

## SEXUAL HARASSMENT PREVENTION AND COMPLAINTS UNDER TITLE IX

### I. GENERAL

The District is committed to providing an academic and work environment free of unlawful sexual harassment under Title IX as defined in this regulation. This regulation and the related policy protect students, employees, volunteers, applicants for admission, and applicants for employment, 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 chartered vehicle, or at a class or training program sponsored by the District at another location.

The District encourages members of the District community to report sexual harassment. This regulation only applies to conduct defined as Sexual Harassment under Title IX (as more fully described below) 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 regulations. In implementing this regulation discussed below, the District will also provide supportive measures, training, and resources in compliance with California law, unless they are preempted by the Title IX regulations.

### II. TITLE IX COORDINATOR AND OFFICERS

- A. Questions concerning Title IX may be referred to the District Title IX Coordinator whose contact information is below.
  - 1. The District's Title IX Coordinator is Karen Dubert, District Director of Employee Relations and Title IX Coordinator, Human Resources, (949) 582-4395, [kdubert@socccd.edu](mailto:kdubert@socccd.edu), located in District Human Resources (third floor of Saddleback College Health Sciences Building).
- B. The District has also authorized Title IX Officers of each college with coordinating the District's responsibilities under Title IX and this regulation as shown below.
  - 1. The Irvine Valley College Title IX Officer is Dr. Martha McDonald, Vice President for Student Services, (949) 451-5624, [mmcdonald@ivc.edu](mailto:mmcdonald@ivc.edu), located in the Administration Building (A 100).
  - 2. The Saddleback College Title IX Officer is Dr. Juan Avalos, Vice President for Student Services, (949) 582-4566, [javalos@saddleback.edu](mailto:javalos@saddleback.edu), located in the Administration Building (Room 126).

- C. The Title IX Coordinator or Title IX Officer is required to respond to reports of sexual harassment or misconduct. The Title IX Coordinator or Title IX Officer 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.
- D. A report of sexual harassment to the Title IX Coordinator or Title IX Officer does not necessarily lead to a full investigation, as discussed more fully below. However, the Title IX Coordinator or Title IX Officer will make an assessment to determine if there is a safety risk to the campus. If the Title IX Coordinator finds there is a continued risk, the Title IX Coordinator or Title IX Officer will file the formal complaint without the Complainant's consent or cooperation.
- E. The investigation and adjudication of alleged sexual harassment 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.

### III. JURISDICTIONAL REQUIREMENTS – APPLICATION OF REGULATION

This regulation applies if the conduct meets the following three jurisdictional requirements:

- A. The conduct took place in the United States;
- B. 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 as District owned or controlled.
- C. The conduct meets the definition of Title IX “sexual harassment.”

### IV. DEFINITIONS

- A. **Advisor:** Throughout the Title IX process, both the Complainant and Respondent have a right to an Advisor of their choice. If a Party does not have an Advisor at the time of the hearing, the District must provide the Party an Advisor of the District’s choice, free of charge. The District may establish restrictions regarding the extent to which the Advisor may participate in the proceedings as long as the restrictions apply equally to both Parties.  
  
Parties 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 an advisor.
- B. **Complainant:** A Complainant is an individual who alleges they have been the victim of conduct that could constitute sexual harassment.
- C. **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 they have 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 their consent at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, is not an indicator of consent. In California, a minor (meaning a person under the age of 18) cannot consent to sexual activity.

1. 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:
  - a. The Respondent's belief arose from the Respondent's own intoxication or recklessness;
  - b. The Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented; or
  - c. 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:
    - i. Asleep or unconscious;
    - ii. Unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
    - iii. Unable to communicate due to a mental or physical condition.

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

E. **Hearing Officer:** The person who will conduct the live hearing and make a determination of responsibility. The District may have one Hearing Officer determine whether the Respondent is responsible, and another Hearing Officer determine the appropriate level of penalty for the conduct. The Hearing Officer, as the decision-maker, cannot be the Title IX Coordinator, Title IX Officer, or the investigator.

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

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

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

1. A District employee conditions the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (*quid pro quo* harassment);
2. 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;
3. Sexual assault, including the following:
  - a. **Sex Offenses.** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
  - b. **Rape** (except Statutory Rape). The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the genital or anal opening of the body of another person.
  - c. **Sexual Assault with an Object.** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything the offender uses other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.
  - d. **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - e. **Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse.**
    - i. **Incest.** Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
    - ii. **Statutory Rape – Non-Forcible.** Sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
- I. **Dating violence:** Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the victim. 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.
- J. **Domestic Violence** is violence committed:
  1. By a current or former spouse or intimate partner of the victim;
  2. By a person with whom the victim shares a child in common;

3. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
4. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; or
5. By any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws of California.

K. **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.

## V. REPORTING OPTIONS

Reports of sexual harassment may be made to either the District's Title IX Coordinator or Title IX Officer.

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. If other rules are violated, the District will address such violations separately from an allegation of sexual violence. 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 or Title IX Officer does not automatically initiate an investigation under this regulation. 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/AR 3540 *Sexual and Other Assaults on Campus*).

VI. DISTRICT EMPLOYEES AND OFFICIALS WITH AUTHORITY

- A. District Officials with Authority are not confidential resources and are required to report allegations of sexual harassment to the Title IX Coordinator or Title IX Officer promptly. All other employees are encouraged to report allegations to the Title IX Coordinator or Title IX Officer but are not required to do so.
- B. The District has designated the following employees as Officials with Authority:
  - 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. Officials with Authority are required to report all relevant information they know about sexual harassment, including the name of the Respondent, the Complainant, any other witnesses, and the date, time, and location of the alleged incident. All other employees are encouraged to report allegations of sexual harassment to the Title IX Coordinator or Title IX Officer but are not required to do so.
- D. Professional, licensed, mental health counselors who provide mental health counseling to members of the District community, or interns, graduate students, and others supervised by professional licensed counselors, are not required to report any information to the Title IX Coordinator. The District is prohibited from accessing or using privileged information held by a professional or paraprofessional as a result of treatment of an individual without the individual's voluntary written consent. Non-professional counselors who work or volunteer in a student health or wellness center, including front desk personnel and student employees in the course of their duties, must maintain confidentiality. They are not required to report actual or suspected sexual harassment or sexual assault to the Title IX Coordinator or Title IX Officer in a way that identifies the student without the Complainant's consent. These individuals are limited to senior health office assistants, health office assistants, and student help/college work study employees.

## VII. INTAKE AND PROCESSING OF REPORT

### A. Receipt of Report

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

### B. Timeframe for Reporting

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

### C. Supportive Measures

1. Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a formal complaint has been filed.
2. The District will provide the Complainant and Respondent with written notice of options for, available assistance in, and how to request available supportive measures.
3. The District will provide the Complainant and Respondent with supportive measures as appropriate and as reasonably available to restore or preserve equal access to the District's education program or activities. These measures are designed to protect the safety of all Parties, protect the District's educational environment, or deter sexual harassment. The District will provide supportive measures on a confidential basis and will only make disclosures to those with a need to know to enable the District to provide the service.
4. Supportive measures may include counseling, extensions of deadlines, other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Parties, changes in work location, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
5. When requested by a Complainant or otherwise determined to be appropriate, the District shall issue a no-contact directive prohibiting the Respondent from contacting the Complainant during the pendency of the investigation. The District shall not issue a mutual no-contact directive automatically, but instead shall consider the specific circumstances of each report of sexual harassment to determine whether a mutual no-contact directive is necessary or justifiable to protect a Party's safety or well-being, or to respond to interference with an investigation. If the District issues any no-contact directive, the District shall provide the Parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action. If the District issues a mutual no-contact directive, the District shall also provide the Parties with a written justification for the directive.

D. Emergency Removal of Respondent Pending Final Determination

Upon receiving a report regarding sexual harassment, the Title IX Coordinator or Title IX Officer will make an immediate assessment concerning the health and safety of the Complainant and campus community as a whole. The District has the right to order emergency removal of a Respondent, or if the Respondent is an employee, place the employee on administrative leave.

1. Students and Non-Employee Respondents

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, Title IX Officer, college threat assessment team, or designee will conduct the individualized safety and risk analysis.

If the Title IX Coordinator or Title IX Officer determines emergency removal is appropriate, they or their 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, Title IX Officer, or designee will determine whether the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal.

2. Employees - Administrative Leave

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

VIII. FORMAL COMPLAINT PROCESS

A. Notice to Parties

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

1. Notice of the District’s Title IX complaint process;
2. 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;

3. 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 complaint process;
4. Notice that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney;
5. 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;
6. 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 complaint investigation and hearing process; and
7. For student Parties, notice regarding appropriate counseling resources.

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 or Title IX Officer will provide notice in writing of the additional allegations to the Parties.

**B. Dismissal of Formal Complaint**

1. 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 this regulation if any of the following three circumstances exist:
  - a. If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment;
  - b. If the conduct alleged did not occur in the District’s education program or activity; or
  - c. If the conduct alleged did not occur against a person in the United States.
2. The District has discretion to dismiss a formal complaint or any allegation under the following circumstances:
  - a. 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;
  - b. If the Respondent is no longer enrolled or employed by the District; or
  - c. 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.
3. If the District dismissed the formal complaint or any allegations, the Title IX Coordinator or Title IX Officer 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.

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

C. Consolidation of Formal Complaints

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

D. Equitable Treatment of the Parties

The District’s determination of responsibility is a neutral, fact-finding process. The District will treat Complainants and Respondents equitably. This regulation 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 Title IX complaint process.

E. Presumption of Non-Responsibility

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

F. Bias or Conflict of Interest

The District’s Title IX Coordinator, investigator, Hearing Officer, 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 Hearing Officer in the process. The District will ensure that the Title IX Coordinator, Title IX Officer, investigator, Hearing Officer, and facilitator receive training on:

1. The definition of sexual harassment in this regulation;
2. The scope of the District’s education program or activity;
3. How to conduct an investigation;
4. The Title IX process including conducting hearings, appeals, and informal resolution processes; and
5. How to serve impartially, including avoiding: prejudgment of the facts at issue; conflicts of interest; and bias.

G. Timeline for Completion

The District will undertake its Title IX complaint 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 or Title IX Officer 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 or Title IX Officer in writing by explaining the reason for the delay and the length of the continuance requested. The Title IX Coordinator or Title IX Officer will notify the Parties and document the grant or denial of a request for extension or delay as part of the case recordkeeping.

H. Role of Advisor

The role of the Advisor is to provide support and assistance in understanding and navigating the investigation 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 regulation.

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

I. Confidentiality Notice

To protect the privacy of those involved, the Parties and Advisors will receive a notice prior to attending an interview or otherwise participating in the District's Title IX process indicating that the District's investigation, disclosure of relevant evidence, and the Title IX complaint hearing process will include private and confidential information regarding the parties. The confidentiality notice will indicate that the evidence subject to inspection and review is provided for the purpose of gathering evidence and participating in the Title IX complaint investigation and hearing process. The notice will state that dissemination or use of this evidence for any purpose unrelated to the Title IX process may subject the party to liability for additional Title IX claims or other liability under criminal or tort law. The confidentiality notices will not restrict the ability of either Party to discuss the allegations under investigation.

#### J. Use of Privileged Information

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

#### K. Student Complainant Requests for Confidentiality or No Investigation

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

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.

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

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

IX. INVESTIGATIONS

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

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

A. Trained Investigators

The District will investigate Title IX formal complaints fairly and objectively. Individuals serving as investigators under this regulation will have adequate training on what constitutes sexual harassment, how the District's Title IX complaint procedures operate, and trauma-informed investigation 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 regulation.

B. Burden of Gathering Evidence

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

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 procedure.

C. 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.

D. Evidence of Past Sexual History

An investigator or Hearing Officer shall not consider the prior sexual history of the Complainant except in the limited circumstances described below:

1. Unless such questions or evidence is offered to prove that someone other than the Respondent committed the alleged conduct; or
2. Unless the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Where the investigator or Hearing Officer allows consideration of questions or 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 procedure.

E. Evidence Review

Both Parties have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including inculpatory or exculpatory evidence whether obtained from a Party or other source. Any evidence the District does not intend to rely on in reaching a determination regarding responsibility must also be provided to each Party, so that each Party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to the investigator preparing an investigative report, 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 Parties will have at least ten days to submit a written response. The investigator must consider this written response prior to completing the investigative report.

F. Investigative Report

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

1. A description of the circumstances giving rise to the formal complaint;
2. A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
3. A summary of the testimony of each witness the investigator interviewed;
4. An analysis of relevant evidence collected during the investigation, including a list of relevant documents;
5. A table of contents if the report exceeds ten pages; and
6. 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.

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

X. HEARING

After completing an investigation and prior to completing a determination regarding responsibility, the District will hold a live hearing to provide the Complainant and Respondent an opportunity to

respond to the evidence gathered before a Hearing Officer. Neither Party may choose to waive the right to a live hearing, but the Parties can choose whether to participate in the hearing or answer some or all cross-examination questions.

A. Notice

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

B. Hearing Format

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

The 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 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.

C. Hearing Officer

The Hearing Officer will be free from conflict of interest or bias, including bias for or against Complainants or Respondents.

The Hearing Officer may ask the Parties and the witnesses questions during the hearing.

The Hearing Officer must objectively evaluate all relevant evidence both inculpatory and exculpatory and must independently reach a determination regarding responsibility without giving deference to any preliminary findings or recommendations included in the investigative report. The Hearing Officer must receive training on issues of relevance, how to apply the rape-shield protections for Complainants, and any technology to be used at the hearing.

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

E. Cross-Examination

The District shall permit each Party's Advisor to ask the other Party and any witness relevant questions, including questions challenging credibility. The Party's Advisor must conduct cross-examination directly, orally, and in real time. A Party may never personally conduct cross-examination. 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 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 irrelevant. In making these determinations, the Hearing Officer is not bound by, but may take guidance from, the formal rules of evidence.

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

Before a Complainant, Respondent, or witness answers a question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Hearing Officer 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 Hearing Officer's determination and answering the question or (2) refusing to answer the question.

The Hearing Officer cannot draw an inference about the determination of responsibility based solely on a Party's or witness's absence from the live hearing or refusal to submit to cross-examination or to answer any question.

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

F. Determinations of Responsibility

When the Hearing Officer makes a determination of responsibility or non-responsibility, the Hearing Officer will issue a written determination regarding responsibility, no later than 20 business days after the date that the hearing ends.

When making a determination regarding responsibility, a Hearing Officer will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. A Hearing Officer may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness. In evaluating the evidence, the Hearing Officer 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:

1. Identification of the allegations potentially constituting Title IX sexual harassment as defined in this regulation;
2. 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, and 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;
3. Findings of fact supporting the determination. In making these findings, the Hearing Officer will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility;
4. Conclusions regarding the application of the District's code of conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
6. A statement of, and rationale for, any disciplinary sanctions the District imposes on the Respondent;
7. 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;
8. The District need not disclose to the Respondent remedies that do not affect them as part of the written determination. The District can inform the Respondent that it will provide remedies to the Complainant. However, the District will inform the Complainant of the sanctions against the Respondent; and
9. 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.

## XI. DISCIPLINARY SANCTIONS AND REMEDIES

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

Remedies for the Complainant 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. Providing counseling services or a referral to counseling services;
- D. Providing medical services or a referral to medical services;
- E. Providing academic support services, such as tutoring;
- F. 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
- G. 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.

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, demotion, suspension, or dismissal.

## XII. APPEAL OF DISMISSAL OF A FORMAL COMPLAINT OR OF THE DETERMINATION OF RESPONSIBILITY

A Complainant or Respondent may appeal the District's determination regarding responsibility or the dismissal of a formal complaint or any allegations. A Complainant or Respondent must submit a written appeal within five (5) business days from the date of the notice of determination regarding responsibility or from the date of the District's notice of dismissal of a formal complaint or any allegations.

The Title IX Coordinator or Title IX Officer will notify the Party that an appeal was filed and forwarded to an assigned Appeal Officer to consider the appeal. The Appeal Officer may not be the same individual who made the decision the appellant is challenging – whether that is the determination regarding responsibility or the decision to dismiss a formal complaint or any allegations, and may not be the Title IX Coordinator or the investigator.

### A. Grounds for Appeal

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Revised: 02-15-23

In filing an appeal of the District’s determination regarding responsibility or the District’s dismissal of a formal complaint, the Party must state the grounds for appeal and a statement of facts supporting those grounds. The grounds for appeal are as follows:

1. A procedural irregularity affected the outcome;
2. 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
3. The District’s Title IX Coordinator, investigator, or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

**B. Appeal Procedure**

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

1. Notify the other Party in writing within five (5) business days of receiving a Party’s appeal; and
2. Allow the non-appealing Parties at least 10 business days from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome.

The Appeal Officer will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 45 business days after the Appeal Officer 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 Appeal Officer may extend or otherwise modify the deadlines provided above. Either Party may seek an extension by submitting a written request to the Appeal Officer explaining the need for the extension and the proposed length of the extension. The Appeal Officer will respond to the request within 48 hours in writing and will inform the Parties simultaneously whether the extension is granted.

**XIII. INFORMAL RESOLUTION**

If the District determines that a formal complaint is appropriate for informal resolution, it may provide the Parties with the opportunity to participate in an informal resolution process, including mediation, at any time prior to reaching a determination regarding responsibility.

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

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

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

**XIV. 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, 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.

**XV. DISSEMINATION OF POLICY AND REGULATIONS**

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

When hired, employees are required to sign an acknowledgement that they have received the policy and this regulation. The District will place the signed acknowledgment of receipt in each employee’s personnel file.

**XVI. TRAINING**

The District will provide a comprehensive trauma-informed training program to Title IX Coordinators, Title IX Officers, investigators, Hearing Officers, Appeal Officers, and any individual who facilitates an informal resolution process, on the definition of sexual harassment, the scope of the District’s education program or activities, best practices for assessment of a sexual harassment complaint, how to conduct an investigation and complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, bias, and implicit bias and racial inequities, both broadly and in school disciplinary processes. Any materials used to train the District’s Title IX Coordinator, investigators, Hearing Officers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

Materials for this training must include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity.

**XVII. FILE RETENTION**

A. The District will retain on file for a period of at least seven (7) years after closing the case copies of:

1. The original report or complaint;

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2. Any actions taken in response to the report or complaint, including supportive measures;
  3. The investigative report including all evidence gathered and any responses from the Parties;
  4. The District's determination regarding responsibility;
  5. Audio or audiovisual recording or transcript from a hearing;
  6. Records of any disciplinary sanctions imposed on the Respondent;
  7. Records of any remedies provided to the Complainant;
  8. Any appeal and the result;
  9. Any informal resolution and the result; and
  10. All materials used to train Title IX Coordinators, Title IX Officers, investigators, Hearing Officers, and any person who facilitates an informal resolution process. The District will make these training materials publicly available on its website.
- B. The District will make these documents available to the U.S. Department of Education Office for Civil Rights upon request.

*References:*

*Title IX, Education Amendments of 1972; Title 5 Sections 59320 et seq.*  
*Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e*  
*20 U.S. Code Sections 1681 et seq.*  
*34 Code of Federal Regulations Parts 106.1 et seq.*  
*Education Code Section 67380 et seq.*