- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Academic support
- Altering work arrangements for employees or student-employees
- Altering academic schedule and assignment or testing accommodations
- Safety planning
- Providing campus safety escorts
- Any other actions deemed appropriate by the Title IX Coordinator

When requested by a Complainant or otherwise determined to be appropriate, the District will issue an interim no-contact directive prohibiting the Respondent from contacting the Complainant during the pendency of the investigation. The institution will not issue an interim mutual no-contact directive automatically, but instead will consider the specific circumstances of each situation to determine whether a mutual no-contact directive is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to respond to interference

with an investigation. A no-contact directive issued after a decision of responsibility has been made as a remedy will be unilateral and only apply against the party found responsible.

Upon the issuance of a mutual no-contact directive, the institution will provide the parties with a written justification for the directive and an explanation of the terms of the directive. Upon the issuance of any no-contact directive, the institution will provide the parties with an explanation of the terms of the directive.

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 Procedure.

## **XII. Emergency Removal**

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

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

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

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

The Title IX Coordinator has sole discretion under this Procedure to implement or modify an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this procedure will be grounds for discipline within the student or employee conduct processes, which may include expulsion or termination.

The District will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take incomplete grades without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural/club athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact on the parties as possible.

When the Respondent is an employee accused of misconduct in the course of their employment, existing provisions for interim action per Collective Bargaining Agreements (CBAs) are applicable instead of the above emergency removal process. Links to CBAs follow:

- Members of the Butte College Education Association, accessible [here](#)
- Members of the Butte College California School Employees Association Chapter No. 511, accessible [here](#)
- Members of the Butte College Part-Time Faculty Association/Communication Workers of America, accessible [here](#)
- Members of the Butte College Police Officer's Association, accessible [here](#)

### **XIII. Promptness**

Once the District has received notice or a Formal Complaint, all allegations are promptly acted upon. Complaints typically take 60-90 business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the District will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in District procedures will be delayed, the District will provide written notice to the parties of the delay, the cause for the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

### **XIV. Confidentiality/Privacy**

Every effort is made by the District to preserve the confidentiality of reports.<sup>9</sup> The District will not share the identity of any individual who has made a report or Formal Complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of harassment, discrimination, or retaliation; any Respondent; or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA)<sup>10</sup> or its implementing regulations,<sup>11</sup> or as required by law; or to carry out the purposes of 34 C.F.R. Part 106, including any investigation, hearing, or grievance proceeding arising under District Policies and Procedures.

The District reserves the right to determine which District officials have a legitimate educational interest in being informed about incidents that fall under this Procedure, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Office of Instruction, Student Services, Human Resources, Butte College Police, and the Behavioral Intervention/Threat Assessment Team. Information will be shared as necessary with Investigators, Decision-makers, witnesses, and the parties. The circle

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<sup>9</sup> For the purpose of this Procedure, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of District employees who “need to know” in order to assist in the assessment, investigation, and resolution of the complaint. All employees who are involved in the District’s response to notice under this Procedure receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in the District’s Student Records Procedure. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws (including Title IX) that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, and counselors. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The District has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see page 35. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (1) the individual gives written consent for its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

<sup>10</sup> 20 U.S.C. 1232g

<sup>11</sup> 34 C.F.R. § 99

of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The District may contact parents/guardians of students to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically [below](#).

## **XV. Jurisdiction<sup>12</sup>**

This Procedure applies to the District's education program and activities,<sup>13</sup> to conduct that takes place on property owned or controlled by the District, at District-sponsored events, and in buildings owned or controlled by the District's recognized student organizations. The Respondent must be a member of District's community in order for this Procedure to apply.

This Procedure is also applicable to the effects of off-campus misconduct that effectively deprives a person of access to the District's education program or activities. The District will extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial District interest.

Regardless of where the conduct occurred, the District will address notice/complaints to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on campus (including virtual learning and employment environments) or in an off-campus sponsored program or activity. A substantial District interest includes:

- 1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
- 2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
- 3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- 4) Any situation that substantially interferes with the educational interests or mission of the District.

If the Respondent is unknown or is not a member of the District community, the Title IX Coordinator will assist the Complainant in identifying appropriate institutional and local resources and support options. If criminal conduct is alleged, the District can assist in contacting local or institutional law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the District's community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator.

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<sup>12</sup> CA Educ. Code, Section 66281.1 requires institutions take reasonable steps to respond to each incident of sexual harassment. The institution shall take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the institution's policies that occur in connection with any educational activity or other program of the institution, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education.

<sup>13</sup> Which includes the District's employees' work environment.

In addition, the District may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from District property and/or events.

All vendors serving the District through third-party contracts are subject to the policies and procedures of their employers.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the District where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse.

## **XVI. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the District's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of procedure) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the District will typically apply the policies in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint. Typically, this Procedure is only applied to alleged incidents that occurred after August 14, 2020. For alleged incidents that occurred prior to August 14, 2020, previous versions of this Procedure will apply. Those versions are available from the Title IX Coordinator.

## **XVII. Online Harassment and Misconduct**

District policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the District's education program and activities or when they involve the use of District networks, technology, or equipment.

Although the District may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the District, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or sex-based messaging; distributing, or threatening to distribute, nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the District's community.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the District's control (e.g., not on District networks, websites, or between District email accounts) will only be

subject to this Procedure when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but legally protected speech cannot be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the District only when such speech is made in an employee's official or work-related capacity.

## **XVIII. Procedure on Nondiscrimination**

The District adheres to all federal, state, and local civil rights laws and regulations prohibiting discrimination in public higher education institutions.

### **A. Protected Characteristics**

The District does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Race
- Religious Creed
- Color
- National Origin
- Ancestry
- Physical Disability
- Mental Disability
- Medical Condition
- Genetic Information
- Marital Status
- Sex
- Gender
- Gender Identity
- Gender Expression
- Age
- Sexual Orientation
- Military or Veteran Status
- Because she/he/they is perceived to have one or more of the foregoing characteristics
- or any other protected characteristic under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process within the institution, with the Equal Employment Opportunity Commission, and/or other human/civil rights agencies

The District's Nondiscrimination Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the District's community whose acts deny, deprive, or limit the educational, employment, or social access, benefits, and/or opportunities of any member of the District's community, guest, or visitor on the basis of that person's actual or perceived protected characteristics listed above, is in violation of the District policy.

When brought to the attention of the District, any such discrimination will be promptly and fairly addressed and remedied by the District according to the appropriate grievance process.

## **B. Inclusion Related to Gender Identity/Expression**

The District strives to ensure that all individuals are safe, included, and respected in their working and learning environments, regardless of their gender identity or expression, including intersex, transgender, agender, and gender diverse students and employees.

Discrimination on the basis of gender identity or expression is not tolerated by the District. If a member of the District's community feels they have been subjected to discrimination under this Procedure, they should follow the appropriate reporting/Formal Complaint process described above.

In upholding the principles of equity and inclusion, the District supports the full integration and healthy development of those who are transgender, transitioning, or gender diverse, and seeks to eliminate any stigma related to gender identity and expression.

The District is committed to fostering a climate where all identities are valued and create a more vibrant and diverse community. The purpose of this procedure is to have the District administratively address issues some students and employees, including those identifying as intersex, transgender, agender, and gender diverse, may confront as they navigate systems originally designed around the assumption that gender is binary. As our society's understanding of gender evolves, so do the District's processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all but understanding them is essential to the District's goal of being as welcoming and inclusive a community as possible.

Misgendering is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Unintentional misgendering is usually resolved with a simple apology if someone clarifies their pronouns for you. Intentional misgendering is inconsistent with District values. We all get to determine our own gender identity and expression, but we don't get to choose or negate someone else's.

Deadnaming, along with misgendering, can be very traumatic to a person who is transgender, transitioning, or gender diverse. Deadnaming means using someone's birth-assigned (cisgender) name, rather than the name they have chosen.

To a person who is transgender, transitioning, or gender diverse, their cisgender identity may be something that is in their past, dead, buried, and behind them. To then revive their deadname could trigger issues, traumas, and experiences of the past that the individual has moved past, or is moving past, and can interfere with their health and well-being.

Again, unintentional deadnaming can be addressed by a simple apology and an effort to use the person's chosen name. Intentional deadnaming could be a form of bullying, outing, or otherwise harassing an individual, and thus should be avoided.

This Procedure should be interpreted consistent with the goals of maximizing the inclusion of intersex, transgender, transitioning, agender, and gender diverse students and employees, including:

- Maintaining the privacy of all individuals consistent with law

- Ensuring all students equal access to educational programming, activities, and facilities, including restrooms and locker rooms
- Ensuring all employees equal access to employment opportunities and work, service, or health-related facilities
- Providing professional development for employees and education for students on topics related to gender inclusion
- Encouraging all students and employees to respect the pronoun usage and identities of all members of the District's community

The District has set forth its specific processes for implementing this Procedure through the accompanying Title IX-related procedures.

## **XIX. Disability Discrimination and Accommodation Procedure**

The District is committed to full compliance with the Americans with Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal, state, and local laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the District, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The Vice President for Student Services has been designated as the District's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.<sup>14</sup>

For details relating to disability accommodations in the District's Resolution Process, see [section 41](#), below.

### **A. Students with Disabilities**

The District is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the District's academic programs, facilities, and activities.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact Disabled Student Programs and Services, which coordinates services for students with disabilities.

Disabled Student Programs and Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s) in accordance with applicable District policies.

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<sup>14</sup> For complaints involving discrimination or harassment on the basis of disability and retaliation related to protected activity involving the same, please contact the ADA/Section 504 Compliance Officer at 530-895-2239, [gitaupe@butte.edu](mailto:gitaupe@butte.edu), or in person at SAS-210, 3536 Butte Campus Drive, Oroville, CA 95965.

## **B. Employees with Disabilities**

Pursuant to the ADA, the District will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the District.

An employee with a disability is responsible for submitting an accommodation request to the Human Resources Benefit Analyst and providing necessary documentation. The Human Resources Benefit Analyst will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties in accordance with applicable District policies.

## **XX. Discriminatory Harassment Procedure**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Procedure is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial, or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under District policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of District Policy, though supportive measures will be offered to those impacted. All offense definitions encompass actual and/or attempted offenses.

### **A. Discriminatory Harassment**

Discriminatory harassment—defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived characteristic protected by procedure or law—is a form of prohibited discrimination under District procedure.

The District does not tolerate discriminatory harassment of any employee, student, visitor, or third party. The District will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.<sup>15</sup> This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive and objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, the District may also impose sanctions on the Respondent through application of the appropriate grievance process below.

### **B. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of California regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

The District has adopted the following definitions of sexual harassment in order to address the unique environment of an academic community. One definition is required

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<sup>15</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students at Educational Institutions Investigative Guidance.](#)

by federal law, and the other by state law. Both apply, and while they overlap, they are not identical.

**California Sexual Harassment Definition:**<sup>16</sup>

- a. unwelcome sexual advances, or
- b. requests for sexual favors, or
- c. other verbal, visual, or physical conduct of a sexual nature,
- d. made by someone from in the work or educational setting,
- e. under any of the following conditions:
  - submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, or
  - submission to, or reject of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, or
  - the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment, or
  - submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

**Sexual Violence**, defined as:

- a. physical sexual acts<sup>17</sup>,
- b. perpetrated against a person without the person's affirmative consent.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

**Title IX Sexual Harassment**, as an umbrella category, includes these specific definitions of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex,<sup>18</sup> or that is sexual in nature, that satisfies one or more of the following:

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<sup>16</sup> This definition of sexual harassment will be used in addition to and when formal complaints of Title IX Sexual Harassment are mandatorily dismissed. See section on [Dismissal](#) outlined below.

<sup>17</sup> A "physical act" includes both of the following:

- a. **Rape:**
  - penetration,
  - no matter how slight,
  - of the vagina or anus,
  - with any part or object,
  - or oral copulation of a sex organ
  - by another person
  - without the consent of the victim.
- b. **Sexual Battery:**
  - the intentional touching of another person's intimate parts without consent, or
  - 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 part without consent.

<sup>18</sup> Including gender identity, gender expression, sexual orientation, and sex stereotypes.

- 1) **Quid Pro Quo:**
  - a. an employee of the District,
  - b. conditions<sup>19</sup> the provision of an aid, benefit, or service of the District,
  - c. on an individual's participation in unwelcome sexual conduct.
- 2) **Sexual Harassment:**
  - a. unwelcome conduct,
  - b. determined by a reasonable person,
  - c. to be so severe, and
  - d. pervasive, and,
  - e. objectively offensive,
  - f. that it effectively denies a Complainant equal access to the District's education program or activity.<sup>20</sup>

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<sup>19</sup> Implicitly or explicitly.

<sup>20</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent, which is 18 in California). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

3) **Sexual Assault**, defined as:

- a. Any sexual act<sup>21</sup> directed against a Complainant,<sup>22</sup>
  - without their consent, or
  - instances in which the Complainant is incapable of giving consent.
- b. **Incest:**
  - Non-forcible sexual intercourse,
  - between persons who are related to each other,
  - within the degrees wherein marriage is prohibited by California law.
- c. **Statutory Rape:**
  - Non-forcible sexual intercourse,
  - with a person who is under the statutory age of consent of 18 years of age in California.

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<sup>21</sup> A "sexual act" is specifically defined by federal regulations to include one or more of the following:

Rape:

- Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person,
- without their consent,
- including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity."

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.

<sup>22</sup> This would include having another person touch you sexually, forcibly, and/or without their consent.

- 4) **Dating Violence**, defined as:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a person,
  - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
    - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
      - a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
      - b) Dating violence does not include acts covered under the definition of domestic violence.
- 5) **Domestic Violence**,<sup>23</sup> defined as:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a current or former spouse or intimate partner of the Complainant,
  - d. by a person with whom the Complainant shares a child in common, or
  - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
  - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California, or
  - g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of California.
- 6) **Stalking**, defined as:
- a. engaging in a course of conduct,
  - b. on the basis of sex,
  - c. directed at the Complainant, that
    - i. would cause a reasonable person to fear for the person's safety, or
    - ii. the safety of others; or
    - iii. Suffer substantial emotional distress.

For the purposes of this definition—

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

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<sup>23</sup> To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

The District reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this Procedure. The most serious offenses are likely to result in suspension/expulsion/termination.

### **C. Unethical Relationships Procedure**

#### Expectations Regarding Unethical Relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty member and student or supervisor and employee). In reality, these relationships may be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant policy violation still exists. The District does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the District. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this Procedure, the duty to notify the appropriate supervisor still pertains.

While no relationships are specifically prohibited by this Procedure, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under this Procedure, based on the circumstances of the allegation.

### **D. Force, Coercion, Consent, and Incapacitation<sup>24</sup>**

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is

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<sup>24</sup> The state definition of consent is “positive cooperation in act or attitude pursuant to the exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act and the transaction involved.” A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is an issue. This definition of consent is applicable to criminal prosecutions for sex offenses in California but may differ from the definition used on campus to address procedure violations.

intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," which elicits the response, "Okay, don't hit me. I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Affirmative Consent**<sup>25</sup> is:

- knowing (conscious), and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonably immediate time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.

Proof of consent or non-consent is not a burden placed on either party involved in a complaint. Instead, the burden remains on the District to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar

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<sup>25</sup> California Education Code Section 67386/SB 967 establishes an affirmative consent standard in the determination of whether consent was given by both parties to sexual activity.

circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>26</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, thus the District’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy or procedure that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drug consumption.

In the evaluation of complaints, it shall not be a valid defense that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

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

Thus, it is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment. In the evaluation of complaints, it shall not be a valid defense to alleged lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:

- a. The Respondent’s belief in affirmative consent arose from the intoxication or recklessness of the Respondent.
- b. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This Procedure also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

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<sup>26</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

## **E. Other Civil Rights Offenses<sup>27</sup>**

In addition to the forms of sexual harassment described above, which are covered by Title IX, the District additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant's actual or perceived protected characteristic.

- 1) **Sexual Exploitation**, defined as:
  - a. a person taking sexual advantage of another person,
  - b. for the benefit of anyone other than that person,
  - c. without that person's consent,
  - d. including, but not limited to, any of the following acts:
    - the prostituting of another person,
    - 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,
    - the recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, without that person's consent,
    - the distribution of images, including video or photograph, or audio of another person's sexual activity or 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, or
    - The viewing of another person's sexual activity or intimate parts, in a place where the other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.
    - Invasion of sexual privacy (e.g., doxxing)
    - Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
    - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
    - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
    - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
    - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
    - Knowingly soliciting a minor for sexual activity
    - Knowingly creating, possessing, or disseminating child pornography

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<sup>27</sup> The definitions in this section may apply when formal complaints of Title IX Sexual Harassment are mandatorily dismissed, but may also apply in addition to the Title IX offenses listed above. See section on [Dismissal](#) outlined below.

- 2) **Harm/Endangerment**, defined as:
  - a. threatening or causing physical harm;
  - b. extreme verbal, emotional, or psychological abuse; or
  - c. other conduct which threatens or endangers the health or safety of any person or damages their property.
- 3) **Discrimination**, defined as:
  - a. actions that deprive, limit, or deny
  - b. other members of the community
  - c. of educational or employment access, benefits, or opportunities,
  - d. including disparate treatment.
- 4) **Intimidation**, defined as:
  - a. implied threats or
  - b. acts that cause the Complainant reasonable fear of harm.
- 5) **Hazing**, defined as:
  - a. acts likely to cause physical or psychological harm or social ostracism
  - b. to any person within the District's community,
  - c. when related to the admission, initiation, pledging, joining, or any other group-affiliation activity.
- 6) **Bullying**, defined as:
  - a. repeated and/or severe aggressive behavior
  - b. that is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the Complainant,
  - c. that is not speech or conduct that is otherwise protected by the First Amendment.

Violation of any other District policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived protected characteristic(s), and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from warning through expulsion/termination.

## **XXI. Retaliation**

Protected activity under this Procedure includes reporting alleged misconduct that may implicate this Procedure, participating in the resolution process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Procedure.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The District will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

The District and any member of the District's community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or procedure, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this procedure.

Filing a complaint under Process B could be considered retaliatory if those allegations could be subject to Process A, when the Process B allegations are made for the purpose of interfering

with or circumventing any right or privilege provided afforded within Process A that is not provided by Process B. Therefore, the District carefully vets all complaints to ensure this does not happen, and to ensure that complaints are routed to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Pursuing a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Procedure does not constitute retaliation, provided that the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **XXII. Mandated Reporting<sup>28</sup>**

All District employees (faculty, staff, administrators) and volunteers are expected to report actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions, noted below.

The District has determined that the following administrators are Responsible Employees who have a duty to address and correct harassment, discrimination, and/or retaliation, or who have the duty to report sexual harassment to an appropriate District official who has that authority. Responsible Employees have received training<sup>29</sup> on how to report prohibited conduct under this Procedure.

- Student life directors, coordinators, or deans.
- Athletic directors, coordinators, or deans.
- Coaches of any student athletic or academic team or activity.
- Faculty and associate faculty, teachers, instructors, or lecturers.
- Graduate student instructors, while performing the duties of employment by the institution.
- Laboratory directors, coordinators, or principal investigators.
- Internship or externship directors or coordinators.
- Study abroad program directors or coordinators.

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting institutional resources. Within the institution, some resources may maintain confidentiality and are not required to report actual or suspected harassment, discrimination, or retaliation in a way that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or institution official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe the District's reporting options for a Complainant or third party (including parents/guardians when appropriate):

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<sup>28</sup> This Procedure does not affect other mandated reporting obligations under policies or laws that require reporting to campus or local law enforcement, Child Protective Services, or Adult Protective Services.

<sup>29</sup> CA Educ. Code, Section 66281.8 requires institutions with on-campus housing to ensure that residential life student and nonstudent staff, or their equivalent, annually receive training on how to handle, in a trauma-informed manner, reports made to them of sexual harassment or sexual violence, and situations in which they are aware of sexual harassment or sexual violence, in student residential facilities.

## **A. Confidential Resources<sup>30</sup>**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- On-campus Victim Advocates<sup>31</sup>
- Community-based (non-employees):
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Institutional counselors and the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

## **B. Mandated Reporters and Formal Notice/Complaints**

All District employees (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this Procedure that they observe or have knowledge of, even if not reported to them by a Complainant or third party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the District.

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<sup>30</sup> CA Educ. Code, Sect. 66281.8 (SB 493) requires on-campus confidential resources to inform students who provide information about sexual harassment of their ability to report the alleged sexual harassment to a responsible employee and direct the student to those specific reporting resources. Individuals who have a confidential relationship with a student by law is exempt from having to report sexual harassment concerns to the Title IX Coordinator or other designated employee, unless otherwise required by law.

<sup>31</sup> Reports to campus advocates are not completely confidential unless those advocates are also certified sexual assault counselors who are employed by a rape crisis center, or are certified as domestic violence counselors, as defined by California law.

Supportive measures may be offered as the result of such disclosures without formal District action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment, discrimination, 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.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this Procedure, they still have a duty to report their own misconduct, though the District is technically not on notice simply because a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this Procedure is not required to report their own experience, though they are, of course, encouraged to do so.

### **XXIII. Notice to Law Enforcement**

There may be circumstances in which the District is obliged to report an incident of violent crime, hate crime, or sexual assault immediately, or as soon as practicably possible, to campus law enforcement. Butte College Police have instituted specialized, trauma-informed responses developed in consultation with campus and community-based victim advocates to remedy sexual assault and violence and hate crimes, and to respect the Complainant's request for confidentiality.

#### Requests for Confidentiality with Respect to Reporting to Police

Complainants have the right to decide if they want to make a report to the police and/or speak with the police. The District will honor requests for confidentiality. Institutional and local law enforcement agencies are prohibited from disclosing information about most sexual assaults if the Complainant requests anonymity. When information is shared with law enforcement, such reports will include (when the Complainant has consented to being identified):

- The name and characteristics of the alleged victim
- The name and characteristics of the alleged perpetrator, if known
- Description of the incident, including location and date and time
- Any report number assigned to the police incident report documenting the investigation being conducted by the jurisdictional agency

#### Mandatory Reporting Requirements for Health Practitioners in California<sup>32</sup>

Any licensed health care provider in the State of California providing services in a health facility, clinic or physician's office is required to make a report if they provide *medical treatment for a physical condition* to a patient whom they know or reasonably suspect is the victim of assaultive or abusive conduct or a firearm injury. The health practitioner is required to make a report by telephone as soon as practically possible and send a written report to a local law enforcement agency within two working days. The report must be made to the enforcement agency that has jurisdiction over the location in which the injury was sustained. This includes any health care practitioners in the Student Health Clinic.

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<sup>32</sup> Specific questions regarding interpretation of the law should be referred to your legal counsel and/or local district attorney. Please see Cal. Penal code §§ 11160-11163.2.

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

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, and/or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the institution and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the District proceeds when the Complainant does not wish to do so, and may require a violence risk assessment to help determine whether to proceed. The Title IX Coordinator may sign a Formal Complaint to initiate a grievance process after reviewing any violence risk assessment results and weighing the following factors:

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

In instances where the Complainant's request for confidentiality or no investigation is granted, the District will provide supportive measures to the Complainant and 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 formal action against the alleged Respondent or revealing the identity of the Complainant. These steps may include but are not limited to:

- Increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred
- Providing additional training and education materials for students and employees
- Conducting climate surveys regarding sexual violence

The District will also take immediate steps to provide for the safety of the Complainant while keeping the Complainant's identity confidential, as appropriate. These steps may include changing living arrangements or course schedules, assignments, or tests. The Complainant will be notified that the steps the District will take to respond to the complaint will be limited by the request for confidentiality.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Procedure.

When the District proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Procedure irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony. The District will inform the Complainant prior to initiating the Formal Resolution Process and 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 will honor this request.

Note that the District's ability to remedy and respond to notice may be limited if the Complainant does not want the District to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the District's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the District to honor that request, the District may offer [Informal Resolution](#) options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the District and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **XXV. Federal Timely Warning Obligations**

The District must issue timely warnings for certain reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The District will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **XXVI. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this Procedure are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a procedure violation determination.

Additionally, witnesses and parties knowingly providing false evidence; tampering with, or destroying, evidence; or deliberately misleading an official conducting an investigation, hearing, or informal resolution can be subject to discipline under appropriate District policies.

## **XXVII. Amnesty<sup>33</sup>**

The District community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to District officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

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<sup>33</sup> CA Educ. Code, Section 66281.8 requires any disciplinary measures imposed by the institution for violations of the institution's student conduct procedure at or near the time of the incident being investigated shall be consistent with paragraph (10) of subdivision (b) of Section 67386, which provides that 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 institution's student conduct procedure at or near the time of the incident, unless the institution 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.

It is in the best interests of the District's community that Complainants choose to report misconduct to District officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, the District maintains a procedure of offering parties and witnesses amnesty from minor procedure violations—such as underage consumption of alcohol or the use of illicit drugs—related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty—the incentive to report serious misconduct—is rarely applicable to Respondent with respect to a Complainant.

#### **A. Students**

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the Butte Campus Police).

The District maintains a Procedure of amnesty for students who offer help to others in need. Although procedure violations cannot be overlooked, the District may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

#### **B. Employees**

Sometimes, employees are hesitant to report harassment, discrimination, or retaliation they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the unethical relationship procedure and is then assaulted in the course of that relationship might hesitate to report the incident to District officials.

The District may, at its discretion, offer employee Complainants amnesty from such procedure violations (typically more minor procedure violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

### **XXVIII. Federal Statistical Reporting Obligations**

Certain institutional officials—those deemed Campus Security Authorities—have a duty to report the following for federal statistical reporting purposes (Clery Act):

- 1) All "primary crimes," which include criminal homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- 2) Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
- 3) VAWA-based crimes,<sup>34</sup> which include sexual assault, domestic violence, dating violence, and stalking
- 4) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug law violations

All personally identifiable information is kept private, but statistical information must be shared with Butte College Police regarding the type of incident and its general location (on or off

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<sup>34</sup> VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. sections 13701 through 14040.

campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log. Campus Security Authorities include: student affairs/student conduct staff, campus law enforcement, coaches, athletic directors, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

## **XXIX. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault and stalking is critical to potential criminal prosecution and to obtaining restraining/protective orders and is particularly time sensitive. The District will inform the Complainant of the importance of preserving evidence by taking the following actions:

### **Sexual Assault**

- Seek forensic medical assistance at Enloe Hospital (or the nearest hospital), ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container.
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

### **Stalking**

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
  - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
  - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence including notes, gifts, etc. in place when possible.
- Save copies of any messages showing a request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

## **Resolution Procedures "Process A"**

### **I. Overview**

The procedures below apply only to qualifying allegations of sexual harassment (including sexual violence, sexual assault, dating violence, domestic violence, and stalking, as defined in this Procedure) involving students, staff, administrators, or faculty members.

If other Policy definitions are invoked, such as protected characteristic harassment or discrimination as defined above, please see AP 3435 or AP 5520 for a description of the procedures applicable to the resolution of such offenses, known as "Process B."

Process B can also apply to sexual harassment (including sexual violence, sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

Unionized/other categorized employees are subject to the terms of their agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.

The procedures below may be used to address alleged collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of Policy are being addressed at the same time. In such cases, the Title IX Coordinator may consult with the institution officials who typically oversee such conduct (e.g., human resources, student conduct, instruction, etc.) to provide input as needed. All other allegations of misconduct unrelated to incidents covered by this procedure will be addressed through procedures described in other Board Policies and/or Administrative Procedures

## II. Notice/Complaint<sup>35</sup>

Upon receipt of a complaint or notice of an alleged Procedure violation by the Title IX Coordinator, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the District needs to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint. This contact with Complainant will include the following information:

- The District has received a report that the Complainant may have been subjected to sexual harassment.
- A statement that retaliation for filing a complaint or participating in a complaint process, or both, is prohibited.
- Counseling resources within the institution or the community.
- Notice that the Complainant has the right, but not the obligation, to report the matter to law enforcement.
- The District's investigation procedures.
- A list of potential supportive measures, such as no-contact directive, housing changes, and academic schedule changes.
- The importance of preserving evidence.
- A request for Complainant to meet with the Title IX Coordinator to discuss options for responding to the report.
- Information on how the District responds to reports of sexual harassment and a description of potential disciplinary consequences.

The Title IX Coordinator will then initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a Formal Complaint
- 2) An Informal Resolution (upon submission of a Formal Complaint)
- 3) A Formal Grievance Process including an investigation and a hearing, (upon submission of a Formal Complaint)

The District uses a Formal Grievance Process as described below to determine whether Policy has been violated. If so, the District will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

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<sup>35</sup> CA Educ. Code, Sec. 66281.8 provides regardless of whether or not a complaint has been filed under the institution's grievance procedures, if the institution knows, or reasonably should know, about possible sexual harassment involving individuals subject shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond if the institution determines that an investigation is not required. If the institution determines that the alleged conduct more likely than not occurred, it shall immediately take reasonable steps to end the harassment, address the hostile environment, if one has been created, prevent its recurrence, and address its effects. A postsecondary institution shall be presumed to know of sexual harassment if a responsible employee knew, or, in the exercise of reasonable care, should have known, about the sexual harassment. The institution may rebut this presumption of knowledge if it shows all of the following:

- (I) The institution provides training and requires all nonconfidential responsible employees to report sexual harassment.
- (II) Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question was provided training and direction to report sexual harassment.
- (III) Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question failed to report it.

(ii) The institution shall consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the institution's policies.

If the Title IX Coordinator receives notice from a third party who is not the actual Complainant, the Coordinator will take appropriate steps to address and remedy any potential hostile environment, to the extent possible based on the information received.

### **III. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this Procedure, the Title IX Coordinator<sup>36</sup> engages in an initial assessment, typically within one to five (1-5) business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response<sup>37</sup>, an Informal Resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their needs, determine appropriate supports, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution<sup>38 39</sup>, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
  - If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the alleged misconduct falls within the scope of the 2020 Title IX regulations:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate issue

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<sup>36</sup> If circumstances require, the President, Title IX Coordinator, or Executive Director of Human Resources will designate another person to oversee the Resolution Process should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

<sup>37</sup> Per CA Educ. Code, Section 66281.8, an institution will not require a Complainant enter a voluntary resolution agreement or any other form of resolution as a prerequisite to receiving remedial measures from the institution which safeguard the Complainant's access to education.

<sup>38</sup> Per the 2020 Title IX regulations, recipients are prohibited from Informal Resolution of a complaint by a student against an employee.

<sup>39</sup> Per CA Educ. Code, Section 66281.8, an institution may not mandate mediation to resolve allegations of sexual harassment, and will not allow mediation, even on a voluntary basis, to resolve allegations of sexual violence. Other forms of informal resolution that are not mediation are permitted.

- If alleged misconduct does not fall within the scope of the Title IX regulations, the Title IX Coordinator determines that the regulations do not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply and will refer the matter accordingly. Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX, which does not limit the District’s authority to address a complaint with an appropriate process and remedies.

### **A. Violence Risk Assessment**

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the BIT as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- 1) Emergency removal of a Respondent on the basis of immediate threat to an individual or the community’s physical health/safety
- 2) Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant
- 3) Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment
- 4) To help identify potential predatory conduct
- 5) To help assess/identify grooming behaviors
- 6) Whether it is reasonable to try to resolve a complaint through Informal Resolution, and if so, what approach may be most successful
- 7) Whether to permit a voluntary withdrawal by the Respondent
- 8) Whether to impose transcript notation or communicate with a transfer Recipient about a Respondent
- 9) Assessment of appropriate sanctions/remedies (to be applied post-hearing)
- 10) Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other BIT members. A VRA authorized by the Title IX Coordinator should occur in collaboration with the BIT or threat assessment team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

More about the District’s process for VRA can be found in [Appendix C](#).

## **B. Dismissal (Mandatory and Discretionary)<sup>40</sup>**

The District must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute Title IX sexual harassment as defined above, even if proved
- 2) The conduct did not occur in an educational program or activity controlled by the District (including buildings or property controlled by recognized student organizations), and/or the District does not have control of the Respondent
- 3) The conduct did not occur against a person in the United States
- 4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the District's education program or activity<sup>41</sup>

The District may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein
- 2) The Respondent is no longer enrolled in or employed by the District
- 3) Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

Upon any dismissal, the District will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal (See [Section 37](#)).

## **IV. Counterclaims**

The District is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. The District permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims determined to have been reported in good faith will be processed using the Resolution Process below. Investigation of such claims may take place after resolution of the underlying initial complaint, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying complaint, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of Policy.

## **V. Right to an Advisor**

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The parties may

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<sup>40</sup> This dismissal requirement is mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

<sup>41</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable unless the Title IX Coordinator signs the complaint in the event the Complainant cannot/will not do so.

select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>42</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

As a public entity, the District fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, the District will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses are permitted to have union representation or Advisors in grievance process interviews or meetings.

#### **A. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the Resolution Process. The parties may choose Advisors from inside or outside of the District's community.

The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the District, the Advisor will have been trained by the District and be familiar with the District's Resolution Process.

If the parties choose an Advisor from outside the pool of those identified by the District, the Advisor may not have been trained by the District and may not be familiar with the District's policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the Resolution Process, prior to a hearing.

#### **B. Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

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.

#### **C. Advisors in Hearings/District-Appointed Advisor**

Under the Title IX Regulations, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the District will appoint a trained Advisor for the limited purpose of conducting any questioning of the parties and witnesses.

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<sup>42</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

#### **D. Pre-Interview Meetings**

Advisors and their advisees may request to meet with the Investigator(s) conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and District's policies and procedures. This request is subject to availability of the Investigator(s) and the discretion of the of Title IX Coordinator.

#### **E. Advisor Violations of District Procedure**

All Advisors are subject to the same District policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by the District. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address District officials or Investigators in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee<sup>43</sup> during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator or other Decision-maker except during questioning at a hearing proceeding.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the Resolution 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.

Any Advisor who oversteps their role as defined by this Procedure, or who refuses to comply with the District's established rules of decorum for the hearing, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including the District requiring the party to use a different Advisor or providing a different District-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **F. Sharing Information with the Advisor**

The District expects that the parties may wish to have the District share documentation and evidence related to the allegations with their Advisors. If desired, the parties must provide written documentation to the Title IX Coordinator demonstrating consent to a release of information to the Advisor before the District is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the District will comply with that request at the discretion of the Title IX Coordinator.

Advisors appointed by the institution will not be asked to disclose details of their interactions with their advisees to institutional officials or Decision-makers.

#### **G. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the District. The District may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the District's privacy expectations.

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<sup>43</sup> Subject to the state law provisions or District procedure above.

## **H. Expectation of an Advisor**

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

The District may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

## **I. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor should be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

## **J. Assistance in Securing an Advisor<sup>44</sup>**

For representation, Respondents may wish to contact organizations such as:

- Families Advocating for Campus Equality (<http://www.facecampusequality.org>)
- Stop Abusive and Violent Environments (<http://www.saveservices.org>)

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>)
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association
- The Time's Up Legal Defense Fund (<https://nwlc.org/times-up-legal-defense-fund/>)

## **VI. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the Resolution Process are expected to maintain the privacy of the proceedings in accordance with District Procedure.

Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, except for information the parties agree not to disclose as part of an Informal Resolution. The District encourages parties to discuss any sharing of information with their Advisors before doing so.

The Formal Grievance Process is the District's primary resolution approach unless Informal Resolution is elected by all parties and the District.

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<sup>44</sup> This is being provided for informational purposes and does not constitute the District's endorsement of any of the external individuals/organizations listed.

## **A. Informal Resolution**

Three options for Informal Resolution are detailed in this section.

- 1) **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation
- 2) **Alternative Resolution.** When the parties agree to resolve the matter through an alternative resolution mechanism including mediation, restorative practices, facilitated dialogue, etc., as described below, often before a formal investigation takes place (See [Section B](#))
- 3) **Accepted Responsibility.** When the Respondent accepts responsibility for violating procedure, and desires to accept the recommended sanction(s) and end the Resolution Process (See [Section C](#))

To initiate Informal Resolution, a Complainant must submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The parties may agree, as a condition of engaging in Informal Resolution, that statements made, or evidence shared, during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties consent.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. The parties may not enter into an agreement that requires the District to impose specific sanctions, though the parties can agree to certain restrictions or other courses of action. For example, the parties cannot require a student be suspended, but the parties can agree that the Respondent will temporarily or permanently withdraw. The only Informal Resolution Process that can result in sanctions levied by the institution is "Accepted Responsibility." The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, the District will provide the parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the District.

The District 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.

## **B. Alternative Resolution Approaches**

Alternative Resolution is an informal approach, including mediation, restorative practices, facilitated dialogue, etc. by which the parties reach a mutually agreed upon resolution of a complaint. All parties must consent to the use of an Alternative Resolution approach.

The Title IX Coordinator may consider the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties' amenability to Alternative Resolution
- Likelihood of potential resolution, considering any power dynamics between the parties
- The nature and severity of the alleged misconduct
- The parties' motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history of the Respondent
- Whether an emergency removal is needed
- Skill of the Alternative Resolution facilitator with this type of complaint
- Complaint complexity
- Emotional investment/capability of the parties
- Rationality of the parties
- Goals of the parties
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

The ultimate determination of whether Alternative Resolution is available or successful is made by the Title IX Coordinator. The Title IX Coordinator is authorized to facilitate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors, including terms of confidentiality, release, and non-disparagement.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral for formal resolution, referral to the conduct process for failure to comply). Results of complaints resolved by Alternative Resolution are not appealable.

### **C. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged Procedure violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

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

This result is not subject to appeal once all parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.<sup>45</sup>

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<sup>45</sup> The parties may not want discussions that take place within Informal Resolution to be admissible in a later Formal Grievance Process, but essential facts must and do transfer from the informal process to the formal. Disclosing something in an informal setting to shield it from formal admissibility is a cynical strategy, so

When a resolution is accomplished, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

## **VII. Formal Grievance Process Pool**

The Formal Grievance Process relies on a pool of administrators<sup>46</sup> (“the Pool”) to carry out the process.

### **A. Pool Member Roles**

Members of the Pool are trained annually, and can serve in in the following roles, at the discretion of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternative Resolution if appropriately trained in appropriate resolution approaches (e.g., mediation, restorative practices, facilitated dialogue)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

### **B. Pool Member Appointment**

The Title IX Coordinator appoints the Pool,<sup>47</sup> which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different complaints, the District can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

### **C. Pool Member Training**

Pool members receive comprehensive, trauma-informed<sup>48</sup> annual training based on their respective roles. This training includes, but is not limited to:

- The scope of the District’s Nondiscrimination and Prohibition of Harassment Procedure and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias and racial inequities, both broadly and in school disciplinary processes
- Disparate treatment
- Reporting, confidentiality, and privacy requirements

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administrators should take care in determining the terms of any assurances of the confidentiality of the Informal Resolution.

<sup>46</sup> External, trained third-party neutral professionals may also be used to serve in Pool roles

<sup>47</sup> This does not preclude the District from having all members of the Pool go through an application and/or interview/selection process

<sup>48</sup> CA SB 967 requires the District to provide a comprehensive trauma-informed training program for campus officials involved in deciding sexual assault, domestic violence, dating violence, and stalking cases.

- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the District with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with procedure
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping
- 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 (See [Appendix E](#)).

The materials used to train all members of the Pool are publicly posted here [Title IX Training Materials](#) .

### **VIII. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written Notice of the Investigation and Allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who will be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all allegations
- The identity of the involved parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies implicated

- A description of the applicable procedures
- A statement of the potential sanctions/responsive actions that could result
- A statement that the District presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that the investigation and hearing are not adversarial processes between Complainant(s), Respondent(s), and witnesses, but rather a process the District uses to comply with its obligations under existing law
- A statement that the Complainant does not have the burden to prove, nor does the Respondent have a burden to disprove, the underlying allegations(s) of misconduct
- A statement that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing if intentionally withheld
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity during the review and comment period to inspect and review all directly related and/or relevant evidence obtained
- A statement about the District's Procedure on retaliation
- Information about the confidentiality of the process
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor
- A statement informing the parties that the District's Procedure prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how the party may request disability accommodations during the Resolution Process
- A link to the District's VAWA Brochure
- Notice to student parties regarding appropriate counseling resources developed and maintained by the institution
- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator, in advance of the interview process, any conflict of interest that the Investigator(s) may have
- An instruction to preserve any evidence that is directly related to the allegations

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official District records, or emailed to the parties' District-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **IX. Resolution Timeline**

The District will make a good faith effort to complete the Resolution Process within a sixty to ninety (60-90) business-day time period, including appeal if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

The District will not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

## **X. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation, usually within five (5) business days of determining that an investigation should proceed.

## **XI. Ensuring Impartiality**

Any individual materially involved in the administration of the Resolution Process including the Title IX Coordinator, Investigator(s), and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the President.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a Policy violation and evidence that supports that the Respondent did not engage in a Policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The District operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a Policy violation by the applicable standard of proof.

## **XII. Investigation Timeline**

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc.

The District will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

## **XIII. Investigation Process Delays and Interactions with Law Enforcement**

The District may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law

enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions.

The District will communicate the anticipated duration of the delay and reason to the parties in writing and provide the parties with status updates if necessary. The District will promptly resume its investigation and Resolution Process as soon as feasible. During such a delay, District will implement supportive measures as deemed appropriate.

District action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

#### **XIV. Investigation Process Steps**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all available relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. Recordings of interviews are not provided to the parties, but the parties will have the ability to review the transcript of the interview once the investigation report is compiled.

At the discretion of the Title IX Coordinator, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential procedure violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the parties and witnesses
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegations (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose

- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Gather, assess, and synthesize evidence, but make no conclusions, engage in no procedure analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the District does not intend to rely in reaching a determination, for a ten (10) business-day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- Elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- Share the report with the Title IX Coordinator and/or legal counsel for their review and feedback
- Incorporate any relevant feedback and share the final report with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties and Advisors are also provided with a file of any directly related evidence that was not included in the report.

## **XV. Witness Role and Participation in the Investigation**

Witnesses (as distinguished from the parties) who are employees of the District are strongly encouraged to cooperate with and participate in the District's investigation and Resolution Process. Student witnesses and witnesses from outside the District community are encouraged to cooperate with District investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, Microsoft Teams, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness, efficiency, or other reasons dictate a need for remote interviewing. The District will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

## **XVI. Interview Recording**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties should be made aware of and consent to<sup>49</sup> audio and/or video recording.

## **XVII. Evidentiary Considerations<sup>5051</sup>**

Neither the investigation nor the hearing will consider: (1) incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; or (2) questions and evidence about the Complainant's sexual predisposition; or (3) questions and evidence about the Complainant's prior or subsequent sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior or subsequent sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation and the hearing 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.

## **XVIII. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) business days from the conclusion of the investigation—when the final investigation report is transmitted to the parties and the Decision-maker(s)—unless all parties and the Decision-maker(s) agree to an expedited timeline.

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<sup>49</sup> Consent of the interviewer and interviewee in California, a “dual-party recording” state.

<sup>50</sup> CA Educ. Code, Section 66281.8 provides that parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

<sup>51</sup> In the event of a dismissal under Title IX, but where the process still proceeds, the following is applicable: CA Educ. Code, Sec. 66282.1.8 provides that the investigator(s) or hearing officer(s) prohibit the following evidentiary considerations: (1) the past sexual history of a Complainant or Respondent except when the conditions in (3a and 3b) are present; (2) prior or subsequent sexual history between the Complainant and anyone other than the Respondent for any reason unless directly relevant to prove that the physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual; or (3a) the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and Respondent unless the evidence is relevant to how the parties communicated consent in prior or subsequent consensual sexual relations, (3b) when evidence in (3a) is permitted, investigators and hearing officers who allow consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent are required to consider that the fact the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient by itself to establish the conduct at issue was consensual. Prior to allowing the consideration of any evidence provided under this section, the investigator(s) or hearing officer(s) will provide a written explanation to the parties as to why the evidence is consistent with this clause.

The Title IX Coordinator will select an appropriate Decision-maker from the Pool and provide a copy of the investigation report and the file of directly related evidence.

### **XIX. Hearing Decision-maker Composition**

The District will designate a single Decision-maker from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing.

The Decision-maker will not have had any previous involvement with the complaint. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a time and venue determined by the Title IX Coordinator or designee.

### **XX. Additional Evidentiary Considerations in the Hearing**

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 District uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy.

### **XXI. Hearing Notice**

No less than ten (10) business days prior to the hearing,<sup>52</sup> the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator as soon as possible, preferably at least five (5) business days prior to the hearing.

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<sup>52</sup> Unless an expedited hearing is agreed to by all parties.

- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) based on demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and how the parties can access the recording after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they wish to conduct cross-examination and do not have an Advisor, and the District will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.
- A statement that are repetitive, irrelevant, or harassing are prohibited.
- A statement that parties may note an objection to questions posed.<sup>53</sup>
- A copy of all the materials provided to the Decision-maker(s) about the complaint unless they have already been provided.<sup>54</sup>
- 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.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Procedure) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term, as needed, to meet the resolution timeline followed by the District and remain within the 60-90 business-day goal for resolution. Employees who do not have 12-month contracts are still expected to participate in Resolution Proceedings that occur during months between contracts.

## **XXII. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator as soon as possible, preferably at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know as soon as possible, preferably at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

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<sup>53</sup> CA Educ. Code, Sec. 66281.8 provides that institutions may limit such objections to written form, and neither the hearing officer nor the institution are obligated to respond, other than to include any objection in the record. The hearing officer has the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the formal rules of evidence.

<sup>54</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

### **XXIII. Pre-Hearing Preparation**

After any necessary consultation with the parties, the Chair will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any relevant evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.<sup>55</sup>

The parties will be given the name of the Decision-maker at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the complaint.

The Title IX Coordinator will give the Decision-maker a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10)-business-day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

### **XXIV. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors and invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

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

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<sup>55</sup> 34 C.F.R. § 668.46(k)(3)(B)(3) requires “timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings.”

At each pre-hearing meeting with a party and/or their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/Advisor, with all parties/Advisors present at the same time, remotely, or as a written-only exchange. The Chair will work with the parties to establish the format.

## **XXV. Hearing Procedures**

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged procedure violations that occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Nondiscrimination and Prohibition of Harassment Procedure.

Participants at the hearing will include the Chair, the Investigator who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent),<sup>56</sup> Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations, interpretation, and/or assistive services.

The Chair will answer all questions of procedure.

Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Decision-maker(s) and the parties, and the witnesses will then be excused.

## **XXVI. Joint Hearings**

In hearings involving more than one Respondent and/or involving more than one Complainant who has accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each complaint with respect to each alleged procedure violation.

## **XXVII. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker based on bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review the challenge and decide.

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<sup>56</sup> Subject to the District's Code of Organizational Conduct.

The Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator/case manager appointed by the Title IX Coordinator.<sup>57</sup>

The Title IX Coordinator or designee may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

### **XXVIII. Investigator Presentation of Final Investigation Report**

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker and the parties (through their Advisors).

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

### **XXIX. Testimony and Questioning**

Once the Investigator presents the report and responds to questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker and then by the parties through their Advisors.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question (and state it if it has not already been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

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

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

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

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<sup>57</sup> If not conflicted out by previous involvement, the Title IX Coordinator may serve as the hearing facilitator/case manager.

### **XXX. Refusal to Submit to Questioning; Inferences**

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared. It is otherwise considered off-limits, and an Advisor who is an institutional employee is temporarily alleviated from mandated reporter responsibilities related to their interaction with their advisee during the Resolution Process.

### **XXXI. Hearing Recordings**

Hearings (but not deliberations) are recorded by the District for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker, the parties, their Advisors, and appropriate administrators of the District will be permitted to review the recording or review a transcript of the recording, upon request to the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **XXXII. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker will determine whether the Respondent is responsible for the procedure violation(s) in question.

The Decision-maker will also review any pertinent conduct history provided by the appropriate administrator and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will then prepare a written statement detailing all findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and rationales explaining the sanction(s) and will deliver the statement to the Title IX Coordinator.

This statement must be submitted to the Title IX Coordinator within five (5) business days of the end of deliberations unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **XXXIII. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome letter. The Title IX Coordinator will then share the letter, which includes the final determination, rationale, and any applicable sanction(s), with the parties and their Advisors within five (5) business days of receiving the deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official District records, or emailed

to the parties' District-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific alleged Policy violation(s), including the relevant procedure section(s), and will contain a description of the procedural steps taken by the District from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding for each alleged procedure violation; the findings of fact that support the determination; conclusions regarding the application of the relevant procedure to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the District is permitted to share such information under state or federal law; any sanction(s) issued which the District is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to the District's educational or employment program or activity.

The Notice of Outcome will also include information on when the results are considered final by the District, will note any changes to the outcome and/or sanction(s) that occur prior to finalization, and the relevant procedures and bases for appeal.

#### **XXXIV. Rights of the Parties (See [Appendix B](#))**

##### **XXXV. Sanctions**

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

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this Procedure are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

## A. Student Sanctions

The following are the common sanctions that may be imposed upon students singly or in combination:<sup>58</sup>

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any District procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling:* A mandate to meet with and engage in either District-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at the District.
- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend District-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma:* The District may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating procedure.
- *Revocation of Degree:* The District reserves the right to revoke a degree previously awarded from the District for fraud, misrepresentation, and/or other violation of District policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Other Actions:* In addition to or in place of the above sanctions, the District may assign any other sanctions as deemed appropriate.

## B. Student Organization Sanctions

The following are the common sanctions that may be imposed upon student organizations singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any District procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the organization is found in violation of any institutional procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of District funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student organization recognition for a definite period of time not to exceed two years and/or until specific criteria are met. During the

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<sup>58</sup> District policies on transcript notation will apply to these proceedings.

suspension period, a student organization may not conduct any formal or informal business or participate in District-related activities, whether they occur on or off campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from the District.

- *Expulsion:* Permanent termination of student organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- *Loss of Privileges:* Restricted from accessing specific District privileges for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, the District may assign any other sanctions as deemed appropriate.

### **C. Employee Sanctions/Responsive/Corrective Actions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- Warning/Coaching
- Formal Reprimand
- Reduction in Pay
- Suspension
- Demotion
- Termination/Discharge
- Transfer
- Reassignment
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the District may assign any other responsive actions as deemed appropriate.

## **XXXVI. Withdrawal or Resignation Before Complaint Resolution**

### **A. Students**

Should a Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the District, the Resolution Process typically ends with a dismissal, as the District has lost primary disciplinary jurisdiction over the withdrawn student. However, the District may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, the District will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the District in any capacity. Admissions and Human Resources will be notified, accordingly. Such exclusion applies to all District locations.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely and, if

found in violation, that student is not permitted to return to District unless and until all sanctions, if any, have been satisfied.

### **B. Employees**

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process typically ends with dismissal, as the District has lost primary disciplinary jurisdiction over the resigned employee. However, the District may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, the District will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for academic admission or rehire with the District or any District location, and the records retained by the Title IX Coordinator will reflect that status.

All District responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **XXXVII. Appeals**

Any party may submit a written request for appeal ("Request for Appeal") to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker will Chair the appeal. No Appeal Decision-maker will have been previously involved in the Resolution Process for the complaint, including in any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair or designee for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

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

Appeals are limited to the following grounds:

- 1) A procedural irregularity affected the outcome of the matter
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- 3) The Title IX Coordinator, Investigator(s), or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

If any of the grounds in the Request for Appeal do not meet the grounds in this Procedure, that request will be denied by the Appeal Decision-maker, and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Procedure, then the Appeal Decision-maker will notify all parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker.

All other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker will be mailed, emailed, and/or provided a hard copy of the Request for Appeal with the approved grounds and then be given three (3) days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeal Decision-maker to all parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Procedure by the Appeal Decision-maker and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-maker, as necessary, who will submit their responses, if any, within three (3) days. Any such responses will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved grounds for appeal, and the subsequent responses will be shared with the Appeal Decision Maker and the Decision Maker will render a decision within no more than three (3) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which the District is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the District is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' District-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

### **B. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed (i.e.: not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then the emergency removal procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanctions include separation in any form, the District may place a hold on official transcripts, diplomas, graduations, course registration, etc. pending the outcome of an appeal. The Respondent may request a stay of these holds from the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator or designee, whose determination is final.

### **C. Appeal Considerations**

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- Decisions on appeal are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator and/or Decision-maker for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where an error cannot be cured by the original Decision-maker (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new hearing with new Pool members serving in the Investigator and Decision-maker roles.
- The results of a remand to a Decision-maker cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to the District or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **XXXVIII. Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the institutional community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Procedure modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no Policy violation is found.

When no Policy violation is found, the Title IX Coordinator will address any remedies the District owes the Respondent to ensure no effective denial of educational access.

The District will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the District's ability to provide these services.

### **XXXIX. Failure to Comply with Sanctions and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker (including the Appeal Decision-maker).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the District. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator

### **XL. Recordkeeping**

The District will maintain for a period of seven years following the conclusion of the Resolution Process, records of:

- 1) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation
- 2) Any disciplinary sanctions imposed on the Respondent
- 3) Any remedies provided to the Complainant designed to restore or preserve equal access to the District's education program or activity
- 4) Any appeal and the result therefrom
- 5) Any Informal Resolution and the result therefrom
- 6) 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 the District's website.
- 7) Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent
  - b. Any measures designed to restore or preserve equal access to the District's education program or activity
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances

The District will also maintain any and all records in accordance with state and federal laws.

## **XLI. Disability Accommodations in the Resolution Process**

The District is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the District's Resolution Process.

Anyone needing such accommodations or support should contact the Director of Disabled Student Programs & Services or appropriate HR individual if employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

## **XLII. Revision of this Procedure**

This procedure supersedes any previous procedure addressing harassment, sexual misconduct, discrimination, and/or retaliation for incidents occurring on or after August 14, 2020, under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The District reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the Resolution Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require procedural alterations not reflected in this procedure.

If government laws or regulations change—or court decisions alter—the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws or regulations or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws which frame such policies and codes, generally.

## **APPENDIX A: Prohibited Conduct Examples (Title IX)**

### Examples of possible Title IX Sexual Harassment:

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student agrees to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually oriented jokes and pictures to hundreds of other students via social media. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.
- Chris has recently transitioned from male to nonbinary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being nonbinary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not sexually or romantically interested in Chris. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their gender identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo there. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

### Examples of Stalking:

- Students A and B were "friends with benefits." Student A wanted a more serious relationship, which caused student B to end the relationship. Student A could not let go and relentlessly pursued Student B. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if Student B had sent out a picture of themselves, though it was not their penis. This

caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.

- A student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and they would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor's car, both on-campus and at home. Asked again to stop, the student stated by email, "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

#### Examples of Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being "a prude." He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to "jerk him off" (hand to genital contact). Amanda would have never done it but for Bill's incessant coercion.
- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with Beth. Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.
- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other's clothes, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

### Examples of Retaliation:

- A student-athlete alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes approval for the faculty member to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

## **APPENDIX B: Statement of Rights of the Parties**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment, discrimination, and/or retaliation made in good faith to District officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated procedure violations.
- The right to be informed in advance of any public release of information by the District regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released by the District to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by District officials.
- The right to have District procedure and these procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by District officials from reporting sexual harassment, discrimination, and/or retaliation to both on-campus and off-campus authorities.
- The right to be informed by District officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by the District in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report.
- The right to have allegations of violations of this Procedure responded to promptly and with sensitivity by Butte College Police and/or other District officials.
- The right to be informed of available supportive measures, such as counseling; advocacy; health care; student financial aid, visa, and immigration assistance; and/or other services, both on campus and in the community.
- The right to a District -implemented no-contact order when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation assistance
  - Visa/immigration assistance

- Arranging to dissolve a housing contract and provide a pro-rated refund
- Exam, paper, and/or assignment rescheduling or adjustment
- Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
- Transferring class sections
- Temporary withdrawal/leave of absence (may be retroactive)
- Campus safety escorts
- Alternative course completion options
- The right to have the District maintain such actions for as long as necessary and for supportive measures to remain confidential, provided confidentiality does not impair the District's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any District meeting or interview involving another party, when possible.
- The right to identify and have the Investigator(s), Advisors, and/or Decision-maker(s) question relevant available witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker(s), may be asked of any party or witness.
- The right to have inadmissible sexual predisposition/prior sexual history or irrelevant character evidence excluded by the Decision-maker(s).
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of all relevant and directly related evidence obtained during the investigation, subject to privacy limitations imposed by state and federal law, and a ten (10)-business-day period to review and comment on the evidence.
- The right to receive a copy of the final investigation report, including all factual, procedure, and/or credibility analyses performed, and to have at least ten (10) business days to review and comment on the report prior to the hearing.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Procedure violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
- The right to preservation of confidentiality/privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any District representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.

- The right to the use of the appropriate standard of evidence, preponderance of the evidence OR clear and convincing evidence to make a Finding and Final Determination after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any hearing.
- The right to be promptly informed of the finding(s) and sanction(s) (if any) of the Resolution Process and a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written Notice of Outcome letter delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the District is considered final and any changes to the Final Determination or sanction(s) that occur post Notification of Outcome.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the Resolution Process, and the procedures for doing so in accordance with the standards for appeal established by the District.
- The right to a fundamentally fair resolution as defined in these procedures.

## APPENDIX C: Violence Risk Assessment (VRA)

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A **Violence Risk Assessment (VRA)** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Behavioral Intervention Team (BIT) (sometimes also known as CARE teams) members.

A VRA occurs in collaboration with the BIT, CARE, and/or threat assessment team and must be understood as an ongoing process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California), nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

- 1) An appraisal of **risk factors** that escalate the potential for violence
- 2) A determination of stabilizing influences that reduce the risk of violence
- 3) A contextual **analysis of violence risk** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence
- 4) The application of **intervention and management** approaches to reduce the risk of violence

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the BIT. The BIT will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

The assessor(s) will follow the process for conducting a violence risk assessment as outlined in the BIT manual and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

Some examples of formalized approaches to the VRA process include: The NABITA Risk Rubric,<sup>59</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>60</sup> Looking Glass,<sup>61</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>62</sup> Historical Clinical Risk Management (HCR-20),<sup>63</sup> and MOSAIC.<sup>64</sup>

The VRA is conducted independently from the Title IX process, informed by it, but free from outcome pressure. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

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<sup>59</sup> [www.nabita.org/tools](http://www.nabita.org/tools)

<sup>60</sup> [www.nabita.org/resources/assessment-tools/sivra-35](http://www.nabita.org/resources/assessment-tools/sivra-35)

<sup>61</sup> [www.nabita.org/looking-glass](http://www.nabita.org/looking-glass)

<sup>62</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>63</sup> <http://hcr-20.com>

<sup>64</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)

The BIT member(s) conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to the health and/or safety of an individual or the community.

## **APPENDIX D: Statistics on the Prevalence of Sexual Harassment and Sexual Assault in the Education Setting**

Butte College provides training to the Grievance Process Pool on the following statistics<sup>65</sup>

- a) Sex discrimination, including sexual harassment and violence, harms all students, undermines students' physical safety, impedes students' ability to learn, and can reinforce social inequality throughout a student's lifetime.
- b) Sexual harassment and violence in higher education is pervasive. According to research published by the American Association of University Women, during college, 62 percent of women and 61 percent of men experience sexual harassment. The Association of American Universities (AAU) survey of students shows that more than 1 in 5 women and nearly 1 in 18 men are sexually assaulted in college.
- c) Historically marginalized and underrepresented groups are more likely to experience sexual harassment than their peers. Research from the Gay, Lesbian & Straight Education Network (GLSEN) and the Centers for Disease Control and Prevention show that more than one-half of LGBTQ students 13 to 21 years of age, inclusive, are sexually harassed at school. An AAU survey indicates that nearly one in four transgender and gender-nonconforming students are sexually assaulted during college. According to a National Women's Law Center (NWLC) report, students with disabilities are 2.9 times more likely than their peers to be sexually assaulted.
- d) Sexual harassment occurs both on campus and in off-campus spaces associated with school. Nationwide, nearly 9 in 10 college students live off campus and 41 percent of college sexual assaults involve off-campus parties. Research by the Rape, Abuse & Incest National Network indicates that only 8 percent of all sexual assaults occur on school property.
- e) Survivors generally underreport instances of sexual harassment and assault. The NWLC reports that only 12 percent of college survivors report sexual assault to their schools or the police.
- f) Research published in the Journal of College Student Retention: Research, Theory & Practice demonstrates that 34 percent of sexual harassment and violence survivors drop out of college.

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<sup>65</sup> These statistics are included in CA Educ. Code, Section 66281.8.

## **APPENDIX E: Process B**

- Process B is applicable when the Title IX Coordinator determines Process A is inapplicable, or offenses subject to Process A have been dismissed.
- If Process A is applicable, Process A must be applied in lieu of Process B.

Process B is outlined in following Administrative Procedures:

- [AP 3435](#) for Employee Respondents
- [AP 5520](#) for Student Respondents