

UNLAWFUL HARASSMENT AND DISCRIMINATION PREVENTION AND COMPLAINTS

I. GENERAL

The District is committed to equal opportunity in educational programs, employment, and all access to institutional programs and activities while providing an academic and work environment free of unlawful discrimination and harassment that respects the dignity of all individuals and groups. This regulation defines sexual harassment as well as other forms of harassment and discrimination on campus and sets forth a procedure for the investigation and resolution of complaints by or against any staff or faculty member or student within the District.

This regulation and the related policy protect students, employees, unpaid interns, and volunteers in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, a District vehicle, or at a class or training program sponsored by the District at another location.

For conduct that is defined by the Title IX federal regulations as sexual harassment in an education program or activity against a person in the United States, complainants must proceed under Board Policy and Administrative Regulation 3433 *Sexual Harassment Prevention and Complaints Under Title IX*. For other forms of sexual harassment or gender-based harassment, complainants should use this regulation.

II. EDUCATION PROGRAMS

The District shall provide access to its services, classes, and programs without regard to national origin, immigration status, religion, age, gender, gender identity, gender expression, race, ethnicity, color, medical condition, military and veteran status, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, pregnancy, or because they are perceived to have one or more of the foregoing characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics.

All courses, including noncredit classes, shall be conducted without regard to the gender of the student enrolled in the classes. As defined in the Penal Code, "gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

The District shall not prohibit any student from enrolling in any class or course on the basis of gender.

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Academic staff, including but not limited to counselors, instructors, and administrators, shall not offer program guidance to students that differs on the basis of gender.

Insofar as practicable, the District shall offer opportunities for participation in athletics equally to male and female students.

III. DEFINITIONS

A. General Harassment

Harassment based on race, ethnicity, religious creed, color, national origin, immigration status, ancestry, physical disability, mental disability, pregnancy, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation of any person, military and veteran status, or the perception that a person has one or more of these characteristics is illegal and violates District policy. Harassment shall be found where a reasonable person with the same characteristics as the complainant of the harassing conduct would be adversely affected to a degree that interferes with their ability to participate in or to realize the intended benefits of an institutional activity, employment, or resource.

Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment if it meets the definition above. For example, repeated derisive comments about a person's competency to do the job, when based on that person's gender, could constitute gender-based harassment. Harassment comes in many forms, including but not limited to the following conduct that could, depending on the circumstances, meet the definition above, or could contribute to a set of circumstances that meets the definition:

1. Verbal

Inappropriate or offensive remarks, slurs, jokes, or innuendoes based on a person's race, gender, sexual orientation, or other protected status. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status, or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats, or intimidation; or sexist, patronizing, or ridiculing statements that convey derogatory attitudes based on gender, race, nationality, sexual orientation, or other protected status.

2. Physical

Inappropriate or offensive touching, assault, or physical interference with free movement. This may include, but is not limited to, kissing, patting, lingering, or intimate touches, grabbing, pinching, leering, staring, unnecessarily brushing against or blocking another person, whistling, or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's gender, race, ethnicity, national origin, immigration status, sexual orientation, or other protected status. Physical sexual harassment includes acts of sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving

consent due to the complainant's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability.

3. Visual or Written

The display or circulation of visual or written material that degrades an individual or group based on gender, race, nationality, sexual orientation, or other protected status. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions.

4. Environmental

A hostile academic or work environment may exist where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, race, nationality, sexual orientation, or other protected status; or gratuitous comments regarding gender, race, sexual orientation, or other protected statuses that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from:

- a. An unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment; or
- b. An unwarranted focus on, or stereotyping of particular racial or ethnic groups, sexual orientations, genders, or other protected statuses.

An environment may be hostile toward anyone who merely witnesses unlawful harassment in their immediate surroundings, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work activities.

B. Sexual Harassment

1. In addition to the above forms of harassment, sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature made by someone from, or in, the work or educational setting when:

- a. Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, progress, internship, or volunteer activity;
- b. Submission to or rejection of the conduct by the individual is used as a basis of employment or academic decisions affecting the individual;
- c. 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 (as more fully described below); or

- d. Submission to, or rejection of, the conduct by the individual is used as the basis for any decisions affecting the individual regarding benefits and services, honors, programs, or activities available at or through the District or the colleges.
- 2. This definition encompasses two kinds of sexual harassment:
 - a. **Quid Pro Quo:** Quid pro quo sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.
 - b. **Hostile Environment:** Hostile environment sexual harassment occurs when unwelcome conduct based on a person's gender alters the conditions of an individual's academic or work environment, unreasonably interferes with an individual's academic or work performance, or creates an intimidating, hostile, or abusive learning or work environment. The complainant must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it unreasonably interfered with the person's academic or work performance or created an intimidating, hostile, or offensive learning or working environment.
- C. Sexually harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the complainant would perceive the conduct as harassment based on sex.

D. Consensual Relationships

Romantic and/or sexual relationships between either employees of the District or between an employee and a student where there is an inherent imbalance of power and/or the potential for exploitation are prohibited.

1. Employee-to-Employee

Consensual romantic and/or sexual relationships between employees of the District have the potential for creating negative conflicts that can affect the work and/or educational environment. Thus, individuals serving in supervisory roles are prohibited from engaging in consensual relationships with subordinates.

2. Employee-to-Student

Faculty members are prohibited from engaging in consensual romantic and/or sexual relationships with students enrolled in their class or other direct instructional oversight. Administrators, staff, or other employees who have a supervisory role over a student are similarly prohibited from engaging in consensual romantic and/or sexual relationships with those students.

Conflicts of interest may arise if the administrator, faculty member, or staff member must evaluate the employee's or student's work or make decisions affecting the employee or student. The relationship may create an appearance of impropriety and lead to charges of

favoritism by other students or employees. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

In the event that such relationships do occur, the District has the authority to transfer and or change an assignment of any involved employee, to eliminate or attenuate the supervisory authority of one over the other, or of a faculty member over a student. Such action by the District is a proactive and preventive measure to avoid possible charges of harassment and does not constitute discipline against any affected employee.

E. Academic Freedom

No provision of this Administrative Regulation shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. Freedom of speech and academic freedom are, however, not limitless and this regulation will not protect speech or expressive conduct that violates federal or California anti-discrimination laws.

IV. REPORTING AND FILING COMPLAINTS

A. The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in harassment, discrimination, or retaliation. Any person who has suffered or has learned of harassment, discrimination, or retaliation, may report harassment, discrimination, or retaliation. Complainants have the option of filing a Complaint.

B. Responsible Employees

All responsible employees are required to report all actual or suspected sexual harassment to the Vice Chancellor, Human Resources or designee immediately. A responsible employee is any employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has been given the duty of reporting incidents of sexual harassment to an appropriate District official who has that authority. Responsible employees include:

1. Chancellor
2. Vice Chancellors
3. Presidents of Irvine Valley College and Saddleback College
4. Vice Presidents
5. Deans
6. Assistant Deans
7. Title IX Coordinator
8. Title IX Officers

9. Directors of Student Life
10. Coaches of any student athletic or academic team or activity
11. Faculty members (all full and part-time academic employees)
12. All supervisors and managers
13. Sworn personnel of the campus police department

C. Confidential Reporting

An employee who is employed as a therapist, physician, psychotherapist, member of the clergy, sexual assault counselor, domestic violence counselor, or other individual acting in a formal professional capacity for which confidentiality is mandated 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.

An employee who is not considered a responsible employee must inform each student who provides them with information regarding sexual harassment of the student's ability to report to a responsible employee and direct the student to those specific reporting resources.

D. Outreach for Students

When a responsible employee reports actual or suspected sexual harassment involving students to the vice president for student services or designee, the Vice Chancellor, Human Resources or designee will assess the report of sexual harassment and provide outreach, as appropriate, to each identifiable student who is alleged to be the victim of the reported conduct.

The outreach shall include all of the following information:

1. The District received a report that the student may have been a victim of sexual harassment;
2. A statement that retaliation for filing a complaint or participating in the complaint process, or both, under this procedure is prohibited;
3. Counseling resources within the District or in the community;
4. Where a crime may have occurred, notice that the student has the right, but not the obligation, to report the matter to law enforcement;
5. The District's complaint and investigation procedures established pursuant to this procedure;
6. Potential interim measures, such as no-contact directives, housing changes, and academic schedule changes, where applicable;
7. The importance of preserving evidence;
8. A request for the student to meet with the Title IX coordinator or other designated employee to discuss options for responding to the report; and

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9. The manner in which the District responds to reports of sexual harassment and a description of potential disciplinary consequences.

The District shall consider and respond to requests for accommodations relating to prior incidents of student 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 District's policies.

E. Complaints

A Complaint is a written or verbal statement filed with the District that alleges harassment, discrimination, or retaliation in violation of the District's board policies, administrative regulations, or in violation of state or federal law. Complaints must be filed with the Vice Chancellor, Human Resources unless the party submitting the Complaint alleges discrimination, harassment, or retaliation against the responsible District officer, in which case it should be submitted directly to the Chancellor.

The District may request, but shall not require the complainant to submit a Complaint on the form prescribed by the Chancellor of the California Community Colleges. A complainant shall report a verbal Complaint to the Vice Chancellor, Human Resources or designee. The Vice Chancellor, Human Resources or designee shall record the verbal Complaint in writing. The Vice Chancellor, Human Resources or designee will take steps to ensure the writing accurately reflects the facts alleged by the complainant.

A Complaint must meet each of the following criteria:

1. It must allege facts with enough specificity to show that the allegations, if true, would constitute a violation of District policies or regulations prohibiting discrimination, harassment, or retaliation;
2. The complainant must file any Complaint not involving employment within one year of the date of the alleged discriminatory, harassing, or retaliatory conduct or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation(s) of discrimination, harassment, or retaliation; and
3. The complainant must file any Complaint alleging discrimination, harassment, or retaliation in employment within 180 days of the date of the alleged discriminatory, harassing, or retaliatory conduct, except that this period shall be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

If the Complaint does not meet the requirements set forth above, the Vice Chancellor, Human Resources or designee will promptly contact the complainant and specify the defect. If the complainant is unable to fix the defect in the Complaint, the Vice Chancellor, Human Resources or designee shall consider the allegations contained in the Complaint and determine the appropriate course of action. This may include efforts to informally resolve the matter or a fact-finding investigation.

F. Oversight of Complaint Process

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The Vice Chancellor, Human Resources is the "responsible District officer" charged with receiving Complaints of discrimination or harassment and coordinating their investigation.

The actual investigation of Complaints may be assigned by the Vice Chancellor, Human Resources to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the Vice Chancellor, Human Resources is named in the Complaint or implicated by the allegations in the Complaint.

G. Who May File a Complaint

Any student, employee, parent of a minor, or an individual with legal authority on behalf of a student or employee who believes they have been discriminated against or harassed by a student, employee, or third party in violation of this regulation and the related policy.

H. Where to File a Complaint

A student, employee, parent of a minor, or an individual with legal authority on behalf of a student or employee who believes they have been discriminated against or harassed in violation of policy and this regulation may make a Complaint orally or in writing directed to the Vice Chancellor, Human Resources or designee. Complainants may, but are not required to, use the form prescribed by the Chancellor of the California Community Colleges. These forms are available from any of the following:

1. The Vice Chancellor, Human Resources, if the complainant is an employee;
2. The vice president for student services, if the complainant is a student;
3. District's Human Resources website; and
4. California Community Colleges Chancellor's Office website.

Any District employee who receives a harassment or discrimination Complaint shall notify the Vice Chancellor, Human Resources immediately.

I. Advisers in Student Harassment Complaints

Student parties in Complaints involving sexual harassment are permitted to have a support person or adviser accompany them during any stage of the Complaint process described in this regulation. Student parties in Complaints involving sexual harassment have the right to consult with an attorney, at their own expense, at any stage of the Complaint process if they wish to do so. An attorney may serve as a support person or adviser.

J. Filing a Timely Complaint

Since failure to report harassment and discrimination impedes the District's ability to stop the behavior, the District strongly encourages anyone who believes they are being harassed or discriminated against, to file a Complaint. The District also strongly encourages the filing of such Complaints within 30 days of the alleged incident. While all Complaints are taken seriously and will be investigated promptly, delay in filing impedes the District's ability to investigate and remediate.

All supervisors and managers have a mandatory duty to report incidents of harassment and discrimination, the existence of a hostile, offensive, or intimidating work environment, and acts of retaliation.

The District will investigate Complaints involving acts that occur off campus if they are related to an academic or work activity or if the harassing conduct interferes with or limits a student's or employee's ability to participate in or benefit from educational or employment activities.

K. Communicating that the Conduct is Unwelcome

The District encourages faculty, students, and staff to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste, or inappropriate. However, a complainant need not tell the respondent to stop or that the conduct makes them feel uncomfortable.

V. INTAKE AND PROCESSING OF THE COMPLAINT:

Upon receiving notification of a harassment or discrimination Complaint, the Vice Chancellor, Human Resources or designee shall:

- A. Advise a student complainant that they may file a complaint with the Office for Civil Rights of the U.S. Department of Education and employee complainants may file a complaint with the California Civil Rights Department (formerly Department of Fair Employment and Housing or DFEH) or with the federal Equal Employment Housing or with the federal Equal Employment Opportunity Commission (EEOC). All complainants should be advised that they have a right to file a complaint with local law enforcement. The District must investigate even if the complainant files a complaint with local law enforcement. In addition, the District should ensure that complainants are aware of any available resources, such as counseling and health and mental health services by student health centers on campus.
- B. In matters involving student sexual harassment, provide student parties notice regarding appropriate counseling resources developed and maintained by the District.
- C. Consider whether the District can undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules, and providing informal counseling or training, etc.
- D. Advise all parties that they need not participate in an informal resolution of the Complaint, as described below, and that they have the right to end the informal resolution process at any time. Mediation, even on a voluntary basis, cannot be used to resolve allegations of sexual violence.
- E. Take interim steps to protect a complainant from coming into contact with a respondent, especially if the complainant is a victim of sexual violence. The Vice Chancellor, Human Resources, the responsible District officer or the designee should notify the complainant of their options to avoid contact with the respondent and allow students to change academic

situations as appropriate. For instance, the District may prohibit the respondent from having any contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and respondent, the District shall minimize the burden on the complainant. For example, it is not appropriate to remove complainants from classes or housing while allowing the respondent(s) to remain.

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

VI. INTERIM AND SUPPORTIVE MEASURES

- A. Interim measures are individualized services offered as appropriate to either or both the complainant and respondent in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending.
- B. Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the complainant or the respondent regardless of whether a Complaint has been filed.
- C. The District will provide interim or supportive measures to parties as appropriate and as reasonably available.
- D. Interim and supportive measures may include changes to academic or working situation or protective measures such as counseling, extensions of deadlines, other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- E. No-Contact Directives
 1. When requested by a complainant or otherwise determined to be appropriate, the District shall issue an interim no-contact directive prohibiting the respondent from contacting the complainant during the pendency of the investigation.
 2. 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 the noncomplaining party's safety or well-being, or to respond to interference with an investigation.
 3. If the District issues a no-contact directive after making a decision of responsibility, the no-contract directive shall be unilateral and only apply against the party found responsible.
 4. Upon the issuance of a mutual no-contact directive, the District shall 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 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.

VII. STUDENT COMPLAINANT REQUESTS FOR CONFIDENTIALITY

- A. If a student complainant requests confidentiality when reporting sexual harassment, which could preclude a meaningful investigation or potential discipline of the respondent, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the District shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the complainant. The District shall normally grant the request when possible.
- B. In determining whether to disclose a complainant's identity or proceed to an investigation over the objection of the complainant, the District may consider whether any of the following apply:
1. There are multiple or prior reports of sexual misconduct against the respondent;
 2. The respondent reportedly used a weapon, physical restraints, or engaged in battery;
 3. The respondent is a faculty or staff member with oversight of students;
 4. There is a power imbalance between the complainant and respondent;
 5. The complainant believes that the complainant will be less safe if the complainant's name is disclosed or an investigation is conducted; and
 6. The District is able to conduct a thorough investigation and obtain relevant evidence in the absence of the complainant's cooperation.
- C. If the District determines that it can honor the student complainant's request for confidentiality, it shall still take reasonable steps to respond to the Complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the respondent or revealing the identity of the complainant. The District shall also take immediate steps to provide for the safety of the complainant while keeping the complainant's identity confidential as appropriate. The District shall notify the complainant that the steps the District will take to respond to the Complaint will be limited by the complainant's request for confidentiality.
- D. If the District determines that it must disclose the student complainant's identity to the respondent or proceed with an investigation, it shall inform the complainant prior to making this disclosure or initiating the investigation. The District shall also take immediate steps to provide for the safety of the complainant where appropriate. In the event the complainant requests that the District inform the respondent that the complainant asked the District not to investigate or seek discipline, the District shall honor this request.

VIII. INVESTIGATION

The Vice Chancellor, Human Resources, the responsible District officer, or designee shall:

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- A. Provide notice to student parties to a sexual harassment complaint that the District is conducting an investigation. The notice shall include the allegations against the respondent and the alleged District policy violations under review. If new allegations that arise during the course of the District’s investigation that could subject either student party to new or additional discipline or corrective action, the Vice Chancellor, Human Resources, the responsible District officer, or designee shall provide a supplemental notice to the student parties.
- B. Authorize the investigation of the Complaint, and supervise or conduct a thorough, prompt and impartial investigation of the Complaint, as set forth below. Where the parties opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. The investigation will include interviews with the complainant, the respondent, and any other persons who may have relevant knowledge concerning the Complaint. This may include complainants of similar conduct.
- C. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual, or sexual conduct, and the context in which the alleged incidents occurred.

D. Investigation of the Complaint

The District shall promptly investigate every Complaint. No claim of workplace or academic harassment or discrimination shall remain unexamined. This includes Complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District’s facilities, in a District vehicle, or at a class or training program sponsored by the District at another location. The District shall promptly investigate Complaints of harassment or discrimination that occur off campus if the alleged conduct creates a hostile environment on campus. The District shall notify the complainant that the District will commence an impartial fact-finding investigation of the allegations contained in the Complaint.

As set forth above, where the parties opt for an informal resolution, the Vice Chancellor, Human Resources or designee may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a “need-to-know-basis” is essential to a thorough investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant’s age; whether there have been other harassment complaints about the same individual; and the respondent’s rights to receive information about the allegations if the information is maintained by the District as an “education record” under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.15. The District will inform the complainant if it cannot maintain confidentiality.

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E. Investigation Steps

The District will fairly and objectively investigate harassment and discrimination Complaints. Employees designated to serve as investigators under this regulation shall have adequate training on what constitutes sexual harassment, including sexual violence, and how the District's grievance process operates. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially using trauma-informed investigation techniques.

The investigation and adjudication of alleged misconduct under this regulation is not an adversarial process between the complainant, the respondent, and the witnesses, but rather a process for the District to comply with its obligations under existing law. The complainant does not have the burden to prove, nor does the respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

Investigators will use the following steps: interviewing the complainant(s); interviewing the respondent(s); identifying and interviewing witnesses and evidence identified by each party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reaching a conclusion as to the allegations and any appropriate disciplinary and remedial action; and seeing that all recommended action is carried out in a timely fashion. When the District evaluates the Complaint, it shall do so using a 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 discrimination or harassment has occurred. Student complainants should be aware that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing, if a hearing is required under this regulation.

F. Timeline for Completion

The District will undertake its investigation promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report, and the District shall notify the complainant and respondent of the outcome within 90 days of the District receiving the Complaint.

G. Cooperation Expected

All employees are expected to cooperate with a District investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the District of its obligation to investigate. The District will conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the complainant(s) and regardless of whether a Complaint is filed. No employee will be retaliated against as a result of lodging a Complaint or participating in any workplace investigation.

H. Written Report

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

1. A description of the circumstances giving rise to the Complaint;
2. A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
3. A summary of testimony provided by each witness, including the complainant and any available witnesses identified by the complainant in the Complaint;
4. An analysis of any relevant data or other evidence collected during the investigation, including a list of relevant documents;
5. A specific finding as to whether each factual allegation in the Complaint occurred based on the preponderance of the evidence standard;
6. A table of contents if the report exceeds ten pages; and
7. Any other information deemed appropriate by the District.

I. Confidentiality of the Process

Investigations are best conducted within a confidential climate. Therefore, the District does not reveal information about ongoing investigations except as necessary to fulfill its legal obligations. The District will keep the investigation confidential to the extent possible, but it cannot guarantee absolute confidentiality because release of some information on a “need-to-know-basis” is essential to a thorough investigation and to protect the rights of student and employee respondents during the investigation process and any ensuing discipline.

J. Administrative Determination

1. Non-employment Discrimination

In any case not involving employment discrimination, within 90 days of receiving a Complaint, the District shall complete its investigation and forward a copy or summary of the report, and written notice to the complainant setting forth all of the following:

- a. The determination of the Chancellor or designee as to whether unlawful discrimination occurred with respect to each allegation in the Complaint based on a preponderance of the evidence standard and the basis for that determination including factual findings;
- b. In the event a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future;
- c. The proposed resolution of the Complaint;
- d. The complainant's right to appeal the determination to the District's Board of Trustees and the California Community Colleges Chancellor's Office; and

- e. In matters involving student sexual misconduct, the respondent's right to appeal to the District's Board of Trustees any disciplinary sanction imposed upon the respondent.

2. Employment Discrimination

In any case involving employment discrimination, within 90 days of receiving a Complaint, the District shall complete its investigation and forward a copy or summary of the report and written notice to the complainant setting forth all of the following:

- a. The determination of the Chancellor or designee as to whether unlawful discrimination occurred with respect to each allegation in the Complaint based on the preponderance of the evidence standard and the basis for that determination including factual findings;
- b. If a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future;
- c. The proposed resolution of the Complaint; and
- d. The complainant's right to appeal the determination to the District's Board of Trustees and to file a complaint with the California Civil Rights Department (formerly Department of Fair Employment and Housing) or the U.S Equal Employment Opportunity Commission.

3. The District shall also provide the respondent with the following:

- a. The determination of the Chancellor or designee as to whether unlawful discrimination occurred with respect to each allegation in the Complaint based on a preponderance of the evidence standard and the basis for that determination including factual findings;
- b. The proposed resolution of the Complaint, including any disciplinary action taken against the respondent; and
- c. In matters involving student sexual misconduct not subject to Title IX, the respondent's right to appeal to the District's Board of Trustees any disciplinary sanction imposed upon the respondent.

K. Discipline for Student Sexual Misconduct Not Subject to Title IX

In a Complaint involving student sexual misconduct not subject to Title IX (as defined in *Administrative Regulation 3433*), if a student respondent is subject to severe disciplinary sanctions, and the credibility of witnesses was central to the investigative findings, the District will provide an opportunity for the student respondent to cross-examine witnesses indirectly at a live hearing, either in person or by videoconference, conducted by a neutral decision-maker other than the investigator.

In other Complaints involving sexual harassment against a student, the District shall decide whether a hearing is necessary to determine whether any sexual violence more likely than not occurred. In making this decision, the District may consider whether the parties elected

to participate in the investigation and whether each party had the opportunity to suggest questions to be asked of the other party and witnesses during the investigation.

The District shall appoint a neutral third party to attend the hearing solely for the purpose of asking any questions to the witnesses. The neutral third party shall not be the student respondent, the student respondent's representative, or any individual charged with making a final determination regarding discipline. The student respondent may submit written questions before and during the cross-examination, including any follow-up questions. Either party or any witness may request to answer the questions by videoconference from a remote location.

At the hearing, the other party shall have an opportunity to note an objection to the questions posed. The District may limit such objections to written form, and neither the hearing officer nor the District are obligated to respond, other than to include any objection in the record. The hearing officer shall have 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.

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 hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

The hearing officer 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.

L. Evidence of Past Sexual History

An investigator or hearing officer, if required by this regulation, shall not consider the past sexual history of the complainant or respondent except in the limited circumstances described below:

1. The investigator or hearing officer 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.
2. The investigator or hearing officer 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 a dating relationship or prior or subsequent consensual sexual relations between the complainant and the respondent pursuant to this circumstance, the mere fact that the complainant and respondent engaged in other consensual sexual relations with one

another is never sufficient, by itself, to establish that the conduct in question was consensual.

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

M. Discipline and Corrective Action

If harassment, discrimination, or retaliation occurred in violation of policy or this regulation, the District shall take appropriate disciplinary action against the respondent and any other remedial action it determines to be appropriate consistent with state and federal law. The action will be prompt, effective, and commensurate with the severity of the offense.

1. Possible disciplinary sanctions for student respondents might include, but are not limited to:
 - a. Written or verbal reprimand;
 - b. Required training or counseling;
 - c. Non-academic probation;
 - d. Suspension; and
 - e. Expulsion;
2. Possible disciplinary sanctions for employee respondents might include, but are not limited to:
 - a. Written or verbal reprimand;
 - b. Required training or counseling;
 - c. Demotion/reassignment;
 - d. Suspension (paid or unpaid); or
 - e. Termination.
3. Remedies for the complainant might include, but are not limited to:
 - a. Providing an escort to ensure that the complainant can move safely between classes and activities;
 - b. Ensuring that the complainant and respondent do not attend the same classes or work in the same work area;
 - c. Preventing offending third parties from entering campus;
 - d. Providing counseling services by the student health centers on campus or a referral to counseling services by student health centers;
 - e. Providing medical services or a referral to medical services;
 - f. Providing academic support services, such as tutoring;

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- g. Arranging for a student-complainant 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
- h. 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 being disciplined.

If the District imposes discipline, the nature of the discipline will not be communicated to the complainant. However, the District may disclose information about the sanction imposed on an individual who was found to have engaged in harassment when the sanction directly relates to the complainant; for example, the District may inform the complainant that the respondent must stay away from the complainant.

Disciplinary actions against faculty, staff, and students will conform to all relevant statutes, regulations, personnel policies and regulations, including the provisions of any applicable collective bargaining agreement.

The District shall also take reasonable steps to protect the complainant from further harassment, or discrimination, address the hostile environment, if one has been created, prevent its recurrence, address its effects, and protect the complainant, respondent, and witnesses from retaliation as a result of communicating the Complaint or assisting in the investigation. The District will ensure that complainants and witnesses know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred. The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the extent possible without impeding the District's ability to investigate and respond effectively to the Complaint.

If the District cannot take disciplinary action against the respondent because the complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

IX. APPEALS

If the District imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the process for appealing a disciplinary decision.

If the complainant is not satisfied with the results of the administrative determination, they may, within 30 days, submit a written appeal to the District's Board of Trustees.

In a Complaint involving student sexual misconduct not subject to Title IX, a respondent who is not satisfied with the results of the administrative determination may submit a written appeal to the District's Board of Trustees within 30 days.

The Board shall review the original Complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within 45 days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded

to the complainant and respondent. The complainant shall also be notified of their right to appeal this decision.

If the Board does not act within 45 days, the administrative determination shall be deemed approved on the forty-sixth day and shall become the final decision of the District in the matter. The District shall promptly notify the complainant and the respondent of the Board's action, or if the Board took no action, that the administrative determination is deemed approved.

In any case not involving workplace discrimination, harassment, or retaliation, the complainant shall have to right to file a written appeal with the California Community Colleges Chancellor's Office within 30 days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Section 59350 of Title 5 of the California Code of Regulations.

In any case involving employment discrimination, including workplace harassment, the complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the Civil Rights Department (formerly Department of Fair Employment and Housing).

X. REMAND

The California Community Colleges Chancellor's Office may remand any matter to the District for any of the following reasons: to cure defects in the investigation or in procedural compliance; to consider new evidence not available during the investigation despite the complainant's due diligence that would substantially impact the outcome of the investigation; or to modify or reverse a decision of the District's Board of Trustees based upon misapplication of an applicable legal standard or an abuse of discretion.

If the California Community Colleges Chancellor's Office remands a matter to the District, the District shall take necessary action and issue a decision after remand within 60 days. In any case not involving employment discrimination, the complainant may appeal the District's amended determination to the California Community Colleges Chancellor's Office within 30 days by following the appeal procedures above.

XI. EXTENSIONS OF TIME

A student complainant or respondent may request, in writing, an extension of a deadline related to a Complaint during periods of examinations or school closures. The District shall grant a student party's reasonable request for an extension of a deadline related to a Complaint during periods of examinations or school closures.

If the District is unable to comply with the 90-day deadline, the District may extend the time to respond by up to 45 additional days. An extension may be taken by the District only once without permission from the California Community Colleges Chancellor's Office, and must be necessary for one of the following reasons:

- A. A need to interview a party or witness who has been unavailable;

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- B. A need to review or analyze additional evidence, new allegations, or new complaints related to the matter; or
- C. To prepare and finalize an administrative determination.

The District shall send a written notice of the extension of time to the complainant and to a respondent who is aware of an investigation indicating the necessity of an extension, the justification for the extension, and the number of days the deadline will be extended. The District shall send this notice no later than 10 days prior to the initial time to respond.

The District may request additional extensions from the California Community Colleges Chancellor's Office after the initial 45-day extension. The District shall send a copy of the extension request to the complainant and to the respondent who is aware of an investigation. The complainant and respondent may each file a written objection with the California Community Colleges Chancellor's Office within five days of receipt.

XII. DISCLOSURES TO THE CALIFORNIA COMMUNITY COLLEGES CHANCELLOR'S OFFICE

Upon request of the California Community Colleges Chancellor's Office, the District shall provide copies of all documents related to a discrimination Complaint, including the following: the original Complaint, any investigative report unless subject to the attorney-client privilege, the written notice to the complainant setting forth the results of the investigation, the final administrative decision rendered by the Board or a statement indicating the date upon which the decision became final, and a copy of the notification to the complainant of their appeal rights, the complainant's appeal of the District's administrative determination, and any other non-privileged documents or information the Chancellor requests.

The District shall provide to the California Community Colleges Chancellor's Office an annual report with the following information: the number of employment and non-employment discrimination complaints and informal charges received in the previous academic year; the number of complaints and informal charges resolved in the previous academic year; the number of complaints of unlawful discrimination received in the previous academic year, and the number of those complaints that were sustained in whole or in part; and any other information requested by the Chancellor.

XIII. FILE RETENTION

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

- A. the original complaint;
- B. the investigatory report;
- C. the summary of the report if one is prepared;
- D. the notice provided to the complainant, of the District's administrative determination and their right to appeal;

- E. any appeal; and
- F. the District’s final decision.

For any appeal to the California Community Colleges Chancellor’s Office, the District shall provide all relevant, non-privileged documents upon request to the Chancellor of the California Community Colleges.

XIV. DISSEMINATION OF POLICY AND REGULATIONS

District policy and regulations related to harassment will include information that specifically addresses sexual violence. District policy and regulations will be provided to all students, all employees, all volunteers who regularly interact with students, and each individual or entity under contract with the District to perform any service involving regular interaction with students at the District, and will be posted on campus and on the District website.

When hired, employees are required to sign that they have received the policy and regulations, and the signed acknowledgment of receipt is placed in each employee’s personnel file. In addition, these policies and regulations are incorporated into the District’s course catalogs and orientation materials for new students.

XV. TRAINING

A. For Employees

The District shall provide sexual harassment training and education to each employee once every two years.

The training and education required by this regulation shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to complainants of sexual harassment in employment, a review of “abusive conduct,” and harassment based on gender identity, gender expression, and sexual orientation. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. Supervisor’s harassment training must also address potential exposure and liability for employers and individuals, supervisor’s obligation to report sexual harassment, discrimination, and retaliation when they become aware of it, and appropriate remedial measures to correct harassing behavior.

Training for responsible employees must also address the responsible employee’s obligation to report sexual harassment and instruction on how to report sexual harassment to the responsible District officer.

The District will also provide comprehensive, trauma-informed training to each employee involved in the District’s sexual harassment or discrimination grievance procedure including investigating and adjudicating Complaints involving sexual violence, sexual assault, domestic violence, dating violence, and stalking. This training shall include

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information on trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process, best practices for assessment of a sexual harassment or sexual violence complaint, best practices for questioning of the complainant, respondent, and witnesses, and implicit bias and racial inequities, both broadly and in school disciplinary processes. Materials for this training shall include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity.

The District will maintain appropriate records of the training provided, including the names of the supervisory employees trained, the date of training, sign in sheets, copies of all certificates of attendance or completion issued, the type of training provided, a copy of all written or recorded training materials, and the name of the training provider. If the training is provided by webinar, the District will maintain a copy of the webinar, all written materials used by the training and all written questions submitted during the webinar, and document all written response or guidance the trainer provided during the webinar. The District will retain these records for at least two years.

The District will also provide training to students who lead student organizations. The District should provide copies of the sexual harassment policies and training to all District law enforcement unit employees regarding the grievance processes and any other processes used for investigating reports of sexual violence.

In years in which a substantive policy or regulatory change has occurred, all District employees will attend a training update or receive a copy of the revised policies and regulations.

Participants in training programs will be required to sign a statement that they have either understood the policies and regulations, their responsibilities, and their own and the District's potential liability, or that they did not understand the policy and desire further training.

B. Education and Prevention for Students

In order to take proactive measures to prevent sexual harassment and violence toward students, the District will provide preventive education programs and make victim resources, including comprehensive victim services, available. The District will include such programs in their orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, the District's policies and disciplinary procedures, and the consequences of violating these policies. A training program or informational services will be made available to all students at least once annually.

The education programs will also include information aimed at encouraging students to report incidents of sexual violence to the appropriate District and law enforcement authorities. Since complainants or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of District or college rules were involved, the District will inform students that the primary concern is for student safety and that use of alcohol or drugs never makes the complainant at fault for sexual violence.

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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.

References:

Education Code Sections 200 et seq., 212.5, 231.5, 44100, 66250 et seq., 66281.5, 66281.8, 67386, and 72010 et seq.

Penal Code Sections 422.5 et seq.

Government Code Sections 12940, 12950.1, and 12923

Title 5 Sections 59300 et seq., 59320, 59324, 59326, and 59328

Title 2 Sections 10500 et seq., 11023, and 11024

ACCJC Accreditation Eligibility Requirement 20 and ACCJC Accreditation Standard Catalog Requirements

The Americans with Disabilities Act of 1990 – 42 United States Code Sections 12101 et seq.