
Human Resources

INTERIM AP 6434 Responding to Harassment Based on Sex under Title IX

References:

- 20 U.S. Code Sections 1681, et seq.;
- 34 Code of Federal Regulations Parts 106.1 et seq

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Rationale

Riverside Community College District (“the District”) is dedicated to creating and fostering a work and learning environment free of discrimination based on sex, including Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking (“Prohibited Conduct”). The District has developed internal policies and procedures that provide a prompt, fair and impartial process for those involved in an allegation of sexual harassment or retaliation. The District values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the Formal Grievance Process during what is often a difficult time for all those involved.

The District hereby implements this administrative procedure in response to the Department of Education’s final Title IX regulations published in the Federal Register on May 19, 2020. This administrative procedure supersedes all board policies and administrative procedures with respect to cases that fall under the jurisdiction of Title IX.

The District will respond to sexual harassment and sexual misconduct which falls outside the Title IX definition and outside the jurisdiction of the Title IX federal regulations using California law and applicable District policies and procedures. In implementing these procedures discussed below, the District will also provide supportive measures, training, and resources in compliance with California law, unless they are preempted by the Title IX regulations.

When the Respondent is a member of the District's community, a Formal Grievance Process may be available regardless of the status of the Complainant, who may or may not be a member of the District's community. This community includes but is not limited to students, student organizations, faculty members, administrators, staff and third parties such as guests, visitors, volunteers, contractors, invitees, and program participants. The procedures below may be applied to incidents, to patterns, and/or to the climate in any of the District's programs and activities, all of which may be addressed and investigated in accordance with this administrative procedure.

Jurisdiction

These Title IX sexual harassment procedures protect students, employees, applicants for employment, and applicants for admission. This administrative procedure applies if the conduct meets the following jurisdictional requirements:

- The conduct took place in the United States;
- The conduct took place in a District "education program or activity." This includes locations, events, or circumstances over which the District exercised substantial control over both the Respondent and the context in which the harassment occurred, including on-campus and off-campus property and buildings the District owns or controls or student organizations officially recognized by and owned or controlled by the District.
- The conduct meets the definition of Title IX "sexual harassment."
- The Respondent is a member of the District's community.

This administrative procedure can also be applicable to address the effects of misconduct that occurred outside of District property that effectively deprives someone of access to District's educational program, activity, or service.

The District may extend jurisdiction to off-site and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial District interest. A substantial District interest includes:

- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;

- Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- Any situation that is detrimental to the educational interests or mission of the District.

Regardless of where the conduct occurred, the District will address complaints or notice to determine whether the conduct occurred in the context of employment or educational program or activity and/or has continuing effects on the work and/or learning environment.

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

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

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

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

All vendors serving the District through third-party contracts are subject to the policies and procedures of their employers or to these policies and procedures to which their employer has agreed to be bound by their contracts.

Title IX Coordinator

The Title IX Coordinator is charged with primary oversight of the District's compliance with Title IX including education, monitoring, addressing reports of sexual harassment or misconduct and file retention. The Title IX Coordinator will handle information received with the utmost discretion and will share information with others on a need-

to-know basis. For example, 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. The District reserves the right to determine which District officials have a legitimate educational interest in being informed about incidents that fall within this procedure, pursuant to the Family Educational Rights and Privacy Act (FERPA).

A report of sexual harassment to the Title IX Coordinator will not necessarily lead to a formal investigation, however, the Title IX Coordinator will make an assessment to determine if there is a safety risk to the campus and proceed as appropriate to address the risk. If the Title IX Coordinator finds there is a continued risk, the Title IX Coordinator may file a formal complaint without the Complainant's consent or cooperation.

The District's Title IX Coordinator is:

Lorraine Y. Jones, M.S.W.
District Compliance Officer and Title IX Coordinator
3801 Market Street, Suite 200, Riverside, CA 92501
Phone number: 951-328-3874 or 951-222-8595
TTY: 951-776-2037
Video Phone: 951-801-5712
Email: lorraine.jones@rccd.edu
Website: <https://www.rccd.edu/Pages/IX.aspx>

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator may designate a Deputy Title IX Coordinator to assist with coordinating the District's responsibilities under Title IX and this administrative procedure. All Deputy Title IX Coordinators report to the Title IX Coordinator in their capacity as a Deputy Title IX Coordinators. The designated Deputy Title IX Coordinators are:

District Office:

Georgina Villaseñor-Lee, M.P.A.
Human Resources Analyst and Deputy Title IX Coordinator
3801 Market Street, Suite 200, Riverside, CA 92501
Phone: 951-328-3725 or 951-222-8595
TTY: 951-776-2037
Video Phone: 951-801-5712
Email: georgina.villasenor-lee@rccd.edu

Moreno Valley College:

Silvester Julienne
Senior Human Resources Liaison and Deputy Title IX Coordinator
MVC Office: 16130 Lasselle Street, Moreno Valley, CA 92551
(Across from Student Academic Services 101)
MVC Phone: 951-571-6279
District Office: 3801 Market Street, Suite 200, Riverside, CA 92501
District Office Phone: 951-222-8593

TTY: 951-776-2037
Video Phone: 951-801-5712
Email: silvester.julienne@rccd.edu
Norco College:
Shannon Minter, M.S., SHRM-CP
Senior Human Resources Liaison and Deputy Title IX Coordinator
NC Office: 2001 Third Street, Norco, CA 92860
(Operations Center, Room 107)
NC Phone: 951-739-7801
District Office: 3801 Market Street, Suite 200, Riverside, CA 92501
District Office Phone: 951-222-8356
TTY: 951-776-2037
Video Phone: 951-801-5712
Email: shannon.minter@rccd.edu

Riverside City College:
Danielle Sanders, PHR
Senior Human Resources Liaison and Deputy Title IX Coordinator
RCC Office: 4800 Magnolia Avenue, Riverside, CA 92506
(Charles A. Kane Building, Room 230F)
RCC Phone: 951-328-3703
District Office: 3801 Market Street, Suite 200, Riverside, CA 92501
District Office Phone: 951-222-8591
TTY: 951-776-2037
Video Phone: 951-801-5712
Email: danielle.sanders@rccd.edu

Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Vice Chancellor of Human Resources and Employee Relations:

Trinda Best, M.P.A.
Interim Vice Chancellor, Human Resources and Employee Relations
3801 Market Street, Suite 200, Riverside, CA 92501
Phone number: 951-222-8797 or 951-222-8595
TTY: 951-776-2037
Video Phone: 951-801-5712
Email: trinda.best@rccd.edu
Website: <https://www.rccd.edu/Pages/IX.aspx>

Definitions

The District has adopted the following definitions to address the unique environment of an academic community.

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

Affirmative Consent: An affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent. In California, a minor (meaning a person under the age of 18) cannot consent to sexual activity.

It shall not be a valid response to alleged lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:

- The Respondent's belief in affirmative consent arose from the intoxication or recklessness of the Complainant. Any allegation that alcohol or other drugs were involved in an incident will be reviewed.
- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the complainant affirmatively consented.

It shall not be a valid response that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

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

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

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

Decision-Maker on Appeal: The person with authority to render a decision on an appeal. The Decision-Maker on Appeal cannot be the same Decision-Maker who decides whether the Respondent is responsible, or the Decision-Maker who decides the appropriate level of penalty for the conduct.

District: The Riverside Community College District and other properties that it owns or otherwise controls.

Education program, activity, or service: Locations, events, or circumstances where the District exercises substantial control over both the Respondent and the context in which the Prohibited Conduct occurs and also includes any building owned or controlled by a student organization that is officially recognized by the District.

Evidence: Testimony, writings, material objects, or other things offered to prove the existence or nonexistence of a fact.

- Exculpatory: Any evidence that is favorable to the Respondent that shows or tends to show the Respondent is not responsible for the allegation of sexual harassment.
- Inculpatory: Any evidence that shows or tends to show that the Respondent engaged in the allegation of sexual harassment.

Final Determination: A conclusion by a preponderance of the evidence that the alleged conduct did or did not violate District policy.

Finding: A conclusion by a preponderance of the evidence that the alleged conduct did or did not occur as alleged (as in a “finding of fact”).

Formal Complaint: A document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the District investigate the allegation(s). If the Title IX Coordinator signs the formal complaint, they will not become a Party to the complaint. A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section labeled “Reporting Options” below, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the District) that contains the Complainant’s physical

or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the District investigate the allegations.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

Formal Grievance Process: The process for adjudicating Formal Complaints of Prohibited Conduct through investigation, live hearing, determination of responsibility, and appeals.

Hearing Officer: The person with decision-making and sanctioning authority within the District's Formal Grievance process.

Investigator: The person tasked by the District with investigating a Complaint. All Investigators shall receive annual training regarding such issues as the laws governing Title IX and VAWA/Campus SaVE Act; as well as other related state and federal laws prohibiting discrimination, harassment and retaliation based on gender or sex, including sex discrimination, sexual harassment, sexual misconduct, dating and domestic violence, and stalking; complainant, respondent, employee, and witness privacy rights; and the Family Educational Rights and Privacy Act of 1974 (FERPA).

Notice: An employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

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

Official with Authority (OWA): An employee of the District explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the District. District Officials with Authority are not confidential resources and are required to promptly report to the Title IX Coordinator any allegations of sexual harassment and all relevant information they know concerning sexual harassment (including the name of the Respondent, the Complainant, any other witnesses, and the date, time, and location of the alleged incident). The District has designated the employees holding the following positions as Officials with Authority:

- Member of the District's Board of Trustees,
- Chancellor,
- President,
- Academic Manager (all positions),
- Classified Manager (all positions),
- Human resources Analyst and Deputy Title IX Coordinator,

- Senior Human Resources Liaison and Deputy Title IX Coordinator
- Officer, Safety and Police
- Senior Officer, Safety and Police
- Community Service Aide

All other employees are encouraged to report allegations to the Title IX Coordinator but are not required to do so.

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

Prohibited Conduct: Any sexual misconduct, gender or sex-based discrimination or harassment, dating violence, domestic violence, stalking, and retaliation.

Remedies: Actions taken to address safety, prevent recurrence of Prohibited Conduct, and restore equal access to the District's educational program, activities, services or employment.

Resolution Process: Refers broadly to the process for addressing Formal Complaints either by informal resolution or through a Formal Grievance Process that includes investigation, live hearing, and appeal.

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

Retaliation: Intimidation, harassment, or reprisal against a person who has reported a problem, filed a complaint, or participated in any manner in an investigation, hearing or other District resolution process.

Sanction means a consequence or other corrective action imposed by the District on a Respondent who is found to have engaged in Prohibited Conduct under this interim administrative regulation.

Sexual Harassment under Title IX: Conduct on the basis of sex that reflects one or more of the following:

- A. Quid Pro Quo Sexual Harassment: When an employee of the District conditions (implicitly or explicitly) the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct; or
- B. Hostile Environment Sexual Harassment: Unwelcome conduct determined by a reasonable person standing in the shoes of the Complainant to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or

C. Sexual assault, dating violence, domestic violence, or stalking, as defined herein.

1. **Sexual assault.** Any sexual act (forcible or non-forcible), directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual acts include the following:

(a) Rape, which is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

(b) Sodomy, which is defined as oral or anal sexual intercourse with another person, forcibly committed and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(c) Sexual Assault with an Object, which is defined as the use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(d) Fondling, which is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse

(e) Incest – non-forceable sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(f) Statutory Rape – non-forceable sexual intercourse with a person who is under the statutory age of consent.

2. **Dating violence.** Violence committed, on the basis of sex, by a

person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall 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. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

3. **Domestic violence.** Conduct, on the basis of sex, that includes the requisite components of felony or misdemeanor crimes of violence committed by:

- (a) a current or former spouse or intimate partner of the victim;
- (b) a person with whom the victim shares a child in common;
- (c) a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner;
- (d) a person similarly situated to a spouse of the Complainant under California law; or
- (e) any other person against an adult or youth victim who is protected from that person's acts under California law.

4. **Stalking.** A course of conduct directed at a specific person on the basis of sex that would cause a reasonable person to fear for the person's safety or the safety of others, or to suffer substantial emotional distress. For the purposes of this definition:

- (a) *A course of conduct* is two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property;
- (b) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the Complainant; and
- (c) *Substantial emotional distress* means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Reporting

Any person may report sex discrimination, including sexual harassment and other Prohibited Conduct, as defined in this administrative procedure (regardless if the person reporting is the person alleged to be the target of conduct that could be prohibited), at any time, in person, by mail, by telephone, or by electronic mail, using the contact information listed above for the Title IX Coordinator, Deputy Title IX Coordinators, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. This Title IX administrative procedure also applies to allegations of sexual harassment that are made to any Official with Authority. The District encourages those impacted by Prohibited Conduct to speak with someone to obtain resources and support.

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

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate. When notice/complaint is affected by significant time delay, the District will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

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

The Title IX Coordinator has ultimate discretion over whether the District proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the District to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The District may be compelled to act on alleged employee misconduct

irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the District's ability to pursue a Formal Grievance Process fairly and effectively.

Students may make complaints or inquiries externally to:

Office for Civil Rights (OCR)
U.S. Department of
Education 400 Maryland
Avenue, SW
Washington, D.C. 20202-
1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov

Or

Office for Civil Rights,
San Francisco Office
U.S. Department of Education
50 United Nations Plaza
San Francisco, CA 94102
Telephone: (415) 486-5555
Facsimile: (415) 486-5570
Email: OCR.SanFrancisco@ed.gov

Web: <http://www.ed.gov/ocr>

Employment-related complaints or inquiries may be made externally to:

U.S. Equal Employment Opportunity
Commission (EEOC) Royal Federal Building,
255 East Temple Street, 4th Floor Los Angeles,
CA 90012
Facsimilie: 213-894-1118
TTY: (800)-669-6820
ASL Video Phone: (844)-234-5122

California Department of Fair Employment and
Housing (DFEH) 2218 Kausen Drive, Suite 100
Elk Grove, CA 95758

Or

California Department of Fair Employment and Housing (DFEH)
320 West 4th Street, 10th Floor
Los Angeles, CA 90013
Telephone: (213) 439-6799; (800)-884-1684
TTY: (800)-700-2320
Web: <https://www.dfeh.ca.gov>

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

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

The District will document reports of prohibited conduct 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 5840 Sexual and Other Assaults on Campus and 5840 Sexual and Other Assaults.)

Complainants and others reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the District must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. The District will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger. (Also see BP/AP 5815 Reporting of Crimes.)

Confidential Reporting Resources

State law requires confidential resources on campus not to disclose information they receive without the express written permission of the individual seeking their services or as provided by law (where there is a continuing threat of serious harm to the individual or others; where there is suspected abuse or neglect of a minor; or where disclosure to a third party is otherwise legally required).

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

Campus-based (non-employee) confidential District resources available to students include:

- Licensed Clinical Social Worker
- Counseling Intern

Off-Campus (non-employee) resources available to students include:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

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

Standard of Proof

The District will use the “preponderance of the evidence” standard of proof throughout the process of reaching factual findings, conclusions, and determinations of responsibility for policy violations pursuant to this Administrative Procedure. A preponderance of the evidence means that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side (e.g. more likely than not). This is a qualitative, not quantitative, standard.

Supportive Measures

The District will offer and implement appropriate and reasonable supportive measures to the Parties upon notice of alleged sexual harassment and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services, offered as appropriate, as reasonably available and without fee or charge to the Parties. Supportive measures are intended to restore or preserve equal access to the District’s education program, activity, or employment and are offered regardless of whether a formal complaint has been filed. These measures are intended to protect the safety of all Parties or the District’s educational environment, and/or deter sexual harassment and/or retaliation.

The Title IX Coordinator will promptly make supportive measures available to the Parties upon receiving notice or a complaint and will coordinate the effective implementation of such measures. At the time that supportive measures are offered, the District will inform the Complainant, in writing, that they may file a formal complaint with the District either

at that time or in the future, if they have not done so already.

The District will maintain the privacy of the supportive measures, provided that privacy does not impair the District's ability to provide the supportive measures. The District will act to ensure as minimal an academic/occupational impact on the Parties as possible. The District will implement measures in a way that does not unreasonably burden the other party. Supportive measures may include, but are not limited to:

- Referral to counseling, medical, and/or other health care services
- Referral to the District's Employee Assistance Program
- Referral to community-based service providers
- Student financial aid counseling
- Altering work arrangements for employees or student employees
- Safety planning
- Campus safety escorts
- Implementing mutual contact limitations (no contact directives) between the Parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass Notice
- Class or work schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas within under the District's jurisdiction
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to the appropriate student or employee conduct processes for enforcement.

Emergency Removal

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

Upon notification from the District's Title IX Coordinator, the District's Chief of Police will conduct the individualized safety and risk analysis.

If the Chief of Police determines emergency removal is appropriate, they or designee will provide the person the District is removing from campus on an emergency basis with a notice and opportunity to attend a meeting and challenge the basis of their removal. The Vice Chancellor, Educational Services and Strategic Planning for student Respondents, the Vice Chancellor, Human Resources and Employee Relations for employee and third party Respondents will determine whether the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal.

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

General Provisions

Making deliberately false and/or malicious accusations under this administrative procedure is a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination. Additionally, witnesses and parties knowingly providing false evidence, tampering with, or destroying evidence, or deliberately misleading an investigator, or Decision-Maker (hearing officer or appeal) can be subject to discipline under District policy.

The District community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to District officials or participate in Resolution Processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Accordingly, to foster participation in Resolution Processes, 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.

Resolution Process for Alleged Prohibited Conduct

Overview

The procedures outlined below apply **only** to qualifying allegations of Prohibited Conduct under this administrative procedure involving students, staff, administrators, or faculty members. The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g.,

vandalism, physical abuse of another).

Complaints or allegations that are dismissed or not within the jurisdiction of this administrative procedure may be referred for action under another provision of the District's board policy and administrative regulations, such as BP 3500 Standards of Student Conduct, AP 6435 Discrimination, Harassment and Retaliation Complaints and Investigations, or an applicable collective bargaining agreement, as determined by the Title IX Coordinator.

Equitable Treatment of the Parties

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

Statement of Presumption of Non-Responsibility

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

Bias or Conflict of Interest

The District's Title IX Coordinator, investigator(s), Decision-Maker(s), or any person designated by the District to facilitate an informal resolution process, will not have potential or 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 Title IX Coordinator, investigator(s), Decision-Maker(s) or individuals facilitating an informal resolution process. The District will ensure that the Title IX Coordinator, Deputy Title IX Coordinators, investigators, Decision-Makers, and facilitators receive training on:

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

Notice/Formal Complaint

Within five (5) business days of receipt of a Formal Complaint or notice to a Title IX Coordinator of alleged Prohibited Conduct under this administrative procedure, the Title IX Coordinator or Deputy Title IX Coordinator shall initiate a prompt initial assessment by contacting the Complainant to determine the next steps the District needs to take, which shall include one or more of the following:

- Offer supportive measures, regardless of whether the Complainant wants to file a Formal Complaint; and/or
- An Informal Resolution (upon submission of a Formal Complaint); and/or
- A Formal Grievance Process including an investigation and a hearing (upon submission of a Formal Complaint).

A. **Formal Complaint** - Formal complaints may be filed as follows:

a. Who May File a Formal Complaint?

At the time of filing a formal complaint, the Complainant must be enrolled as a student or employed by the District or attempting to enroll or apply for employment, an education program or activity of the District. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by District, and to have the incidents investigated and properly resolved through this procedure.

If the Complainant does not file a formal complaint, the Title IX Coordinator may file and sign a formal complaint requesting that the District investigate the allegation(s) of Prohibited Conduct if it is clearly not unreasonable in light of the known circumstances. If the Title IX Coordinator signs the formal complaint, they will not become a Party to the complaint.

b. How to File a Formal Complaint

A formal complaint may be submitted in person, by mail, or by electronic transmission, on a document filed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct against a Respondent and requesting that the District investigate the allegation(s) (per formal complaint definition above). The Complainant can also submit a complaint using the District's web-based Title IX Complaint Form located on the District's Title IX webpage.

c. When to File a Complaint

The District does not impose a time limit or statute of limitations on a Complainant's

decision to file a formal complaint of Sexual Harassment for purposes of this administrative procedure. Since failure to report Sexual Harassment impedes the District's ability to stop the behavior, collect relevant evidence and may affect supportive measures or remedies the District can offer, the District strongly encourages anyone who believes they are being sexually harassed to file a complaint.

d. Where to File a Complaint

A formal complaint must be filed with the District's Title IX Coordinator.

B. Dismissal of Formal Complaints

The District must investigate the allegations in a formal complaint. However, the District must dismiss the formal complaint and will not process the complaint under these procedures based on one or more of the following:

- a. The allegations in the formal complaint do not meet the definition of Prohibited Conduct under this administrative procedure, even if proved; and/or;
- b. The alleged conduct did not occur in an educational program or activity controlled by the District; and/or
- c. The alleged conduct did not occur against a person in the United States;
- d. At the time of the filing of a formal complaint, a Complainant is not participating or attempting to participate in the District's education program, activity or employment.

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 therein;
- b. The Respondent is no longer enrolled or employed by the District; or
- c. Specific circumstances that prevent the District from gathering evidence sufficient to reach a determination regarding responsibility as to the formal complaint or allegations.

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

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

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

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. Counterclaims

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

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

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

E. Timeline for Completion

The District will undertake its grievance process promptly and swiftly as possible. To that end, the District shall complete the investigation and its determination regarding responsibility within 150 business days.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the 150 business 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, due to the complexity of the investigation, or to allow for the completion of a fair hearing and appeal processes. The District will provide notice of this extension to the Complainant and Respondent in writing and include the reason for the delay and anticipated timing of completion.

A Party may request an extension from the Title IX Coordinator in writing by explaining the reason for the delay and the length of the continuance requested. The Title IX Coordinator will notify the Parties and document the grant or denial of a request for extension or delay as part of the case recordkeeping.

F. Right to an Advisor

The Parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The 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 District has the right to determine what constitutes appropriate behavior of an Advisor and take reasonable steps to ensure compliance with this procedure.

A Party does not have a right to self-representation at the hearing; an Advisor must conduct any cross-examination. The District must provide an Advisor of its choice, free of charge to any Party without an Advisor in order to conduct cross-examination. If an Advisor fails to appear at the hearing, the District will provide an Advisor to appear on behalf of the non-appearing Advisor. To limit the number of individuals with confidential information about the issues, each Party is limited to identifying one (1) Advisor.

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

Informal Resolution may be viable when (1) the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation; (2) the Parties agree to resolve the matter through an alternate resolution mechanism as described below, including mediation, restorative practices, etc., usually before a formal investigation takes place; or (3) when the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation).

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should notify the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any Party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

The District shall 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 and will not pressure the Parties to participate in Informal Resolution, such as making informal resolution a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right.

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

a. Alternate Resolution Mechanism

Alternate Resolution is an informal mechanism, including mediation or restorative practices, etc. by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism.

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

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

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

b. Respondent Accepts Responsibility for Alleged Violations

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

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

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

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

H. Formal Grievance Process: Notice of Investigation and Allegations

Upon receipt of a Formal Complaint, the Title IX Coordinator or Deputy Title IX Coordinator will provide written Notice of Investigation and Allegations to the Parties of the District's receipt of the Formal Complaint, and include the information listed below:

- A meaningful summary of all of allegations;
- The identity of the involved Parties (if known);
- The precise misconduct being alleged;
- The date and location of the alleged incident(s) (if known);
- The specific policies or procedures implicated;
- A description of the applicable procedures;
- A statement of the potential sanctions/responsive actions that could result;
- A statement that the District presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination;
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period;
- A statement about the District's Title IX grievance process and policy on retaliation;
- Information about the privacy of the process;
- Information on the need for each party to have an Advisor of their choosing

- and suggestions for ways to identify an Advisor;
- A statement informing the Parties that the District's procedure prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process;
- Detail on how the party may request disability accommodations during the interview process;
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have; and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the notice of allegations may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges. Notice will be made in writing and may be delivered by one or more of the following methods: in person, by mail to the last known address on file, or by email to the Parties' listed email address or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

I. Investigation

The District will normally complete its investigation within 90 business days from the date of the Notice of Investigation and Allegations, unless extended by the Title IX Coordinator for good cause. For example, some investigations may require more time due to the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, the need for language assistance, the absence of Parties and/or witnesses, and/or accommodations for disabilities or health conditions, etc. The Title IX Coordinator will communicate regularly with the Parties to update them on the progress and timing of the investigation and will notify them in writing of the reason for any extension and the projected new timeline.

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

a. Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all the Parties and relevant witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. The Parties will have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

b. Trained investigators

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

c. Gathering Evidence and Burden of Proof

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.

d. 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.

e. Confidentiality Agreements

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

f. 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 (no less than 10 business days) for the Party to prepare to participate.

Although in-person interviews for the Parties and potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a

need for remote interviewing. The District will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

g. Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the District's investigator(s) elect to audio record and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

h. Evidence Review

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

Prior to the investigator preparing a preliminary investigative report, the District will send to each Party and their 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.

i. Investigative Report

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

- A description of the circumstances giving rise to the formal complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony of each witness the investigator interviewed;
- An analysis of relevant evidence collected during the investigation, including a list of relevant documents;
- A specific finding as to whether the allegations occurred using a preponderance of the evidence standard;
- A table of contents if the report exceeds ten pages; and
- Any other information deemed appropriate by the District.

The investigator will not make a determination regarding responsibility.

The investigator may redact information not directly related to the allegations or privileged information. However, the investigator will keep a log of information they do

not produce to the Parties. The investigator will provide this log only to the Title IX Coordinator. The Title IX Coordinator will not disclose the log to the Parties but will maintain the log in the Title IX Coordinator's file, in the event it later becomes relevant.

The District will send the preliminary investigative report to each Party and their Advisors, if any, in electronic format sent via a District provided email address or a hard copy, sent via personal service or U.S. Postal Service Registered Mail for their review and written response. The Parties shall have at least 10 business days from the date of the District's notice of the preliminary investigative report to submit a written response to the evidence.

At least 10 business days prior to a hearing or other time of determination regarding responsibility, the District will send the final investigative report to each Party and their Advisors, if any in electronic format sent via a District provided email address or a hard copy, sent via personal service or U.S. Postal Service Registered Mail for their review and written response.

Provided that the Formal Complaint is not resolved through Informal Resolution, once the final investigative report is shared with the Parties, the Title IX Coordinator will refer the matter for a hearing.

J. Hearing

After completing an investigation and prior to completing a determination regarding responsibility, the District will hold a live hearing to provide the Complainant and Respondent an opportunity to respond to the evidence gathered before a Decision-Maker. 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. The District will designate a single Decision-Maker (hearing officer) at the discretion of the Title IX Coordinator. The Decision-Maker will be free from conflict of interest or bias, including bias for or against Complainants or Respondents. The Decision-Maker must not have had any previous involvement in the matter, and therefore, cannot be the Title IX Coordinator or investigator(s) in the case.

The District will contract the services of an independent attorney to serve as Decision-Maker to oversee the live hearing. In cases where the Complainant or Respondent objects to the Decision-Maker based on a conflict of interest, the Complainant or Respondent may request the Title IX Coordinator select a different Decision-Maker. The Complainant or Respondent must make this request to the Title IX Coordinator in writing at least five (5) business days prior to the hearing.

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

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

a. Roles and Responsibilities

The Title IX Coordinator, or designee shall be responsible for managing the hearing process and the necessary logistics (scheduling, notifying witnesses, providing the Parties and Decision-Maker(s) with appropriate documentation and evidence, coordinating the location of the hearing, and any other support that is necessary for the hearing to run smoothly), provided their previous role(s) in the matter do not create a conflict of interest.

The Decision-Maker(s) is responsible for conducting an impartial live hearing and issuing a written determination regarding responsibility to the Parties without bias or conflict of interest.

The Parties' Advisor of choice may be, but is not required to be, an attorney. The Parties' Advisors may be present for meetings and proceedings throughout the grievance process, subject to equal restrictions on Advisors' participation, in the District's discretion. If a Party does not have an Advisor at the hearing, the District must provide a primary Advisor of the District's choice, without fee or charge, solely for the purpose of conducting cross-examination.

b. Hearing Format

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

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

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. Deliberations are not recorded. The Parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-Maker(s), the Parties, their Advisors, and appropriate administrators of the District will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

c. Notice of Hearing

If the District proceeds to a hearing, the District will provide each Party with written notice of the date, time, location, participants, and purpose of the hearing with sufficient time (no less than 10 business days) for the Party to prepare to participate.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-Maker and Parties to see and hear a Party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with information about the Parties' right to object to any Decision-Maker on the basis of demonstrated bias. This objection must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the Party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-Maker. For compelling reasons, the Decision-Maker may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the District will appoint one. Each Party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-Maker about the matter, unless they have been provided already.¹
- An invitation to each party to submit an impact statement to the Decision-Maker pre-hearing that the Decision-Maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the

¹ The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

- hearing.
- A statement that Parties cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Procedure) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the winter or summer, as needed, to meet the resolution timeline followed by the District and remain within the 150 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Procedure is not in good standing to graduate.

If a party or Parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing. Similarly, any witness who cannot attend in person should let the Title IX Coordinator or the Decision-Maker know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

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.

e. Cross Examination

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

The order of testimony will typically be:

- The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-Maker(s) and the Parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not

during deliberations. Neither the Parties nor the Decision-Maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and Parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-Maker shall disregard it.

- Following the testimony of the Investigator(s), the Parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Decision-Maker. The Parties/witnesses will submit to questioning by the Decision-Maker and then by the Parties through their primary Advisors.

Advisors may only ask relevant cross-examination and other questions of a Party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-Maker need not provide a lengthy or complicated explanation in support of a relevance determination. If a Party or witness disagrees with a relevance determination, that individual has the choice of either (1) abiding by the Decision-Maker's determination and answering the question or (2) refusing to answer the question.

Any evidence deemed relevant and credible by the Decision-Maker may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the Parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are irrelevant unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the sexual harassment alleged by the Complainant or the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove consent.

If a Party or witness does not submit to cross-examination at the live hearing, the Decision-Maker will not rely on any statement of that Party or witness in reaching a determination regarding responsibility. A Party or witness may also decline to answer a question, and the Decision-Maker cannot rely on any statement on which that Party or witness has declined to answer cross-examination questions. A Decision-Maker cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

f. Deliberation, Decision-making, and Standard of Proof

The Decision-Maker will deliberate in closed session to determine whether, based on the preponderance of the evidence, the Respondent is responsible or not responsible for the violation(s) of this administrative procedure. When the Decision-Maker makes a determination of responsibility or non-responsibility, the Decision-Maker 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 Decision-Maker will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. A Decision-Maker may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness. In evaluating the evidence, the Decision-Maker will use the preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that sexual harassment occurred.

The written determination will include:

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

The District will provide the written determination to the Parties simultaneously within 10 business days of receipt of the written determination through a Notice of Outcome, including their right to appeal. 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.

K. Remedies and Disciplinary Sanctions

Should a violation of the interim administrative procedure be substantiated, the District will effectively implement remedies for the Complainant, designed to restore or preserve the Complainant's equal educational access, such as long-term supportive measures.

a. Remedies for the Complainant

Remedies for the Complainant might include, but are not limited to:

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

The District may impose disciplinary sanctions on the Respondent in conformity with all relevant statutes, regulations, and District personnel policies and regulations, including the provisions of any applicable collective bargaining agreement. The District must have completed the grievance procedures (investigation, hearing, and any appeal, if applicable) before the imposing disciplinary sanctions or any other actions that are not supportive measures against a Respondent. Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties

- Any other information deemed relevant by the Decision-Maker

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

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

b. Student Sanctions

The following are the usual sanctions that may be imposed upon students singly or in combination:

- Warning-Verbal or Written
- Disciplinary Probation
- Removal from class
- Reprimand-Verbal or Written
- Required Consultation
- Probation
- Short-term or Long-term Suspension
- Expulsion
- Transcript Notation
- Withdrawal of Consent to Remain on Campus
- Withholding Diploma
- Revocation of Degree
- Student Organizational Sanctions: Deactivation, loss of recognition, loss of some or all privileges for a specified period of time.
- Other Actions (as deemed appropriate).

c. Employee Sanctions

Sanctions/responsive actions for an employee determined to be responsible for engaging in harassment, discrimination, and/or retaliation include:

- Warning – Verbal or Written
- Performance Improvement Plan
- Enhanced supervision, observation, or review
- Required Counseling or Consultation
- Required Training or Education
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
- Reassignment
- Assignment to new supervisor

- Restriction of stipends, special projects, and/or professional development resources
- Suspension with pay
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the District may assign any other responsive actions as deemed appropriate.

d. Withdrawal or Resignation While Charges Pending

1. **Students:** Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the District, the resolution process ends, as the District no longer has disciplinary jurisdiction over the withdrawn student.

However, the District will continue to address and remedy any systemic issues, or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the District. Such exclusion applies to all colleges within the District. Admissions and Records will be notified that they cannot be readmitted. They may also be barred from District property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to the District unless and until all sanctions have been satisfied.

2. **Employees:** Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the District no longer has disciplinary jurisdiction over the resigned employee.

However, the District will continue to address and remedy any systemic issues, or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

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

L. Appeals

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 to the District's Title IX Coordinator within 10 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.

a. Grounds for Appeal

The District will contract the services of a second independent attorney who will serve as the Decision-Maker on Appeal. In filing an appeal of the District's determination regarding responsibility or the District's dismissal of a formal complaint, the Party must state the grounds for appeal and a statement of facts supporting those grounds. The grounds for appeal are as follows:

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

If any of the grounds in the Request for Appeal do not meet the grounds listed above, the Decision-Maker on Appeal will deny request and notify the Parties and their Advisors in writing within five (5) business days of the denial and the rationale in a Notice of Appeal Outcome.

b. Appeal Procedure

After receiving a written request for an appeal from either the Complainant or Respondent, the District's Title IX Coordinator will:

- Notify the non-appealing Party in writing within 5 business days of receiving a Party's appeal. The written notice will include the basis of the appeal and the name of the appeal decision-maker.
- Allow the non-appealing Parties at least 10 business days from the date of the receipt of the appeal (designated as the date the District's email server tracks that a message was delivered) to submit a written response in support of, or challenging, the outcome.

The Decision-Maker on appeal 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 Decision-Maker on appeal receives the response to the appeal or the last day to provide a response. The District will provide the written decision simultaneously to both Parties.

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

M. Retaliation Prohibited

The District prohibits retaliation against any individual who has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this procedure. Retaliatory acts may include (1) intimidation; (2) threats; (3) coercion, (4) discrimination for the purpose of interfering with any right or privilege secured by Title IX or this administrative procedure, or (5) charges for code of conduct violations that arise out of the same facts or circumstances as the report or complaint of sexual harassment are specifically prohibited by the District. The exercise of rights protected under the First Amendment or principles of academic freedom does not constitute retaliation.

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

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Formal Grievance proceeding does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

N. Dissemination of Policy and Procedures

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

O. Training

The District shall provide training to Title IX Coordinators, investigators, Decision-Makers, and any individual who facilitates an informal resolution process, on the definition of sexual harassment as defined in these procedures, the scope of the District's education program or activities, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Any materials used to train the District's Title IX Coordinator, investigators,

Decision-Makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

In accordance with the mandates in the federal Title IX regulations, the District will post these training materials on its website.

P. File Retention

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

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

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

Also see:

- BP/AP 5840 Sexual and Other Assaults on Campus;
- BP/AP 6410 Nondiscrimination;
- BP/AP 6430 Prohibition of Harassment
- BP/AP 6433 Prohibition of Sexual Harassment under Title IX
- AP 6435 Discrimination and Harassment Complaints and Investigations.

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Office of Primary Responsibility: Vice Chancellor, Human Resources & Employee Relations

Administrative Approval:
August 17, 2020