

El Camino Community College District Office of Title IX, Diversity, and Inclusion

Provisional Title 5 – Unlawful Discrimination Complaint Procedures¹

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¹ Disclaimer: These provisional procedures are subject to change without prior notice to keep the District in compliance with Board Policies and/or State and Federal laws and do not apply to Unlawful Discrimination alleged to occur before September 18, 2020.

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SECTION 1 - INTRODUCTION

El Camino Community College District (referred to as the 'District') is committed to equal opportunity in educational programs, employment, and all access to institutional programs and activities. All members of the District Community, guests and visitors, have a right to an environment free from Unlawful Discrimination and Harassment on the basis of ethnicity, national origin, religion, age (40 years or older), sex or gender (including pregnancy and Sexual Harassment²), race, ancestry, sexual orientation, medical condition, citizenship status, genetic information, veteran status, or disability. This procedure has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This procedure is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

All individuals are expected to conduct themselves in a manner that does not infringe upon the rights of others. When an allegation of misconduct is brought to the District's attention appropriate support services will be offered and, when a Respondent is found to have violated this policy, sanctions will be used to address such behavior and prevent further violations.

It is within the District's authority to review and address allegations of Unlawful Discrimination when they occur on District property, in connection with employment or academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities or at another location, or on an off-campus site or facility maintained by the District, or on grounds or facilities maintained by a student organization.

SECTION 2 - RELEVANT DEFINITIONS

Appellant: A Complainant or Respondent who appeals the District's Investigative Findings, pursuant to Section 8.8 (see *Guidelines Used in the Appeals Process*).

Complainant: A person alleging that they are the victim of Unlawful Discrimination by another person subject to *Administrative Procedure (AP) 3435*. Any person, other than Complainant, who reports possible violation(s) of the District's policy on Unlawful Discrimination, shall be identified as a Reporter, as defined herein.

Consensual Relationships: Romantic or sexual relationships between supervisors and employees, or between administrators, faculty or staff members and students are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the administrator, faculty or staff member must evaluate the student's or employee's work or make decisions affecting the employee or student. The

² Where sexual harassment allegations fall outside the purview of *Title IX of the Education Amendments of 1972*, they will be reviewed under the procedures for Unlawful Discrimination Complaints outlined in these provisional procedures. Where Sexual Harassment occurs, the District will provide supportive measures, due process, and a fair and equitable process in which such allegations can be reviewed and addressed.

relationship may create an appearance of impropriety and lead to charges of favoritism by other students or employees. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing. In the event that such relationships do occur, the District has the authority to transfer any involved employee to eliminate or attenuate the supervisory authority of one over the other, or of a teacher over a student. Such action by the District is a proactive and preventive measure to avoid possible charges of harassment and does not constitute discipline against any affected employee.

District: El Camino Community College District.

District Appeals Body: The Chancellor's Office determines whether the Director of Title IX, Diversity, and Inclusion's determination of an Unlawful Discrimination Complaint is upheld or overturned.

District Community: Means any Employee, contractor, Student, member of the public, volunteer, intern, or guest present on District property, or on property being used by the District. For purposes of this definition, a Student is deemed a member of the District Community while enrolled in, or in the process of applying for, admission as a Student at the District.

District Disciplinary Officer: Where Respondent is a **Student**, the Director of Student Development, or designee, shall act as the District Disciplinary Officer to administer the Sanctions under *AP 5500*.

Where Respondent is an **Employee**, the Director of Human Resources, or designee, shall act as the District Disciplinary Officer to administer the Sanctions under applicable District AP, bargaining unit agreements, and in compliance with the *Education Code*.

Employee: Any person employed for wages or salary by the El Camino Community College District.

Gender: For purposes of this procedure, Gender refers to an individual's actual or perceived Gender as Male, Female, or non-binary (see *California SB 179*), Gender Identity, or Sexual Orientation, as well as any assumptions or stereotypes based on one's actual or perceived Gender.

Gender-based Harassment and/or Misconduct³: Unwelcome Conduct of a nonsexual nature based on a Complainant's actual or perceived gender, including conduct based on gender identity, gender expression, or nonconformity with gender stereotypes that effectively denies a student services, benefits, or access to campus programs and activities based on gender.

³ Where the complaint allegation consists of Sexual and Gender-Based Misconduct (including, but not limited to sexual harassment, stalking, intimate partner violence, and sexual assault), as defined by *Title IX of the Education Amendments of 1972*, please refer to *District Board Policy and Administrative Procedure 3540*.

Harassment: Harassment based on actual or perceived race, color, ancestry, national origin, religion, creed, age (over 40), disability (mental or physical), sex, gender (including pregnancy and childbirth), sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, military and veteran status, or retaliation; or on any other basis as required by state and federal law, violates District policy. Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment. For example, repeated derisive comments about a person's competency to do the job, when based on that person's gender, could constitute gender-based harassment. Harassment comes in many forms, including but not limited to the following conduct:

Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race, gender, sexual orientation, or other protected status. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats or intimidation; or sexist, patronizing or ridiculing statements that convey derogatory attitudes based on gender, race nationality, sexual orientation or other protected status.

Physical: Inappropriate or offensive touching, assault, or physical interference with free movement. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, pinching, leering, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's gender, race, national origin, sexual orientation or other protected status.

Physical sexual harassment includes acts of sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol or under the age of 18, the legal age of consent. An individual also may be unable to give consent due to an intellectual or other disability.

Visual or Written: The display or circulation of visual or written material that degrades an individual or group based on gender, race, nationality, sexual orientation, or other protected status. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.

Environmental: A hostile academic or work environment exists where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, race, nationality, sexual orientation or other protected status; or gratuitous comments regarding gender, race, sexual orientation, or other protected status that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually

suggestive statements in the classroom or work environment. It can also be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, genders or other protected statuses. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in their immediate surroundings, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work.

Sexual Harassment: In addition to the above, sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature when:

1. submission to the conduct is made a term or condition of an individual's employment, academic status, or progress;
2. submission to, or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual;
3. the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment; or
4. submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the community college.

This definition encompasses two kinds of sexual harassment:

"Quid pro quo" sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.

"Hostile environment" sexual harassment occurs when unwelcome conduct based on a person's gender is sufficiently severe or pervasive so as to alter the conditions of an individual's learning or work environment, unreasonably interfere with an individual's academic or work performance, or create an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile. The harassment may impact more than one individual. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it is severe, i.e. a sexual assault.

Sexually harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is

whether a reasonable person of the same gender as the victim would perceive the conduct as harassment based on sex.

Investigative Findings: A complaint process determination, based on the available evidence and made at the conclusion of the Investigative Process, that the allegation that Respondent violated *AP 3435* has been Substantiated or Unsubstantiated. The Investigative Findings may form the basis of any applicable sanctions.

Party/Parties: refers to the individuals involved in the alleged violation of *AP 3435*. The term Party refers to either Complainant or Respondent individually; the term Parties means both Complainant and Respondent collectively.

Reporter: Any person(s), other than Complainant, who reports potential violation(s) of the District's policy on Unlawful Discrimination.

Respondent: Person/s who are alleged to have violated the District's policy on Unlawful Discrimination.

Retaliation: Any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation of unlawful discrimination or Unlawful Discrimination. Victims of Retaliation may include, but are not limited to Complainant, Respondent, witnesses, Investigator, Director of Title IX, Diversity, and Inclusion, and Appeals Body. Examples of actions that might constitute Retaliation against a Complainant, witness, or other participant in the complaint or investigation process include: a) Singling the person out for harsher treatment; b) lowering a grade or evaluation; c) failing to hire, failing to promote, withholding pay increase, demotion, or discharge; d) providing negative information about the person in order to interfere with their prospects for employment, admission, or academic program.

Sanctions: Those disciplinary measures available to the District Disciplinary Officer or designee to impose upon a Respondent upon the substantiation of an allegation that a Respondent violated *AP 3435 – Unlawful Discrimination*.

Student: Any person who is enrolled, applying to enroll, or was enrolled within the last two Academic terms at the District during the period in which the misconduct occurred.

Substantiated: Means, based on the applicable evidence collected during the investigation, that it is determined by a preponderance of the evidence that the allegations made against Respondent are considered more likely than not to have occurred and constitute violation of the District's *AP 3435 – Unlawful Discrimination*.

Unwelcome Conduct: Conduct of a harassing nature, which is not solicited, invited, or Consented to. Such conduct would be deemed unwelcome if the person receiving it did not request or invite it, and considered the conduct to be undesired, or offensive. Such conduct may take various forms, including name-calling, graphic or written statements (including the use of technology, including cell phones or the Internet), hazing, bullying, offensive, or other

conduct that may be physically or psychologically threatening, harmful, humiliating or sexual in nature. Unwelcome Conduct does not have to include intent to harm, or be directed at a specific target, or involve repeated incidents. Unwelcome Conduct can involve persons of the same or different protected statuses. Participation in the conduct or the other Party's failure to complain does not mean that the conduct was welcome.

Unsubstantiated: Means, based on the applicable evidence collected during the investigation, it is determined by a preponderance of the evidence that the allegations against Respondent more likely than not did not occur and/or that they would not constitute a violation of *AP 3435 – Unlawful Discrimination*.

SECTION 3 - DISTRICT JURISDICTION

It is within the District's authority to review and address allegations of Unlawful Discrimination when they occur on District property, in connection with academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities or at another location, or on an off-campus site or facility maintained by the District, or on grounds or facilities maintained by a student organization.

Pursuant to District *Board Policy (BP) 5500* and *AP 5500*, the District's jurisdiction concerning alleged *Student Code of Conduct* violations extends to the District or any of its activities occurring on District property within the United States. This jurisdiction may also apply to off-campus electronic activity (such as e-mail, texting, telephone contact, social media and other technology) when the off-campus conduct affects, disrupts, or interferes with a Complainant's equal access to educational programs or activities. The District shall promptly investigate complaints of Unlawful Discrimination that occur off campus if the alleged conduct creates a hostile environment on campus.

SECTION 4 - RANGE OF SANCTIONS FOR VIOLATIONS OF AP 3435

Any Student found Responsible for violating *AP 3435* on Unlawful Discrimination, and/or *AP 5520* on Student Conduct may receive Sanctions ranging from warning to expulsion, as well as educational sanctions, depending on the severity of the incident, and considering the severity of the incident and any previous campus conduct code violations.⁴

Any Employee found Responsible for violating *AP 3435* on Unlawful Discrimination may face disciplinary action, depending on the severity of the incident, subject to any applicable existing

⁴ The District Disciplinary Officer or designee reserves the right to broaden or lessen any range of recommended Sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the District Disciplinary Officer nor any appeals body or officer will deviate from the range of recommended Sanctions unless compelling justification exists to do so. (See *AP 5500 Standards of Student Conduct*)

bargaining unit agreements, the *Education Code*, and any other applicable policies and procedures.⁵

SECTION 5 - DISTRICT NOTICES AND COMMUNICATION

The District's primary correspondence and notification mechanism with Parties shall be through the District assigned email account. At the District's discretion, Complainants may be notified via other communication methods, such as U.S. certified mail, delivery in person, telephone, or by an alternate email on record to the contact information provided by the Student.

SECTION 6 - EMPLOYEE REPORTING OBLIGATIONS

Where a Complainant may report potential violations of *AP 3435* to a District Employee, all employees are encouraged to refer Complainant to the Director of Title IX, Diversity, and Inclusion for supportive measures, resources, and complaint filing options. While most employees are encouraged to refer a Complainant, Managers/Administrators are required to notify the Director of Title IX, Diversity, and Inclusion and/or appropriate Law Enforcement, of any incidents and relevant details of Unlawful Discrimination that are reported to them by a member of the District Community.

District Employees are not expected, nor encouraged, to investigate, question, or seek further information regarding a potential allegation of Unlawful Discrimination. Employees shall not take any corrective actions against a member of the community based on suspected violations of *AP 3435* outside of the appropriate grievance process following an investigation through the Unlawful Discrimination Complaint process.

6.1 Federal Statistical Reporting Obligations

The *Jeanne Clery Act* is a landmark federal law that requires Districts and universities, including the District, to disclose certain timely and annual information about crimes that occur on or near campus. The District has a duty to report relevant crimes, such as hate crimes, for federal statistical reporting purposes pursuant to the *Jeanne Clery Act*. All personally identifiable information is kept confidential, but statistical information must be passed along to District law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual *Campus Security Report*. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal Reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for Student and campus activities. The

⁵ See *El Camino Classified Employees Agreement effective January 1, 2020*; *El Camino College Federation of Teachers Agreement effective January 1, 2020*; *El Camino College Police Officers Association Agreement effective January 1, 2015*.

information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category.

SECTION 7 - FILING A COMPLAINT

7.1 Timeframe for Reporting a Complaint

Complainants must report violations of AP 3435 within one hundred and eighty (180) calendar days of the violation. This period shall be extended by no more than ninety (90) days following the expiration of the one hundred eighty (180) days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the one hundred eighty (180) days. Where Complaints are submitted outside the one hundred and eighty (180) day timeframe, supportive measures and services may still be provided.

7.2 Methods for Reporting and Filing a Complaint

Members of the District Community may report known or reasonably suspected incidents of Unlawful Discrimination to the Director of Title IX, Diversity, and Inclusion. All incidents where imminent physical danger is known or suspected should be reported to Campus Police or local law enforcement via 9-1-1 immediately. Students who wish to remain confidential while receiving support services for incidents of Unlawful Discrimination may also report to the Student Health Services (see *Confidentiality* Section 7.3).

Campus Police:

(310) 660-3100
16007 South Crenshaw Blvd.

Director of Title IX, Diversity, and Inclusion:

Jaynie Ishikawa
TDI@elcamino.edu
(310) 660-3813
Administration Building, Suite 140
Website and information: <https://www.elcamino.edu/about/depts/diversity/>
Online Reporting Form:
https://cm.maxient.com/reportingform.php?ElCaminoCollege&layout_id=1

Students and Employees may file a Complaint of Unlawful Discrimination with the Office of Title IX, Diversity, and Inclusion verbally or in writing.

A Formal Complaint must meet each of the following criteria:

1. It must allege facts with enough specificity to show that the allegations, if true, would constitute a violation of District policies or procedures prohibiting unlawful discrimination;

2. The complainant must file any Formal Complaint not involving employment within one (1) year of the date of the alleged unlawfully discriminatory conduct or within one (1) year of the date on which the complainant knew or should have known of the facts underlying the allegation(s) of unlawful discrimination; and
3. The complainant must file any Formal Complaint alleging unlawful discrimination in employment within one hundred eighty (180) days of the date of the alleged unlawful discrimination, except that this period shall be extended by no more than ninety (90) days following the expiration of the one hundred eighty (180) days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the one hundred eighty (180) days.

If the Formal Complaint does not meet the requirements set forth above, the Director of Title IX, Diversity, and Inclusion will promptly return it to the complainant and specify the defect. If the sole defect is that the Formal Complaint was filed outside the applicable proscribed timeline, the Office of Title IX, Diversity, and Inclusion will handle the matter as an informal complaint.

Employee Complaints

Complainants filing employment-related complaints shall be notified that they may also file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH) at any time before or after a District investigation and determination.

Student Complaints

Complainants filing education-related complaints shall be notified that they may also file discrimination complaints with the U.S. Department of Education Office for Civil Rights.

7.3 Confidentiality

Confidentiality in a complaint filed with the Director of Title IX, Diversity, and Inclusion cannot be guaranteed, however the information in a report will only be disclosed on a need-to-know basis. Complainants may request to seek Supportive Measures from the Director of Title IX, Diversity, and Inclusion without their name or information being disclosed to Respondent. Where Supportive Measures require coordination with other campus offices, limited information will be provided and the details of the alleged conduct will not be disclosed.

Where a Complainant wishes to file a complaint, either for the purposes of an Informal Resolution or a Formal Complaint and investigation, Complainant's name and details of the allegations will be disclosed to Respondent and the relevant advisors, administrators, and other individuals involved in the complaint process.

When the District becomes aware of Unlawful Discrimination that poses a serious or ongoing threat to the District Community, the Director of Title IX, Diversity, and Inclusion has the

authority to determine if an investigation into the allegations is warranted, regardless of a Complainant's wishes to the contrary, in order to ensure the safety of the District Community. In these cases, Complainants are not required to participate in the District's investigation. However, this may significantly limit the District's ability to effectively and efficiently respond to the incident.

Complainants who wish to receive confidential support services may utilize any of the confidential resources listed below.

7.4 Confidential Reporting Options

Certain resources are not required to disclose private, personally identifiable information unless there is cause for fear for your safety, or the safety of others.

Student Health Services

District Employees (such as psychologists, doctors, and other medical health professionals) who work at the Student Health Services and whose primary job duty is to render medical or counseling care to Students and are working within the scope of their professional license or certification are considered confidential services. In addition, employees providing administrative support within the Student Health Services are excluded from the reporting requirement. The exclusion of these Employees rendering medical or counseling care or administrative support in the Student Health Services is intended to provide Students with a mechanism to confidentially report incidents of Unlawful Discrimination. This section is not intended to negate the mandatory reporting responsibilities required under *California Welfare and Institutions Code Section 15630*.

Counseling services are available to Students free of charge on an appointment and drop-in basis. Reports to Employees of the Student Health Services, such as psychologists, doctors, and other medical health professionals, who work at the Student Health Services and whose primary job duty is to render medical or counseling care to Students and are working within the scope of their professional license or certification, will remain confidential. In addition, reports to employees providing administrative support within the Student Health Services are maintained on a need-to-know basis within the Student Health Services and for the purposes on providing care to students within the scope of their position.

In addition, reports to members of the clergy and chaplains off-campus are also confidential resources. For off campus resources, visit <https://www.elcamino.edu/about/depts/diversity/unlawful-discrimination-resource-sheet.pdf>

7.5 Non-Confidential Reporting Options

District Administrators, are designated by the District for purposes of putting the District on notice and for whom reporting is required, other than in stated limited circumstances. Notice to a District Administrator is official notice to the District. Other non-confidential reporting options include, but are not limited to:

- Student Club and Organization Advisors
- Student Support Services Staff
- Academic Affairs
- Campus Police
- Athletics staff
- Academic Counseling Staff

7.6 Amnesty for Alcohol and Drug Use

The District understands that Students may be reluctant to file complaints of Unlawful Discrimination when alcohol and/or drugs were used. Whenever possible, the District will respond educationally, rather than punitively, to the use of drugs and/or alcohol so as to promote the reporting of Unlawful Discrimination. However, the District reserves the right to other remedies dependent upon the severity of the alcohol or drug use.

7.7 Reports Involving Unknown/Non-District Offenders

When Respondent is not a District Employee or Student, the District will offer reasonable supportive remedies, such as class scheduling alternatives, escort services, and medical and counseling care to Complainant. However, Unlawful Discrimination investigations against individuals over whom the District has no authority may be limited in scope and remedies available.

7.8 Anti-Retaliation/Anti-Intimidation

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because they have complained of unlawful discrimination or are otherwise involved in a related investigation. Any substantiated allegation of Retaliation violates *BP/AP 3430* and *AP 3435*, this procedure, and applicable law and may result in disciplinary action.

7.9 Parallel Student Conduct, Police and Court Proceedings

Complainants are strongly encouraged to report all incidents of Unlawful Discrimination to law enforcement. District investigations are independent from court or other administrative proceedings. Complainants may seek outside remedies including orders of protection or similar lawful orders issued by a criminal, civil, or tribal court. Discipline may be instituted against a Respondent also charged in civil or criminal courts based on the same facts that constitutes the alleged violation of the *Student Code of Conduct* or other applicable Board Policy or collective bargaining agreement. The District may proceed before, concurrently with, or after any judicial, criminal, or administrative proceedings to maintain the timelines outlined in this procedure.

SECTION 8 - COMPLAINT REVIEW PROCESS AND SUPPORTIVE MEASURES

8.1 Preliminary Assessment

The District will review and respond to all reports of alleged violations of Unlawful Discrimination. Where the Director of Title IX, Diversity, and Inclusion is notified of potential Unlawful Discrimination, the Director of Title IX, Diversity, and Inclusion, or their designee(s), will provide Complainant with information on Supportive Measures and filing options, including Informal Resolution, where applicable, and the Formal Complaint process.

The Director of Title IX, Diversity, and Inclusion has the authority to determine jurisdiction of a complaint based on the nature of the allegations, location of the incident, status of the parties, and/or other relevant factors. Where a case falls outside the jurisdiction of the District, the Director of Title IX, Diversity, and Inclusion may provide Complainant with Supportive Measures, resources, and/or a referral to the appropriate administrative office. Where the allegations, if found to be true, would not rise to a policy violation it is the discretion of the Director of Title IX, Diversity, and Inclusion to determine if a complaint may be accepted for review or investigation.

Complainant may opt to pursue an Informal Resolution, prior to or instead of a Formal Complaint in most cases. If the Director of Title IX, Diversity, and Inclusion determines it is warranted based on a safety concern, a Formal Complaint will be initiated and an investigation will be conducted.

8.2 Interim Action and Supportive Measures

Once the Director of Title IX, Diversity, and Inclusion or designee has received a complaint and/or report of Unlawful Discrimination, the District will make an assessment to determine if any immediate remedies are warranted, pending an investigation. The District will work with Complainants affected by the Unlawful Discrimination report to ensure their safety and promote their well-being. The Director of Title IX, Diversity, and Inclusion may determine immediate or long-term supportive measures, such as, but not limited to, changing academic schedules, police escort services, restrictions on the Parties pending investigation, and other measures to promote the well-being, safety, and restoration of the Parties.

Examples of supportive measures that may be implemented are subject to the discretion of the Director of Title IX, Diversity, and Inclusion and may include:

- Access to counseling services and assistance in setting up an initial appointment, both on and off campus;
- Imposition of campus “No Contact Order;”
- Rescheduling of exams and assignments (in conjunction with appropriate faculty and deans as necessary);

- Providing alternative course completion options (with the agreement of the appropriate faculty);
- Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty, or transfer sections (with the agreement of the appropriate faculty);
- Change in work schedule or job assignment;
- Limiting an individual or organization’s access to certain District facilities or activities pending resolution of the matter;
- Voluntary leave of absence;
- Providing an escort to ensure safe movement between classes and activities;
- Providing medical services;
- Providing academic support services, such as tutoring;
- Interim suspension or District-imposed leave;
- Any other remedy that can be tailored to the Parties to reasonably achieve the goals of this Policy.

Ongoing Supportive Measures for Complainants

The District shall take reasonable and necessary steps to prevent the recurrence of any Unlawful Discrimination and to remedy discriminatory effects on both Complainant and Respondent, if appropriate.

8.3 Informal Resolution

If the Office of Title IX, Diversity, and Inclusion or either Party believes that it may be possible to resolve the Complaint in a prompt, fair, and reasonable manner without conducting a Formal Complaint and Investigation, the Office of Title IX, Diversity, and Inclusion may suggest the Parties consider Informal Resolution. Supportive measures and interim remedies may be implemented in Informal Resolution, such as mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling, training, etc.

The purpose of the informal process is not to investigate the matter or determine fault, but to 1) provide supportive measures and remedies to the involved parties, 2) share with the person at issue feedback from the aggrieved Party to prevent further potential issues and/or miscommunications, and 3) notify them of the type of behavior that can be construed as being in violation of our school board policies.

The Director of Title IX, Diversity, and Inclusion may work with relevant administrative offices, such as deans, faculty, or the District Disciplinary Officer, to coordinate and provide proposed supportive measures and remedies. There is no timeline associated with the informal process. Informal Resolution can be changed to a formal investigation if the circumstances warrant it. The protections against Retaliation apply in both informal and formal processes.

Where Respondent is a District Employee, the relevant supervisor is notified of the issue as well, not only to help monitor the situation, but to work with Human Resources on instituting

any necessary interim actions. Where Respondent is a District Student, relevant instructors and administrative staff may be notified of the issue as well, to assist in monitoring the situation.

Once the Office of Title IX, Diversity, and Inclusion has met with all relevant Parties to discuss the matter, the complaint will be considered resolved. Accordingly, there is no appeals process for informal resolution.

However, the Formal Complaint & Investigation process may be used prior to the final resolution at the request of Complainant or if information is provided that indicates a substantial or ongoing threat to the safety of the campus community.

Where Informal Resolution is not applicable, elected, or agreed upon by both parties a Complainant may choose to proceed with a formal complaint, in which an investigation will be conducted (See Steps 1-4 in Section 8.9 below). The Formal Complaint & Investigation process has disciplinary implications and is governed by the *CA Code of Regulations*. Its purpose is to determine whether or not there has been a violation of District policies.

8.4 Formal Complaint and Investigation Process

Where a Complainant notifies the Director of Title IX, Diversity, and Inclusion of allegations of Unlawful Discrimination and wishes to pursue a Formal Complaint, or where the Director of Title IX, Diversity, and Inclusion determines it is warranted based on a safety concern, an investigation into the allegations will be conducted by the Director of Title IX, Diversity, and Inclusion or their designee. The District is committed to using a balanced and fair investigative process for both Complainant and Respondent.

As set forth in these provisional procedures, the scope of Formal Investigations conducted by the Office of Title IX, Diversity, and Inclusion are limited to allegations of Unlawful Discrimination. This Formal Complaint and investigation process only applies in cases where Complainant has filed a complaint, the Director of Title IX, Diversity, and Inclusion has determined it is within the District's jurisdiction, and where the parties have opted not to pursue or agree to Informal Resolution.

8.5 Timeframe for Investigations

The District shall use reasonable, diligent efforts to investigate reported incidents of Unlawful Discrimination to Complainant and Respondent within ninety (90) working days or the date in which the complaint was filed unless there are extenuating circumstances that prohibit the timeliness of the completion of the investigation. Time frames for investigations may vary depending on the details of a case or if possible, violations occur near, during, or after District holidays, breaks, or the end of an academic term.

If an extenuating circumstance exists that prohibits the completion of an investigation within ninety (90) working days, the District may grant themselves an additional forty-five (45) day extension and will inform Complainant and Respondent in writing of such delay. In such

situations where additional extensions may be required to complete the investigation or final report, the District may request additional extensions from the Chancellor's office and will provide notice to both parties.

8.6 Video and Audio Recording

No recording of any interview or investigative procedure will be permitted.

8.7 Participation in an Investigation

All Parties are expected to cooperate with a District investigation into allegations of unlawful discrimination. Parties may decline to participate, however, lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. The District may choose to conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the Parties.

Complainants

A Complainant may request that no investigation or disciplinary action be pursued to address the alleged Unlawful Discrimination. The District shall make all reasonable attempts to maintain discretion and confidentiality to the extent possible. However, there are situations where the District must override these requests. The District maintains the discretion whether it shall honor such requests if doing so would compromise its ability to provide a safe and nondiscriminatory environment for the District Community. In cases where the Director of Title IX, Diversity, and Inclusion determines an investigation is warranted despite Complainant's wishes, and regardless of if a complaint was filed, the District may pursue an investigation. If Complainant declines to participate in the investigation, the investigation may continue and a determination will be made without the benefit of Complainant's input.

Respondents

Respondents may decline to participate in the investigation and hearing. In these cases, the investigation and adjudication process will continue and a determination will be made without the benefit of Respondent's input. Pursuant to *AP 3050 (Institutional Code of Ethics)*, it is strongly recommended that District Employees participate in these procedures.

8.8 Standard of Evidence

An allegation will be determined as substantiated or unsubstantiated based on a preponderance of the evidence, meaning that it is more likely than not that allegation occurred and constitutes a violation of the District's *AP 3435, BP/AP 5500* and any other applicable policies and procedures. The outcome of a Formal Complaint shall be based upon the thorough investigation of allegations, and the weighing of evidence in totality by the Director of Title IX, Diversity, and Inclusion, or their designee, investigator, and the Appeals Body, if applicable.

8.9 Investigation Process

Step 1 – Notice of Formal Investigation

Once a formal complaint of Unlawful Discrimination has been received by the Director of Title IX, Diversity, and Inclusion, or designee, an email will be sent to Complainant and Respondent, separately but concurrently, with the following information:

- A description of the alleged violation(s), including the Parties' names, summary of the allegation(s), location of the incident(s), and date and time of the incident(s);
- A description of the applicable policies (including a description of the District's policy against Retaliation);
- A statement of the potential Sanctions/responsive actions that could result;
- Information about the Parties' right to an Advisor;
- A request for an investigative interview; and
- The estimated timeline for completion of the investigation.

Step 2 – Investigation Process

The investigator will make good faith and reasonable efforts to interview Complainant, Respondent, and any witnesses (if appropriate). Both Complainant and Respondent may have an Advisor (such as a Union Representative)⁶ present during District investigation meetings, including their own investigative interview, and other related administrative meetings.

The Investigator will also make good faith and reasonable efforts to gather all available information, documents, and materials (if any) that are relevant to the case. The Investigator may decline a Party's request to gather information if:

- The request seeks information that is unreasonably duplicative of evidence in the Investigator's possession; or
- The Investigator determines that the information is not relevant to disputed issues; or
- The Request seeks information that can be reasonably and adequately obtained by the requesting Party from other independent or publicly available sources; or
- The burden of obtaining the information is likely to substantially outweigh the benefit that the evidence bears on a disputed issue; or
- The requested information can be reasonably obtained through other means less likely to intrude on a person's privacy

Step 4 – Investigative Findings

Once the investigation process has been concluded, the Director of Title IX, Diversity, and Inclusion, or their designee, will make a determination based on the preponderance of the evidence regarding a violation of *AP 3435* as well as a recommendation for applicable sanctions to be provided to the District Disciplinary Officer. The Director of Title IX, Diversity, and Inclusion, or their designee, will compile a report with the findings and recommendations to be

⁶ See Section 11.3, *Advisors*

issued to the District Disciplinary Officer and relevant administrative offices. The District will issue an outcome letter to both parties outlining the findings of the allegation(s) and relevant next steps.

Unsubstantiated

If after the conclusion of an investigation, the preponderance of the evidence indicates that it is NOT more likely than not that Respondent violated the District policy, the complaint will be determined unsubstantiated.

Substantiated

If after the conclusion of an investigation, the preponderance of the evidence indicates that it is more likely than not that Respondent violated District *AP 3435*, the complaint will be determined substantiated. Where a Respondent is found Responsible for violation of *AP 3435*, the Director of Title IX, Diversity, and Inclusion’s report will be submitted to the District Disciplinary Officer to serve as the basis of any applicable Sanctions.

Whether or not a complaint allegation is found to be substantiated, both Complainant and Respondent will be notified of the outcome of the Investigative Findings in writing. The notification shall include the determination of the Office of Title IX, Diversity, and Inclusion as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint, a description of actions taken, if any, to prevent similar problems from occurring in the future, the proposed resolution of the complaint, and the Parties’ right to appeal.

If the District imposes discipline, the nature of the discipline will not be communicated to the complainant. However, the District may disclose information about the sanction imposed on an individual who was found to have engaged in harassment when the sanction directly relates to the complainant; for example, the District may inform the complainant that the harasser must stay away from the complainant. Any applicable Sanctions are determined after the Appeals process has concluded and will be administered through the District Disciplinary Officer.

SECTION 9 - APPEALS PROCESS

9.1 Appeals of the Investigative Findings & Administrative Determination

Appeals of the Investigative Findings & Administrative Determination are handled outside of the Office of Title IX, Diversity, and Inclusion, pursuant to *Title 5 CCR § 59338*. When either party is not satisfied with the results of the administrative determination, they may, within thirty (30) working days, submit a written appeal to the District Chancellor’s Office. The Chancellor’s Office shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Chancellor’s Office shall issue a final decision in

the matter within ninety (90) working days after receiving the file from the Director of Title IX, Diversity, and Inclusion. A copy of the decision rendered by the Chancellor's Office shall be forwarded to the Parties and to the Director of Title IX, Diversity, and Inclusion. Appeals of any subsequent Sanctions imposed shall be submitted to the District Disciplinary Officer directly using the procedure for appealing a disciplinary decision.

9.2 Grounds for Appeal

Parties may file an appeal of the outcome of their case based on the specified grounds outlined herein. An Appellant must specify a) which of the following grounds, the appeal is based; and b) a summary of any new information to be considered in support of the appeal.

- (1) whether there was a procedural error in violation of this subchapter;
- (2) whether there was a defect in the investigation;
- (3) whether new evidence not unavailable during the investigation despite the complainant's due diligence would substantially impact the outcome of the investigation;
- (4) whether correct legal standards were applied; and
- (5) whether the district's determination was an abuse of discretion.

SECTION 10 - SANCTIONS

Sanctions issued by the appropriate District Disciplinary Officer shall be imposed in accordance with existing District policy, Board policy, applicable collective agreements and the law. Additionally, Sanctions shall be prompt, effective, and commensurate with the severity of the offense.

The relevant factors that may be considered, as applicable to the specifics of each type of Unlawful Discrimination, when imposing Sanctions include:

1. The specific Unlawful Discrimination at issue
2. The circumstances accompanying the Unlawful Discrimination (such as physical altercations, threats, etc.);
3. Respondent's state of mind (intentional, motivations, repeated behavior, etc.);
4. The impact of the Unwelcome Conduct of Complainant; and
5. The safety of the District Community.

Sanctions are solely determined by the appropriate District Disciplinary Officer.

Pursuant to *AP 5520*, possible Sanctions for Students include, but are not limited to:

- Written or Verbal Reprimand
- Educational Sanctions
- Probation
- Restitution
- Removal from Class/Facility/District Entity

- Withdrawal of Consent to Remain On Campus
- No Contact Order
- Short-Term Suspension
- Long-Term Suspension
- Intermediate Interim Suspension
- Expulsion

Possible Sanctions for Employees include, but are not limited to:

- Dismissal;
- Suspension with or without pay;
- Involuntary transfer; and or
- Demotion.

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

SECTION 11 - COMPLAINANT AND RESPONDENT RIGHTS

Parties are entitled to a fundamentally fair process, including reasonable notice of allegations of violations of Unlawful Discrimination, the opportunity for the person to be heard and to afford the person the opportunity to present evidence prior to the issuance of any Investigative Findings and Sanctions, except when immediate interim suspensions or restrictions are deemed necessary pending an investigation and determination of the matter.

11.1 Right to Review Records

The *Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99)* is a Federal law that protects the privacy of Student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the Student when they enroll in school beyond the high school level. Students to whom the rights have transferred are eligible Students. *California Education Code Section 76200 et seq.* also provides additional guidance concerning the privacy of Student records. Individuals are considered Students upon the submission of an admissions application.

Students have the right to inspect and review their education records maintained by the District. The District may charge a fee for copies.

Employees right to inspect and review their personnel file are subject to the restrictions contained in all applicable bargaining unit agreements and pursuant to District policies and procedures.

11.2 Special Requests/Accommodations

Any Party may have an interpreter attend the investigative interview or appeal hearing. An interpreter accompanying a Party must provide evidence of their certification as a certified interpreter to the Director of Title IX, Diversity, and Inclusion or designee at least five (5) calendar days prior to the interview or other meetings. The interpreter may only interpret for the Party who requested them, and shall not expand or enhance the Party's testimony. Likewise, the use of assistive technology must be reviewed and approved by the Director of Title IX, Diversity, and Inclusion or designee at least five (5) calendar days prior to the commencement of the investigative interview and appeal hearing.

11.3 Advisors

Unlawful Discrimination investigations and appeal hearings are not formal court proceedings, but instead are administrative actions imposed by the District. In cases where a Party is a dependent minor, the Party's parent or legal guardian will be notified and permission will be requested to interview the party (see *Participation in an Investigation* in Section 8.7). A parent or guardian will be permitted to accompany a minor to any investigative interview or hearing. In addition, each Party may elect to be accompanied by a single Advisor, including but not limited to a collective bargaining representative (if applicable), attorney, family member, or friend, to any investigative meeting, investigative interview, or appeal. Both Complainant and Respondent may have an Advisor present during District investigation meetings, including their own investigative interview as well as other related administrative meetings.

SECTION 12 - PREVENTION AND EDUCATION

Through the Officer, the District is committed to educating the District Community of the impact that Unlawful Discrimination has on an individual and the District Community. Therefore, the District will:

- Provide the District Community with education and prevention information about Unlawful Discrimination and Harassment. The information shall be developed in collaboration with campus-based and community-based victim advocacy organizations.
- Post prevention and education resources and information on the District's website regarding Unlawful Discrimination.
- Offer all reported victims of Unlawful Discrimination sources of counseling, advocacy, support, and legal options.

**Disclaimer: These provisional procedures are subject to change, including without prior notice, to keep the District in compliance with Board Policies and/or State and Federal laws.*