

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

Provisional Title IX 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 sexual and gender-based misconduct alleged to occur before August 14, 2020.

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SECTION 1 - INTRODUCTION

El Camino Community College District (referred to as the 'District') is committed to maintaining an inclusive, safe, and respectful educational and working environment. All members of the District Community, guests and visitors, regardless of gender, gender identity, and/or sexual orientation, have a right to an environment free from harassment, including Sexual Harassment², and, where Sexual Harassment occurs supportive measures, due process, and a fair and equitable process in which such allegations can be reviewed and addressed. 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.

Any Sexual or Gender-Based Misconduct is a violation of District policies and regulations, and is subject to all applicable punishment, including criminal procedures and Employee or Student discipline procedures. Sexual or Gender-Based Misconduct encompasses Sexual harassment, which includes, but is not limited to, Sexual Violence, Dating or Domestic Violence, or Stalking, as defined by California law and/or set forth below. Sexual Harassment can be committed by or against an Employee, Student, or member of the public of any gender or gender identity.

It is within the District's authority to review and address allegations of Sexual Harassment 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.³

These Provisional Procedures do not apply to sexual and gender-based misconduct alleged to occur before August 14, 2020. With respect to sexual and gender-based misconduct that allegedly occurred prior to August 14, 2020, the District will utilize Title IX regulations and District provisional procedures in place at the time the alleged misconduct occurred.⁴

² California Education Code Sections 67385.7, 67386, 67390, and 76200 et seq.; California Penal Code Sections 242, 243, 245, and 261 et seq.; 20 U.S. Code Section 1092(f) - The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act); 34 Code of Federal Regulations Section 668.46(b) (11); Title IX of the Education Amendments of 1972 Implementing Regulations at: 20 U.S.C. 1681 & 34 C.F.R. PART 106);

³ See BP 3540 - Sexual or Gender-Based Misconduct; AP 5500 - Standards of Student Conduct. See generally Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq, Title IX, 34 C.F.R. § 106.1et seq; Violent Crime Control and Law Enforcement Act of 1994, Title IV, sec. 40001-40703 of the Violence Against Women Act of 1994

⁴ See El Camino College Provisional Title IX Procedures Updated 8.28.19.

SECTION 2 - RELEVANT DEFINITIONS

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

District: El Camino Community College District.

Complainant: A person alleging that they are the victim of Sexual or Gender-Based Misconduct by another person subject to Board Policy 3540. Any person, other than Complainant, who reports possible violation(s) of the District's policy on Sexual or Gender-Based Misconduct, shall be identified as a Reporter, as defined herein.

Consent/Affirmative Consent: Ongoing, affirmative, conscious, and voluntary agreement for the act in which the participants are involved. Consent is active, not passive. It is the responsibility of each person involved in the sexual activity to ensure that they have the Affirmative Consent of the other or others to engage in the sexual activity. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in sexual activity. Consent to any one form of sexual activity does not automatically imply Consent to any other forms of sexual activity.

Lack of protest or resistance does not mean Consent, nor does silence mean Consent. Affirmative Consent cannot be given under duress, force, or coercion including where threats, physical aggression, or intimidation is used to produce consent. 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. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no Consent; this includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious. The legal age of Consent is 18 years of age; anyone under the age of 18 is unable to provide consent to sexual activity. Any sexual activity with a minor under the age of 18 may constitute Statutory Rape.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

District: El Camino Community College District.

District Appeals Body: The District Board of Trustees or designee who determines whether the Hearing Officer's determination of a Title IX hearing 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 Administrative Procedure 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 Administrative Procedure, bargaining unit agreements, and in compliance with the Education Code.

Domestic Violence: A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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 Misconduct: 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.

Hearing Officer: A designated District administrator who determines whether or not Respondent has violated District policy for complaints of Sexual or Gender-Based Misconduct brought forth by a Student that, if substantiated, could result in a severe sanction (suspension or expulsion), where credibility of any Party or witness is central to the finding.

Investigative Findings: A Title IX process determination, based on the available evidence and made at the conclusion of the Investigative Process, that the allegation that Respondent violated Board Policy 3540 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 Board Policy 3540. The term Party refers to either Complainant or Respondent individually; The term Parties means both Complainant and Respondent collectively.

Quid pro quo Sexual Harassment: Unwelcome sexual advances, requests for sexual favors or other verbal, non-verbal, or physical conduct of a sexual nature; **and** where submission to or rejection of such conduct is a determining factor in adverse educational or employment action.

Reporter: Any person(s), other than Complainant, who reports potential violation(s) of the District's policy on Sexual or Gender-Based Misconduct.

Respondent: Person/s who are alleged to have violated the District's policy on Sexual or Gender-Based Misconduct.

Responsible Employees: District Employees designated by the District to mandatorily report all known or suspected incidents of Sexual or Gender-Based Misconduct to the District Title IX Coordinator.

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 Sexual or Gender-Based Misconduct. Victims of Retaliation may include, but are not limited to Complainant, Respondent, witnesses, Title IX Investigator, Hearing Officer, 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 Board Policy 3540 – Sexual or Gender-Based Misconduct.

Sexual Assault: Actual or attempted Sexual Contact with another person without that person's Consent. Sexual Assault includes but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of Sexual Assault.

Sexual Activity: Intentional physical contact with another individual's intimate body parts (such as the breasts, buttock, groin, or genitals), touching another individual with one's own intimate body parts, or making another individual touch one's own or their own intimate body parts. Sexual Activity encompasses kissing, touching, fondling, intercourse, oral sex, or masturbation.

Sexual Exploitation: A form of Sexual Harassment wherein one takes non-consensual or abusive sexual advantage of another for the benefit of anyone other than the one being exploited without their Consent. Examples of Sexual Exploitation may include, but are not limited to:

1. Prostituting another person;
2. Non-consensual video or audio-taping of sexual activity;
3. Viewing or distributing images of an individual's sexual activity, body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's Consent to have the image shared, or advance Consent to view such an image, and for the purposes of arousing or gratifying sexual desire;
4. Knowingly transmitting an STD, HIV, or other communicable disease to another;
5. Exposing one's body parts in non-consensual circumstances; inducing another to expose their genitals.

Sexual Harassment: Unwelcome verbal, non-verbal, or physical conduct of a sexual nature and/or on the basis of sex that would be considered in the eyes of a reasonable person so severe, pervasive, and objectively offensive that effectively denies a student services, benefits, or access to campus programs and activities based on Gender. Harassment based on gender identity, gender expression, or non-conformity with gender stereotypes are considered forms of Sexual Harassment. Sexual Harassment encompasses quid pro quo harassment, sexual misconduct, Sexual Exploitation, stalking, dating violence, domestic violence. Sexual Harassment may include in-person, electronic, written, verbal, and Third-Party communications.

Sexual Misconduct: Unwelcome physical conduct of a sexual nature without Affirmative Consent. Any sexual activity without Affirmative Consent is Sexual Misconduct. Sexual Misconduct encompasses Sexual Assault, Sexual Exploitation, Rape, Fondling, and Incest.

1. Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
2. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age and/or because of his/her temporary or permanent mental incapacity.
3. Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
4. Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent.
5. Sexual Exploitation: See definition above.

Sexual Misconduct can occur between strangers or acquaintances, or people who know each other well, including between people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by and against anyone regardless of gender identity and expression, and can occur between people of the same or different sex or gender.

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person’s safety or the safety of others; or (2) suffer substantial emotional distress.

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker 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.

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

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

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 Board Policy 3540 – Sexual or Gender-Based Misconduct, or Administrative Procedure 3540 – Sexual or Gender-Based Misconduct.

Title IX Coordinator: The Director of the Office of Title IX, Diversity, and Inclusion, or designee; the person(s) responsible for oversight and implementation of Title IX compliance at the District for the effective oversight of the District’s Sexual or Gender-Based Misconduct Policy and Procedure and for the responsibilities outlined in this Procedure.

Title IX Investigator(s): The Title IX Coordinator’s designated person(s) responsible for the investigation of complaints of Sexual or Gender-Based Misconduct at the District.

Unwelcome Conduct: Conduct of a sexual, gender-based, or 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, or humiliating. 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 opposite Sex. 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 BP/AP 3540 – Sexual or Gender-Based Misconduct.

SECTION 3 - DISTRICT JURISDICTION

It is within the District’s authority to review and address allegations of Sexual Harassment 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 Administrative Procedure 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.

SECTION 4 - RANGE OF SANCTIONS FOR VIOLATIONS OF BP 3540

Any Student found Responsible for violating Board Policy 3540 on Sexual or Gender-Based Misconduct, and/or Board Policy 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.⁵

Any Employee found Responsible for violating Board Policy 3540 on Sexual or Gender-Based Misconduct may face disciplinary action, depending on the severity of the incident, subject to any applicable existing bargaining unit agreements, the Education Code, and any other applicable policies and procedures.⁶

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

⁵ 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)

⁶ See El Camino Classified Employees Agreement effective January 1, 2017; El Camino College Federation of Teachers Agreement effective January 1, 2017; El Camino College Police Officers Association Agreement effective January 1, 2015

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 BP/AP 3540 to a District Employee, all employees are encouraged to refer Complainant to the District Title IX Coordinator for supportive measures, resources, and complaint filing options. While most employees are encouraged to refer a Complainant, the following Employees of the District are designated as Responsible Employees, who are required to notify the Title IX Coordinator and/or appropriate Law Enforcement, of any incidents and relevant details of Sexual or Gender-Based Misconduct that are reported to them by a member of the District Community:

- A. Managers/Administrators
- B. All Faculty

District Employees are not expected, nor encouraged, to investigate, question, or seek further information regarding a potential allegation of Sexual or Gender Based Misconduct. Employees are not to take any corrective actions against a member of the community based on suspected violations of BP/AP 3540 outside of the appropriate grievance process following an investigation through the Title IX 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 Sexual Assault, Domestic Violence, Dating Violence and Stalking 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 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

Complainant's are encouraged to report violations of BP/AP 3540 within one hundred and eighty (180) calendar days of the violation. While there is no restriction on submitting

complaints after the one hundred and eighty (180) day period, the extended timeframe may impede the District's ability to investigate and remediate. 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 Sexual or Gender-Based Misconduct to Campus Police and/or to the District Title IX Coordinator. 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 may also report incidents of Sexual or Gender-Based Misconduct to the Student Health Services if they wish to remain confidential (see Confidentiality information in section 7.3).

Campus Police:

(310) 660-3100
16007 South Crenshaw Blvd.

Title IX Coordinator:

Jaynie Ishikawa, Director of Title IX, Diversity, and Inclusion
titleixcoordinator@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=2

Students and Employees may also file a Complaint of Unlawful Discrimination with the Office of Title IX, Diversity, and Inclusion or directly to the California Community Districts State Chancellor's Office.

7.3 Confidentiality

Confidentiality in a complaint filed with the Title IX Coordinator 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 Title IX Coordinator 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 Sexual or Gender-Based Misconduct that poses a serious or ongoing threat to the District Community, the Title IX Coordinator 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 excluded from being Responsible Employees. In addition, employees providing administrative support within the Student Health Services are also excluded from the category of Responsible Employees. 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 Sexual or Gender-Based Misconduct. 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/resources.aspx>.

7.5 Non-Confidential Reporting Options

Responsible Employees, including all Faculty and Administrators, are designated by the District for purposes of putting the District on notice and for whom mandatory reporting is required, other than in stated limited circumstances. Notice to a Responsible Employee 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

Members of the District Community have the right and can expect to have incidents of Sexual or Gender-Based Misconduct taken seriously by the District when formally reported, and to have those incidents investigated and properly resolved. Formal reporting means that only people who need to know will be told, and information will be shared only as necessary.

7.6 Amnesty for Alcohol and Drug Use

The District understands that Students may be reluctant to file complaints of Sexual or Gender-Based Misconduct 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 Sexual or Gender-Based Misconduct. 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, Sexual or Gender-Based Misconduct investigations are subject to the jurisdictional limitations of the District as set forth herein.

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 (including sexual misconduct) or are otherwise involved in a related investigation. Any substantiated allegation of Retaliation violates Board Policies 3430 and 3540, 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 Sexual or Gender-Based Misconduct to law enforcement. Title IX 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, except in cases involving Sexual or Gender-Based Misconduct. In Sexual or Gender-Based Misconduct cases, the District shall proceed with investigation without undue delay, typically within fourteen (14) calendar days, in accordance with federal and state law requirements, and District Policies and Procedures.

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 Sexual or Gender-Based Misconduct. Where the Title IX Coordinator is notified of potential Sexual or Gender-based Misconduct, the Title IX Coordinator, 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 Title IX Coordinator 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 Title IX, the Title IX Coordinator 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 Title IX Coordinator 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 Title IX Coordinator 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 Title IX Coordinator or designee has received a complaint and/or report of Sexual or Gender-Based Misconduct, 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 Sexual or Gender-Based Misconduct report to ensure their safety and promote their well-being. The Title IX Coordinator 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 Title IX Coordinator 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 Sexual or Gender-Based Misconduct 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.

Both Parties must agree to participate in the Informal Resolution process and must agree in writing to the proposed remedies. Where Respondent does not agree to participate in Informal Resolution or where the Parties do not agree to the proposed remedies, Complainant will have the option to pursue a Formal Complaint or withdraw their complaint.

Where Complainant is a District Student and Respondent is a District Employee, Informal Resolution is not permitted.

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 Title IX Coordinator 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 file a formal complaint, in which an investigation will be conducted (See Steps 1-5 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 Title IX Coordinator of allegations of Sexual or Gender-Based Misconduct and wishes to pursue a Formal Complaint, or where the Title IX Coordinator determines it is warranted based on a safety concern, an investigation into the allegations will be conducted by the Title IX Coordinator 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 Sexual or Gender-based Misconduct. This Formal Complaint and investigation process only applies in cases where Complainant has filed a complaint, the Title IX Coordinator 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 Sexual or Gender-Based Misconduct 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 will inform Complainant and Respondent in writing of such delay.

8.6 Video and Audio Recording

Per 2020 guidance from the Department of Education, the Title IX Coordinator and/or Designee(s) are required to audio record all interviews and hearing procedures conducted for an investigation into a complaint of Sexual or Gender Based Misconduct. An official recording of interviews and hearing procedures will be taken and maintained by the District and will be made available to the interviewees and relevant parties upon request. No outside, secondary, or duplicate recording of any interview or hearing procedure will be permitted.

8.7 Participation in an Investigation

Complainants

A Complainant may request that no investigation or disciplinary action be pursued to address the alleged Sexual or Gender-Based Misconduct. 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 its Students. In cases where the Title IX Coordinator determines an investigation is warranted despite Complainant's wishes, a Complainant may decline to participate in the investigation, the investigation will continue and a determination will be made without the benefit of Complainant's input. Where a Complainant pursues a formal investigation but declines to submit to questioning during the hearing, the Hearing Officer will determine if there is sufficient information without the Complainant's testimony to continue with a hearing on the allegations. Where there is not enough evidence to continue, a Hearing Officer may end the proceedings and the case will be considered withdrawn.

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 BP/AP 3540, 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 Title IX Coordinator, or their designee, the Hearing Officer, and the Appeals Body, if applicable.

8.9 Investigation Process

Step 1 – Notice of Formal Investigation

Once a formal complaint of Sexual or Gender-Based Misconduct has been received by the Title IX Coordinator, 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 Title IX Investigator will make good faith and reasonable efforts to interview Complainant, Respondent, and any witnesses (if appropriate). Both Complainant and Respondent may have an Advisor⁷ present during District investigation meetings, including their own investigative interview, Hearings, as well as other related administrative meetings.

The Title IX 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

⁷ See Section 11.3, Advisors

- 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

Information Regarding Romantic or Sexual History

The Investigator, as well as the hearing officer and appeals officer, will not consider the Parties' prior conduct or romantic/sexual history, except for the following circumstances:

1. Such evidence about Complainant's sexual behavior is offered to prove that someone other than Respondent committed the alleged misconduct; or
2. The evidence concerns specific incidents of Complainant's sexual behavior with respect to Respondent and is offered to prove Consent.

The existence of a sexual relationship between Complainant and Respondent does not support the inference of Consent to alleged Sexual or Gender-Based Misconduct.

Once sufficient evidence has been collected, the Title IX Investigator will provide the parties with the opportunity to review and respond to the information gathered, propose questions to be posed to the other party, provide new and relevant evidence or information, or identify new and relevant witnesses.

The Title IX investigator will compile the information and evidence relevant to the complaint and write an investigatory report to be provided to the Hearing Officer and Parties at least ten (10) working days prior to the hearing.

Step 3 – Hearing Procedures

Once the investigation process has concluded, the Title IX Coordinator will assign a Hearing Officer and provide the parties with reasonable advance notice of the date and time of the hearing. The hearing will consist of the Hearing Officer, the Title IX Coordinator and/or Investigator, the Parties, the Parties' respective Advisors, relevant witnesses, and relevant administrative staff for the purposes of hearing coordination including an advisor to the Hearing Officer. The Title IX Coordinator or designee will present the details of the allegations, a summary of the investigative process, a summary of evidence or information not included in the Investigatory report, and a recommendation for the outcome based on the investigation report. The Title IX investigator will be available for questions regarding the investigative process.

Both Parties will be given the opportunity to provide an opening statement regarding the allegations and may present an argument regarding sanctions and/or remedies. Parties will be provided the opportunity to pose questions to the other party and/or witnesses; all cross-examination will be conducted through the advisors and the Hearing officer may pose their own

questions to parties and witnesses. Cross-examination may be conducted with the parties physically in separate rooms, however the parties must be available for audio and visual observation while being questioned. Any statements or evidence from the Parties or witnesses for which they do not submit to questioning may not be considered by the Hearing Officer in the determination of the outcome. No inferences may be made based on a party's or witness' decision to not submit to questioning.

Parties may opt out of being present for portions of the hearing, including the opposing party's responses to their questions, but must be present, either physically or via audio/visual technology, for their own cross-examination from the other party's advisor. The Hearing Officer retains the right to dismiss any questions that are determined irrelevant or inappropriate per these procedures and will do so during the hearing with an explanation of why it is deemed irrelevant.

Inappropriate or Disruptive Behavior

All parties are expected to remain professional and respectful throughout the hearing, including Advisors and Witnesses. The Hearing Officer has the authority to remove any individual from the Hearing should their conduct become inappropriate or disruptive to the proceedings. If an individual is removed from the hearing for disruptive or inappropriate behavior, the hearing will proceed without their participation to the extent it does not impact parties' due process rights. In the case where the removal of a party disrupts or impacts due process, the hearing may be paused or rescheduled. Where a hearing is rescheduled due to a disruption, the District will still be required to adhere the timelines within these procedures.

Any disruptive or inappropriate behavior may be considered by the Hearing Officer and/or the District Disciplinary Officer in the sanction recommendation and decision.

Step 4 – Investigative Findings

Once the hearing process has been concluded, the Hearing Officer will make a determination based on the preponderance of the evidence regarding a violation of BP 3540 as well as a recommendation for applicable sanctions to be provided to the District Disciplinary Officer. The Hearing Officer will compile a report with the findings and recommendations to be issued to the parties and relevant administrative offices within 10 working days of the hearing. The parties will have 10 working days to appeal the determination to the District Appeals Body.

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 BP/AP 3540, the complaint will be

determined substantiated. Where a Respondent is found Responsible for violation of BP 3540, the Investigative Report and Hearing Officer's report will be submitted to the District Disciplinary Officer to serve as the basis of any applicable Sanctions.

Whether or not a Respondent is found to be Responsible, both Complainant and Respondent will be notified of the outcome of the Investigative Findings in writing. The notification shall include the Investigative Report, the outcome of the investigation, and an advisement of their right to appeal the outcome (see Step 5, Appeals of the Investigative Findings & Administrative Determination). Any applicable Sanctions are determined after the Appeals process has concluded and will be administered through the District Disciplinary Officer.

Step 5 – 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 5 CCR § 59338. When either party is not satisfied with the results of the administrative determination, they may, within ten (10) working days, submit a written appeal to the Board of Trustees. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within forty-five (45) working days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the Parties and to the State Chancellor's Office. If the board does not overturn the Hearing outcome within forty-five (45) working days the administrative determination shall be deemed approved and shall become the final decision of the District in this matter.

The Parties shall also be notified of their right to file a complaint with outside entities, such as the State Chancellor's Office or appropriate external, state, or federal agencies.

Appeals of any subsequent Sanctions imposed shall be submitted to the District Disciplinary Officer directly using the procedure for appealing a disciplinary decision.

SECTION 9 - APPEALS PROCESS

9.1 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. A substantive procedural error or omission occurred, which materially and significantly affected the weighing of evidence by the Title IX Coordinator, Title IX Investigator or designee, which substantively affected the outcome of the hearing (e.g., substantiated bias, material deviation from established procedures, etc.).
2. To consider new evidence, previously unavailable during the original investigation, that could subsequently impact the original finding. Evidence intentionally withheld by a

Party will not be considered unavailable. A summary of this new evidence and its potential impact must be included in the request for appeal.

3. Evidence of bias or conflict of interest demonstrated by an Investigator, Title IX Coordinator, or Hearing Officer towards a Party.

Pursuant to Board Policy 5500 and Administrative Procedure 5520, parties may file an appeal of the sanctions only which will be reviewed through the procedures under the Student Code of Conduct.

9.2 Notification of Outcome

Once the Board has rendered its decision on an appeal, it will send to Complainant and Respondent, separately, written communication with the following information:

1. Notification of the Board's decision to uphold or overturn the Administrative Determination;
2. A reiteration the alleged policy and procedure violation(s);
3. A reminder to all Parties involved of the Standard of Proof (Preponderance of Evidence);
4. A reminder to all Parties of the District's commitment to protecting against Retaliation, safeguarding confidentiality, and of all imposed interim Sanctions that are active and must be adhered to; and
5. A reminder to all Parties to review District Board Policy and Administrative Procedure 3540, and any other applicable board policy, and to understand each Party's rights and responsibilities.

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:

1. Fair and appropriate given the facts of the particular case;
2. Consistent with the individual District's handling of similar cases;
3. Adequate to protect the safety of the District Community; and
4. Reflective of the seriousness of the Sexual or Gender-Based Misconduct.

The relevant factors that may be considered, as applicable to the specifics of each type of Sexual or Gender-Based Misconduct, when imposing Sanctions include:

1. The specific Sexual or Gender-Based Misconduct at issue (such as penetration, touching, unauthorized recording, etc.);
2. The circumstances accompanying the lack of Consent (such as force, threat, coercion, incapacitation, etc.);
3. Respondent's state of mind (intentional, knowing, bias-motivated, reckless, 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/College District Entity
- Withdrawal of Consent to Remain On-
- 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.

SECTION 11 - COMPLAINANT AND RESPONDENT RIGHTS

Parties are entitled to a fundamentally fair process, including reasonable notice of allegations of violations of Sexual or Gender-Based Misconduct, 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.

Throughout the investigative process, both Complainant and Respondent have the following equal rights:

- To be treated with respect by District officials;
- To take advantage of campus support resources, such as mental health services, Health Services, etc. to help remedy and restore;
- To experience a safe education and work environment;
- To have an Advisor present during the investigative interview and appeals hearing;
- To be free of Retaliation;
- To have complaints investigated adequately, impartially, and reliably;
- To fully participate in any process whether the injured Party is serving as

Complainant, or where the institution is serving as Complainant;

Where an investigation is conducted, Complainant and Respondent have a right to a grievance process that:

- Is prompt and equitable;
- Includes an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence;
- Precludes conflicts of interest or bias on the part of coordinators, investigators, and decisionmakers;
- Ensures training for coordinators, investigators, and decision-makers;
- Relies on training materials that promote objective investigations and disciplinary procedures and that do not rely on sex stereotypes;
- Includes a presumption that Respondent is not responsible;
- Allows delays in investigations for good cause, including absence of parties or witnesses, law enforcement activity, or disability accommodations;
- Describes the sanctions and remedies that are available;
- Specifies the standard of evidence to be used;
- Specifies the supportive measures that are available;
- Precludes the use of questions that would violate a legally recognized privilege, unless waived.
- Provides concurrent notification in writing, of the outcome/resolution of the complaint and the basis for the determination; and
- Details the procedures available for appeals;

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 Title IX Investigator at least five (5) calendar days prior to the interview, hearing, or appeal. 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 Title IX Investigator at least five (5) calendar days prior to the commencement of the investigative interview and appeal hearing.

11.3 Advisors

Sexual or Gender-Based Misconduct 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 must be present at the 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 hearing. Both Complainant and Respondent may have an Advisor present during District investigation meetings, including their own investigative interview, Hearings, as well as other related administrative meetings

The advisor's role during interviews and meetings regarding the complaint is limited to observing and consulting with and providing support to Complainant or Respondent. An Advisor may not participate (speak) in the interview or appeal hearing on the Party's behalf; and may not in any way disrupt or interfere with the investigative or appeal hearing process. The advisor should also maintain confidentiality. The Advisor's role during the hearing process will also include conducting appropriate and relevant cross-examination of the other party; Advisors are expected to remain calm, professional, and sensitive during the cross-examination and any inappropriate questions or behavior may result in notice from the Hearing Officer and/or removal from the hearing.

The District will provide an advisor to any Party, in the event that the Party does not have an advisor, their advisor is unavailable to attend the hearing, or the advisor is removed from the hearing due to inappropriate or disruptive behavior. The District provided advisors will serve in the same capacity as a Party-selected advisor. Parties may opt out of having an advisor for the investigative interview or other related meetings, but may not opt to self-represent for the cross-examination portion of the hearing.

SECTION 12 - PREVENTION AND EDUCATION

Through the Title IX Coordinator, the District is committed to educating the District Community of the impact that Sexual or Gender-Based Misconduct has on an individual and the District Community. Therefore, the District will:

- Provide the District Community with education and prevention information about Sexual or Gender-Based Misconduct, including Domestic Violence, Dating Violence, Sexual Assault, or Stalking. 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 Sexual or Gender-Based Misconduct, including Domestic Violence, Dating Violence, Sexual Assault and Stalking.
- Offer all reported victims of Sexual or Gender-Based Misconduct 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.*