

General Institution

1 **AP 3434 RESPONDING TO HARASSMENT BASED ON SEX UNDER**
2 **TITLE IX**

3 **References:**

- 4 20 U.S. Code Sections 1681 et seq.;
- 5 34 Code of Federal Regulations Parts 106.1 et seq.;
- 6 Education Code Section 67386

7 **Introduction**

8 The District encourages members of the District community to report sexual harassment.
9 This procedure only applies to conduct defined sexual harassment under Title IX and
10 applicable federal regulations and that meet Title IX jurisdictional requirements. The
11 District will respond to sexual harassment and sexual misconduct that falls outside that
12 definition and outside the jurisdiction of the Title IX federal regulations using California
13 law and applicable District policies and procedures. In implementing these procedures
14 discussed below, the District will also provide supportive measures, training, and
15 resources in compliance with California law, unless they are preempted by the Title IX
16 regulations.

17 These Title IX sexual harassment procedures and the related policy protect students,
18 employees, applicants for employment, and applicants for admission.

19 **TITLE IX COORDINATOR**

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

22 The Title IX Coordinator is required to respond to reports of sexual harassment or
23 misconduct. The Title IX Coordinator will handle information received with the utmost
24 discretion and will share information with others on a need-to-know basis. For example,
25 the Title IX Coordinator may need to address public safety concerns on campus, comply
26 with state and federal legal requirements, or share information to implement supportive
27 measures. The District reserves the right to determine which District officials have a
28 legitimate educational interest in being informed about incidents that fall within this
29 procedure, pursuant to the Family Educational Rights and Privacy Act (FERPA).

30 A report of sexual harassment to the Title IX Coordinator does not necessarily lead to a
31 full investigation, as discussed more fully below. However, the Title IX Coordinator will
32 make an assessment to determine if there is a safety risk to the campus and proceed as
33 appropriate to address the risk. If the Title IX Coordinator finds there is a continued risk,
34 the Title IX Coordinator may file the formal complaint without the Complainant's consent
35 or cooperation.

36 **JURISDICTIONAL REQUIREMENTS – APPLICATION OF PROCEDURES**

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

- 39 • The conduct took place in the United States;
- 40 • The conduct took place in a District “education program or activity.” This includes
41 locations, events, or circumstances over which the District exercised substantial
42 control over both the Respondent and the context in which the harassment occurred,
43 including on-campus and off-campus property and buildings the District owns or
44 controls or student organizations officially recognized by the District own or control.
- 45 • The conduct meets the definition of Title IX “sexual harassment.”

46 This administrative procedure can also be applicable to address the effects of off-
47 campus misconduct that effectively deprives someone of access to District’s
48 educational program, activity, or service.

49 The District may extend jurisdiction to off-campus and/or to online conduct when the
50 Title IX Coordinator determines that the conduct affects a substantial District interest.

51 **DEFINITIONS**

52 **Advisor:** Throughout the complaint process, both the Complainant and Respondent
53 have a right to an Advisor of their choice. If a Party does not have an Advisor at the time
54 of the hearing, the District must provide the Party an Advisor of the District’s choice, free
55 of charge. The District may establish restrictions regarding the extent to which the Advisor
56 may participate in the proceedings as long as the restrictions apply equally to both Parties.
57 The Advisor must be free from conflicts of interest (e.g., the Advisor cannot also be a
58 witness in the case).

59 **Appeal Officer:** Decision Maker with authority to render a decision on an appeal.

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

62 **Consent:** Consent means affirmative, conscious, and voluntary agreement to engage in
63 sexual activity. Both Parties must give affirmative consent to sexual activity. It is the
64 responsibility of each person involved in the sexual activity to ensure that he/she/they has
65 the affirmative consent of the other or others to engage in the sexual activity. Lack of
66 protest, lack of resistance, or silence does not indicate consent. Affirmative consent must
67 be ongoing throughout a sexual activity and one can revoke his/her/their consent at any
68 time. The existence of a dating relationship between the persons involved, or the fact of
69 past sexual relations between them, is not an indicator of consent. In California, a minor
70 (meaning a person under the age of 18) cannot consent to sexual activity.

71 The Respondent’s belief that the Complainant consented will not provide a valid defense
72 unless the belief was actual and reasonable, based on the facts and circumstances the

73 Respondent knew, or reasonably should have known, at the time of the incident. A
74 Respondent's belief is not a valid defense where:

- 75 • The Respondent's belief arose from the Respondent's own intoxication or
76 recklessness;
- 77 • The Respondent did not take reasonable steps to ascertain whether the Complainant
78 affirmatively consented; or
- 79 • The Respondent knew or a reasonable person should have known that the
80 Complainant was unable to consent because the Complainant was incapacitated, in
81 that the Complainant was:
 - 82 ○ asleep or unconscious;
 - 83 ○ unable to understand the fact, nature, or extent of the sexual activity due to the
84 influence of drugs, alcohol, or medication; or
 - 85 ○ unable to communicate due to a temporary or permanent mental or physical
86 condition.

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

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

94 **Education Program, Activity, or Service:** means locations, events, or circumstances
95 where the District exercises substantial control over both the Respondent and the
96 context in which the Prohibited Conduct occurs and also includes any building owned or
97 controlled by a student organization that is officially recognized by the District.

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

- 100 ▪ **Exculpatory Evidence:** Any evidence that is favorable to the Respondent that
101 shows or tends to show the Respondent is not responsible for the allegation of
102 sexual harassment.
- 103 ▪ **Inculpatory Evidence:** Any evidence that shows or tends to show that the
104 Respondent engaged in the allegation of sexual harassment.

105 False Allegations and Evidence Deliberately false and/or malicious accusations under
106 this procedure are a serious offense and will be subject to appropriate disciplinary
107 action. This does not include allegations that are made in good faith but are ultimately
108 shown to be erroneous or do not result in a policy violation determination. Additionally,
109 witnesses and parties knowingly providing false evidence, tampering with or destroying
110 evidence, or deliberately misleading an investigator, or decision maker can be subject to
111 discipline under District policy.

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

116 **Official with Authority (OWA):** District Officials with Authority are not confidential
117 resources and are required to report allegations of sexual harassment to the Title IX
118 Coordinator promptly. Officials with Authority are required to report all relevant
119 information they know about sexual harassment including the name of the Respondent,
120 the Complainant, any other witnesses, and the date, time, and location of the alleged
121 incident. The District has designated the employees holding the following positions as
122 Officials with Authority: Board of Trustees, President/Superintendent, Vice
123 Presidents/Assistant Superintendents, and Managers, including Cerritos College Police
124 Department and the Title IX Coordinator. All other employees are encouraged to report
125 allegations to the Title IX Coordinator but are not required to do so.

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

127 Remedies are actions taken to address safety, prevent recurrence of Prohibited
128 Conduct, and restore equal access to the District's educational program, activities,
129 services or employment.

130 **Respondent:** A Respondent is an individual reported to be the perpetrator of conduct
131 that could constitute sexual harassment. The District presumes the Respondent is not
132 responsible for the alleged conduct unless or until the District makes a finding regarding
133 responsibility at the conclusion of the complaint process.

134 **Sanction** means a consequence or other corrective action imposed by the District on a
135 Respondent who is found to have engaged in Prohibited Conduct under this
136 administrative procedure.

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

- 138 • A District employee conditions the provision of an aid, benefit, or service of the District
139 on an individual's participation in unwelcome sexual conduct (*quid pro quo*
140 harassment);
- 141 • Unwelcome conduct determined by a reasonable person to be so severe, pervasive,
142 and objectively offensive that it effectively denies a person equal access to the
143 District's education program or activity;
- 144 • Sexual assault, including the following:
 - 145 ○ Sex Offenses. Any sexual act directed against another person, without the consent
146 of the victim, including instances where the victim is incapable of giving consent.
 - 147 ○ Rape (except Statutory Rape). The carnal knowledge of a person, without the
148 consent of the victim, including instances where the victim is incapable of giving
149 consent because of his/her/their age or because of his/her/their temporary or
150 permanent mental or physical incapacity. There is carnal knowledge if there is the
151 slightest penetration of the genital or anal opening of the body of another person.

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- Sodomy. Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
 - Sexual Assault with an Object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything the offender uses other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.
 - Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
 - Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse.
 - Incest. Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape – Non-Forcible. Sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
 - Dating violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a relationship will be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - Domestic Violence. Violence committed:
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; or
 - By any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws of California.
 - Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her/their safety or the safety of others or 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

197 c) *Substantial emotional distress* means significant mental suffering or anguish
198 that may but does not necessarily require medical or other professional
199 treatment or counseling.

200 **Student(s)** means any individual(s) who has applied for admission, accepted an offer of
201 admission, or who is registered or enrolled for credit or non-credit bearing coursework,
202 and who maintains an ongoing relationship with the District.

203 **REPORTING OPTIONS**

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

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

209 Because individuals may be deterred from reporting incidents of sexual harassment if
210 alcohol, drugs, or other violations of District or campus rules were involved, the District
211 will inform individuals that the primary concern is for student and employee safety and
212 that use of alcohol or drugs never makes a Complainant at fault for sexual harassment.
213 If other rules are violated, the District will address such violations separately from an
214 allegation of sexual violence.

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

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

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

229 **INTAKE AND PROCESSING OF REPORT**

230 **Receipt of Report**

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

235 **Timeframe for Reporting**

236 To promote timely and effective review, the District strongly encourages individuals to
237 report sexual harassment as soon possible because a delay in reporting may affect the
238 ability to collect relevant evidence and may affect remedies the District can offer. There
239 is no time limitation on submitting notice/complaints to the Title IX Coordinator(s).

240 **Supportive Measures**

241 Supportive measures are non-disciplinary, non-punitive individualized services offered
242 free of charge to the Complainant or the Respondent regardless of whether a formal
243 complaint has been filed. The District will provide the Complainant and Respondent with
244 supportive measures as appropriate and as reasonably available to restore or preserve
245 equal access to the District's education program or activities. These measures are
246 designed to protect the safety of all Parties, protect the District's educational environment,
247 or deter sexual harassment. The District will provide supportive measures on a
248 confidential basis and will only make disclosures to those with a need to know to enable
249 the District to provide the service. Supportive measures may include counseling,
250 extensions of deadlines, other course-related adjustments, modifications of work or class
251 schedules, campus escort services, mutual restrictions on contact between the Parties,
252 changes in work or housing locations, leaves of absence, increased security and
253 monitoring of certain areas of the campus, and other similar measures. Violations of no
254 contact directives will be referred to appropriate student or employee conduct processes
255 for enforcement.

256 **Removal of Respondent Pending Final Determination**

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

262 **Emergency Removal**

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

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

273 This risk analysis is performed by the Title IX Coordinator in conjunction with the District's
274 Office of Student Conduct and Grievances and or the District's Crisis Assessment

275 Intervention Response (CAIR) Team using its standard objective violence risk
276 assessment procedures. In all cases in which an emergency removal is imposed, the
277 student Respondent will be given notice of the action and the opportunity to challenge the
278 removal decision consistent with to Administrative Procedure 5520 Student Discipline
279 Procedures (beginning at line 126 Immediate Interim Suspension) and Education Code
280 Section 66017.

281 In such cases when the challenge occurs, the Respondent will meet with the Vice
282 President of Student Services/Assistant Superintendent or designee who has not been
283 previously involved in the District's individualized threat assessment of the Respondent.
284 This meeting is not a hearing on the merits of the allegation(s), but rather is an
285 administrative process intended to determine solely whether the emergency removal is
286 appropriate. A Respondent may be accompanied by an Advisor of their choice. This
287 meeting must be requested within three (3) calendar days or objections to the
288 emergency removal will be deemed waived.

289 Violation of an emergency removal under this procedure will be grounds for discipline,
290 which may include expulsion. While an emergency removal is in effect, alternative
291 coursework options may be pursued to ensure as minimal an academic impact as
292 possible on the Parties. Lesser restrictive emergency actions may be implemented as an
293 alternative emergency removal where appropriate.

294 **Administrative Leave**

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

299 **FORMAL COMPLAINT PROCESS**

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

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

310 A Formal Complaint may be submitted in person, by mail, or by electronic transmission,
311 on a document filed by a Complainant or signed by the Title IX Coordinator alleging
312 Prohibited Conduct against a Respondent and requesting that the District investigate
313 the allegation(s) (per Formal Complaint definition above). The complaint form may be
314 accessed on the District's website here: www.cerritos.edu/title-ix.

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

- 320 • Offer supportive measures; and/or
- 321 • An Informal Resolution; and/or
- 322 • A Formal Complaint Process including an investigation and a hearing (upon
323 submission of a Formal Complaint).

324 **Notice to Parties**

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

- 327 • Notice of the District's Title IX complaint process;
- 328 • Notice of the allegations of alleged sexual harassment with sufficient details known at
329 the time and with sufficient time to prepare a response before any initial interview;
- 330 • Statement that the Respondent is presumed not responsible for the alleged conduct
331 and that a determination regarding responsibility is made at the conclusion of the
332 complaint process;
- 333 • Notice that the Parties may have Advisor of their choice, who may be, but is not
334 required to be, an attorney; employee may choose a union representative as an
335 advisor.
- 336 • Notice that the Parties may inspect and review any evidence obtained as part of the
337 investigation that is directly related to the allegations raised in the formal complaint,
338 including the evidence upon which the District does not intend to rely in reaching a
339 determination regarding responsibility, and inculpatory or exculpatory evidence
340 whether obtained from a Party or other source; and
- 341 • Inform the Parties of any provision in the District's code of conduct that prohibits
342 knowingly making false statements or knowingly submitting false information during
343 the complaint process.

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

347 **Dismissal of Formal Complaint**

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

- 351 • If the conduct alleged in the formal complaint would not constitute Title IX sexual
352 harassment as defined in this procedure;
- 353 • If the conduct alleged did not occur in the District's education program or activity;
- 354 • If the conduct alleged did not occur against a person in the United States.
- 355 • At the time of filing a Formal Complaint, a complainant is not participating in or
356 attempting to participate in the education program or activity of the District; and/or

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

- 359 • If at any time during the investigation or hearing: a Complainant notifies the Title IX
360 Coordinator in writing that the Complainant would like to withdraw the formal complaint
361 or any allegations;
- 362 • If the Respondent is no longer enrolled or employed by the District; or no longer an
363 applicant seeking enrollment or employment; or
- 364 • If there are specific circumstances that prevent the District from gathering evidence
365 sufficient to reach a determination regarding responsibility as to the formal complaint
366 or allegations.

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

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

372 **Consolidation of Formal Complaints**

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

377 **Equitable Treatment of the Parties**

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

383 **Statement of Presumption of Non-Responsibility**

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

388 **Bias or Conflict of Interest**

389 The District's Title IX Coordinator, investigator, Decision-Maker, or any person designated
390 by the District to facilitate an informal resolution process, will not have potential actual
391 bias or conflict of interest in the investigatory, hearing, sanctioning, or appeal process or
392 bias for or against Complainants or Respondents generally. Actual bias is an articulated
393 prejudice in favor of or against one Party or position; it is not generalized concern about
394 the personal or professional backgrounds, positions, beliefs, or interests of the Decision-

395 Maker in the process. The District will ensure that the Title IX Coordinator, investigator,
396 Decision-Maker, and facilitator receive training on:

- 397 • The definition of sexual harassment in this procedure;
- 398 • The scope of the District's education program or activity;
- 399 • How to conduct an investigation;
- 400 • The complaint process including conducting hearings, appeals, and informal
401 resolution processes; and
- 402 • How to serve impartially, including avoiding: prejudice of the facts at issue;
403 conflicts of interest; and bias.

404 Concerns of bias or a potential conflict of interest should be raised with the Title IX
405 Coordinator. To raise any concern involving bias or conflict of interest by the Title IX
406 Coordinator, contact the Vice President of Human Resources.

407 **Timeline for Completion**

408 The District will undertake its complaint process promptly and as swiftly as possible. The
409 District will complete the investigation and its determination regarding responsibility or the
410 informal resolution process within 180 calendar days of the date of the Notice of
411 Investigation and Allegations.

412 When appropriate, the Title IX Coordinator may determine that good cause exists to
413 extend the 180-calendar day period to conduct a fair and complete investigation, to
414 accommodate an investigation by law enforcement, to accommodate the unavailability of
415 witnesses or delays by the Parties, to account for District breaks or vacations, or due to
416 the complexity of the investigation. The District will provide notice of this extension to the
417 Complainant and Respondent in writing and include the reason for the delay and
418 anticipated timing of completion.

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

423 **Role of Advisor**

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

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

429 A Party does not have a right to self-representation at the hearing; an Advisor must
430 conduct any cross-examination. The District must provide an Advisor of its choice, free
431 of charge to any Party without an Advisor in order to conduct cross-examination. If an
432 Advisor fails to appear at the hearing, the District will provide an Advisor to appear on

433 behalf of the non-appearing Advisor. To limit the number of individuals with confidential
434 information about the issues, each Party may identify one Advisor.

435 **Confidentiality**

436 The District will maintain as confidential the identity of any Complainant, any
437 Respondent, or any witness, except as may be permitted by FERPA, as required by
438 law, or as necessary to carry out a Formal Complaint process under this administrative
439 procedure.

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

445
446 If a Complainant would like the details of an incident to be kept confidential, the
447 Complainant may speak with the Employee Assistance Program (if employee) or:

448 Campus-based confidential District resources available to students include:

- 449 ▪ Student Health Services Mental Health Resources (Only available to students)
- 450 ▪ YWCA Campus Victim Advocate

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

- 452 ▪ Licensed professional counselors and other medical providers
- 453 ▪ Local rape crisis counselors
- 454 ▪ Domestic violence resources
- 455 ▪ Local or state assistance agencies
- 456 ▪ Clergy/Chaplains
- 457 ▪ Attorneys

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

462 **Confidentiality Agreements**

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

469 **Use of Privileged Information**

470 The District's formal complaint procedure does not require, allow, rely upon, or otherwise
471 use questions or evidence that constitute, or seek disclosure of, information protected
472 under a legally recognized privilege (e.g., attorney-client privilege, doctor-patient

473 privilege, spousal privilege, etc.), unless the person holding the privilege provides
474 voluntary, written consent to waive the privilege.

475 **Investigations**

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

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

480 **Trained Investigators**

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

487 **Burden of Gathering Evidence**

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

493 **Notice of Investigative Interview**

494 The District will provide written notice of the date, time, location, participants, and purpose
495 of all investigative interviews to a Party whose participation is invited or expected, with
496 sufficient time (not to exceed 10 calendar days) for the Party to prepare to participate.

497 **Evidence Review**

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

503 Prior to the investigator preparing an investigative report, the District will send to each
504 Party and the Party's Advisor, if any, the evidence subject to inspection and review in an
505 electronic format or a hard copy. The Parties will have at least ten days to submit a written
506 response. The investigator must consider this written response prior to completing the
507 investigative report.

508 **Investigative Report**

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

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

521 The investigator will not make a determination regarding responsibility.

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

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

531 **Hearing**

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

537 **Notice**

538 The Title IX Coordinator will send notice of the hearing to the Parties no less than ten
539 (10) business days prior to the hearing, unless the Parties agree to an expedited
540 schedule. Once mailed, emailed, and/or received in-person, notice will be presumptively
541 delivered. The notice will contain:

- 542 ▪ A description of the alleged violation(s), a list of all policies allegedly violated, a
- 543 description of the applicable procedures, and a statement of the potential
- 544 sanctions/responsive actions that could result.
- 545 ▪ The time, date, and location of the hearing and a reminder that attendance is
- 546 mandatory, superseding all other campus activities.
- 547 ▪ Any technology that will be used to facilitate the hearing.
- 548 ▪ Information about the option for the live hearing to occur with the Parties located in
- 549 separate rooms using technology that enables the Decision Maker and Parties to
- 550 see and hear a party or witness answering questions. Such a request must be raised
- 551 with the Title IX Coordinator at least five (5) business days prior to the hearing.

- 552 ▪ A list of all those who will attend the hearing, along with an invitation to object to any
553 Decision Maker on the basis of demonstrated bias. This must be raised with the Title
554 IX Coordinator at least two (2) business days prior to the hearing.
- 555 ▪ Information on how the hearing will be recorded and on access to the recording for
556 the Parties after the hearing.
- 557 ▪ A statement that if any party or witness does not appear at the scheduled hearing,
558 the hearing may be held in their absence, and the party's or witness's testimony and
559 any statements given prior to the hearing will not be considered by the Decision
560 Maker. For compelling reasons, the Decision Maker or Title IX Coordinator may
561 reschedule the hearing.
- 562 ▪ Notification that the Parties may have the assistance of an Advisor of their choosing
563 at the hearing and will be required to have one present for any questions they may
564 desire to ask. The party must notify the Title IX Coordinator if they do not have an
565 Advisor, and the District will appoint one. Each party must have an Advisor present.
566 There are no exceptions.
- 567 ▪ A copy of all the materials provided to the Decision Maker about the matter, unless
568 they have been provided already.
- 569 ▪ An invitation to contact the Title IX Coordinator to arrange any disability
570 accommodations, language assistance, and/or interpretation services that may be
571 needed at the hearing, at least seven (7) business days prior to the hearing.
- 572 ▪ A statement that Parties cannot bring mobile phones/devices into the hearing.

573 Hearings for possible violations that occur near or after the end of an academic term
574 (assuming the Respondent is still subject to this procedure) and are unable to be
575 resolved prior to the end of term will typically be held immediately after the end of the
576 term or during the summer, as needed, to meet the resolution timeline followed by the
577 District and remain within the one hundred eighty (180) calendar day goal for resolution.
578 In these cases, if the Respondent is a graduating student, a hold may be placed on
579 graduation and/or official transcripts until the matter is fully resolved (including any
580 appeal). A student facing charges under this procedure is not in good standing to
581 graduate.

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

587 **Hearing Format**

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

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

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

599 **Decision-Maker**

600 The Decision-Maker will be free from conflict of interest or bias, including bias for or
601 against Complainants or Respondents.

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

608 **Presenting Witnesses**

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

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

617 **Cross-Examination**

618 The District shall permit each Party's Advisor to ask the other Party and any witness
619 relevant questions, including questions challenging credibility. The Party's Advisor must
620 conduct cross-examination directly, orally, and in real time. A Party may never personally
621 conduct cross-examination.

622 If a Party or witness does not submit to cross-examination at the live hearing, the
623 Decision-Maker will not rely on any statement of that Party or witness in reaching a
624 determination regarding responsibility.

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

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

632 The Decision-Maker cannot rely on the statements or testimony of a Party or witness who
633 has refused to answer a question the Decision-Maker had found relevant unless the
634 Decision-Maker reconsiders and changes the ruling before reaching the determination of
635 responsibility. If the Decision-Maker changes the determination of relevance of an
636 unanswered question, the Decision-Maker must explain the decision to reconsider the
637 ruling in the written determination of responsibility.

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

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

644 **Determinations of Responsibility**

645 When the Decision-Maker makes a determination of responsibility or non-responsibility,
646 the Decision-Maker will issue a written determination regarding responsibility, no later
647 than 20 business days after the date that the hearing ends.

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

655 The written determination will include:

- 656 • Identification of the allegations potentially constituting Title IX sexual harassment as
657 defined in these procedures;
- 658 • A description of the procedural steps taken from the receipt of the formal complaint
659 through the determination, including who conducted the investigation and gave
660 notifications to the Parties. The determination will also state when, where, and the
661 date the investigator interviewed the Parties and witnesses, conducted site visits, the
662 methods used to gather other evidence. The procedural section should also discuss
663 the dates and how the Parties were provided the opportunity to review and inspect
664 evidence and the date of any hearings held and who attended the hearing;
- 665 • Findings of fact supporting the determination. In making these findings, the Decision-
666 Maker will focus on analyzing the findings of fact that support the determination of
667 responsibility or non-responsibility;
- 668 • Conclusions regarding the application of the District's code of conduct to the facts;

- 669 • A statement of, and rationale for, the result as to each allegation, including a
670 determination regarding responsibility;
- 671 • A statement of, and rationale for, any disciplinary sanctions the District imposes on
672 the Respondent;
- 673 • A statement of whether the District will provide the Complainant with remedies
674 designed to restore or preserve equal access to the District's education program or
675 activity;
- 676 • The District need not disclose to the Respondent remedies that do not affect
677 him/her/them as part of the written determination. The District can inform the
678 Respondent that it will provide remedies to the Complainant. However, the District
679 will inform the Complainant of the sanctions against the Respondent;
- 680 • The District's procedures and permissible bases for the Complainant and Respondent
681 to appeal.

682 The District will provide the written determination to the Parties simultaneously within
683 seven (7) business days of receipt of the Decision-Maker's written determination. The
684 determination regarding responsibility becomes final either on the date that the District
685 provides the Parties with the written determination of the result of the appeal, if the Parties
686 file an appeal, or if the Parties do not file an appeal, the date on which an appeal would
687 no longer be timely.

688 **Disciplinary Sanctions and Remedies**

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

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

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

710 Possible disciplinary sanctions for student Respondents include written or verbal
711 reprimand, required training or counseling, non-academic probation, suspension, and
712 expulsion and may be imposed in consultation with the Dean of Students or designee.
713 Possible disciplinary sanctions for employee Respondents include written or verbal
714 reprimand, required training or counseling, reduction in pay, demotion, suspension, or
715 discharge and may be imposed in consultation with the Vice President of Human
716 Resources or designee.

717 Employee sanctions will consider relevant disciplinary policy and procedures, collective
718 bargaining agreement provisions (if applicable) and Ed Code Sections (including but not
719 limited to: §§ 87732, 87734, § 87675, 87682).

720 **Appeal of Dismissal of a Formal Complaint or of the Determination of** 721 **Responsibility**

722 A Complainant or Respondent may appeal the District's determination regarding
723 responsibility or the dismissal of a formal complaint or any allegations. A Complainant or
724 Respondent must submit a written appeal within 15 calendar days from the date of the
725 notice of determination regarding responsibility or from the date of the District's notice of
726 dismissal of a formal complaint or any allegations.

727 **Grounds for Appeal**

728 The appropriate Vice President will serve as the Decision-Maker on Appeal. In filing an
729 appeal of the District's determination regarding responsibility or the District's dismissal of
730 a formal complaint, the Party must state the grounds for appeal and a statement of facts
731 supporting those grounds. The grounds for appeal are as follows:

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

739 **Appeal Procedure**

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

- 741 • Notify the other Party in writing within five business days of receiving a Party's appeal;
- 742 • Allow the non-appealing Parties at least 10 days from the date of receipt of the appeal
743 to submit a written statement in support of, or challenging, the outcome;

744 The appeal Decision-Maker will issue a written decision on whether to grant or deny the
745 appeal, and the rationale for the decision, within 45 business days after the Decision-
746 Maker on appeal receives the response to the appeal or the last day to provide a
747 response. The District will provide the written decision simultaneously to both Parties.
748

749 The Decision-Maker on appeal may extend or otherwise modify the deadlines provided
750 above. Either Party may seek an extension by submitting a written request to the appeal

751 Decision-Maker explaining the need for the extension and the proposed length of the
752 extension. The Decision-Maker will respond to the request within 48 hours in writing and
753 will inform the Parties simultaneously whether the extension is granted.

754 **Informal Resolution**

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

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

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

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

772 **Retaliation Prohibited**

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

778 **Dissemination of Policy and Procedures**

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

783 When hired, employees are required to sign acknowledging that they have received the
784 policy and procedures. The District will place the signed acknowledgment of receipt in
785 each employee's personnel file.

786 **Training**

787 The District will provide training to Title IX Coordinators, investigators, Decision-Makers,
788 and any individual who facilitates an informal resolution process, on the definition of

789 sexual harassment, the scope of the District’s education program or activities, how to
790 conduct an investigation and complaint process including hearings, appeals, and informal
791 resolution processes, as applicable, and how to serve impartially, including avoiding
792 prejudgment of the facts at issue, conflicts of interest, and bias. Any materials used to
793 train the District’s Title IX Coordinator, investigators, Decision-Makers, and any person
794 who facilitates an informal resolution process, will not rely on sex stereotypes and must
795 promote impartial investigations and adjudications of formal complaints of sexual
796 harassment.

797 **File Retention**

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

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

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

815 Office of Primary Responsibility: Vice President, Human Resources

Date Adopted: April 26, 2021