

General Institution

AP 3434 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.;
- Education Code Sections 212.5, 66282.1 et seq., and 67380 et seq.

Introduction

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

Title IX Coordinator

Questions concerning Title IX may be referred to the District Title IX Coordinator: <https://www.cerritos.edu/title-ix/title-IX-coordinator.htm>.

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

Jurisdictional Requirements – Application of Procedures

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

- The conduct took place in the United States;
- The conduct took place in a District “education program or activity.” This includes locations, events, or circumstances over which the District exercised substantial control over both the Respondent and the context in which the harassment occurred, including on-campus and off-campus property and buildings the District

- owns or controls or student organizations officially recognized by the District own or control; and
- The conduct meets the definition of Title IX “sexual harassment.”

40 **Reporting Options**

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

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

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

56 Individuals have the opportunity to decide whether they want to pursue a Title IX formal
57 complaint. Reporting sexual harassment to the Title IX Coordinator does not automatically
58 initiate an investigation under these procedures. A report allows the District to provide a
59 wide variety of support and resources to impacted individuals and to prevent the
60 reoccurrence of the conduct. A complainant or the Title IX Coordinator filing a formal
61 complaint will initiate a formal process as described in the jurisdictional requirements
62 section of this procedure.

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

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

71 **Obligations of Employees**

72 District employees who have authority to institute corrective measures on behalf of the
73 District, and are not confidential resources, are required to report allegations of sexual
74 harassment to the District’s Title IX Coordinator promptly when they have information
75 about conduct that may reasonably constitute sexual harassment.

76 Additionally, the following must report allegations of sexual harassment to the District's
77 Title IX Coordinator promptly:

78 Board of Trustees, President/Superintendent, Vice Presidents/Assistant
79 Superintendents, Managers, all Faculty, Athletic Coaches, Child Development Center,
80 Cerritos College Police Department, and the Title IX Coordinator.

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

85 **Confidential Resource Options at the District**

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

- 92 • Student Health Services Personnel
- 93 • Campus Advocate

94 In most cases, Confidential Resources at the District will not share the substance of any
95 such communications or that such communications occurred without consent. Individuals
96 who wish to talk confidentially about issues related to sexual harassment, with the
97 understanding that the District will not take any action based on such confidential
98 communications, are encouraged to contact one of these Confidential Resources.

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

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

112 Under California law, any health practitioner employed in a health facility, clinic,
113 physician's office, or local or state public health department or clinic is required to make

114 a report to local law enforcement if he/she/they provides medical services for a physical
115 condition to a person who he/she/they knows or reasonably suspects is suffering from:
116 (1) a wound or physical injury inflicted by a firearm; or (2) any wound or other physical
117 injury where the injury is the result of assaultive or abusive conduct (including sexual
118 assault, dating violence, and domestic violence). This requirement does not apply to
119 sexual assault and domestic violence counselors and advocates or mental health
120 professionals and advocates.

121 **Definitions**

122 **Advisor:** Throughout the complaint process, both the Complainant and Respondent have
123 a right to an Advisor of their choice. A student Party has the right to select an Advisor of
124 their choice or to request the District provide an Advisor to the student. If a Party does not
125 have an Advisor at the time of the hearing, the District must provide the Party an Advisor
126 of the District's choice, free of charge. The District may establish restrictions regarding
127 the extent to which the Advisor may participate in the proceedings as long as the
128 restrictions apply equally to both Parties.

129 Parties have the right to consult with an attorney, at his/her/their own expense, at any
130 stage of the complaint process if he/she/they wish to do so. An attorney may serve as an
131 advisor.

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

134 **Complainant:** A Complainant is an individual who alleges he/she/they is the victim of
135 conduct that could constitute sexual harassment.

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

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

- 148 • The Respondent's belief arose from the Respondent's own intoxication or
149 recklessness;
- 150 • The Respondent did not take reasonable steps to ascertain whether the
151 Complainant affirmatively consented; or

- 152 • The Respondent knew or a reasonable person should have known that the
153 Complainant was unable to consent because the Complainant was incapacitated,
154 in that the Complainant was:
- 155 ○ asleep or unconscious;
 - 156 ○ unable to understand the fact, nature, or extent of the sexual activity due to
157 the influence of drugs, alcohol, or medication; or
 - 158 ○ unable to communicate due to a mental or physical condition.

159 **Decision-Maker:** The person who will oversee the live hearing and make a determination
160 of responsibility. The District may have one Decision-Maker determine whether the
161 Respondent is responsible for discrimination violation of the District's Title IX policies and
162 procedures and another Decision-Maker determine the appropriate level of disciplinary
163 sanctions for the conduct.

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

167 **District:** Means the Cerritos Community College District and other properties that it owns
168 or otherwise controls.

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

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

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

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

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

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

190 **Retaliation:** Intimidation, threats, coercion, or discrimination against any individual for the
191 purpose of interfering with any right or privilege secured by this procedure, or because
192 the individual has reported information, made a Complaint, testified, assisted, or
193 participated or refused to participate in any manner in an investigation, proceeding, or
194 hearing under this procedure.

195 **Sexual Harassment under Title IX**

196 Conduct that satisfies one or more of the following:

- 197
- 198 • **Quid pro quo harassment.** A District employee conditions the provision of an aid,
199 benefit, or service of the District on an individual's participation in unwelcome sexual
200 conduct;
- 201 • **Hostile environment harassment.** Unwelcome conduct determined by a
202 reasonable person to be so severe, pervasive, and objectively offensive that it
203 effectively denies a person equal access to the District's education program or
204 activity; **or**
- 205 • **Sexual assault:** Any sexual act directed against another person, without the
206 consent of the victim, including instances where the victim is incapable of giving
207 consent or unlawful sexual intercourse. Sexual assault includes sexual exploitation
208 and the following:
 - 209 ○ **Rape** Sexual intercourse between two or more people, and may include oral
210 or anal intercourse, without the consent of the victim, including instances
211 where the victim is incapable of giving consent because of his/her/their
212 temporary or permanent mental or physical incapacity.
 - 213 ○ **Statutory Rape.** Sexual intercourse with a person who is under the
214 statutory age of consent.
 - 215 ○ **Sexual Assault with an Object.** To use an object or instrument to
216 unlawfully penetrate, however slightly, the genital or anal opening of the
217 body of another person, without the consent of the victim, including
218 instances where the victim is incapable of giving consent because of
219 his/her/their age or because of his/her/their temporary or permanent mental
220 or physical incapacity.
 - 221 ○ **Fondling.** The touching of the private body parts of another person for the
222 purpose of sexual gratification, without the consent of the victim, including
223 instances where the victim is incapable of giving consent because of
224 his/her/their age or because of his/her/their temporary or permanent mental
225 or physical incapacity.
 - 226 ○ **Incest.** Sexual intercourse between persons who are related to each other
227 within the degrees wherein marriage is prohibited by law.
- 228 • **Dating violence.** Violence committed by a person who is or has been in a social
229 relationship of a romantic or intimate nature with the victim. The existence of a
230 relationship will be determined based on a consideration of the following factors:
231 the length of the relationship, the type of relationship, and the frequency of
232 interaction between the persons involved in the relationship.

- 233 • **Domestic Violence.** Violence committed:
 - 234 ○ By a current or former spouse or intimate partner of the victim;
 - 235 ○ By a person with whom the victim shares a child in common;
 - 236 ○ By a person who is cohabitating with, or has cohabitated with, the victim as
 - 237 a spouse or intimate partner;
 - 238 ○ By a person similarly situated to a spouse of the victim under the domestic
 - 239 or family violence laws of California; or
 - 240 ○ By any other person against an adult or youth victim protected from that
 - 241 person's acts under the domestic or family violence laws of California.
- 242 • **Stalking.** Engaging in a course of conduct directed at a specific person that would
- 243 cause a reasonable person to fear for his/her/their safety or the safety of others or
- 244 suffer substantial emotional distress.

245 **Student(s)** means any individual(s) who has applied for admission, accepted an offer of

246 admission, or who is registered or enrolled for credit or non-credit bearing coursework,

247 and who maintains an ongoing relationship with the District.

248 **Supportive Measures**

249 Supportive measures are non-disciplinary, non-punitive individualized services offered

250 free of charge to the Complainant or the Respondent regardless of whether a formal

251 complaint has been filed.

252 **Response to Reports of Sexual Harassment**

254 **Timeframe for Reporting**

255 To promote timely and effective review, the District strongly encourages individuals to

256 report sexual harassment as soon as possible because a delay in reporting may affect

257 the ability to collect relevant evidence and may affect remedies the District can offer.

258 There is no time limitation on submitting notice/complaints to the Title IX Coordinator(s).

259 **Receipt of Report**

260 After receiving a report of sexual harassment, the Title IX Officer will contact the

261 Complainant and reporting party to explain rights under this policy and procedure and

262 invite the Complainant to an in-person meeting. The Title IX Officer will discuss

263 supportive measures with the Parties.

264 **Student Complainant Requests for Confidentiality**

265 If a student Complainant requests confidentiality when reporting sexual harassment which

266 could preclude a meaningful investigation or potential discipline of the Respondent, if

267 found responsible, or that no investigation or disciplinary action be pursued to address

268 alleged sexual harassment, the District shall take the request seriously, while at the same

269 time considering its responsibility to provide a safe and nondiscriminatory environment

270 for all students, including for the Complainant. The District shall normally grant the request

271 when possible. In determining whether to disclose a Complainant's identity or proceed to

272 an investigation over the objection of the Complainant, the District may consider whether

273 any of the following apply:

- 274 • There are multiple or prior reports of sexual misconduct against the Respondent;

- 275 • The Respondent reportedly used a weapon, physical restraints, or engaged in
276 battery;
- 277 • The Respondent is a faculty or staff member with oversight of students;
- 278 • There is a power imbalance between the Complainant and Respondent;
- 279 • The Complainant believes that the Complainant will be less safe if the
280 Complainant's name is disclosed or an investigation is conducted; and
- 281 • The District is able to conduct a thorough investigation and obtain relevant
282 evidence in the absence of the Complainant's cooperation.

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

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

297 **Implementation of Supportive Measures**

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

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

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

312 The District shall not disclose information about any supportive measures to persons other
313 than the person to whom they apply, including informing one Party of supportive measures

314 provided to another Party, unless necessary to provide the supportive measure or restore
315 or preserve a Party's access to the education program or activity, or as required by law.

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

327 **Sexual Assault and Domestic Violence Counselors**

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

331 **Emergency Removal**

332 The District may remove a non-employee Respondent from the District's education
333 program or activity on an emergency basis after it conducts an individualized safety and
334 risk analysis and determines that an immediate threat to the physical health or safety of
335 any student or other individual arising from the allegations of sexual harassment justifies
336 removal.

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

342 The District's Title IX Coordinator in conjunction with the District's Office of Student
343 Conduct and Grievances and the District's Crisis Assessment Intervention Response
344 (CAIR) Team will conduct the individualized safety and risk analysis.

345 If it is determined that emergency removal is appropriate, the Dean of Student Services
346 will provide the person the District is removing with a notice and opportunity to attend a
347 meeting and challenge the basis of their removal consistent with Administrative
348 Procedure 5520 Student Discipline Procedures (beginning at Immediate Interim
349 Suspension) and Education Code Section 66017. The Dean of Student Services will
350 determine whether the emergency removal from campus order is warranted after
351 considering information provided by the Respondent challenging the emergency removal.

352 **Administrative Leave**

353 The District may place a non-student employee Respondent on administrative leave
354 during the pendency of a complaint process. The District will follow any relevant policies,
355 procedures, collective bargaining agreements, and state law in placing an employee on
356 administrative leave.

357 **No-Contact Order in Reports of Sexual Harassment Involving Students**

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

369 **Response to Formal Complaints of Sexual Harassment**

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

373 **Consolidation of Formal Complaints**

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

378 **Dismissal of Formal Complaint**

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

- 382 • If the conduct alleged in the formal complaint would not constitute Title IX sexual
383 harassment as defined in this procedure;
- 384 • If the conduct alleged did not occur in the District's education program or activity;
385 and/or
- 386 • If the conduct alleged did not occur against a person in the United States.
- 387 • At the time of filing a Formal Complaint, a complainant is not participating in or
388 attempting to participate in the education program or activity of the District.

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

- 391 • If at any time during the investigation or hearing, a Complainant notifies the Title
392 IX Coordinator in writing that the Complainant would like to withdraw the formal
393 complaint or any allegations;
- 394 • If the Respondent is no longer enrolled or employed by the District; or no longer
395 an applicant seeking enrollment or employment; or
- 396 • If there are specific circumstances that prevent the District from gathering evidence
397 sufficient to reach a determination regarding responsibility as to the formal
398 complaint or allegations.

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

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

404 **Formal Complaint Process**

405 The procedures below apply only to qualifying allegations of Prohibited Conduct under
406 this administrative procedure involving students, staff, administrator, or faculty
407 members. The procedures below may be used to address collateral misconduct arising
408 from the investigation of or occurring in conjunction with reported misconduct (e.g.,
409 vandalism, physical abuse of another).

410 Complaints or allegations that are dismissed or not within the jurisdiction of this
411 administrative procedure may be referred for action under another provision of the
412 District's board policy and administrative procedures, such as Board Policy 5500,
413 Administrative Procedure 3435, or an applicable collective bargaining agreement, as
414 determined by the Title IX Coordinator.

415 The Title IX Coordinator or Title IX Deputy shall initiate a prompt initial assessment by
416 contacting the Complainant to determine the next steps the District needs to take, which
417 shall include one or more of the following:

- 418 • Offer supportive measures; and/or
- 419 • An Informal Resolution; and/or
- 420 • A Formal Complaint Process including an investigation and a hearing (upon
421 submission of a Formal Complaint).

422 **Equitable Treatment of the Parties**

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

428 **Statement of Presumption of Non-Responsibility**

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

433 **Role of Advisor**

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

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

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

445 **Privacy**

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

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

455 **Prohibition Against Bias or Conflict of Interest**

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

- 464 • The definition of sexual harassment in this procedure;
- 465 • The scope of the District's education program or activity;
- 466 • How to conduct an investigation;

- 467 • The complaint process including conducting hearings, appeals, and informal
468 resolution processes; and
469 • How to serve impartially, including avoiding: prejudice of the facts at issue,
470 conflicts of interest, and bias.

471 **Timeline and Extensions**

472 The District will undertake its complaint process promptly and as swiftly as possible. The
473 District will complete the investigation and its determination regarding responsibility or the
474 informal resolution process within one-hundred and eighty (180) calendar days.

475 When appropriate, the Title IX Coordinator may determine that good cause exists to
476 extend the one-hundred and eighty (180)-calendar day period to conduct a fair and
477 complete investigation, to accommodate an investigation by law enforcement, to
478 accommodate the unavailability of witnesses or delays by the Parties, to account for
479 District breaks or vacations, or due to the complexity of the investigation. The District will
480 provide notice of this extension to the Complainant and Respondent in writing and include
481 the reason for the delay and anticipated timing of completion.

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

488 **Notice to Parties**

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

- 491
- 492 • Notice of the District's Title IX complaint process;
 - 493 • Notice of the allegations of alleged sexual harassment with sufficient details known
494 at the time and with sufficient time to prepare a response before any initial
495 interview;
 - 496 • Statement that the Respondent is presumed not responsible for the alleged
497 conduct and that a determination regarding responsibility is made at the conclusion
498 of the complaint process;
 - 499 • Notice that the Parties may have an Advisor of their choice, who may be, but is not
500 required to be, an attorney; an employee may choose a union representative as
501 an advisor.
 - 502 • Notice that the Parties may inspect and review any evidence obtained as part of
503 the investigation that is directly related to the allegations raised in the formal
504 complaint, including the evidence upon which the District does not intend to rely in
505 reaching a determination regarding responsibility, and inculpatory or exculpatory
506 evidence whether obtained from a Party or other source;

- 507 • Inform the Parties of any provision in the District’s code of conduct that prohibits
508 knowingly making false statements or knowingly submitting false information
509 during the complaint process; and
510 • Notice for student Parties of appropriate counseling resources the District has
511 developed and maintains.

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

515 **Informal Resolution**

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

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

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

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

541 **Investigations**

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

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

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

552 **Evidence**

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

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

561 **Use of Privileged Information**

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

567 **Evidence of Past Sexual History**

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

- 570 • Unless such questions or evidence is offered to prove that someone other than the
571 Respondent committed the alleged conduct;
- 572 • Unless the questions or evidence concern specific incidents of the Complainant's
573 prior sexual behavior with respect to the Respondent and are offered to prove
574 consent.
 - 575 ○ Where the investigator or Decision-Maker allows consideration of questions
576 or evidence about a dating relationship or prior or subsequent consensual
577 sexual relations between the Complainant and the Respondent pursuant to
578 this circumstance, the mere fact that the Complainant and Respondent
579 engaged in other consensual sexual relations with one another is never
580 sufficient, by itself, to establish that the conduct in question was consensual.

581 Before allowing the consideration of any evidence proffered pursuant to this section, the
582 investigator or Decision-Maker shall provide a written explanation to the Parties as to why
583 consideration of the evidence is consistent with this procedure.

584 **Evidence Review**

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

591 The District will make available to each Party and the Party's Advisor, if any, the evidence
592 subject to inspection and review in an electronic format or a hard copy. The District will
593 allow Parties at least ten (10) calendar days to submit a written response. The
594 investigator must consider this written response prior to completing the investigative
595 report.

596 **Investigative Report**

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

- 599 • A description of the circumstances giving rise to the formal complaint;
- 600 • A description of the procedural steps taken during the investigation, including all
601 individuals contacted and interviewed;
- 602 • A summary of the testimony of each witness the investigator interviewed;
- 603 • A summary of all relevant and permissible evidence gathered through the
604 investigation, including a list of relevant documents;
- 605 • A table of contents if the report exceeds ten pages; and
- 606 • Any other information deemed appropriate by the District.

607 The investigator will not make a determination regarding responsibility.

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

613 The District will send the investigative report to each Party and their Advisors, if any, at
614 least ten (10) calendar days prior to the live hearing. The District will provide the final
615 investigative report in an electronic format or a hard copy. Parties may review the
616 investigation report and provide a written response. The District will allow Parties at least
617 ten (10) calendar days to submit a written response.

618 **Live Hearing**

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

624 **Notice**

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

627 **Hearing Format**

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

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

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

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

644 **Decision-Maker**

645 The Decision-Maker will be free from conflict of interest or bias, including bias for or
646 against Complainants or Respondents. In cases where the Complainant or Respondent
647 objects to the Decision-Maker based on a conflict of interest, the Complainant or
648 Respondent may request the Title IX Coordinator select a different Decision-Maker. The
649 Complainant or Respondent must make this request to the Title IX Coordinator in writing
650 at least five (5) business days prior to the hearing.

651 The Decision-Maker may ask the Parties and the witnesses questions during the hearing.
652 The Decision-Maker must objectively evaluate all relevant evidence both inculpatory and
653 exculpatory and must independently reach a determination regarding responsibility
654 without giving deference to the investigative report. The Decision-Maker must receive
655 training on issues of relevance, how to apply the rape-shield protections for
656 Complainants, and any technology to be used at the hearing.

657 **Presenting Witnesses**

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

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

666 Generally, the Parties may not introduce evidence, including witness testimony, at the
667 hearing that the Party did not identify during the investigation and that was available at
668 the time of the investigation. However, the Decision-Maker has discretion to accept for
669 good cause, or exclude, such new evidence offered at the hearing.

670 **Cross-Examination**

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

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

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

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

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

698 The Decision-Maker may also ask any Party or witness questions. If a Party or witness
699 refuses to respond to a Decision-Maker's questions, the Decision-Maker is not precluded
700 from relying on that Party or witness' statements.

701 **Determinations of Responsibility**

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

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

710 The written determination will include:

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

738 The District will provide the written determination to the Parties simultaneously. The
739 determination regarding responsibility becomes final either on the date that the District

740 provides the Parties with the written determination of the result of the appeal, if the Parties
741 file an appeal, or if the Parties do not file an appeal, the date on which an appeal would
742 no longer be timely.

743 **Appeal of Dismissal of a Formal Complaint or of the Determination of**
744 **Responsibility**

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

747 **Grounds for Appeal**

748 A party may appeal based on the following grounds:

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

756 **Appeal Procedure**

- 757 • A Party may submit a written appeal no later than fifteen (15) calendar days from
758 the date of the District's notice of dismissal of a formal complaint or from the date
759 of the notice of determination regarding responsibility.
- 760 • The Vice President of Human Resources or designee will serve as the Decision-
761 maker on Appeal.
- 762 • If the District receives an appeal, the District will notify the other Party in writing
763 within five (5) business days of receiving a Party's appeal;
- 764 • The non-appealing Party may submit a written statement in support of, or
765 challenging, the District's decision to dismiss the formal complaint or the District's
766 decision in the determination of responsibility. The District will allow the non-
767 appealing Party at least ten (10) business days from the date of receipt of the
768 appeal to submit the written statement;
- 769 • The appeal Decision-Maker will issue a written decision on whether to grant or
770 deny the appeal, and the rationale for the decision, within forty-five (45) business
771 days after the Decision-Maker on appeal receives the response to the appeal or
772 the last day to provide a response. The District will provide the written decision
773 simultaneously to both Parties.

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

779 **Disciplinary Sanctions and Remedies**

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

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

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

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

803 Within five (5) business days of a decision of disciplinary action against a respondent in
804 response to a complaint of sexual harassment, the District will provide a notification of the
805 disciplinary action to the Respondent and Complainant.

806

807 **Retaliation Prohibited**

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

813 **Training**

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

821 The District will ensure its students receive annual training on sexual violence and sexual
822 harassment including related topics required by State law.

823 **File Retention**

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

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

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

841 **Complaint Reporting**

842 The President/Superintendent shall provide the Board of Trustees, upon request, a report
843 of complaints filed pursuant to AP 3434. This report must disaggregate the complaints by
844 complaint type (Student Complainant and Student Respondent, Student Complainant and
845 Employee Respondent, Employee Complainant and Student Respondent, Employee
846 Complainant and Employee Respondent, etc.) This report must also disaggregate the
847 complaints by the Complainant's race, age, gender, religion, or any other characteristic
848 identified by the Board.

849 Office of Primary Responsibility: Vice President, Human Resources

Date Approved: April 26, 2021

Date Revised: May 5, 2025