LOS ANGELES COMMUNITY COLLEGE DISTRICT
ADMINISTRATIVE REGULATION C-15

TOPIC: Responding to Harassment Based on Sex under Title IX

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I. Introduction and Scope of Regulation

The District encourages members of the District community, including students, employees, applicants for admission and applicants for employment, to report sexual harassment. The District is committed to responding to all reports promptly, impartially and equitably.

This procedure only applies to allegations of misconduct on the basis of sex and if the conduct reported meets each of the following four (4) conditions:

1. The conduct occurred on or after August 14, 2020;
2. The conduct took place in the United States; and
3. The conduct took place in a District "education program or activity." This includes locations, events, or circumstances over which the District exercised substantial control over both the Respondent and the context in which the harassment occurred, including on-campus and off-campus property and buildings the District owns or controls or student organizations officially recognized by the District own or control; and
4. The conduct is one or more of the following circumstances:

a. A District employee conditioned the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (quid pro quo harassment); or

b. Unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or

c. Sexual assault as defined in this procedure on page 31; or

d. Dating violence on the basis of sex as defined in this procedure on page 33; or

e. Domestic violence on the basis of sex as defined in this procedure on page 34; or

f. Stalking on the basis of sex as defined in this procedure on page 34.

When all four (4) conditions above are met, the conduct alleged meets the United States Department of Education's definition of sexual harassment under Title IX (hereinafter "Title IX sexual harassment") and shall be subject to review under this regulation as described herein.

Per relevant federal Title IX regulations, this administrative procedure constitutes the sole resolution process under which any conduct alleged that meets the four (4) conditions listed on page 2 can be investigated and addressed. This means that any finding by the District that an individual is responsible for violating the District's policy prohibiting conduct meeting the four (4) conditions (i.e. Title IX sexual harassment) must be made exclusively through the provisions of this this procedure, and that such a finding must occur before the District responds to any substantiated report of Title IX sexual harassment by imposing discipline against a student or employee as a result of the findings. Any other District resolution process that previously addressed conduct meeting the four (4) conditions above is now expressly preempted as of August 14, 2020 by this procedure and shall not apply or be invoked to address any alleged conduct meeting the definition above. Existing procedures still apply to all conduct that does not meet the above definition of Title IX sexual harassment under this procedure.

A. Distinction from Other Procedures

Alleged misconduct duly reported to the District that does not meet all four (4) conditions listed on page 2, including but not limited to, other allegations that may constitute sex-based discrimination or sexual harassment in LACCD programs and activities but not Title IX sexual harassment, will not be subject to review under this procedure, with the exceptions noted below. Conduct that does not meet all four (4) conditions on page 2 shall instead be addressed through the other applicable District procedures, including but not limited to those provided for through the District's Administrative Regulation C-14 (Procedures for Prohibited Discrimination, Unlawful Harassment, and Sexual Misconduct Complaints), the District's Student Conduct Code, relevant Human Resources policies, collective bargaining agreements and applicable state laws and regulations.

In the event a formal complaint of Title IX sexual harassment proceeds to a review and resolution through the grievance procedures outlined herein, the District will strive to address any other conduct reported that is alleged to have occurred in the same or substantially similar set of factual circumstances as the Title IX sexual harassment complaint in the same proceeding. In such a situation, all reported conduct will be addressed under this procedure in a single grievance proceeding so long as the formal complaint is not dismissed at the discretion of the District during the process before the complaint is resolved. If a Title IX sexual harassment complaint is dismissed at any stage of the grievance process, the District is prohibited from using alternative procedures to address the Title IX sexual harassment allegations within the submitted formal complaint, but it may still further address any other conduct alleged to have occurred in the same or substantially similar set of factual circumstances in the formal complaint under other applicable procedures, including District disciplinary procedures.

II. How to Make a Report of Title IX Sexual Harassment

The District strongly encourages prompt reporting of Title IX sexual harassment as defined herein. Prompt reporting allows for the collection and preservation of evidence, including physical evidence, digital media and witness statements. A delay may limit the District's ability to effectively investigate and respond. However, there is no time limit for making a report of misconduct that is covered by this procedure.

In order to make a report to the District about conduct which may constitute Title IX sexual harassment, an individual should contact the District's Title IX Coordinator or a Deputy Title IX Coordinator, who are each listed on the next page of this procedure. The report may be made verbally or in writing. Any individual may report conduct that may constitute Title IX sexual harassment, as defined on page 2, to the District's Title IX Coordinator, or a Deputy Title IX Coordinator. The individual may choose to submit their report on the form located at: https://www.cccco.edu/-/media/CCCCO-Website/Files/General-Counsel/x_discrimcomplaintform-ada.pdf?la=en&hash=CEA65F34EEAE900CB00E68281A3907726B48CF08.

An anonymous report that is received by a designated employee will be reviewed in accordance with these procedures. The District may be limited in its ability to address an anonymous report based on federally-required procedural requirements outlined below.

Title IX Coordinator and Deputy Title IX Coordinators

The Title IX Coordinator, directly or through their designee(s), is required, among other duties, to respond to reports of misconduct as defined in this procedure. Questions concerning Title IX may be referred to either the District Title IX Coordinator or a Deputy Title IX Coordinator, using the contact information below. To make a report about a specific incident, individuals should contact the Deputy Title IX Coordinator assigned to their college or site within the District, as described in this section.

The District Title IX Coordinator's contact information is:

Brittany Grice
Title IX Coordinator
Director of Diversity, Equity and Inclusion

770 Wilshire Boulevard
Attention: LACCD Office for Diversity, Equity and Inclusion
Los Angeles, CA 90017
213-891-2315
titleix@email.laccd.edu

The District has established three (3) Deputy Title IX Coordinator positions. These positions serve as the District Title IX Coordinator's designees for specified functions and may act in the absence of the Title IX Coordinator on the Title IX Coordinator's behalf. The contact information for the District Deputy Title IX Coordinators is as follows:

Dr. Genice Sarcedo-Magruder
Deputy Title IX Coordinator for West Los Angeles, Los Angeles Harbor, Southwest Los Angeles, Los Angeles City and Los Angeles Pierce Colleges, and the Educational Services
Center (inclusive of all satellite campuses)
Regional Equity & Title IX Officer and Dean
770 Wilshire Boulevard
Attention: Office for Diversity, Equity and Inclusion
Los Angeles, CA 90017
213-891-2315
sarcedg@piercecollege.edu

Angelica Toledo
Deputy Title IX Coordinator for East Los Angeles, Los Angeles Trade-Technical, Los Angeles Valley and Los Angeles Mission Colleges, and Van de Kamp Innovation
Center (inclusive of all satellite campuses)
Regional Equity & Title IX Officer and Dean
770 Wilshire Boulevard
Attention: Office for Diversity, Equity and Inclusion
Los Angeles, CA 90017
213-891-2315
toledoa@elac.edu

Victoria Friedman
Deputy Title IX Coordinator for Title IX Policy and Procedure Inquiries
District Compliance Officer
770 Wilshire Boulevard
Attention: Office for Diversity, Equity and Inclusion
Los Angeles, CA 90017
213-891-2125
friedmv@laccd.edu

The Title IX Coordinator, any deputies and/or their designee(s) shall act independently and with authority free from bias and conflicts of interest in executing their duties. The Title IX Coordinator oversees all response under this policy and these procedures. The Title IX Coordinator supervises the Deputy Title IX Coordinators.

All members of the Title IX response team, which includes the Title IX Coordinator and Deputy Title IX Coordinators, as well as investigators, facilitators of informal resolution, the Decision-Maker, and the Appeal Officer, as described herein are selected and trained to ensure they are not biased for or against any participant in a specific case, or for or against Complainants and/or Respondents, generally. The District will ensure that all personnel responsible for processing formal complaints filed under this procedure shall receive training on:

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

Inquiries and complaints regarding Title IX or matters subject to this procedure may also be made externally to:

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

A. Submitting a Formal Complaint of Title IX Sexual Harassment

Under this procedure, a Complainant is an individual who alleges they have been subjected to conduct that could constitute Title IX sexual harassment. Under this procedure, a Respondent is an

individual reported to be the perpetrator of conduct that could constitute Title IX sexual harassment. As used in this procedure, Parties means the Complainant(s) and Respondent(s).

At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the District in order for the District to be able accept the formal complaint. Otherwise, the submission will not be considered a formal complaint filed under this procedure.

A formal complaint means a written document that is submitted or signed by the Complainant or signed by the District Title IX Coordinator:

(1) Alleging, with sufficient detail, a violation of the District's policy prohibiting Title IX sexual harassment by a Respondent; and
(2) requesting that the District investigate the allegation(s).

As used in this section, the phrase "written document submitted or signed by the Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the District) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person directly filing the complaint. Formal complaints may not be filed by a third Party on behalf of a Complainant, unless the third Party is the District's Title IX Coordinator.

A Complainant's formal complaint may be filed with the Title IX Coordinator or a Deputy Title IX Coordinator in person, by mail or by electronic mail, by using the relevant contact information in this procedure.

III. District's Initial Response to Reports or Complaints Made Under this Procedure

A. When the District Receives Either a Report or Formal Complaint of Title IX Sexual Harassment

The District Title IX Coordinator or their designee shall notify an individual who submits a relevant report alleging Title IX sexual harassment, and/or a Complainant who submits a document intended to be a formal complaint of Title IX sexual harassment of its receipt by the Title IX Coordinator's office in writing within 5 calendar days. In this written acknowledgement, information regarding the grievance process will be provided to the individual making the report of alleged Title IX sexual harassment and to the Complainant, if the Complainant is not the individual making the report, along with a copy of this administrative procedure and a list of any applicable resources.

If a written document has been submitted by a Complainant, and the Title IX Coordinator or their designee initially determines that the information submitted by the Complainant does not meet the definition of a formal complaint of Title IX sexual harassment as defined above, the Title IX Coordinator or their designee will also inform the Complainant of this in the initial written acknowledgment, and will provide the Complainant with the opportunity to submit the written information in order to satisfy the requirements of filing a formal complaint under this grievance process.

Regardless of whether a formal complaint is ultimately filed by a Complainant, the Title IX Coordinator or designee will complete an initial assessment regarding each report to determine if there is an ongoing safety risk or threat to the District's sites, including its Colleges.

The Title IX Coordinator and all designees will handle information received with discretion and will share information with others on a need-to-know basis to accomplish the steps required under this procedure. Additionally, if, at any time, the District learns there are parallel criminal proceedings concerning the same or similar alleged underlying circumstances that may constitute a Title IX sexual harassment report or formal complaint under this procedure, the District will appropriately cooperate with the external law enforcement agency and will coordinate to ensure that the Title IX process does not hinder legal process or proceedings.

B. Providing Supportive Measures to Parties in Response to a Report or a Formal Complaint under this Procedure

The District will offer and implement appropriate and reasonable supportive measures under this procedure to the Parties upon receiving notice of a report or formal complaint of alleged Title IX sexual harassment, and/or any allegations of retaliation arising from the review or resolution of a relevant report or formal complaint addressed under this procedure.

Supportive measures are non-disciplinary, non-punitive individualized services, offered as appropriate, as reasonably available and without fee or charge to the Parties, which are intended to restore or preserve equal access to the District's education program or activity, to address the safety concerns of all Parties or the District's educational environment and/or deter Title IX sexual harassment and/or related retaliation.

The Title IX Coordinator or their designee will promptly make supportive measures available to the Parties upon receiving notice of a report or formal complaint of Title IX sexual harassment and/or related retaliation, and will coordinate the effective implementation of such measures. At the time that supportive measures are offered, the District will inform the Complainant, in writing, that they may file a formal complaint with the District either at that time or in the future, if they have not done so already.

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

a) Counseling and referral to medical and/or other healthcare services;
b) Referral to the Employee Assistance Program;
c) Referral to community-based service providers
d) Student financial aid counseling
e) Altered work arrangements for employees or student-employees;
f) Safety planning;
g) Campus safety escorts;
h) Implementing mutual contact limitations (no contact directives) between the Parties;
i) Academic support, extensions of deadlines, or other course/program-related adjustments;
j) Trespass orders;
k) Class or work schedule modifications, withdrawals, or leaves of absence;
l) Increased security and monitoring of certain areas of the campus; or
m) Any other actions deemed appropriate by the Title IX Coordinator or their designee

Violations of no contact directives (i.e. a directive issued to a Party not to contact another Party) issued under this section will be referred to appropriate student or employee conduct processes for review and enforcement, and possible discipline in accordance with such processes.

C. District's Assessment for Possible Emergency Removal

During its initial response, and any time thereafter during the resolution process under this procedure, the District may remove a non-employee Respondent from the District's education program or activity on an emergency basis after it conducts an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX sexual harassment justifies removal.

The District may not use emergency removal to address a Respondent's threat of obstructing the Title IX sexual harassment investigation or destroying relevant evidence. Emergency removal is only available to address health or safety risks against individuals arising out of Title IX sexual harassment allegations,

not to address other forms of misconduct that a Respondent might commit pending the processing of a complaint.

The District's designee(s) will conduct the individualized safety and risk analysis.

If the District, through its designee(s), determines emergency removal is appropriate, the designee(s) will provide the person the District is removing from campus on an emergency basis with a notice and opportunity to attend a meeting and challenge the basis of their removal. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within two calendar days of the emergency removal, objections to the emergency removal will be deemed waived. A Respondent may be accompanied by an Advisor of their choice when meeting to challenge the basis of their emergency removal. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The District's designee(s), in consultation with the Title IX Coordinator or appropriate Deputy Title IX Coordinator, will determine whether the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal.

Lesser restrictive emergency actions may be implemented as an alternative to emergency removal where appropriate.

Violation of an emergency removal or other emergency restrictions imposed under this section will be grounds for discipline of the Respondent separate and distinct from the grievance process for adjudicating any underlying formal complaint. Such discipline may include expulsion.

IV. Grievance Process for Formal Complaints of Title IX Sexual Harassment

A. Notice to Parties

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

1. Notice of the District's Title IX sexual harassment grievance process;
2. Notice of the allegations under review with sufficient details known at the time, including the identity of the Parties, a meaningful summary of what was reported, and all of the specific policies implicated, to provide for sufficient time to prepare a response before any initial interview;
3. A statement of the potential sanctions and/or responsive actions that could result;
4. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
5. A statement about the District's policy on retaliation;
6. Information about the privacy of the process;
7. Notice that the Parties may have Advisor of their choice, who may be, but is not required to be, an attorney;
8. Notice that the Parties may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a Party or other source;
9. An instruction to preserve any evidence that is directly related to the allegations; and
10. A statement informing the Parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the District decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided above, the Title IX

Coordinator or designee will provide notice in writing of the additional allegations to the Parties.

B. Standard of Proof for All Allegations Resolved Under This Grievance Process

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

C. Dismissal of a Formal Complaint Initially Accepted for Investigation

The District may only investigate allegations that constitute Title IX sexual harassment when they are included in a formal complaint, as well as any other allegations that are brought forward during the District's review of the formal complaint which arise out of the same or substantially similar alleged underlying facts of the formal complaint. As described herein, a formal complaint shall only be accepted as a written document signed by a Complainant or Title IX Coordinator that alleges, with sufficient detail, a violation of the District's policy prohibiting Title IX sexual harassment by a Respondent and includes a request that the District investigate the allegation(s).

The District shall not investigate any formal complaint under this procedure that does not include allegations which, if true, would constitute possible Title IX sexual harassment, as defined on page 2. If at any point during the review of a formal complaint, the District determines the conduct complained of in a formal complaint does not meet the definition of Title IX sexual harassment as defined on page 2, the District is required to dismiss the filing and not take any further action that would constitute a response beyond providing either or both Parties with supportive measures, described above. Such a dismissal shall be known as a mandatory dismissal under this procedure.

The District may also dismiss a formal complaint and any related allegation from further review and resolution under this grievance procedure under any of the following circumstances:

- If at any time during the investigation or hearing, a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations; or
- If the Respondent is no longer enrolled or employed by the District, or is otherwise reasonably deemed to be outside of the District's administrative control; or
- If there are specific circumstances that prevent the District from gathering evidence sufficient to reach a determination regarding responsibility as to the formal complaint.

Whenever the District dismisses a formal complaint or any related allegations, the Title IX Coordinator or designee shall simultaneously provide the Parties with written notice of the dismissal, including the type of dismissal, and reason for the action taken. The District will also notify the Parties of their right to appeal the dismissal with the designated Appeal Officer, as outlined below.

When a dismissal of a formal complaint occurs, the District may then commence proceedings under other policies and procedures in the event there are related allegations that are not required to be reviewed and resolved through this grievance procedure (i.e. any allegations that do not meet the definition of Title IX sexual harassment as defined on page 2), including but not limited to those provided for through the District's Administrative Regulation C-14 (Procedures for Prohibited Discrimination, Unlawful Harassment, and Sexual Misconduct Complaints), the District's Student Conduct Code, relevant Human Resources policies, collective bargaining agreements and applicable state laws and regulations.

D. Respondent Withdrawal or Resignation While Resolution of Formal Complaint is Pending

1. For Students

Should a student decide to not participate in the grievance process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the District, the resolution

process ends, as the District no longer has disciplinary jurisdiction over the withdrawn student. Records retained by the District Title IX Coordinator shall reflect that the student withdrew pending the outcome of the grievance process.

The District will continue to address any variables or circumstances it concludes may have contributed to the alleged violation(s), and any ongoing effects of the alleged Title IX sexual harassment and/or related retaliation.

2. <u>For Employees</u>

Should an employee decide to not participate in the grievance process, the process proceeds absent their participation to a reasonable resolution. Should an employee Respondent resign with unresolved allegations pending under this procedure, the resolution process ends, as the District no longer has disciplinary jurisdiction over the resigned employee. The employee who resigns with unresolved allegations pending is not eligible for rehire with the District or any College of the District, and the records retained by the Title IX Coordinator will reflect that status.

The District will continue to address any variables or circumstances it concludes may have contributed to the alleged violation(s), and any ongoing effects of the alleged Title IX sexual harassment and/or related retaliation.

E. <u>Consolidation of Formal Complaints Subject to Review Under this Procedure.</u>

The District may, at its discretion, consolidate formal complaints as to allegations of Title IX sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party (also known as a counterclaim), where the allegations of Title IX sexual harassment arise out of the same or substantially similar alleged facts or circumstances.

F. Equitable Treatment of the Parties

The District's determination of a Respondent's responsibility for whether a Respondent violated the policy prohibiting Title IX sexual harassment under the relevant circumstances is a neutral, fact-finding process. The District will treat Complainants and Respondents equitably. The procedures of the grievance process will apply equally to both Parties.

The District will not discipline a Respondent for violating the policy prohibiting Title IX sexual harassment unless it determines the Respondent was responsible for Title IX sexual harassment at the conclusion of the grievance process. Emergency removal due to a determination that a Respondent poses an immediate threat and/or safety risk to the District during response to a relevant report does not constitute discipline towards a Respondent. Additionally, the District may place a non-student employee Respondent on administrative leave during the pendency of this grievance process to resolve a formal complaint that has been accepted for further review and investigation. Such action also does not constitute discipline towards a Respondent.

G. Statement of Presumption of Non-Responsibility

The District presumes all reports of alleged Title IX sexual harassment are made in good faith, unless the District receives sufficient evidence to the contrary. Further, the District presumes the Respondent is not responsible for the alleged conduct throughout the pendency of the grievance process. The District, through its independent Decision-Maker, only makes its determination regarding whether the Respondent is responsible for their alleged misconduct reviewed under this administrative procedure at the conclusion of the grievance process.

H. Timeline for Completion of the Grievance Process

The District will undertake its grievance process as reasonably promptly as possible. The District will generally complete the investigation and its determination regarding whether the Respondent is responsible for violating District policy, or any

related informal resolution process within one hundred and eighty (180) calendar days.

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

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

I. Formal Complaints May Be Resolved through Informal Resolution

If, at any time, the District determines that a formal complaint is appropriate for informal resolution, it may offer to provide the Parties with the opportunity to participate in an informal resolution process prior to reaching a determination regarding whether a Respondent violated the underlying policy prohibiting Title IX sexual harassment and any related allegations within the scope of the investigation which arise out of the same or substantially similar alleged facts.

The District may offer an informal resolution process, which can include, but is not limited to mediation, rearrangement of work/academic schedules, providing informal counseling or training, etc. The informal resolution process is intended to resolve a formal complaint without a full investigation and adjudication process. The informal resolution process must not be used to resolve allegations that a District employee committed Title IX sexual harassment against a student.

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

The District must obtain the Parties' voluntary, written consent to the informal resolution process.

The District will provide the Complainant and Respondent written disclosure of the allegations as detailed above, and the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, as well as any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

At any time prior to agreeing to an informal resolution, any Party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. In the event the Parties sign an informal resolution agreement evidencing their acceptance of the terms of a mutually agreed upon informal resolution, the investigation and adjudication of the formal complaint of Title IX sexual harassment and related allegations under this procedure will cease and the matter will be considered resolved and closed, subject only to reopening in the event the District learns the conditions of the agreement have not been met as outlined and agreed to in writing by the parties.

J. Role of an Advisor in the Grievance Process

Each Party is entitled to be accompanied by an Advisor throughout the resolution process under this procedure, beginning with any initial meeting a Party may have with the District concerning a report of Title IX sexual harassment, as defined herein. The role of the Advisor is to provide support and assistance in understanding and navigating the resolution process. The Parties may each have an Advisorof their choice

present with them for all meetings, interviews and hearings within the resolution process, if they so choose.

The Parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available to participate. An Advisor may be a District employee, friend, family member, or attorney. The Parties may choose Advisors from inside or outside of the District community. A person who serves as an Advisor may not also serve as a witness in the same grievance process, including during the investigation or the grievance hearing. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

A Party may not directly participate in questioning any other participant at the hearing; an Advisor must conduct any cross-examination that occurs in the grievance process. Therefore, in the event a grievance process proceeds to a live hearing and a participating Party has not selected their own Advisor during the complaint resolution process thus far, the District will provide an Advisor of its choice, free of charge to any Party without an Advisor for purposes of the live hearing in order to conduct cross-examination of any other Party or witnesses. If an Advisor selected by a Party fails to appear at a scheduled live hearing, the District has the right to provide an Advisor to serve in place of a Party's non-appearing Advisor so the hearing can proceed as planned.

The Advisor may not obstruct or disrupt the grievance process. The Title IX Coordinator has the right to determine what constitutes appropriate behavior of an Advisor and take reasonable steps to ensure an Advisor's compliance with this procedure.

K. Use of Privileged Information

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

L. Investigations

The Title IX Coordinator is responsible for overseeing investigations to ensure timely resolution and compliance with Title IX and this procedure.

M. District's Responsibility for Gathering Evidence During the Investigation

The District, not the Parties, has the responsibility to gather information and interview witnesses.

N. Notice of Investigative Interview

The District will provide written notice of the date, time, location, participants and purpose of all investigative interviews to a Party whose participation is invited or expected, with sufficient time for the Party to prepare to participate.

O. Evidence Review by Parties Prior to Conclusion of Investigation

Both Parties have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination under this procedure regarding whether a relevant policy was violated. This includes any inculpatory (tending to prove a violation) or exculpatory evidence (tending to disprove a violation) whether obtained from a Party or other source.

Prior to the Investigator preparing a final investigative report, the District will send to each Party and the Party's Advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The Parties will have at least ten (10) calendar days to submit a written response to the materials. The investigator must consider this written response prior to completing the investigative report.

P. Investigative Report

The results of the investigation of a formal complaint will be set forth in a written report that fairly summarizes relevant evidence received during the investigation. The Investigator's final investigation report shall describe:

1. The factual allegations and alleged policy violations that are the subject(s) of the investigation;
2. The investigation process;
3. The evidence considered, including any evidence and other information provided by the Parties;
4. Any evidence of substance identified by the Parties or witnesses that the Investigator determined was not relevant (or duplicative) and the reason why the evidence was not considered to be relevant.

The Investigator will not decide whether the underlying policy prohibiting Title IX sexual harassment was violated based on the evidence gathered, nor make findings regarding other alleged policy violations if any such allegations are included within the investigation's scope, as defined by the notice provided to the Parties.

The District will send the final investigative report to each Party and their Advisors, if any, in an electronic format or a hard copy, for review and written response. The Parties will have at least ten (10) calendar days to submit a written response before any scheduled live hearing takes place.

Q. Live Hearing

After completing an investigation and prior to completing a determination regarding responsibility, the District will hold a live hearing to provide the Complainant(s) and Respondent(s) an opportunity to respond to the evidence gathered before a Decision-Maker. The Decision-Maker will make a determination as to whether a Party violated District policy(ies) based on relevant information reviewed during the hearing portion of the grievance process, as described in more detail below.

Neither Party may choose to waive the right to a live hearing when a formal complaint is not dismissed or otherwise informally resolved before the hearing takes place.

Parties and all witnesses can choose whether to participate in the live hearing and, if they participate, decide whether to answer some or all cross-examination questions.

1. Notice of Hearing

If the District proceeds to a hearing, the District will provide all Parties written notice of the date, time, location, participants, and purpose of the hearing with sufficient time for the Party to prepare to participate. The notice shall include a description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.

2. Hearing Format

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

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

The District will create either (1) an audio or audiovisual recording, or (2) transcript, of any live hearing and make it available to the Parties for inspection and review.

3. Decision-Maker

The District will designate a Decision-Maker, at the discretion of the Title IX Coordinator. The Decision-Maker will preside over the live hearing and make all ultimate determinations of relevance of any evidence concerning the allegations, in addition to making the finding as to whether District policy(ies) were violated based on the allegations under review at the hearing. The District will determine any sanctions or responsive actions resulting from their findings on the allegations adjudicated at the live hearing. The Decision-Maker will not have had any previous involvement with the investigation.

In cases where the Complainant or Respondent objects to the Decision-Maker based on a conflict of interest, the Complainant or Respondent may request the Title IX Coordinator select a different Decision-Maker. The Complainant or Respondent must make this request to the Title IX Coordinator in writing at least five (5) business days prior to the hearing.

The Decision-Maker may ask the Parties and the witnesses questions during the hearing. The Decision-Maker must objectively evaluate all relevant evidence, both inculpatory and exculpatory, and must independently reach a determination regarding whether a Party is responsible for violating implicated District policy(ies) based on the investigation's scope without giving deference to the investigative report. The Decision-Maker must receive training on issues of relevance, how to apply the rape-shield protections for Complainants and any technology to be used at the hearing.

4. Presenting Witnesses

The District will provide the Complainant and Respondent an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Witnesses, like Parties, cannot be required by the District to participate in the live hearing process under this administrative procedure.

Only relevant evidence, as determined by the Decision-Maker following the issuance of the District's investigative report, will be admissible during the hearing. Relevant evidence includes evidence relevant to the credibility of a Party or witness, or evidence having any tendency in reason to prove or disprove any disputed fact material to the allegations under investigation, as determined by the Decision-Maker presiding over the hearing. Any evidence determined by the Decision-Maker not to be relevant in advance of the live hearing shall not be included for review during the hearing, nor relied upon in the final decision as to whether a District policy violation occurred based on the circumstances alleged within the scope of the investigation.

5. Cross-Examination of Parties by Advisors

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

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

If a Party or witness does not submit to cross-examination at the live hearing, the Decision-Maker will not rely on any statement of that Party or witness in reaching their findings. If an Advisor asks a relevant question of another Party or a witness, and that Party or witness declines to respond to the question, then the Decision-Maker is precluded from relying on any statement made by that Party or witness. The same preclusion does not apply to questions a Decision-Maker may directly pose to a Party or witness during the live hearing that the Party or witness declines to answer.

A Decision-Maker cannot draw an inference about the determination regarding whether a policy was violated based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

6. Determinations by the Decision-Maker

When the Decision-Maker makes a determination of their findings regarding whether any District policy(ies) were violated based on the allegations within the scope of review of the grievance process as well as any determination of resulting sanctions and responsive actions based on the underlying findings, the Decision-Maker will issue a written report on their determination(s) no later than 30 calendar days from the date that the hearing ends.

When making the determination(s), a Decision-Maker will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. A Decision-Maker may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness. In evaluating the evidence, the Decision-Maker will use the preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that Title IX sexual harassment and any other related allegations in the scope of the investigation occurred.

The District must have completed the grievance procedures (investigation, hearing, and any appeal, if applicable) before imposing disciplinary sanctions or any other actions that are not supportive measures against a Respondent.

If the Decision-Maker determines a Respondent(s) was responsible for conduct that constitutes Title IX sexual harassment, the District will also determine the appropriate sanction or disciplinary action against the Respondent(s), in addition to any remedies to be afforded to the Complainant(s). This decision shall be subject to appeal under the same procedure and timeline of an appeal of the Decision-Maker's other findings resulting from the hearing, as issued in their report to the Parties.

The written determination provided to the Parties by the Decision-Maker will include:

- Identification of the allegations potentially constituting Title IX sexual harassment as defined in these procedures and any other allegations within the scope of review of the underlying investigation and live hearing;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including who conducted the investigation and gave notifications to the Parties. The determination will also state when, where, and the date the investigator interviewed the Parties and witnesses, conducted site visits, the methods used to gather other evidence. The procedural section should also discuss the dates and how the Parties were provided the opportunity to review and inspect evidence and the date of any hearings held and who attended the hearing;
- Findings of fact supporting the determination. In making these findings, the Decision-Maker will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility of a Party for violating any implicated District policies;
- Conclusions regarding the application of the implicated District policy(ies) to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding whether each allegation is substantiated to have factually occurred, and if so, what District policy violation(s) resulted from each substantiated allegation;
- A statement of, and rationale for, any disciplinary sanctions the District imposes on the Respondent;
- A statement of whether the District will provide the Complainant with remedies designed to restore or preserve equal access to the District's education program or activity;

- The District need not disclose to the Respondent remedies that do not affect them as part of the written determination. The District can inform the Respondent that it will provide remedies to the Complainant. However, the District will inform the Complainant of the sanctions against the Respondent;
- The District's procedures and permissible bases for the Complainant and Respondent to appeal the Decision-Maker's determination on whether the allegations were substantiated, whether the substantiated allegations constitute a policy violation(s) and whether specific sanctions or responsive actions should result.

The District will provide the written determination to the Parties simultaneously, within the same business day. The determination(s) of the Decision-Maker described in this section become final either (1) on the date that the District provides the Parties with a written determination of the result of all appeals, if either or both Parties file an appeal, or (2) if the Parties do not file an appeal, the date on which an appeal filed by a Party would no longer be timely and accepted.

V. Disciplinary Sanctions and Remedies That May Result from the Grievance Process

The District will take disciplinary action against the Respondent and any other remedial action it determines to be appropriate. The action imposed will be commensurate with the severity of the offense. Possible disciplinary sanctions for student Respondents include, but are not limited to written or verbal reprimand, required training or counseling, non-academic probation, suspension and/or expulsion. Possible disciplinary sanctions for employee Respondents include written or verbal reprimand, required training or counseling, reduction in pay, demotion**,** suspension and/or discharge.

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

a. Providing an escort to ensure that the Complainant can move safely between classes and activities;
b. Ensuring that the Complainant and Respondent do not attend the same classes or work in the same work area;
c. Providing counseling services or a referral to counseling services;
d. Providing medical services or a referral to medical services;
e. Providing academic support services, such as tutoring;

f. Arranging for a Complainant, if a student, to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and

g. Reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant's discipline.

VI. Addressing Concerns of Bias or Conflict of Interest

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

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the office of the District's Deputy Chancellor. Concerns of bias or a potential conflict of interest by any other Title IX team member should be raised directly with the Title IX Coordinator.

VII. Retaliation is prohibited and violates the Policy Prohibiting Sexual Harassment Under Title IX

The District prohibits retaliation against any individual who has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this procedure.

Retaliatory acts may include (1) intimidation; (2) threats; (3) coercion, (4) discrimination for the purpose of interfering with any right or privilege secured by Title IX or this administrative procedure, or (5) charges for code of conduct violations that arise out of the same facts or circumstances as the report or complaint of sex discrimination are specifically prohibited by the District. The exercise of rights protected under the First Amendment or principles of academic freedom does not constitute retaliation.

Acts of alleged retaliation related to matters reviewed under this procedure should be reported immediately to the Title IX Coordinator or an assigned investigator. Reports shall be promptly addressed under the appropriate procedure. The District will take all reasonable steps to provide support to individuals who express concerns related to retaliation.

Charging an individual with a policy violation for making a materially false statement in bad faith in the course of the resolution process described under this procedure does not constitute retaliation, provided that a determination regarding whether allegations reviewed under this administrative procedure, alone, is not sufficient to conclude that any Party has made a materially false statement in bad faith.

VIII. Appeal Procedures Regarding Dismissal of a Formal Complaint or of the Determination of Responsibility

A. Both Parties' Rights to Appeal

A Complainant or Respondent may appeal the District's determination regarding responsibility and associated sanctions or remedies, or the dismissal of a formal complaint or any allegations. A Complainant or Respondent must submit a written appeal within fifteen (15) calendar days from the date of the notice of determination regarding responsibility or from the date of the District's notice of dismissal of a formal complaint or any allegations.

B. Grounds for Submitting an Appeal

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

- A procedural irregularity affected the outcome;
- New evidence was not reasonably available at the time the District's determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome; or

- The District's Title IX Coordinator, investigator, or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

Appeals filed on the basis that fail to articulate sufficient facts demonstrating or supporting one of the grounds outlined above shall be subject to immediate dismissal rather than a determination on their merits.

C. Appeal Procedure

If the Complainant or Respondent submit an appeal to the District, the District, through an Appeal Officer, will:

- Notify the other Party in writing within ten (10) calendar days of receiving a Party's appeal;
- Allow the non-appealing Parties at least fifteen (15) calendar days from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome;

The Appeal Officer will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within thirty (30) calendar days after the Appeal Office receives the response to the appeal or the last day to provide a response. The District will provide the written decision simultaneously to the Parties.

The Appeal Officer may extend or otherwise modify the deadlines provided above. Either Party may seek an extension by submitting a written request to the Appeal Officer explaining the need for the extension and the proposed length of the extension. The Appeal Officer will respond to the request within five (5) calendar days and will inform the Parties simultaneously whether the extension is granted.

IV. Training

The District will provide training to Title IX Coordinators, investigators, Decision-Makers District-appointed Advisors and any other individual who may facilitate an informal resolution process, on the definition of sexual harassment, the scope of the District's education program or activities, how to conduct an investigation and grievance process

including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Any materials used to train the District's Title IX Coordinator investigators, District-appointed Advisors, Decision-Makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of Title IX sexual harassment.

IX. File retention

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

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

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

Additional Definition Information on Title IX Sexual Harassment from Page 2

Sexual assault, under this procedure, is defined as:

1) Sex Offenses, Forcible:
a) Any sexual act[1] directed against another person,

[1] Sexual acts include:

b) without the consent of the Complainant,
c) including instances in which the Complainant is incapable of giving consent.

2) Sex Offenses, Non-forcible:
a) Incest:
i) Non-forcible sexual intercourse,
ii) between persons who are related to each other,
iii) within the degrees wherein marriage is prohibited by California law.

b) Statutory Rape:
i) Non-forcible sexual intercourse,
ii) with a person who is under the statutory age of consent of 18.

Consent relevant to any sexual act described under this procedure, is defined as **affirmative consent,** which means an affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in sexual activity to ensure that they have the affirmative

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Forcible Rape:
(1) Penetration,
(2) no matter how slight,
(3) of the vagina or anus with any body part or object, or
(4) oral penetration by a sex organ of another person,
(5) without the consent of the Complainant.

Forcible Sodomy:
(1) Oral or anal sexual intercourse with another person,
(2) forcibly,
(3) and/or against that person's will (non-consensually), or
(4) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

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

Forcible Fondling:
(1) The touching of the private body parts of another person (buttocks, groin, breasts),
(2) for the purpose of sexual gratification,
(3) forcibly,
(4) and/or against that person's will (non-consensually),
(5) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

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

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

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

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

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

Dating Violence, under this procedure, is defined as:

a) violence,
b) on the basis of sex,
c) committed by a person,
d) who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
    i) The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—

ii) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
iii) Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence, under this procedure, is defined as:

a) violence,
b) on the basis of sex,
c) committed by a current or former spouse or intimate partner of the Complainant,
d) by a person with whom the Complainant shares a child in common, or
e) by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
f) by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California, or
g) by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of California.

Stalking, under this procedure, is defined as:

a) engaging in a course of conduct,
b) on the basis of sex,
c) directed at a specific person, that
   i) would cause a reasonable person to fear for the person's safety, or
   ii) the safety of others; or
   iii) Suffer substantial emotional distress.

For the purposes of this definition—

(i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third Parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

(iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Original Issue Date: August 14, 2020
Initiated by: Office of Diversity, Equity & Inclusion
Dates of Changes:

References:

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