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4 **AP 3435 DISCRIMINATION AND HARASSMENT INVESTIGATIONS\***

5  
6 **References:**

7 Education Code, Sections 212.5, 231.5, 66281.5, 66281.8, 67386, and 87623;  
8 Government Code, Section 12950.1;  
9 Title 5, Sections 59320, 59324, 59326, 59328, and 59300 et seq.;  
10 Title 2, Sections 11023 and 11024  
11 34 C.F.R., Section 106.8(b)

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13 The District is committed to providing an academic and work environment that respects  
14 the dignity of individuals and groups. All forms of discrimination and harassment are  
15 contrary to basic standards of conduct between individuals and are prohibited by state  
16 and federal law, as well as this procedure, and will not be tolerated. The District prohibits  
17 all forms of discrimination, intimidation, or harassment against any individual who files or  
18 otherwise participates in the filing or investigation of a complaint of discrimination.  
19 Persons who believe they have been subjected to retaliation may file a complaint under  
20 this procedure.

21  
22 This administrative procedure applies to complaints alleging discrimination, harassment,  
23 or retaliation on the basis of national origin, religious creed, age, gender, gender identity,  
24 gender expression, race, ethnicity, immigration status, color, medical condition, genetic  
25 information, ancestry, sexual orientation, marital status, physical disability, mental  
26 disability, pregnancy, or military and veteran status, or because an individual is perceived  
27 to have one or more of the foregoing characteristics, or based on association with a  
28 person or group with one or more of these actual or perceived characteristics.

29  
30 For sex discrimination under Title IX, Complainants must proceed under BP/AP 3433  
31 titled Prohibition of Sex Discrimination under Title IX, and AP 3434 Responding to Sex  
32 Discrimination under Title IX. For other forms of discrimination and harassment,  
33 Complainants should use this procedure.

34  
35 **Reporting and Filing Complaints**

36 The law prohibits coworkers, supervisors, managers, and third parties with whom an  
37 employee comes into contact from engaging in harassment, discrimination, or retaliation.  
38 Any person who has suffered harassment, discrimination, or retaliation or who has  
39 learned of harassment, discrimination, or retaliation may report harassment,  
40 discrimination, or retaliation. All District employees shall report all actual or suspected  
41 sexual harassment to the Vice President of Human Resources immediately.

42  
43 **Confidential Reporting**

44 An employee who is a therapist, physician, psychotherapist, member of the clergy, sexual  
45 assault counselor, domestic violence counselor, or other individual acting in a  
46 professional capacity for which confidentiality is mandated by law is exempt from having

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47 to report sexual harassment concerns to the Title IX Coordinator or other designated  
48 employee, unless otherwise required by law.

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

54  
55 **Outreach**

56 When a responsible employee reports actual or suspected sexual harassment involving  
57 students to the Director, Diversity, Compliance, & Title IX Coordinator, the Director,  
58 Diversity, Compliance, & Title IX Coordinator will assess the report of sexual harassment  
59 and provide outreach, as appropriate, to each identifiable student who is alleged to be the  
60 victim of the reported conduct. The outreach shall include all of the following information:

- 61
- 62 • The District received a report that the student may have been a victim of sexual  
63 harassment;
  - 64 • A statement that retaliation for filing a complaint or participating in the complaint  
65 process, or both, under this procedure is prohibited;
  - 66 • Counseling resources within the District or in the community;
  - 67 • Where a crime may have occurred, notice that the student has the right, but not  
68 the obligation, to report the matter to law enforcement;
  - 69 • The District's complaint and investigation procedures established pursuant to this  
70 procedure;
  - 71 • Potential interim measures, such as no-contact directives, housing changes, and  
72 academic schedule changes, where applicable;
  - 73 • The importance of preserving evidence;
  - 74 • A request for the student to meet with the Title IX coordinator or other designated  
75 employee to discuss options for responding to the report; and
  - 76 • The manner in which the District responds to reports of sexual harassment and a  
77 description of potential disciplinary consequences.

78  
79 The District shall consider and respond to requests for accommodations relating to prior  
80 incidents of student sexual harassment that could contribute to a hostile educational  
81 environment or otherwise interfere with a student's access to education where both  
82 individuals are, at the time of the request, subject to the District's policies.

83  
84 **Complaints**

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

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93 The District may request, but shall not require the Complainant, to submit a Complaint on  
94 the form provided by the District. A copy of the form will be available on the District  
95 website or in-person in the Office of Human Resources. A Complainant shall report a  
96 verbal Complaint to the Director, Diversity, Compliance, & Title IX Coordinator. The  
97 Director, Diversity, Compliance, & Title IX Coordinator shall record the verbal Complaint  
98 in writing. The Director, Diversity, Compliance, & Title IX Coordinator will take steps to  
99 ensure the writing accurately reflects the facts alleged by the Complainant.

100  
101 A Complaint must meet each of the following criteria:

- 102 • It must allege facts with enough specificity to show that the allegations, if true, would  
103 constitute a violation of District policies or procedures or state or federal law  
104 prohibiting discrimination, harassment, or retaliation;
- 105 • The Complainant must file any complaint not involving employment within one year  
106 of the date of the alleged discriminatory, harassing, or retaliatory conduct or within  
107 one year of the date on which the Complainant knew or should have known of the  
108 facts underlying the allegation(s) of discrimination, harassment, or retaliation; and
- 109 • The Complainant must file any complaint alleging discrimination, harassment, or  
110 retaliation in employment within three years of the date of the alleged  
111 discriminatory, harassing, or retaliatory conduct.

112  
113 If the Complaint does not meet the requirement set forth, the Director, Diversity,  
114 Compliance, & Title IX Coordinator will notify the Complainant within fourteen (14)  
115 calendar days that the complaint does not contain allegations of unlawful discrimination  
116 that are sufficient under this procedure to trigger an investigation. Director, Diversity,  
117 Compliance, & Title IX Coordinator will specify why the complaint is defective.

118  
119 If the defect is based on the Complainant's failure to state sufficient facts to support a  
120 claim of unlawful discrimination, Director, Diversity, Compliance, & Title IX Coordinator  
121 shall offer the Complainant an opportunity to proffer additional facts to support their claims  
122 through an intake interview, which shall be scheduled as soon as reasonably convenient  
123 for the Complainant and the Vice President of Human Resources or designee.

124  
125 If, after the intake interview, Director, Diversity, Compliance, & Title IX Coordinator  
126 determines the Complainant has still not stated sufficient facts to support a claim of  
127 unlawful discrimination, the Vice President of Human Resources shall provide the  
128 Complainant with a written determination explaining the basis for dismissing the complaint  
129 within fourteen (14) calendar days of the intake interview. The Director, Diversity,  
130 Compliance, & Title IX Coordinator must also notify the Complainant of their right to  
131 appeal this determination directly to the Chancellor of the California Community Colleges  
132 within 30 days from the date of the notice of dismissal.

133  
134 **Oversight of Complaint Procedure:** The Diversity, Compliance, & Title IX Coordinator  
135 is the "responsible District officer" charged with receiving complaints of discrimination or  
136 harassment, and coordinating their investigation.

138 The investigation of complaints must be assigned by the Director, Diversity, Compliance,  
139 & Title IX Coordinator to a neutral investigator. A neutral investigator means an outside  
140 investigator or an internal investigator who is not in the chain of command of the  
141 respondent, not substantially implicated by the allegations in the complaint, and who is  
142 otherwise impartial. Neutral investigators must be properly trained to conduct such  
143 investigations.

144  
145 **Who May File a Complaint:** Any student, employee, parent of a minor, or an individual  
146 with legal authority on behalf of a student or employee who believes they or any individual  
147 has been discriminated against or harassed by a student, employee, or third party in  
148 violation of this procedure and the related policy.

149  
150 **Where to File a Complaint:** A student, employee, parent of a minor, or an individual  
151 with legal authority on behalf of a student or employee who believes they or any individual  
152 has been discriminated against or harassed in violation of this policy and these  
153 procedures, or who has witnessed or has knowledge of such discrimination, may make a  
154 complaint orally or in writing, within one (1) year of the date of the alleged harassment or  
155 the date on which the Complainant knew or should have known of the facts underlying  
156 the complaint.

157  
158 **Advisors in Student Harassment Complaints**  
159 Student Parties in Complaints involving sexual harassment are permitted to have a  
160 support person or advisor accompany them during any stage of the Complaint process  
161 described in this procedure. Student Parties in Complaints involving sexual harassment  
162 have the right to consult with an attorney, at their own expense, at any stage of the  
163 Complaint process if they wishes to do so. An attorney may serve as a support person  
164 or advisor.

165  
166 **Employment-Related Complaints**  
167 Employee Complainants shall be notified that they may file employment discrimination  
168 complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the  
169 California Civil Rights Department (CRD).

170  
171 Complaints filed with the EEOC and/or the CRD should be forwarded to the State  
172 Chancellor's Office.

173  
174 **Filing a Timely Complaint:** Since failure to report discrimination, including harassment,  
175 impedes the District's ability to stop the behavior, the District strongly encourages anyone  
176 who believes they have been or are being harassed or discriminated against to file a  
177 complaint. The District also strongly encourages the filing of such complaints within thirty  
178 (30) calendar days of the alleged incident. While all complaints are taken seriously and  
179 will be reviewed, assessed, and investigated promptly as appropriate, delay in filing  
180 impedes the District's ability to investigate and remediate.

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

185  
186 The District will investigate complaints involving acts that occur off campus if they are  
187 related to an academic or work activity or if the harassing conduct interferes with or limits  
188 a student's or employee's ability to participate in or benefit from the school's programs or  
189 activities.

190  
191 **Communicating that the Conduct is Unwelcome:** The District further encourages  
192 students and employees who believe they are being subjected to harassment to let the  
193 offending person know immediately and firmly that the conduct or behavior is unwelcome,  
194 offensive, in poor taste and/or inappropriate.

195  
196 **Intake and Processing of the Complaint:** Upon receiving notification of an alleged  
197 harassment or discrimination complaint, the Vice President of Human Resources and/or  
198 designee shall:

- 199 • Undertake efforts to informally resolve the charges, including but not limited to  
200 mediation, rearrangement of work/academic schedules; obtaining apologies;  
201 providing informal counseling and/or training, etc.
- 202 • Advise the complainant that they need not participate in an informal resolution of  
203 the complaint, as described above, and has the right to end the informal resolution  
204 process at any time. Mediation is not allowed, even on a voluntary basis, for resolving  
205 incidents involving sexual violence.
- 206 • Advise a student Complainant that they may file a complaint with the Office of Civil  
207 Rights (OCR) of the U.S. Department of Education and employee Complainants may  
208 file a complaint with the California Civil Rights Department. All Complainants should  
209 be advised that they have a right to file a complaint with local law enforcement, if the  
210 act complained of is also a criminal act. They also should be advised of their option  
211 to be accompanied by a support person throughout the process. The District must  
212 respond even if the Complainant files a complaint with local law enforcement. In  
213 addition, the District should ensure that Complainants are aware of any available  
214 resources, such as counseling, health, and mental health services.
- 215 • In matters involving student sexual harassment, provide student Parties notice  
216 regarding appropriate counseling resources developed and maintained by the  
217 District.
- 218 • Take interim steps to protect the Parties from coming into contact with an one  
219 another, especially if the Complainant is a victim of sexual violence. Director,  
220 Diversity, Compliance, & Title IX Coordinator should notify the Parties of their options  
221 to avoid contact with the one another and allow students to change academic  
222 situations as appropriate. For instance, the District may prohibit the Respondent from  
223 having any contact with the Complainant pending the results of the  
224 investigation. When taking steps to separate the Complainant and Respondent, the  
225 District shall minimize the burden on the Complainant. For example, it is not  
226 appropriate to remove Complainants from classes or housing while allowing  
227 Respondents to remain.

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

233

### 234 **Student Complainant Requests for Confidentiality:**

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

- 244 • There are multiple or prior reports of sexual misconduct against the Respondent;
- 245 • The Respondent reportedly used a weapon, physical restraints, or engaged in  
246 battery;
- 247 • The Respondent is a faculty or staff member with oversight of students;
- 248 • There is a power imbalance between the Complainant and Respondent;
- 249 • The Complainant believes that the Complainant will be less safe if the  
250 Complainant's name is disclosed or an investigation is conducted; and
- 251 • The District is able to conduct a thorough investigation and obtain relevant evidence  
252 in the absence of the Complainant's cooperation.

253

254 If the District determines that it can honor the student Complainant's request for  
255 confidentiality, it shall still take reasonable steps to respond to the Complaint, consistent  
256 with the request, to limit the effects of the alleged sexual harassment and prevent its  
257 recurrence without initiating formal action against Respondent or revealing the identity of  
258 the Complainant. The District shall also take immediate steps to provide for the safety of  
259 the Complainant while keeping the Complainant's identity confidential as appropriate. The  
260 District shall notify the Complainant that the steps the District will take to respond to the  
261 Complaint will be limited by the Complainant's request for confidentiality.

262

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

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### 270 **Investigation**

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

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- 274 • Provide notice to student Parties to a sexual harassment complaint that the District  
275 is conducting an investigation. The notice shall include the allegations against the  
276 Respondent and the alleged District policy violations under review. If new  
277 allegations that arise during the course of the District's investigation that could  
278 subject either student Party to new or additional discipline or corrective action, the  
279 Director, Diversity, Compliance, & Title IX Coordinator shall provide a supplemental  
280 notice to the student Parties.
- 281 • Authorize the investigation of the Complaint, and supervise or conduct a thorough,  
282 prompt, and impartial investigation of the Complaint, as set forth below. Where the  
283 Parties opt for informal resolution, the designated officer will determine whether  
284 further investigation is necessary to ensure resolution of the matter and utilize the  
285 investigation process outlined below as appropriate. The investigation will include  
286 interviews with the Complainant, the Respondent, and any other persons who may  
287 have relevant knowledge concerning the Complaint. This may include victims of  
288 similar conduct.
- 289 • Review the factual information gathered through the investigation to determine  
290 whether the alleged conduct constitutes harassment, or other unlawful  
291 discriminatory conduct, giving consideration to all factual information and the totality  
292 of the circumstances, including the nature of the verbal, physical, visual or sexual  
293 conduct, and the context in which the alleged incidents occurred.

294  
295 **Investigation of the Complaint:** The District shall promptly investigate every complaint  
296 of harassment or discrimination. No claim of workplace or academic harassment or  
297 discrimination shall remain unexamined. This includes complaints involving activities that  
298 occur off campus and in connection with all of the academic, educational, extracurricular,  
299 athletic, and other programs of the District, whether those programs take place in the  
300 District's facilities, on a District bus, or at a class or training program sponsored by the  
301 District at another location. The District shall promptly investigate complaints of  
302 harassment or discrimination that occur off campus if the alleged conduct creates a  
303 hostile environment on campus. The District shall notify the Complainant that the District  
304 will commence an impartial fact-finding investigation of the allegations contained in the  
305 Complaint.

306  
307 As set forth above, where the complainant opts for an informal resolution, the Director,  
308 Diversity, Compliance, & Title IX Coordinator may limit the scope of the investigation, as  
309 appropriate. The District will keep the investigation confidential to the extent possible, but  
310 cannot guarantee absolute confidentiality because release of some information on a  
311 "need-to-know-basis" is essential to a thorough investigation. When determining whether  
312 to maintain confidentiality, the District may weigh the request for confidentiality against  
313 the following factors: the seriousness of the alleged harassment; the Complainant's age;  
314 whether there have been other harassment complaints about the same individual; and  
315 the Respondent's rights to receive information about the allegations if the information is  
316 maintained by the District as an "education record" under the Family Educational Rights  
317 and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations  
318 Part 99.15. The District will inform the Complainant if it cannot maintain confidentiality.

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320 **Investigation Steps:** The District will fairly and objectively investigate harassment and  
321 discrimination complaints. Employees designated to serve as investigators under this  
322 policy shall have adequate training on what constitutes sexual harassment, including  
323 sexual violence, and/or the form of discrimination alleged in the complaint, and on how  
324 the District's grievance procedures operate. The investigator may not have any real or  
325 perceived conflicts of interest and must be able to investigate the allegations impartially  
326 using trauma-informed investigation techniques.

327  
328 The investigation and adjudication of alleged misconduct under this procedure is not an  
329 adversarial process between the Complainant, the Respondent, and the witnesses, but  
330 rather a process for the District to comply with its obligations under existing law. The  
331 Complainant does not have the burden to prove, nor does the Respondent have the  
332 burden to disprove, the underlying allegation or allegations of misconduct.

333  
334 Investigators will use the following steps: interviewing the Complainant(s); interviewing  
335 the Respondent(s); identifying and interviewing witnesses and evidence identified by  
336 each party; identifying and interviewing any other witnesses, if needed; reminding all  
337 individuals interviewed of the District's no-retaliation policy; considering whether any  
338 involved person should be removed from the campus pending completion of the  
339 investigation; reviewing any records, notes, memoranda, correspondence, or statements  
340 related to the discrimination complaint, and personnel/academic files of all involved  
341 parties; reaching a conclusion as to the allegations and any appropriate disciplinary and  
342 remedial action; and seeing that all recommended action is carried out in a timely  
343 fashion. When the District evaluates the complaint, it shall do so using a preponderance  
344 of the evidence standard. Thus, after considering all the evidence it has gathered, the  
345 District will decide whether it is more likely than not that discrimination or harassment has  
346 occurred. Student Complainants should be aware that any evidence available but not  
347 disclosed during the investigation might not be considered in the decision-making  
348 process.

349  
350 **Timeline for Completion:** The District will undertake its investigation as promptly and  
351 swiftly as possible. To that end, the investigator shall complete the above steps, and  
352 prepare a written report, and the District shall notify the Complainant and Respondent of  
353 the outcome, within ninety (90) days of the District receiving the complaint. The District  
354 will toll the timeline while the Parties are engaged in good faith efforts at informal  
355 resolution.

356  
357 **Cooperation Expected:** All employees and students are expected to cooperate with a  
358 District investigation into allegations of harassment or discrimination. Lack of cooperation  
359 impedes the ability of the District to investigate thoroughly and respond  
360 effectively. However, lack of cooperation by a Complainant or witnesses does not relieve  
361 the District of its obligation to investigate. The District will conduct an investigation if it is  
362 discovered that harassment or any other form of discrimination is, or may be occurring,  
363 with or without the cooperation of the alleged victim(s) and regardless of whether a  
364 complaint is filed. No employee will be retaliated against as a result of lodging a Complaint  
365 or participating in any workplace investigation.

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### **Written Report**

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

- A description of the circumstances giving rise to the Complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony provided by each witness with information relevant to the allegations, including the Complainant;
- An explanation of why an identified potential witness was not interviewed;
- An analysis of relevant data or other evidence collected during the course of the investigation, including a list of relevant documents;
- A specific finding as to whether each factual allegation in the Complaint occurred based on the preponderance of the evidence standard;
- A table of contents and
- Any other information deemed appropriate by the District.

### **Confidentiality of the Process**

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

### **Evidence of Past Sexual History**

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

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

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

415  
416 **Administrative Determination**

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

- 420
- 421 • The President/Superintendent's or their designee's determination as to whether  
422 unlawful discrimination occurred with respect to each allegation in the complaint  
423 based on a preponderance of the evidence standard and the basis for that  
424 determination including factual findings;
  - 425 • In the event a discrimination allegation is substantiated, a description of actions  
426 taken, if any, to prevent similar acts of unlawful discrimination from occurring in the  
427 future;
  - 428 • The proposed resolution of the complaint;
  - 429 • The Complainant's right to appeal to the District's Board of Trustees and the  
430 California Community Colleges Chancellor's Office;
  - 431 • In matters involving student sexual misconduct, the Respondent's right to appeal to  
432 the District's Board of Trustees any disciplinary sanction imposed upon the  
433 Respondent.
- 434

435 In any case involving employment discrimination, within ninety (90) days of receiving a  
436 complaint, the District shall complete its investigation and forward a summary of the report  
437 and written notice to the Complainant setting forth all the following:

- 438 • The President/Superintendent or their designee's determination as to whether  
439 unlawful discrimination occurred with respect to each allegation in the complaint  
440 based on the preponderance of the evidence standard and the basis for that  
441 determination including factual findings;
  - 442 • If a discrimination allegation is substantiated, a description of the actions taken, if  
443 any, to prevent similar acts of unlawful discrimination from occurring in the future;
  - 444 • The proposed resolution of the complaint; and
  - 445 • The Complainant's right to appeal to the District's Board of Trustees and to file a  
446 Complaint with the California Civil Rights Department (CRD).
- 447

448 The District shall also provide the Respondent with the following:

- 449
- 450 • The President/Superintendent's or their designee's determination as to whether  
451 unlawful discrimination occurred with respect to each allegation in the Complaint  
452 based on the preponderance of the evidence standard and the basis for that  
453 determination including factual findings;
- 454 • The proposed resolution of the Complaint, including any disciplinary action against  
455 the Respondent; and

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- 456       • In matters involving student sexual misconduct not subject to Title IX, the  
457       Respondent's right to appeal to the District's Board of Trustees any disciplinary  
458       sanction imposed upon the Respondent.  
459

460       The District will toll the timelines described above while the Parties are engaged in good  
461       faith efforts at informal resolution.  
462

463       In matters involving an academic employee placed on involuntary paid administrative  
464       leave, the District shall complete its investigation within ninety (90) days of the  
465       administrative leave commencing, unless the period of paid administrative leave is  
466       extended by agreement of the employee and District for a period not exceeding thirty (30)  
467       additional calendar days.  
468

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

470       In a complaint involving student sexual misconduct not subject to Title IX, if a student  
471       Respondent is subject to severe disciplinary sanctions, and the credibility of witnesses  
472       was central to the investigative findings, the District will provide an opportunity for the  
473       student Respondent to cross-examine witnesses indirectly at a live hearing, either in  
474       person or by videoconference conducted by a neutral decision-maker other than the  
475       investigator.  
476

477       In other complaints involving sexual harassment against a student, the District shall  
478       decide whether a hearing is necessary to determine whether any sexual violence more  
479       likely than not occurred. In making this decision, the District may consider whether the  
480       Parties elected to participate in the investigation and whether each Party had the  
481       opportunity to suggest questions to be asked of the other Party and witnesses during the  
482       investigation.  
483

484       The District shall appoint a neutral third party to attend the hearing solely for the purpose  
485       of asking any questions to the witnesses. The neutral third party shall not be the student  
486       Respondent, the student Respondent's representative, or any individual charged with  
487       making a final determination regarding discipline. The student Respondent may submit  
488       written questions before and during the cross-examination, including any follow-up  
489       questions. Either Party or any witness may request to answer the questions by  
490       videoconference from a remote location.  
491

492       At the hearing, the other Party shall have an opportunity to note an objection to the  
493       questions posed. The District may limit such objections to written form, and neither the  
494       hearing officer nor the District are obligated to respond, other than to include any objection  
495       in the record. The hearing officer shall have the authority and obligation to discard or  
496       rephrase any question that the hearing officer deems to be repetitive, irrelevant, or  
497       harassing. In making these determinations, the hearing officer is not bound by, but may  
498       take guidance from, the formal rules of evidence.  
499

500       Generally, the Parties may not introduce evidence, including witness testimony, at the  
501       hearing that the Party did not identify during the investigation and that was available at

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502 the time of the investigation. However, the hearing officer has discretion to accept for  
503 good cause, or exclude, such new evidence offered at the hearing.

504  
505 The hearing officer shall provide an explanation of the meaning of the preponderance of  
506 the evidence standard, and affirm that it shall apply to adjudications under this procedure.  
507 The preponderance of the evidence standard is met if the District determines that it is  
508 more likely than not that the alleged misconduct occurred, based on the facts available at  
509 the time of the decision.

510

### 511 **Discipline and Corrective Action**

512 If harassment, discrimination and/or retaliation occurred in violation of Board Policy or this  
513 procedure, the District shall take disciplinary action against the Respondent and will take  
514 steps to stop the discrimination, prevent recurrence, and remedy discriminatory effects  
515 on the complainant and others, if appropriate. The action will be prompt, effective, and  
516 commensurate with the severity of the offense.

517

518 Possible disciplinary sanctions for student Respondents include written or verbal  
519 reprimand, required training or counseling, non-academic probation, suspension, and  
520 expulsion. Possible disciplinary sanctions for employee Respondents include written or  
521 verbal reprimand, required training or counseling, suspension, or discharge.

522

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

- 524 • providing an escort to ensure that the Complainant can move safely between
- 525 classes and activities;
- 526 • ensuring that the Complainant and Respondent do not attend the same classes or
- 527 work in the same work area;
- 528 • preventing offending third parties from entering campus;
- 529 • providing counseling services or a referral to counseling services;
- 530 • providing medical services or a referral to medical services;
- 531 • providing academic support services;
- 532 • arranging for a student Complainant to re-take a course or withdraw from a class
- 533 without penalty, including ensuring that any changes do not adversely affect the
- 534 Complainant's academic record;
- 535 • reviewing any disciplinary actions taken against the Complainant to see if there is
- 536 a causal connection between the harassment and the misconduct that may have
- 537 resulted in the Complainant being disciplined;
- 538 • providing any services denied as a result of discrimination; and
- 539 • reviewing a grade awarded as a result of discrimination.

540

541 If discipline is imposed, the nature of the discipline will not be communicated to the  
542 Complainant. However, the District may disclose information about the sanction imposed  
543 on an individual who was found to have engaged in harassment or other discrimination  
544 when the sanction directly relates to the Complainant; for example, the District may inform  
545 the Complainant that the harasser must stay away from the Complainant.

546

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

550  
551 The District shall also take reasonable steps to protect the Complainant from further  
552 harassment, and/or discrimination, address the hostile environment, if one has been  
553 created, prevent its recurrence, address its affects, and protect the Complainant and  
554 witnesses from retaliation as a result of communicating the complaint and/or assisting in  
555 the investigation.

556  
557 The District will ensure that Complainants and witnesses know how to report any  
558 subsequent problems, and should follow-up with Complainants to determine whether any  
559 retaliation or new incidents of harassment have occurred. The District shall take  
560 reasonable steps to ensure the confidentiality of the investigation and to protect the  
561 privacy of all parties to the extent possible without impeding the District's ability to  
562 investigate and respond effectively to the complaint.

563  
564 If the District cannot take disciplinary action against the Respondent because the  
565 Complainant refuses to participate in the investigation, it should pursue other steps to  
566 limit the effects of the alleged harassment and prevent its recurrence.

567  
568 **Appeals**

569 If the District imposes discipline against a student or employee as a result of the findings  
570 in its investigation, the student or employee may appeal the decision using the procedure  
571 for appealing a disciplinary decision (see AP 5520 Student Discipline Procedures, AP  
572 7365 Discipline and Dismissal – Classified Employees, or Education Code, Section  
573 87740, as applicable).

574  
575 If the Complainant is not satisfied with the results of the administrative determination, they  
576 may, within thirty (30) calendar days, submit a written appeal to the Board of Trustees.

577  
578 In a Complaint involving student sexual misconduct not subject to Title IX, a Respondent  
579 who is not satisfied with the results of the administrative determination may submit a  
580 written appeal to the Board of Trustees within thirty (30) calendar days. Upon receipt of a  
581 written appeal, the Board of Trustees shall review the original complaint, the investigative  
582 report, the administrative decision, and the appeal. The Board's review on appeal is  
583 limited to the following issues:

- 584 • whether there was a procedural error in violation of this procedure;
- 585 • whether there was a defect in the investigation;
- 586 • whether new evidence unavailable during the investigation despite the  
587 Complainant's due diligence would substantially impact the outcome of the  
588 investigation;
- 589 • whether correct legal standards were applied; and
- 590 • whether the District's determination was an abuse of discretion.

591

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592 The Board shall issue a final District decision in the matter within forty-five (45) calendar  
593 days after receiving the appeal. A copy of the decision rendered by the Board of Trustees  
594 shall be forwarded to the Complainant and to the State Chancellor's Office. The  
595 Complainant shall also be notified of their right to appeal this decision.

596  
597 If the Board of Trustees does not act within forty-five (45) calendar days the administrative  
598 determination shall be deemed approved by default and shall become the final decision  
599 of the District in the matter. The District shall promptly notify the Complainant and the  
600 Respondent of the Board of Trustees' actions, or if the Board of Trustees took no action,  
601 that the administrative determination is deemed approved.

602  
603 In any case not involving workplace discrimination, harassment, or retaliation, the  
604 Complainant shall have the right to file a written appeal with the California Community  
605 Colleges Chancellor's Office within thirty (30) calendar days after the Board of Trustees  
606 issued the final District decision or permitted the administrative decision to become  
607 final. Such appeals shall be processed pursuant to the provision of Title 5 Section 59350.

608  
609 In any case involving employment discrimination, including workplace harassment, the  
610 Complainant may, at any time before or after the issuance of the final decision of the  
611 District, file a complaint with the California Civil Rights Department.

612  
613 In any complaint dismissed pursuant to Title 5 Section 59332, a complainant may file a  
614 written appeal with the California Community Colleges Chancellor's Office within 30 days  
615 from the date of the notice of dismissal.

#### 616 617 **Remand**

618 The California Community College Chancellor's Office may remand any matter to the  
619 District for any of the following reasons: to cure defects in the investigation or in procedure  
620 compliance; to consider new evidence not available during the investigation despite the  
621 Complainant's due diligence that would substantially impact the outcome of the  
622 investigation; or to modify or reverse a decision of the District's Board of Trustees based  
623 upon misapplication of an applicable legal standard or an abuse of discretion.

624  
625 If the California Community College Chancellor's Office remands a matter to the District,  
626 the District shall take necessary action and issue a decision after remand within sixty (60)  
627 calendar days. In any case not involving employment discrimination, the Complainant  
628 may appeal the District's amended determination to the California Community College of  
629 Chancellor's Office within thirty (30) calendar days by following the appeal procedures  
630 above.

#### 631 632 **Extension of Time**

633 A student Complainant or Respondent may request, in writing, an extension of a deadline  
634 related to a complaint during periods of examinations or school closures. The District shall  
635 grant a student Party's reasonable request for an extension of a deadline related to a  
636 complaint during periods of examinations or school closures.

637

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

- 642 • A need to interview a party or witness who has been unavailable;
- 643 • A need to review or analyze additional evidence, new allegations, or new  
644 complaints related to the matter; or
- 645 • To prepare and finalize an administrative determination.

646  
647 The District shall send a written notice to the Complainant and to the Respondent  
648 indicating the necessity of an extension, the justification for the extension, and the number  
649 of days the deadline will be extended. The District shall send this notice no later than ten  
650 (10) calendar days prior to the initial time to respond.

651  
652 The District may request additional extensions from the California Community Colleges  
653 Chancellor's Office after the initial forty-five (45) business day extension. The District shall  
654 send a copy of the extension request to the Complainant and to the Respondent. The  
655 Complainant and Respondent may each file a written objection with the California  
656 Community Colleges Chancellor's Office within five (5) business days of receipt.

657  
658 The extension of time provisions described above do not apply to investigations involving  
659 an academic employee placed on involuntary paid administrative leave.

660  
661 **Disclosures to the California Community Colleges Chancellor's Office**  
662 Upon request of the California Community Colleges Chancellor's Office, the District shall  
663 provide copies of all documents related to a discrimination complaint, including the  
664 following: the original complaint, any investigative report unless subject to attorney-client  
665 privilege, the written notice to the Complainant setting forth the results of the investigation,  
666 the final administrative decision rendered by the Board or a statement indicating the date  
667 upon which the decision became final, and a copy of the notification to the Complainant  
668 of his/her/their appeal rights, the Complainant's appeal of the District's administrative  
669 determination, any other non-privileged documents or information the Chancellor  
670 requests.

671  
672 The District shall provide to the California Community Colleges Chancellor's Office an  
673 annual report with the following information: the number of employment and non-  
674 employment discrimination complaints and informal charges received in the previous  
675 academic year; the number of complaints and informal charges resolved in the previous  
676 academic year; the number of complaints of unlawful discrimination received in the  
677 previous academic year, and the number of those complaints that were sustained in  
678 whole or in part, and any other information requested by the Chancellor.

679  
680 **Interim and Supportive Measures**  
681 Interim measures are individualized services offered as appropriate to either or both the  
682 Complainant and Respondent in an alleged incident of sexual misconduct, prior to an  
683 investigation or while an investigation is pending.

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684  
685 Supportive measures are non-disciplinary, non-punitive individualized services offered  
686 free of charge to the Complainant or the Respondent regardless of whether a complaint  
687 has been filed.

688  
689 The District will provide interim or supportive measures to Parties as appropriate and as  
690 reasonably available.

691  
692 Interim and supportive measures may include changes to academic, transportation, and  
693 working situation or protective measures such as counseling, extensions of deadlines,  
694 other course-related adjustments, modifications of work or class schedules, campus  
695 escort services, mutual restrictions on contact between the Parties, changes in work  
696 locations, leaves of absences, increased security and monitoring of certain areas of the  
697 campus, and other similar measures.

698  
699 **No-Contact Directives**

700 When requested by a Complainant or otherwise determined to be appropriate, the District  
701 shall issue an interim no-contact directive prohibiting the Respondent from contacting the  
702 Complainant during the pendency of the investigation. The District shall consider the  
703 specific circumstances of each case to determine whether a mutual no-contact directive  
704 is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to  
705 respond to interference with an investigation. If the District issues a no-contact directive  
706 after making decision of responsibility, the no-contact directive shall be unilateral and only  
707 apply against the Party found responsible.

708  
709 Upon the issuance of a mutual no-contact directive, the District shall provide the Parties  
710 with a written justification for the directive and an explanation of the terms of the directive.  
711 Upon the issuance of any no-contact directive, the District shall provide the Parties with  
712 an explanation of the terms of the directive, including the circumstances, if any, under  
713 which violation could be subject to disciplinary action.

714  
715 **File Retention**

716 The District will retain one file for a period of at least five (5) years after closing the case.  
717 The file shall include copies of:

- 718     • The original complaint;  
719     • The investigatory report;  
720     • The summary of the report if one is prepared;  
721     • The notice provided to the Parties of the District's administrative determination and  
722     the right to appeal;  
723     • Any appeal; and  
724     • The District's final decision.

725  
726 For any appeal to the California Community Colleges Chancellor's Office, the District shall  
727 provide all relevant, non-privileged documents upon request of the California Community  
728 Colleges Chancellor's Office.

729  
  
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of Trustees.



730 **Dissemination of Policy and Procedures**

731 Board Policy and Administrative Procedures related to harassment will include  
732 information that specifically addresses sexual violence. District policy and procedures  
733 will be provided to all students, and employees, and will also be posted on campus and  
734 on the District's website.

735  
736 When hired, employees are required to sign that they have received the policy and  
737 procedures, and the signed acknowledgment of receipt is placed in each employee's  
738 personnel file. In addition, these policies and procedures are incorporated into the course  
739 catalogs, class schedules and orientation materials for new students.

740  
741 **Training**

742 The District shall provide at least two hours of classroom or other effective interactive  
743 training and education regarding sexual harassment to all management employees and  
744 at least one hour of classroom or other effective interactive training and education  
745 regarding sexual harassment to all non-management employees once every two years.  
746 All new employees must be provided with the training and education within six months of  
747 their assumption of their position.

748  
749 The training and education required by this procedure shall include information and  
750 practical guidance regarding the federal and state statutory provisions concerning the  
751 prohibition against and the prevention and correction of sexual harassment and the  
752 remedies available to victims of sexual harassment in employment, a review of "abusive  
753 conduct," and harassment based on gender identity, gender expression, and sexual  
754 orientation. The training and education shall also include practical examples aimed at  
755 instructing managers in the prevention of harassment, discrimination, and retaliation, and  
756 shall be presented by trainers or educators with knowledge and expertise in the  
757 prevention of harassment, discrimination, and retaliation. Manager's harassment training  
758 must also address potential exposure and liability for employers and individuals,  
759 manager's obligation to report sexual harassment, discrimination, and retaliation when  
760 they become aware of it, appropriate remedial measures to correct harassing behavior.  
761 Training for manager's must also address their obligation to report sexual harassment  
762 and instruction on how to report sexual harassment to the responsible District officer.

763  
764 The District will also provide comprehensive, trauma-informed training to each employee  
765 involved in the District's sexual harassment or discrimination grievance procedure  
766 including investigating and adjudicating complaints involving sexual violence, sexual  
767 assault, domestic violence, dating violence, and stalking. This training shall include  
768 information on trauma-informed investigatory and hearing practices that help ensure an  
769 impartial and equitable process, best practices for assessment of a sexual harassment or  
770 sexual violence complaint, best practices for questioning of the Complainant,  
771 Respondent, and witnesses, and implicit bias and racial inequalities, both broadly and in  
772 school disciplinary processes. Materials for this training shall include statistics on the  
773 prevalence of sexual harassment and sexual violence in the educational setting, and the  
774 differing rates at which students experience sexual harassment and sexual assault in the

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775 educational setting based on their race, sexual orientation, disability, gender, and gender  
776 identity.

777  
778 The District will maintain appropriate records of the training provided, including the names  
779 of the supervisory employees trained, the date of training, sign-in sheets, copies of all  
780 certificates of attendance or completion issued, the type of training provided, a copy of all  
781 written or recorded training materials, and the name of the training provider. If the training  
782 is provided by webinar, the District will maintain a copy of the webinar, all written materials  
783 used by the training and all written questions submitted during the webinar, and document  
784 all written response or guidance the trainer provided during the webinar. The District will  
785 retain these records for at least two years.

786  
787 The District will also provide training to students who lead student organizations. The  
788 District should provide copies of the sexual harassment policies and training to all District  
789 law enforcement unit employees regarding the grievance procedures and any other  
790 procedures used for investigating reports of sexual violence.

791  
792 In years in which a substantive policy or procedural change has occurred, all District  
793 employees will attend a training update and/or receive a copy of the revised policies and  
794 procedures.

795  
796 Participants in training programs will be required to sign a statement that they have either  
797 understood the policies and procedures, their responsibilities, and their own and the  
798 District's potential liability, or that they did not understand the policy and desire further  
799 training.

800

### 801 **Education and Prevention for Students**

802 In order to take proactive measures to prevent sexual harassment and violence toward  
803 students, the District will, under the direction of the Director of Diversity, Compliance, and  
804 Title IX, provide preventive education programs and make victim resources, including  
805 comprehensive victim services, available. The District will include such programs in  
806 orientation programs for new students, and in training for student athletes and  
807 coaches. These programs will include discussion of what constitutes sexual harassment  
808 and sexual violence, the District's policies and disciplinary procedures, and the  
809 consequences of violating these policies. A training program or informational services  
810 will be made available to all students at least once annually.

811  
812 The education programs will also include information aimed at encouraging students to  
813 report incidents of sexual violence to the appropriate District and law enforcement  
814 authorities. Since victims or third parties may be deterred from reporting incidents if  
815 alcohol, drugs, or other violations of District or campus rules were involved, the District  
816 will inform students that the primary concern is for student safety and that use of alcohol  
817 or drugs never makes the victim at fault for sexual violence. An individual who participates  
818 as a Complainant or witness in an investigation of sexual assault, domestic violence,  
819 dating violence, or stalking will not be subject to disciplinary sanctions for a violation of  
820 the District's student conduct policy at or near the time of the incident, unless the District

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821 determines that the violation was egregious, including, but not limited to, an action that  
822 places the health or safety of any other person at risk or involves plagiarism, cheating, or  
823 academic dishonesty.

824  
825

826 Office of Primary Responsibility: Vice President, Human Resources

827 **Date Approved:** March 4, 2009

828 **Dates Revised:** July 1, 2010; September 24, 2021; April 11, 2016; December 10,  
829 2018;

830 August 1, 2024 (interim policy pending Board approval)

831 **Date Reviewed:** January 16, 2019

832 *(Replaces former Cerritos College Policy 7026)*