



AP 3434 Responding to Sexual Harassment under Title IX

References: Education Code Sections 212.5, 66282.1 et seq., and 67380 et seq;
 20 U.S. Code Sections 1681 et seq.;

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Introduction

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

Title IX Coordinator

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

Office of the Title IX Coordinator
3536 Butte Campus Drive
Oroville, CA 95965
530-893-7487
titleix@butte.edu

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

Jurisdictional Requirements – Application of Procedures

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

- The conduct took place in the United States;
- The conduct took place in a District "education program or activity." This includes locations, events, or circumstances over which the District exercised substantial control over both the Respondent and the context in which the harassment occurred, including on-campus and off-campus property and buildings the District owns, or controls or student organizations officially recognized by the District own or control; and

- The conduct meets the definition of Title IX sexual harassment.

Definitions

Advisor: Throughout the grievance process, both the Complainant and Respondent have a right to an Advisor of their choice. If a Party does not have an Advisor at the time of the hearing, the District must provide the Party an Advisor of its choice, free of charge. The District may establish restrictions regarding the extent to which the Advisor may participate in the proceedings as long as the restrictions apply equally to both Parties.

Parties have the right to consult with an attorney, at their own expense, at any stage of the grievance process if they wish to do so. An attorney may serve as an advisor.

Business Day: Business day means a day the District office is open. Business days do not include Saturdays, Sundays, or days on which the District office is closed.

Complainant: A Complainant is an individual who alleges they are the victim of conduct that could constitute sexual harassment.

Consent: Consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. Both Parties must give affirmative consent to sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he/she/they has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest, lack of resistance, or silence does not indicate consent. Affirmative consent must be ongoing throughout a sexual activity and one can revoke his/her/their consent at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, is not an indicator of consent.

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable, based on the facts and circumstances the Respondent knew, or reasonably should have known, at the time of the incident. A Respondent's belief is not a valid defense where:

- The Respondent's belief arose from the Respondent's own intoxication or recklessness;
- The Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented; or
- The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
 - asleep or unconscious;
 - unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
 - unable to communicate due to a mental or physical condition.

Decision-Maker: The person or group of people (the District may use one or more) who will oversee the live hearing and make a determination of responsibility. The District may have one Decision-Maker determine whether the Respondent is responsible, and another Decision-Maker determine the appropriate level of penalty for the conduct. The Decision-Maker cannot be the Title IX Coordinator or the Investigator.

Disciplinary Sanctions: Consequences imposed on a respondent following a determination under the District Title IX policies and procedures that the Respondent violated the District's prohibition on sexual harassment.

Formal Complaint: A written complaint signed by the Complainant or Title IX Coordinator, alleging sexual harassment and requesting an investigation. If the Title IX Coordinator signs the formal complaint, they will not become a Party to the complaint.

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

Relevant: Related to the allegations of sexual harassment under investigation as part of these grievance procedures. Relevant evidence means evidence, including evidence relevant to the credibility of a Party or witness, having any tendency in reason to prove or disprove any disputed fact material to the allegations under the investigation. Questions are relevant when the question seeks evidence that may aid in showing whether the alleged sexual harassment occurred.

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

Respondent: A Respondent is an individual reported to be the perpetrator of conduct that could constitute sexual harassment.

Retaliation: Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this procedure, or because the individual has report information, made a complaint, testifies, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this procedure.

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

- **Quid pro quo harassment:** A District employee conditions the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct:
- **Hostile environment harassment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
- **Sexual assault:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent or unlawful sexual intercourse. Sexual assault includes sexual exploitation and the following:
 - **Rape.** Sexual intercourse between two people, and may include oral or anal intercourse, without the consent of the victim.
 - **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.
 - **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim.
 - **Sexual Contact/Fondling.** The intentional touching of the clothed or unclothed body parts without the consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation or the forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

- **Incest.** Sexual intercourse between persons who are related to each other within the degrees prohibited by law.
- **Dating Violence.** Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of a relationship will be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- **Domestic Violence.** Violence committed:
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; or
 - By any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws of California.
- **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

Supportive Measures: Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the Complainant and the Respondent regardless of whether a formal complaint has been filed.

Reporting Options

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

The District strongly encourages prompt reporting of sexual harassment. Prompt reporting allows for the collection and preservation of evidence, including physical evidence, digital media, and witness statements. A delay may limit the District's ability to effectively investigate and respond.

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

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

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

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

Obligations of Employees

District employees who have authority to institute corrective measures on behalf of the District, and are not confidential resources are required to report allegations of sexual harassment to the District's Title IX Coordinator promptly when they have information about conduct that may reasonably constitute sexual harassment. Additionally, the following employees must report allegations to the District's Title IX Coordinator promptly:

- Any member of the Executive Leadership Team deemed "Official with Authority"
- Any District employee who regularly interacts with students as part of their job duties
- Any District employee who is identified as a supervisor under California's Fair Employee and Housing Act (FEHA)
- Any District employee who holds any of the following positions, or substantially similar positions or job duties, regardless of the specific title:
 - Title IX Coordinator or Direct or other managers designated to comply with and carry out the District's responsibilities under this procedure;
 - Student life director, coordinators, deans;
 - Coaches of any student athletic or academic team or activities;
 - Faculty and associate faculty, teachers, instructors, lecturers;
 - Laboratory directors, coordinators, principal investigators;
 - Internship or externship directors, coordinators;
 - Study abroad program directors, coordinators.

The District requires the employees identified in this section to report all relevant information they know about sexual harassment including the name of the Respondent, the Complainant, any other witnesses, and the date, time, and location of the alleged incident.

Optional Section: Confidential Resource Options at the District

Students, faculty, and staff may wish to seek confidential assistance in dealing with an incident of sexual harassment. The District has identified specific employees who will maintain confidentiality under the professional license or professional ethics necessary for their employed role at the District. Please see the District's Title IX webpage for the list of District employees who may keep information regarding an incident of sexual harassment confidential. The list includes the following individuals:

- Licensed mental health counselors or therapists;
- Licensed medical providers
- Confidential advocates or victim advocates

In most cases, Confidential Resources at a District will not share the substance of any such communications or that such communications occurred without consent. Individuals who wish to talk confidentially about issues related to sexual harassment, with the understanding that the

District will not take any action based on such confidential communications, are encouraged to contact one of these Confidential Resources.

Confidential Resources may, however, have an obligation to disclose otherwise-privileged information where they perceive an immediate or serious threat to a person or property. This is a limited exception to the privileged nature of communications with Confidential Resources. Reports or records maintained by the District (including Counseling Service records), and other confidential, non-privileged records may, however, be subject to a subpoena if civil or criminal charges are filed in court.

In accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Confidential Resources will not report Clery crimes they learn about through confidential communications for purposes of the District's compilation of campus crime statistics. In addition, when appropriate and legally permissible, the District shall conduct record-keeping on reports of dating violence, domestic violence, stalking and sexual assault, such as that collected for legally required disclosures, that excludes, personally identifiable information of any Complainants.

Under California law, any health practitioner employed in a health facility, clinic, physician's office, or local or state public health department or clinic is required to make a report to local law enforcement if they provide medical services for a physical condition to a person who they know, or reasonably suspect is suffering from:

1. A wound or physical injury inflicted by a firearm; or
2. Any wound or other physical injury where injury is the result of assaultive or abusive conduct (including sexual assault, dating violence, and domestic violence).

This requirement does not apply to sexual assault and domestic violence counselors and advocates.

Response to Reports of Sexual Harassment

Timeframe for Reporting

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

Receipt of Report

After receiving a report of sexual harassment, the Title IX Officer will contact the Complainant and reporting party to explain rights under this policy and procedure and invite the Complainant to an in-person meeting. The Title IX Officer will discuss supportive measures with the Parties.

Student Complainant Requests for Confidentiality

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

- There are multiple or prior reports of sexual misconduct against the respondent;
- The respondent reportedly used a weapon, physical restraints, or engaged in battery;
- The respondent is a faculty or staff member with oversight of students;

- There is a power imbalance between the complainant and Respondent;
- The complainant believes that they will be less safe if the Complainant's name is disclosed or an investigation is conducted; and
- The District is able to conduct a thorough investigation and obtain relevant evidence in the absence of the complainant's cooperation.

If the District determines that it can honor the student complainant's request for confidentiality, it shall still take reasonable steps to respond to the formal complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating any investigation or revealing the identity of the complainant. The District shall notify the complainant that the request for confidentiality will limit the steps the District will take to respond to the report of sexual harassment.

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

Implementation of Supportive Measures

The District will offer and coordinate supportive measures as appropriate for the Complainant and Respondent to restore or preserve that person's access to the District's education program or activity without reasonably burdening the other party, including measures designed to protect the safety of all Parties or These measures are designed to protect the safety of all Parties or the District's educational environment, or deter sexual harassment.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. The Title IX Coordinator should record and retain records regarding requests and provision of supportive measure in accordance with the requirements set out in this procedure. A Party may request supportive measures from the Title IX Coordinator.

Supportive measures may include, but are not limited to: counseling; extensions of deadlines, other course-related adjustments; campus escort services; restrictions on contact applied to one or more Parties; changes in class, work, District-provided housing or extracurricular or any other activity; leaves of absence, increased security and monitoring of certain areas of the campus; and other similar measures.

The District shall not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one Party of supportive measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to the education program or activity, or as required by law.

Sexual Assault and Domestic Violence Counselors

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

Emergency Removal

The District may remove a non-employee Respondent from the District's education program or activity on an emergency basis after it conducts an individualized safety and risk analysis and

determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.

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

The District's Title IX Coordinator or designee will conduct the individualized safety and risk analysis.

If the Title IX Coordinator determines emergency removal is appropriate, they or designee will provide the person the District is removing from campus on an emergency basis with a notice and opportunity to attend a meeting and challenge the basis of their removal. The Title IX Coordinator or designee will determine whether the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal.

Administrative leave

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

No-Contact Order in Reports of Sexual Harassment Involving Students

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

Response to Formal Complaints of Sexual Harassment

In addition to the response discussed in the Response to Reports of Sexual Harassment section, above, the District's response to a formal complaint will include the steps described below.

Consolidation of Complaints

The District may consolidate formal complaints of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of sexual harassment arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

Dismissal of a Formal Complaint

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

- If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in this procedure;
- If the conduct alleged did not occur in the District’s education program or activity;
- If the conduct alleged did not occur against a person in the United States.

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

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

If the District dismissed the formal complaint or any allegations, the Title IX Coordinator shall simultaneously provide the Parties with written notice of the dismissal and reason. The District will also notify the Parties of their right to appeal. See the section on appeals for more information.

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

Equitable Treatment of the Parties

The District’s determination of responsibility is a neutral, fact-finding process. The District will treat Complainants and Respondents equitably. The procedures will apply equally to both Parties. The District will not discipline a Respondent unless it determines the Respondent was responsible for sexual harassment at the conclusion of the grievance process.

Statement of Presumption of Non-Responsibility

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

Role of Advisor

The role of the Advisor is to provide support and assistance in understanding and navigating the grievance process.

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

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

Privacy

The District will take reasonable steps to protect the privacy of the Parties and Witnesses during its grievance procedures. These steps will not restrict the ability of the Parties to discuss the allegations under investigation or to gather and present relevant evidence.

To protect the privacy of those involved, the Parties and Advisors are required to sign a confidentiality agreement prior to attending an interview or otherwise participating in the District's grievance process. The confidentiality agreement restricts unauthorized disclosure of information and evidence obtained solely through the grievance procedure. The confidentiality agreement will not restrict the ability of either Party to discuss the allegations under investigation.

Consistent with the requirements of this procedure, the District shall keep confidential the identity of any individual who has made a report or Complaint of sexual harassment, any Complainant, any Respondent, and any witness, except as may be permitted by law, or to carry out the purposes of this procedure. This means that the District will protect the Party's privacy consistent with this procedure but may disclose information to those who have a legitimate need to know and in order to process Complaints under this policy.

Confidentiality is not absolute, however. Where criminal conduct has occurred, or where the health or safety of others in the community may be in danger, it may be necessary for the District to take appropriate steps to protect the safety of its students and employees, including the person who has reported the misconduct.

Prohibition Against Bias or Conflict of Interest

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

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

Timeline and Extensions

The District will undertake its grievance process promptly and as swiftly as possible. The District will complete the investigation and its determination regarding responsibility or the informal resolution process within 180 calendar days.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the 180 calendar day period to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the unavailability of witnesses or delays by the Parties, to account for District breaks or vacations, or due to the complexity of the investigation. The District will provide notice of this extension to the Complainant and

Respondent in writing and include the reason for the delay and anticipated timing of completion.

A Party may request an extension from the Title IX Coordinator in writing by explaining the reason for the delay and the length of the continuance requested. The Title IX Coordinator will notify the Parties and document the grant or denial of a request for extension or delay as part of the case recordkeeping. The District shall grant a student Party's reasonable request for an extension of a deadline related to the Complaint during periods of examinations or school closures.

Notice to Parties

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

- Notice of the District's Title IX grievance process;
- Notice of the allegations of alleged sexual harassment with sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- Statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Notice that the Parties may have Advisor of their choice, who may be, but is not required to be, an attorney;
- Notice that the Parties may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a Party or other source; and
- Inform the Parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- For student Parties, notice regarding appropriate counseling resources the District has developed and maintains.

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

Informal Resolution

At its discretion, the District may offer the Parties informal resolution in lieu of resolving a Complaint through the District's grievance procedures. The District does not offer informal resolution, including settlement, to resolve allegations that an employee engaged in sexual harassment of a student, to resolve allegations that an employee engaged in sexual assault, sexual violence, or sexual batter, or to resolve allegations of sexual violence involving a student Party.

The District shall not require the Parties to participate in an informal resolution process. The District does not require waiver of the right to an investigation and determination of a Complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right. The District must obtain the Parties' voluntary, written consent to the informal resolution process.

The District will inform the Parties in writing of any informal resolution process it offers and determines is appropriate, if any. Before the initiation of an informal resolution process, the District will explain in writing to the Parties:

- The allegations;
- The requirements of the informal resolution process;
- That any Party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
- That if the Parties agree to a resolution at the end of the informal resolution process, the Parties cannot initiate or resume grievance procedures arising from the same allegations; and
- What information the District will maintain and whether and how the District could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.

Investigations

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

Both Parties have the right to have an Advisor present at every meeting described in this section.

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

Notice of Investigative Interview

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

Evidence

The burden is on the District--- not the Parties---, to conduct an investigation that gathers sufficient evidence to determine whether sexual harassment occurred. The District will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and permissible.

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

Use of Privileged Information

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

Evidence of Past Sexual History

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

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

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

Evidence Review

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

The District will make available to each Party and the Party's Advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The District will allow the Parties at least ten days to submit a written response. The Investigator must consider any written response prior to completing the investigative report.

Investigative Report

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

- A description of the circumstances giving rise to the formal complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony provided by each witness with information relevant to the allegations;
- A summary of all relevant and permissible evidence gathered through the investigation, including a list of relevant documents;
- A description of recommended findings;
- A table of contents if the report exceeds ten pages; and
- Any other information deemed appropriate by the District.

The Investigator will not make a determination regarding responsibility.

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

The District will send the investigative report to each Party and their Advisors, if any, at least ten days prior to the live hearing. The District will provide the final investigative report in an electronic format or a hard copy. Parties may review the investigation report and provide a written response. The District will allow Parties at least ten days to submit a written response.

Live Hearing

After completing an investigation and prior to completing a determination regarding responsibility, the District will hold a live hearing to provide the Parties an opportunity to respond to the evidence gathered before a Decision-Maker. Neither Party may waive the right to a live hearing, but the Parties may choose whether to participate in the hearing or answer some or all cross-examination questions.

Notice

The District will provide all Parties written notice of the date, time, location, participants, and purpose of the hearing with sufficient time for the Party to prepare to participate.

Hearing Format

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

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

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

The Decision-Maker shall provide an explanation of the meaning of the preponderance of the evidence standard and affirm that it shall apply to adjudications under this procedure. The preponderance of the evidence standard is met if the District determines that it is more likely than not that the alleged misconduct occurred, based on the facts available at the time of the decision.

Decision-Maker

The Decision-Maker will be free from conflict of interest or bias, including bias for or against Complainants or Respondents. In cases where the Complainant or Respondent objects to the Decision-Maker based on a conflict of interest, the Complainant or Respondent may request the Title IX Coordinator select a different Decision-Maker. The Complainant or Respondent must make this request to the Title IX Coordinator in writing at least five business days prior to the hearing.

The Decision-Maker may ask the Parties and the witnesses questions during the hearing. The Decision-Maker must objectively evaluate all relevant evidence both inculpatory and exculpatory and must independently reach a determination regarding responsibility without giving deference

to the investigative report. The Decision-Maker must receive training on issues of relevance, how to apply the rape-shield protections for Complainants, and any technology to be used at the hearing.

Presenting Witnesses

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

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

Generally, the 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 Decision-Maker has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

Cross-Examination

The District will permit each Party's Advisor to ask the other Party and any witness relevant questions, including those questions challenging credibility. The Party's Advisor must conduct cross-examination directly, orally, and in real time. A Party may never personally conduct cross-examination. The other Party shall have an opportunity to object to a question posed. The District may limit such objections to written form, and neither the Decision-Maker nor the District are obligated to respond, other than to include any objection in the record. The Decision-Maker shall have the authority and obligation to discard or rephrase any question that the Decision-Maker deems to be irrelevant. In making these determinations, the Decision-Maker is not bound by, but may take guidance from, the formal rules of evidence.

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

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

If a Party or witness does not submit to cross-examination at the live hearing, the Decision-Maker may admit any statement of that Party or witness in reaching a determination regarding responsibility. The Decision-Maker will give the statements whatever weight the Decision-Maker determines appropriate, bearing in mind that the statements have not been tested by cross-examination. In doing so, the Decision-Maker should consider, and if possible, determine, whether the witness or Party made the statement and the statement proves.

A Decision-Maker cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to submit to cross-examination or to answer any question.

Determinations of Responsibility

The Decision-Maker will issue a written determination of responsibility, no later than 20 business days after the conclusion of the live hearing.

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

The written determination will include:

- Identification of the allegations potentially constituting Title IX sexual harassment as defined in these procedures;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including who conducted the investigation and gave notifications to the Parties. The determination will also state when, where, and the date the Investigator interviewed the Parties and witnesses, conducted site visits, the methods used to gather other evidence. The procedural section should also discuss the dates and how the Parties were provided the opportunity to review and inspect evidence and the date of any hearings held and who attended the hearing;
- Findings of fact supporting the determination. In making these findings, the Decision-Maker will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility;
- Conclusions regarding the application of the District's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- A statement of, and rationale for, any disciplinary sanctions the District imposes on the Respondent. The District will inform the Complainant of the sanctions against the Respondent.
- A statement of whether the District will provide the Complainant with remedies designed to restore or preserve equal access to the District's education program or activity. The District need not disclose to the Respondent remedies that do not affect them as part of the written determination.
- The District's procedures and permissible bases for the Complainant and Respondent to appeal.

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

Appeal of Dismissal of a Formal Complaint or of the Determination of Responsibility

A Complainant or Respondent may appeal the District's dismissal of a formal complaint or any allegations or determination regarding responsibility.

Grounds for Appeal

A Party may appeal based on the following grounds:

- A procedural irregularity affected the outcome;

- New evidence was not reasonably available at the time the District’s determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome; or
- The District’s Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

Appeal Procedure

- A Party may submit a written appeal no later than five business days from the date of the District’s notice of dismissal of a formal complaint or any allegations or from the date of the notice of determination regarding responsibility. The Party appealing must state the grounds for appeal and a statement of facts supporting those grounds.
- The Vice President of Human Resources, Training, and Employee Development or designee will serve as the Decision-Maker on Appeal.
- If the District receives an appeal, the District notify the other Party in writing within five business days of receiving a Party’s appeal.
- The non-appealing Party may submit a written statement in support of, or challenging, the District’s decision to dismiss the formal complaint or allegations or the District’s decision in the determination regarding responsibility. The District will allow the non-appealing Part at least ten business days from the date of receipt of the appeal to submit the written statement.
- The appeal Decision-Maker will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 30 business days after the Decision-Maker on appeal receives the response to the appeal or the last day to provide a response. The District will provide the written decision simultaneously to both Parties.

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

Disciplinary Sanctions and Remedies

Following a determination that sexual harassment occurred, the District may impose disciplinary sanctions on the Respondent. The action will be prompt, effective, and commensurate with the severity of the offense.

Possible disciplinary sanctions for student Respondents include written or verbal reprimand, required training or counseling, non-academic probation, suspension, and expulsion. Possible disciplinary sanctions for employee Respondents include written or verbal reprimand, required training or counseling, reduction in pay, demotion, suspension, or discharge per Board Policies and Administrative Procedures 7360 and 7365 Discipline and Dismissals and appropriate collective bargaining agreement.

The District may also issue a no-contact directive against the Respondent.

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

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

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

Within five business days of a decision of disciplinary action against a respondent in response to a complaint of sexual harassment, the District will provide a notification of the disciplinary action to the Respondent and Complainant.

Retaliation Prohibited

The District prohibits any intimidation, threats, coercion, or discrimination against any individual who made a report or complaint of sexual harassment, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Individuals who experience retaliation may file a complaint using the formal complaint process described above.

Training

The District will ensure that its Title IX Coordinator(s), investigators, Decision-Makers, facilitators of an informal resolution process, and other persons who are responsible for implementing the District's grievance procedures or have the authority to modify or terminate supportive measures have training on topics required by Title IX regulations and State law and regulations including training regarding their obligation to report sexual harassment and instruction on how to report sexual harassment to the Title IX Coordinator

File retention

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

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

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

Complaint Reporting

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

The Superintendent/President shall prepare and submit to the Board of Trustees a report on the activities undertaken by the District to ensure campus programs and activities are free from sex discrimination including sexual harassment. The report shall include information required by law. The District shall post the annual report on its internet website and shall present each report during a public meeting of the governing board. The board of Trustees will submit this report to the Chancellor of the California Community College by September 1 of each year.