

General Institution

1 AP 3435 DISCRIMINATION AND HARASSMENT INVESTIGATIONS

2 References:

- 3 Education Code, Sections 212.5, 66281.5, 66281.8, 67386, and 87623;
- 4 Government Code, Section 12950.1;
- 5 Title 5, Sections 59320, 59324, 59326, 59328, and 59300 et seq.;
- 6 Title 2 Sections 11023 and 11024

7 For sexual harassment under Title IX, Complainants must proceed under BP 3433
8 Prohibition of Sexual Harassment under Title IX, AP 3433 Prohibition of Sexual
9 Harassment under Title IX, and AP 3434 Responding to Harassment Based on Sex under
10 Title IX. For other forms of sexual harassment or gender-based harassment,
11 Complainants should use this procedure.

12 Reporting and Filing Complaints

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

18 All responsible employees are required to report all actual or suspected sexual
19 harassment to the Title IX Coordinator immediately. A responsible employee is any
20 employee who has the authority to take action to redress sexual harassment or provide
21 supportive measures to students, or who has been given the duty of reporting incidents
22 of sexual harassment to an appropriate District official who has that authority.

23 Confidential Reporting

24 An employee who is a therapist, physician, psychotherapist, member of the clergy, sexual
25 assault counselor, domestic violence counselor, or other individual acting in a
26 professional capacity for which confidentiality is mandated by law is exempt from having
27 to report sexual harassment concerns to the Title IX Coordinator or other designated
28 employee, unless otherwise required by law.

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

33 Outreach

34 When a responsible employee reports actual or suspected sexual harassment involving

35 students to the Title IX Coordinator, the Title IX Coordinator will assess the report of
36 sexual harassment and provide outreach, as appropriate, to each identifiable student who
37 is alleged to be the victim of the reported conduct. The outreach shall include all of the
38 following information:

- 39 • The District received a report that the student may have been a victim of sexual
40 harassment;
- 41 • A statement that retaliation for filing a complaint or participating in the complaint
42 process, or both, under this procedure is prohibited;
- 43 • Counseling resources within the District or in the community;
- 44 • Where a crime may have occurred, notice that the student has the right, but not
45 the obligation, to report the matter to law enforcement;
- 46 • The District's complaint and investigation procedures established pursuant to this
47 procedure;
- 48 • Potential interim measures, such as no-contact directives, housing changes, and
49 academic schedule changes, where applicable;
- 50 • The importance of preserving evidence;
- 51 • A request for the student to meet with the Title IX coordinator or other designated
52 employee to discuss options for responding to the report; and
- 53 • The manner in which the District responds to reports of sexual harassment and a
54 description of potential disciplinary consequences.

55 The District shall consider and respond to requests for accommodations relating to prior
56 incidents of student sexual harassment that could contribute to a hostile educational
57 environment or otherwise interfere with a student's access to education where both
58 individuals are, at the time of the request, subject to the District's policies.

59 **Complaints**

60 A Complaint is a written or verbal statement filed with the District that alleges harassment,
61 discrimination, or retaliation in violation of the District's Board Policies, Administrative
62 Procedures, or in violation of state or federal law. Complaints must be filed with the
63 Director, Diversity, Compliance, & Title IX Coordinator unless the Party submitting the
64 Complaint alleges discrimination, harassment, or retaliation against the responsible
65 district officer, in which case it should be submitted directly to the Vice President, Human
66 Resources.

67 The District may request, but shall not require the Complainant to submit a Complaint on
68 the form prescribed by the Chancellor of the California Community Colleges. A copy of
69 the form will be available at the Office of Human Resources. A Complainant shall report
70 a verbal Complaint to the Director, Diversity, Compliance, & Title IX Coordinator. The
71 Director, Diversity, Compliance, & Title IX Coordinator shall record the verbal Complaint
72 in writing. The Director, Diversity, Compliance, & Title IX Coordinator will take steps to
73 ensure the writing accurately reflects the facts alleged by the Complainant.

74 A Complaint must meet **each of the following** criteria:

- 75 • It must allege facts with enough specificity to show that the allegations, if true,
76 would constitute a violation of District policies or procedures or state or federal law
77 prohibiting discrimination, harassment, or retaliation;
- 78 • The Complainant must file any Complaint not involving employment within one
79 year of the date of the alleged discriminatory, harassing, or retaliatory conduct or
80 within one year of the date on which the Complainant knew or should have known
81 of the facts underlying the allegations of discrimination, harassment, or retaliation;
82 and
- 83 • The Complainant must file any Complaint alleging discrimination, harassment, or
84 retaliation in employment within one-hundred and eighty (180) days of the date of
85 the alleged discriminatory, harassing, or retaliatory conduct, except that this period
86 shall be extended by no more than ninety (90) days following the expiration of the
87 one-hundred and eighty (180) days if the Complainant first obtained knowledge of
88 the facts of the alleged violation after the expiration of the one-hundred and eighty
89 (180) days.

90 If the Complaint does not meet the requirements set forth above, the Director, Diversity,
91 Compliance, & Title IX Coordinator will notify the Complainant within fourteen (14) days
92 that the complaint does not contain allegations of unlawful discrimination that are
93 sufficient under this procedure to trigger an investigation. The Director, Diversity,
94 Compliance, & Title IX Coordinator will specify why the complaint is defective.

95 If the defect is based on the Complainant's failure to state sufficient facts to support a
96 claim of unlawful discrimination, the Director, Diversity, Compliance, & Title IX
97 Coordinator shall offer the Complainant an opportunity to proffer additional facts to
98 support his/her/their claims through an intake interview, which shall be scheduled as soon
99 as reasonably convenient for the Complainant and the Director, Diversity, Compliance, &
100 Title IX Coordinator or designee.

101 If, after the intake interview, the Director, Diversity, Compliance, & Title IX Coordinator
102 determines that the Complainant has still not stated sufficient facts to support a claim of
103 unlawful discrimination, the Director, Diversity, Compliance, & Title IX Coordinator shall
104 provide the Complainant with a written determination explaining the basis for dismissing
105 the complaint within fourteen (14) days of the intake interview. The Director, Diversity,
106 Compliance, & Title IX Coordinator must also notify the Complainant of his/her/their right
107 to appeal this determination directly to the Chancellor of the California Community
108 Colleges within 30 days from the date of the notice of dismissal.

109 **Oversight of Complaint Procedure:** The Vice President of Human Resources or
110 designee is the "responsible District officer" charged with receiving complaints of
111 discrimination, including harassment, and coordinating their investigation.

112 The investigation of complaints must be assigned by the Vice President of Human
113 Resources or designee to a neutral investigator. A neutral investigator means an outside
114 investigator or an internal investigator who is not in the chain of command of the

115 respondent, not substantially implicated by the allegations in the complaint, and who is
116 otherwise impartial. Neutral investigators must be properly trained to conduct such
117 investigations.

118 **Who May File a Complaint:** Any student, employee, parent of a minor, or an individual
119 with legal authority on behalf of a student or employee who believes the student or
120 employee has been discriminated against or harassed by a student, employee, or third
121 party in violation of this procedure and the related policy.

122 **Where to File a Complaint:** A student, employee, parent of a minor, or an individual with
123 legal authority on behalf of a student or employee who believes the student or employee
124 has been discriminated against or harassed in violation of this policy and procedures may
125 make a complaint orally or in writing directed to the Director, Diversity, Compliance, &
126 Title IX Coordinator.

127 Complainants may, but are not required to, use the form prescribed by the Chancellor-of
128 the California Community Colleges. These forms are available from the Vice President
129 of Human Resources and on the California Community Colleges Chancellor's Office
130 website.

131 **Employment-Related Complaints**

132 Complainants filing employment-related complaints shall be notified that they may file
133 employment discrimination complaints with the U.S. Equal Employment Opportunity
134 Commission (EEOC) or the California Civil Rights Department (CRD).

135 Any District employee who receives an alleged harassment or discrimination complaint
136 shall notify the Vice President of Human Resources or designee immediately.

137 **Filing a Timely Complaint:** Since failure to report discrimination, including harassment,
138 impedes the District's ability to stop the behavior, the District strongly encourages anyone
139 who believes he/she/they has been or is being harassed or discriminated against to file
140 a complaint. The District also strongly encourages the filing of such complaints within thirty
141 (30) days of the alleged incident. While all complaints are taken seriously and will be
142 reviewed, assessed, and investigated promptly as appropriate, delay in filing impedes the
143 District's ability to investigate and remediate.

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

147 The District will investigate complaints involving acts that occur off campus if they are
148 related to an academic or work activity or if the harassing conduct interferes with or limits
149 a student's or employee's ability to participate in or benefit from the school's programs or
150 activities.

151 **Communicating that the Conduct is Unwelcome:** The District further encourages
152 students and employees who believe they are being subjected to harassment to let the
153 offending person know immediately and firmly that the conduct or behavior is unwelcome,
154 offensive, in poor taste, and/or inappropriate.

155 **Intake and Processing of the Complaint:** Upon receiving notification of an alleged
156 harassment or discrimination complaint, the Vice President of Human Resources or
157 designee shall:

- 158 • Consider whether the District can undertake efforts to informally resolve the
159 charges, including but not limited to mediation, rearrangement of
160 work/academic schedules; obtaining apologies; providing informal counseling
161 and/or training, etc.
- 162 • Advise all parties that they need not participate in an informal resolution of the
163 complaint, as described above, and have the right to end the informal resolution
164 process at any time. Mediation is not appropriate for resolving incidents involving
165 sexual violence. Mediation is not a permissible method to resolve allegations of
166 sexual violence.
- 167 • Advise a student complainant that he/she/they may file a complaint with the Office
168 of Civil Rights (OCR) of the U.S. Department of Education and employee
169 complainants may file a complaint with the California Civil Rights Department. All
170 complainants should be advised that they have a right to file a complaint with local
171 law enforcement, if the act of the complaint is also a criminal act. They also should
172 be advised of their option to be accompanied by a support person throughout the
173 process. The District must investigate even if the complainant files a complaint with
174 local law enforcement. In addition, the District should ensure that complainants
175 are aware of any available resources, such as counseling, health, and mental
176 health services.
- 177 • In matters involving student sexual harassment, provide student parties notice
178 regarding appropriate counseling resources developed and maintained by the
179 District.
- 180 • Take interim steps to protect a complainant from coming into contact with an
181 accused individual, especially if the complainant is a victim of sexual violence. The
182 Vice President of Human Resources or designee should notify the complainant
183 of his or her options to avoid contact with the accused individual and allow students
184 to change academic situations as appropriate. For instance, the District may
185 prohibit the accused individual from having any contact with the complainant
186 pending the results of the investigation. When taking steps to separate the
187 complainant and accused individual, the District shall minimize the burden on the
188 complainant. For example, it is not appropriate to remove complainants from
189 classes or housing while allowing accused individuals to remain.

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

195 **Student Complainant Requests for Confidentiality**

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

- 205 • There are multiple or prior reports of sexual misconduct against the Respondent;
- 206 • The Respondent reportedly used a weapon, physical restraints, or engaged in
207 battery;
- 208 • The Respondent is a faculty or staff member with oversight of students;
- 209 • There is a power imbalance between the Complainant and Respondent;
- 210 • The Complainant believes that the Complainant will be less safe if the
211 Complainant's name is disclosed or an investigation is conducted; and
- 212 • The District is able to conduct a thorough investigation and obtain relevant
213 evidence in the absence of the Complainant's cooperation.

214 If the District determines that it can honor the student Complainant's request for
215 confidentiality, it shall still take reasonable steps to respond to the Complaint, consistent
216 with the request, to limit the effects of the alleged sexual harassment and prevent its
217 recurrence without initiating formal action against Respondent or revealing the identity of
218 the Complainant. The District shall also take immediate steps to provide for the safety of
219 the Complainant while keeping the Complainant's identity confidential as appropriate.
220 The District shall notify the Complainant that the steps the District will take to respond to
221 the Complaint will be limited by the Complainant's request for confidentiality.

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

228 **Investigation**

229 The Director, Diversity, Compliance, & Title IX Coordinator shall:

- 230 • Provide notice to student Parties to a sexual harassment complaint that the District
231 is conducting an investigation. The notice shall include the allegations against the
232 Respondent and the alleged District policy violations under review. If new
233 allegations that arise during the course of the District's investigation that could
234 subject either student Party to new or additional discipline or corrective action, the

235 Director, Diversity, Compliance, & Title IX Coordinator shall provide a
236 supplemental notice to the student Parties.

- 237 • Authorize the investigation of the Complaint, and supervise or conduct a thorough,
238 prompt, and impartial investigation of the Complaint, as set forth below. Where
239 the Parties opt for informal resolution, the designated officer will determine whether
240 further investigation is necessary to ensure resolution of the matter and utilize the
241 investigation process outlined below as appropriate. The investigation will include
242 interviews with the Complainant, the accused, and any other persons who may
243 have relevant knowledge concerning the Complaint. This may include victims of
244 similar conduct.
- 245 • Review the factual information gathered through the investigation to determine
246 whether the alleged conduct constitutes harassment, or other unlawful
247 discriminatory conduct, giving consideration to all factual information and the
248 totality of the circumstances, including the nature of the verbal, physical, visual, or
249 sexual conduct, and the context in which the alleged incidents occurred.

250 **Investigation of the Complaint:** The District shall promptly investigate every complaint.
251 No claim of workplace or academic harassment or discrimination shall remain
252 unexamined. This includes complaints involving activities that occur off campus and in
253 connection with all of the academic, educational, extracurricular, athletic, and other
254 programs of the District, whether those programs take place in the District's facilities,
255 on a District bus, or at a class or training program sponsored by the District at another
256 location. The District shall promptly investigate complaints of harassment or
257 discrimination that occur off campus if the alleged conduct creates a hostile environment
258 on campus. The District shall notify the Complainant that the District will commence an
259 impartial fact-finding investigation of the allegations contained in the Complaint.

260 As set forth above, where the complainant opts for an informal resolution, the Vice
261 President of Human Resources or designee may limit the scope of the investigation, as
262 appropriate. The District will keep the investigation confidential to the extent possible,
263 but cannot guarantee absolute confidentiality because release of some information on
264 a "need-to-know-basis" is essential to a thorough investigation. When determining
265 whether to maintain confidentiality, the District may weigh the request for confidentiality
266 against the following factors: the seriousness of the alleged harassment; the
267 complainant's age; whether there have been other harassment complaints about the
268 same individual; and the accused individual's rights to receive information about
269 the allegations if the information is maintained by the District as an "education
270 record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code
271 Section 1232g; 34 Code Federal Regulations Part 99.15. The District will inform the
272 complainant if it cannot maintain confidentiality.

273 **Investigation Steps:** The District will fairly and objectively investigate harassment and
274 discrimination complaints. Employees designated to serve as investigators under this
275 policy shall have adequate training on what constitutes sexual harassment, including
276 sexual violence, and/or the form of discrimination alleged in the complaint, and on how
277 the District's grievance procedures operate. The investigator may not have any real or

278 perceived conflicts of interest and must be able to investigate the allegations impartially
279 using trauma-informed investigation techniques.

280 The investigation and adjudication of alleged misconduct under this procedure is not an
281 adversarial process between the Complainant, the Respondent, and the witnesses, but
282 rather a process for the District to comply with its obligations under existing law. The
283 Complainant does not have the burden to prove, nor does the Respondent have the
284 burden to disprove, the underlying allegation or allegations of misconduct.

285 Investigators will use the following steps: interviewing the complainant(s); interviewing
286 the person who was the subject of the discrimination if different; interviewing the accused
287 individual(s); identifying and interviewing witnesses and evidence identified by each
288 party; identifying and interviewing any other witnesses, if needed; reminding all
289 individuals interviewed of the District's no-retaliation policy; considering whether any
290 involved person should be removed from the campus pending completion of the
291 investigation; review personnel/academic files of all involved parties; reach a
292 conclusion as to the allegations and any appropriate disciplinary and remedial action;
293 and see that all recommended action is carried out in a timely fashion. When the District
294 evaluates the complaint, it shall do so using a preponderance of the evidence standard.
295 Thus, after considering all the evidence it has gathered, the District will decide whether
296 it is more likely than not that discrimination or harassment has occurred.

297 **Timeline for Completion:** The District will undertake its investigation as promptly and
298 swiftly as possible. To that end, the investigator shall complete the above steps, and
299 prepare a written report within ninety (90) days of the District receiving the
300 complaint. The District will toll the timeline while the Parties are engaged in good faith
301 efforts at informal resolution.

302 **Cooperation Expected:** All employees and students are expected to cooperate with a
303 District investigation into allegations of harassment or discrimination. Lack of
304 cooperation impedes the ability of the District to investigate thoroughly and respond
305 effectively. However, lack of cooperation by a complainant or witnesses does not relieve
306 the District of its obligation to investigate. The District will conduct an investigation if it is
307 discovered that harassment or any other form of discrimination is, or may be occurring,
308 with or without the cooperation of the alleged victim(s) and regardless of whether a
309 complaint is filed. No employee will be retaliated against as a result of lodging a Complaint
310 or participating in any workplace investigation.

311 **Written Report**

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

- 314 • A description of the circumstances giving rise to the Complaint;
- 315 • A description of the procedural steps taken during the investigation, including all
316 individuals contacted and interviewed;
- 317 • A summary of the testimony provided by each witness with information relevant to
318 the allegations, including the Complainant;

- 319 • An explanation of why an identified potential witness was not interviewed;
- 320 • An analysis of relevant data or other evidence collected during the course of the
- 321 investigation, including a list of relevant documents;
- 322 • A specific finding as to whether each factual allegation in the Complaint occurred
- 323 based on the preponderance of the evidence standard;
- 324 • A table of contents if the report exceeds ten pages; and
- 325 • Any other information deemed appropriate by the District.

326 **Confidentiality of the Process**

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

334 **Evidence of Past Sexual History**

335 An investigator or hearing officer, if required by this procedure, shall not consider the past
336 sexual history of the Complainant or Respondent except in the limited circumstances
337 described below:

- 338 • The investigator or hearing officer shall not consider prior or subsequent sexual
- 339 history between the Complainant and anyone other than the Respondent for any
- 340 reason unless directly relevant to prove that physical injuries alleged to have been
- 341 inflicted by the Respondent were inflicted by another individual;
- 342 • The investigator or hearing officer shall not consider the existence of a dating
- 343 relationship or prior or subsequent consensual sexual relations between the
- 344 Complainant and the Respondent unless the evidence is relevant to how the
- 345 Parties communicated consent in prior or subsequent consensual sexual relations;
- 346 ○ Where the investigator or hearing officer allows consideration of evidence
- 347 about a dating relationship or prior or subsequent consensual sexual
- 348 relations between the Complainant and the Respondent pursuant to this
- 349 circumstance, the mere fact that the Complainant and Respondent engaged
- 350 in other consensual sexual relations with one another is never sufficient, by
- 351 itself, to establish that the conduct in question was consensual.

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

355 **Administrative Determination**

356 In any case not involving employment discrimination, within ninety (90) days of receiving
357 a Complaint, the district shall complete its investigation and forward a copy or summary
358 of the report, and written notice to the Complainant setting forth all of the following:

- 359 • The Vice President, Human Resources' or designee's determination as to whether
360 unlawful discrimination occurred with respect to each allegation in the Complaint
361 based on a preponderance of the evidence standard and the basis for that
362 determination including factual findings;
- 363 • In the event a discrimination allegation is substantiated, a description of actions
364 taken, if any, to prevent similar acts of unlawful discrimination from occurring in the
365 future;
- 366 • The proposed resolution of the Complaint;
- 367 • The Complainant's right to appeal to the District's Board of Trustees and the
368 California Community Colleges Chancellor's Office; and
- 369 • In matters involving student sexual misconduct, the Respondent's right to appeal
370 to the District's Board of Trustees any disciplinary sanction imposed upon the
371 Respondent.

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

- 375 • The Vice President, Human Resources' or designee's determination as to whether
376 discrimination occurred with respect to each allegation in the Complaint based on
377 the preponderance of the evidence standard and the basis for that determination
378 including factual findings;
- 379 • If a discrimination allegation is substantiated, a description of actions taken, if any,
380 to prevent similar acts of unlawful discrimination from occurring in the future;
- 381 • The proposed resolution of the Complaint; and
- 382 • The Complainant's right to appeal to the District's Board of Trustees and to file a
383 Complaint with the California Civil Rights Department.

384 The District shall also provide the Respondent the following:

- 385 • The Vice President, Human Resources' or designee's determination as to whether
386 unlawful discrimination occurred with respect to each allegation in the Complaint
387 based on the preponderance of the evidence standard and the basis for that
388 determination including factual findings;
- 389 • The proposed resolution of the Complaint, including any disciplinary action against
390 the Respondent; and
- 391 • In matters involving student sexual misconduct not subject to Title IX, the
392 Respondent's right to appeal to the District's Board of Trustees any disciplinary
393 sanction imposed upon the Respondent.

394 The District will toll the timelines described above while the Parties are engaged in good
395 faith efforts at informal resolution.

396 In matters involving an academic employee placed on involuntary paid administrative
397 leave, the District shall complete its investigation within ninety (90) working days of the
398 administrative leave commencing, unless the period of paid administrative leave is
399 extended by agreement of the employee and District for a period not exceeding thirty (30)
400 additional calendar days.

401 **Discipline for Student Sexual Misconduct Not Subject to Title IX**

402 In a Complaint involving student sexual misconduct not subject to Title IX, if a student
403 Respondent is subject to severe disciplinary sanctions, and the credibility of witnesses
404 was central to the investigative findings, the District will provide an opportunity for the
405 student Respondent to cross-examine witnesses indirectly at a live hearing, either in
406 person or by videoconference, conducted by a neutral decision-maker other than the
407 investigator.

408 In other Complaints involving sexual harassment against a student, the District shall
409 decide whether a hearing is necessary to determine whether any sexual violence more
410 likely than not occurred. In making this decision, the District may consider whether the
411 Parties elected to participate in the investigation and whether each Party had the
412 opportunity to suggest questions to be asked of the other Party and witnesses during the
413 investigation.

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

421 At the hearing, the other Party shall have an opportunity to note an objection to the
422 questions posed. The District may limit such objections to written form, and neither the
423 hearing officer nor the District are obligated to respond, other than to include any objection
424 in the record. The hearing officer shall have the authority and obligation to discard or
425 rephrase any question that the hearing officer deems to be repetitive, irrelevant, or
426 harassing. In making these determinations, the hearing officer is not bound by, but may
427 take guidance from, the formal rules of evidence.

428 Generally, the Parties may not introduce evidence, including witness testimony, at the
429 hearing that the Party did not identify during the investigation and that was available at
430 the time of the investigation. However, the hearing officer has discretion to accept for
431 good cause, or exclude, such new evidence offered at the hearing.

432 The hearing officer shall provide an explanation of the meaning of the preponderance of
433 the evidence standard, and affirm that it shall apply to adjudications under this procedure.
434 The preponderance of the evidence standard is met if the District determines that it is
435 more likely than not that the alleged misconduct occurred, based on the facts available at
436 the time of the decision.

437 **Discipline and Corrective Action**

438 If harassment, discrimination, and/or retaliation occurred in violation of Board Policy or this
439 procedure, the District shall take disciplinary action against the accused and any other
440 remedial action it determines to be appropriate consistent with state and federal law. The
441 action will be prompt, effective, and commensurate with the severity of the offense.

442 Possible disciplinary sanctions for student Respondents include written or verbal
443 reprimand, required training or counseling, non-academic probation, suspension, and
444 expulsion. Possible disciplinary sanctions for employee Respondents include written or
445 verbal reprimand, required training or counseling, suspension, or discharge.

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

- 447 • providing an escort to ensure that the complainant can move safely between
448 classes and activities;
- 449 • ensuring that the complainant and alleged perpetrator do not attend the same
450 classes or work in the same work area;
- 451 • preventing offending third parties from entering campus;
- 452 • providing counseling services;
- 453 • providing medical services or referral to medical services;
- 454 • providing academic support services, such as tutoring;
- 455 • arranging for a student complainant to re-take a course or withdraw from a class
456 without penalty, including ensuring that any changes do not adversely affect the
457 complainant's academic record; and
- 458 • reviewing any disciplinary actions taken against the complainant to see if there is
459 a causal connection between the harassment and the misconduct that may have
460 resulted in the complainant being disciplined.

461 If discipline is imposed, the nature of the discipline will not be communicated to the
462 complainant. However, the District may disclose information about the sanction imposed
463 on an individual who was found to have engaged in harassment or other discrimination
464 when the sanction directly relates to the complainant; for example, the District may inform
465 the complainant that the harasser must stay away from the complainant.

466 Disciplinary actions against employees and students will conform to all relevant statutes,
467 regulations, personnel and student policies and procedures, including the provisions of
468 any applicable collective bargaining agreement.

469 The District shall also take reasonable steps to protect the complainant from further
470 harassment and/or discrimination, and to protect the complainant and witnesses from
471 retaliation as a result of communicating the complaint and/or assisting in the investigation.

472 The District will ensure that complainants and witnesses know how to report any
473 subsequent problems, and should follow-up with complainants to determine whether any
474 retaliation or new incidents of harassment have occurred. The District shall take
475 reasonable steps to ensure the confidentiality of the investigation and to protect the
476 privacy of all parties to the extent possible without impeding the District's ability to
477 investigate and respond effectively to the complaint.

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

481 **Appeals**

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

485 If the complainant is not satisfied with the results of the administrative determination,
486 he/she/they may, within fifteen (15) days of issuance of the determination to the
487 complainant by the District, submit a written appeal to the Board of Trustees.

488 The Board's review on appeal is limited to the following issues:

- 489 • whether there was a procedural error in violation of this procedure;
- 490 • whether there was a defect in the investigation;
- 491 • whether new evidence unavailable during the investigation despite the
492 Complainant's due diligence would substantially impact the outcome of the
493 investigation;
- 494 • whether correct legal standards were applied; and
- 495 • whether the District's determination was an abuse of discretion.

496 The Board of Trustees shall review the original complaint, the investigative report, the
497 administrative decision, and the appeal. The Board shall issue a final District decision in
498 the matter within forty-five (45) days after receiving the appeal. A copy of the decision
499 rendered by the Board of Trustees shall be forwarded to the complainant and to the
500 State Chancellor's Office. The complainant shall also be notified of his/her/their right to
501 appeal this decision.

502 If the Board of Trustees does not act within forty-five (45) days the administrative
503 determination shall be deemed approved on the forty-sixth (46th) day and shall become
504 the final decision of the District in the matter. The District shall promptly notify the
505 Complainant and the Respondent of the Board's action, or if the Board took no action,
506 that the administrative determination is deemed approved.

507 In any case not involving employment discrimination, the complainant shall have the right
508 to file a written appeal with the State Chancellor's Office within thirty (30) days after the
509 Board of Trustees issued the final District decision or permitted the administrative
510 decision to become final. Such appeals shall be processed pursuant to the provision of
511 Title 5 Section 59350.

512 In any case involving employment discrimination, including workplace harassment, the
513 complainant may, at any time before or after the issuance of the final decision of the
514 District, file a complaint with the California Civil Rights Department.

515 **Remand**

516 The California Community Colleges Chancellor's Office may remand any matter to the
517 District for any of the following reasons: to cure defects in the investigation or in
518 procedural compliance; to consider new evidence not available during the investigation

519 despite the Complainant's due diligence that would substantially impact the outcome of
520 the investigation; or to modify or reverse a decision of the District's Board of Trustees
521 based upon misapplication of an applicable legal standard or an abuse of discretion.

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

527 **Extension of Time**

528 A student Complainant or Respondent may request, in writing, an extension of a deadline
529 related to a Complaint during periods of examinations or school closures. The District
530 shall grant a student Party's reasonable request for an extension of a deadline related to
531 a Complaint during periods of examinations or school closures.

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

- 536 • a need to interview a party or witness who has been unavailable;
- 537 • a need to review or analyze additional evidence, new allegations, or new
538 complaints related to the matter; or
- 539 • to prepare and finalize an administrative determination.

540 The District shall send a written notice to the Complainant and to a Respondent who is
541 aware of an investigation indicating the necessity of an extension, the justification for the
542 extension, and the number of days the deadline will be extended. The District shall send
543 this notice no later than ten (10) days prior to the initial time to respond.

544 The District may request additional extensions from the California Community Colleges
545 Chancellor's Office after the initial forty-five (45) day extension. The District shall send a
546 copy of the extension request to the Complainant and to a Respondent who is aware of
547 an investigation. The Complainant and Respondent may each file a written objection with
548 the California Community Colleges Chancellor's Office within five (5) days of receipt.

549 The extension of time provisions described above do not apply to investigations involving
550 an academic employee placed on involuntary paid administrative leave.

551 **Disclosures to the California Community Colleges Chancellor's Office**

552 Upon request of the California Community Colleges Chancellor's Office, the District shall
553 provide copies of all documents related to a discrimination Complaint, including the
554 following: the original Complaint, any investigative report unless subject to the attorney-
555 client privilege, the written notice to the Complainant setting forth the results of the
556 investigation, the final administrative decision rendered by the Board or a statement
557 indicating the date upon which the decision became final, and a copy of the notification

558 to the Complainant of his/her/their appeal rights, the Complainant's appeal of the District's
559 administrative determination, any other non-privileged documents or information the
560 Chancellor requests.

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

568 **Interim and Supportive Measures**

569 Interim measures are individualized services offered as appropriate to either or both the
570 Complainant and Respondent in an alleged incident of sexual misconduct, prior to an
571 investigation or while an investigation is pending.

572 Supportive measures are non-disciplinary, non-punitive individualized services offered
573 free of charge to the Complainant or the Respondent regardless of whether a Complaint
574 has been filed.

575 The District will provide interim or supportive measures to Parties as appropriate and as
576 reasonably available.

577 Interim and supportive measures may include changes to academic, living, transportation,
578 and working situation or protective measures such as counseling, extensions of deadlines,
579 other course-related adjustments, modifications of work or class schedules, campus
580 escort services, mutual restrictions on contact between the Parties, changes in work or
581 housing locations, leaves of absence, increased security and monitoring of certain areas
582 of the campus, and other similar measures.

583 **No-Contact Directives**

584 When requested by a Complainant or otherwise determined to be appropriate, the District
585 shall issue an interim no-contact directive prohibiting the Respondent from contacting the
586 Complainant during the pendency of the investigation. The District shall not issue an
587 interim mutual no-contact directive automatically, but instead shall consider the specific
588 circumstances of each case to determine whether a mutual no-contact directive is
589 necessary or justifiable to protect the noncomplaining party's safety or well-being, or to
590 respond to interference with an investigation. If the District issues a no-contact directive
591 after making decision of responsibility, the no-contract directive shall be unilateral and
592 only apply against the Party found responsible.

593 Upon the issuance of a mutual no-contact directive, the District shall provide the Parties
594 with a written justification for the directive and an explanation of the terms of the directive.
595 Upon the issuance of any no-contact directive, the District shall provide the Parties with

596 an explanation of the terms of the directive, including the circumstances, if any, under
597 which violation could be subject to disciplinary action.

598 **File Retention**

599 The District will retain on file for a period of at least five (5) years after closing the case
600 copies of:

- 601 • the original Complaint;
- 602 • the investigatory report;
- 603 • the summary of the report if one is prepared;
- 604 • the notice provided to the Parties of the District's administrative determination and
605 the right to appeal;
- 606 • any appeal; and
- 607 • the District's final decision.

608 For any appeal to the California Community Colleges Chancellor's Office, the district shall
609 provide all relevant, non-privileged documents upon request of the California Community
610 Colleges Chancellor's Office.

611 **Dissemination of Policy and Procedures**

612 Board Policy and Administrative Procedures related to harassment will include
613 information that specifically addresses sexual violence. District policy and procedures
614 will be provided to all students, all employees, all volunteers who will regularly interact
615 with students, and each individual or entity under contract with the District to perform any
616 service involving regular interaction with students at the District. District policy and
617 procedures related to harassment will also be posted on campus and on the District's
618 website.

619 When hired, employees are required to sign that they have received the policy and
620 procedures, and the signed acknowledgment of receipt is placed in each employee's
621 personnel file. In addition, these policies and procedures are incorporated into the course
622 catalogs, class schedules, and orientation materials for new students.

623 **Training**

624 The District shall provide at least two hours of classroom or other effective interactive
625 training and education regarding sexual harassment to all management employees once
626 every two years. All new management employees must be provided with the training and
627 education within six months of their assumption of a management position.

628 The training and education required by this procedure shall include information and
629 practical guidance regarding the federal and state statutory provisions concerning the
630 prohibition against and the prevention and correction of sexual harassment and the
631 remedies available to victims of sexual harassment in employment. The training and
632 education shall also include practical examples aimed at instructing managers in the
633 prevention of harassment, discrimination, and retaliation, and shall be presented by
634 trainers or educators with knowledge and expertise in the prevention of harassment,
635 discrimination, and retaliation. Supervisor's harassment training must also address

636 potential exposure and liability for employers and individuals, supervisor's obligation to
637 report sexual harassment, discrimination, and retaliation when they become aware of it,
638 and appropriate remedial measures to correct harassing behavior. Training for
639 responsible employees must also address the responsible employee's obligation to report
640 sexual harassment and instruction on how to report sexual harassment to the responsible
641 District officer.

642 The District will also provide comprehensive, trauma-informed training to each employee
643 involved in the District's sexual harassment or discrimination grievance procedure
644 including investigating and adjudicating complaints involving sexual violence, sexual
645 assault, domestic violence, dating violence, and stalking. This training shall include
646 information on trauma-informed investigatory and hearing practices that help ensure an
647 impartial and equitable process, best practices for assessment of a sexual harassment or
648 sexual violence complaint, best practices for questioning of the complainant, respondent,
649 and witnesses, and implicit bias and racial inequities, both broadly and in school
650 disciplinary processes. Materials for this training shall include statistics on the prevalence
651 of sexual harassment and sexual violence in the educational setting, and the differing
652 rates at which students experience sexual harassment and sexual assault in the
653 educational setting based on their race, sexual orientation, disability, gender, and gender
654 identity.

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

659 In years in which a substantive policy or procedural change has occurred, all District
660 employees will attend a training update and/or receive a copy of the revised policies and
661 procedures.

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

666 **Education and Prevention for Students**

667 In order to take proactive measures to prevent sexual harassment and violence toward
668 students, the District will, under the direction of the Director of Diversity, Compliance, and
669 Title IX, provide preventive education programs and make victim resources, including
670 comprehensive victim services, available. The District will include such programs in
671 orientation programs for new students, and in training for student athletes and coaches.
672 These programs will include discussion of what constitutes sexual harassment and sexual
673 violence, the District's policies and disciplinary procedures, and the consequences of
674 violating these policies. A training program or informational services will be made
675 available to all students at least once annually.

676 The education programs will also include information aimed at encouraging students to
677 report incidents of sexual violence to the appropriate District and law enforcement
678 authorities. Since victims or third parties may be deterred from reporting incidents if
679 alcohol, drugs, or other violations of District or campus rules were involved, the District
680 will inform students that the primary concern is for student safety and that use of alcohol
681 or drugs never makes the victim at fault for sexual violence. If other rules are violated,
682 the District will address such violations separately from an allegation of sexual violence.

683 Office of Primary Responsibility: Vice President, Human Resources

Date Approved: 3/7/09

Dates Revised: 7/1/10; 9/24/12; 4/11/16; 12/10/18; 4/7/25

Date Reviewed: 1/16/19