

# **AP 3434      Responding to Sex Discrimination under Title IX**

Reference:      **34 Code of Federal Regulations Parts 106.1 et seq.; 20 U.S. Code Sections 1681 et seq.; Education Code Sections 212.5, 66262.5, 66281.8, and 67380 et seq.**

Interim              July 2020              Updated: TBD 2024  
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## **Introduction**

The District encourages members of the District community to report sex discrimination including sex-based harassment. This procedure only applies to conduct defined as sex discrimination under Title IX and applicable federal regulations and that meets Title IX jurisdictional requirements. The District will respond to sex discrimination including sex-based harassment that falls outside that definition and outside the jurisdiction of the Title IX federal regulations using California law and applicable District policies and procedures. In implementing these procedures discussed below, the District will also provide supportive measures, training, and resources in compliance with California law, unless they are preempted by the Title IX regulations.

## **Title IX Coordinator**

Questions concerning Title IX may be referred to the District Title IX Coordinator whose contact information is below.

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The Title IX Coordinator is required to respond to reports of sex discrimination including sex-based harassment. The Title IX Coordinator will handle information received with the utmost discretion and will share information with others on a need-to-know basis. For example, the Title IX Coordinator may need to address public safety concerns on campus, comply with state and federal legal requirements, or share information to implement supportive measures.

A report of sex discrimination including sex-based harassment to the Title IX Coordinator does not necessarily lead to a full investigation, as discussed more fully below. However, the Title IX Coordinator will evaluate a Complaint to determine whether to investigate a Complaint pursuant to these procedures.

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

### **Jurisdictional Requirements – Application of Procedures**

These procedures apply if the conduct meets the following jurisdictional requirements:

- The conduct took place in the United States.
- The conduct meets the definition of Title IX sex discrimination, and
- The conduct took place in a District “education program or activity.” This includes locations, events, or circumstances over which the District exercised substantial control over both the Respondent and the context in which the harassment occurred, including on-campus and off-campus property and buildings the District owns or controls or student organizations officially recognized by the District own or control; or
- The conduct contributes to a hostile environment in the District’s education program or activity in the United States.

### **Definitions**

**Advisor:** Throughout the grievance process, both the Complainant and Respondent have a right to an Advisor of their choice. The District may establish restrictions regarding the extent to which the Advisor may participate in the proceedings as long as the restrictions apply equally to both Parties.

Parties have the right to consult with an attorney, at his/her/their own expense, at any stage of the grievance process if they wishes to do so. An attorney may serve as an advisor.

**Complainant:** A Complainant is (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations; or (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the District’s education program or activity at the time of the alleged sex discrimination.

**Complaint:** An oral or written request to the recipient that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX or its regulations.

**Consent:** Consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. Both Parties must give affirmative consent to sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he/she/they has

the affirmative consent of the other or others to engage in the sexual activity. Lack of protest, lack of resistance, or silence does not indicate consent. Affirmative consent must be ongoing throughout a sexual activity and one can revoke his/her/their consent at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, is not an indicator of consent.

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable, based on the facts and circumstances the Respondent knew, or reasonably should have known, at the time of the incident. A Respondent's belief is not a valid defense where:

- The Respondent's belief arose from the Respondent's own intoxication or recklessness;
- The Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented; or
- The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
  - asleep or unconscious;
  - unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
  - unable to communicate due to a mental or physical condition.

**Decision-Maker:** The person or group of people who will question the parties and witnesses, conduct a live hearing (if offered), and make a determination of whether sex discrimination occurred.

**Disciplinary Sanctions:** Consequences imposed on a respondent following a determination under Title IX or its regulations that the Respondent violated the District's prohibition on sex discrimination.

**Parties:** As used in this procedure, this means the Complainant and Respondent.

**Relevant:** Related to the allegations of sex discrimination under investigation as part of these grievance procedures. Questions are relevant when the question seeks evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision-maker in determining whether the alleged sex discrimination occurred.

**Remedies:** Measures provided, as appropriate, to a complainant or any other person the District identifies as having had their equal access to the District's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the District's education program or activity after the District determines that sex discrimination occurred.

**Respondent:** A Respondent is a person who is alleged to have violated the District's prohibition on sex discrimination.

**Retaliation:** Intimidation, threats, coercion, or discrimination against any person by the District, a student, or an employee or other person authorized by the District to provide aid, benefit, or service under the District's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the person has reported information, made a Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations.

**Sex-based Harassment under Title IX:** A form of sex discrimination. Sex-based harassment includes sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity that satisfies one or more of the following:

- Quid pro quo harassment. An employee, agent, or other person authorized by the District to provide an aid, benefit, or service under the District's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- Hostile environment harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe, or pervasive that it limits or denies a person's ability to participate in or benefit from the District's education program or activity (*i.e.*, creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
  - The degree to which the conduct affected the Complainant's ability to access the District's education program or activity;
  - The type, frequency, and duration of the conduct;
  - The parties' ages, roles within the District's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
  - The location of the conduct and the context in which the conduct occurred; and
  - Other sex-based harassment in the District's education program or activity;
- Sexual assault, including the following:
  - **Sex Offenses:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sex offenses include sexual exploitation.
  - **Rape** (except Statutory Rape): The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable

- of giving consent because of his/her/their temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the genital or anal opening of the body of another person.
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
  - **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything the offender uses other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.
  - **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/their age or because of his/her/their temporary or permanent mental or physical incapacity.
  - **Incest:** Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
  - **Statutory Rape:** - Non-Forcible. Sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
  - **Dating violence:** Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of a relationship will be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
  - **Domestic Violence:** 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 California; or
    - By any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws of California.
  - **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her/their safety or the safety of others or suffer substantial emotional distress.

**Supportive measures:** Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

- Restore or preserve that party's access to the District's education program or activity, including measures that are designed to protect the safety of the parties or the District's educational environment; or
- Provide support during the District's grievance procedures or during an informal resolution process.

### **Grievance Procedures for Complaints of Sex Discrimination under Title IX**

(For Complaints of sex-based harassment involving students, see the section entitled, "Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Parties.")

#### **Who May File a Complaint?**

The following people have a right to make a Complaint of sex discrimination, including Complaints of sex-based harassment, requesting that the District investigate and make a determination about alleged discrimination under Title IX:

- A "complainant," which includes:
  - A student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
  - A person other than a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in the District's education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- The District Title IX Coordinator.

With respect to Complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a Complaint:

- Any student or employee of the District; or
- Any person other than a student or employee who was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination.

#### **Consolidation of Complaints**

The District may consolidate Complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

**Removal of Respondent Pending Final Determination**

Upon receiving a report of sex discrimination, the Title IX Coordinator will make an immediate assessment concerning the health and safety of the Complainant and campus community as a whole. The District has the right to order emergency removal of a Respondent, or if the Respondent is an employee, place the employee on administrative leave.

**Emergency Removal**

The District may remove a non-employee Respondent from the District's education program or activity on an emergency basis after it conducts an individualized safety and risk analysis and determines that an imminent and serious threat to the health and safety of a complainant or any student, employees, or other individual arising from the allegations of sex discrimination justifies removal.

The District's Title IX Coordinator or designee will conduct the individualized safety and risk analysis.

If the Title IX Coordinator or designee determines emergency removal is appropriate, they will provide the person the District is removing from campus on an emergency basis with a notice and opportunity to attend a meeting and challenge the basis of their removal. The Title IX or designee will determine whether the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal.

**Administrative Leave**

The District may place a non-student employee Respondent on administrative leave during the pendency of a grievance process. The District will follow any relevant policies, procedures, collective bargaining agreements, or state law in placing an employee on administrative leave.

**Basic Requirements of Title IX Grievance Procedures for Complaints of Sex Discrimination**

The District will treat complainants and respondents equitably.

The District requires that any Title IX Coordinator, investigator, or decision-maker not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. As long as there is no conflict of interest or bias, a decision-maker may be the same person as the Title IX Coordinator or investigator.

The District presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

**Timeframes and Extensions**

- **Complaint evaluation:** The District will determine whether to dismiss or investigate a Complaint within ten business days.

- **Complaint investigation:** The District will complete an adequate, reliable, and impartial investigation of Complaints within 120 calendar days.
- **Questioning the Parties and Witnesses:** The District will complete the process that enables the Decision-Maker to question the Parties and Witnesses no later than 30 calendar days after the date that the investigation concludes.
- **Determination Whether Sex Discrimination Occurred:** The District will issue a written determination whether sex discrimination occurred no later than 20 business days after the date that the Decision-Maker completes the process that enables the Decision-Maker to question the Parties and Witnesses.
- **Appeal** (if any): A Complainant or Respondent may submit a written appeal no later than ten business days from the date of the notice of determination whether sex discrimination occurred or from the date of the District's notice of dismissal of a Complaint or any allegations. If a Complainant or Respondent submits an appeal to the District, the District will notify the other Party in writing within 10 business days of receiving a Party's appeal and allow the non-appealing Parties at least 10 business days from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome. The appeal Decision-Maker will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 45 calendar days after the Decision-Maker on appeal receives the response to the appeal or the last day to provide a response.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the timeline(s) identified in the preceding paragraph to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the unavailability of witnesses or delays by the Parties, to account for District breaks or vacation, or due to the complexity of the investigation. The District will provide notice of this extension to the Parties in writing and include the reason for the delay and anticipated timing of completion.

A Party may request an extension from the Title IX Coordinator in writing by explaining the reason for the delay and the length of the continuance requested. The Title IX Coordinator will notify the Parties and document the grant or denial of a request for extension or delay as part of the case recordkeeping. The District shall grant a student Party's reasonable request for an extension of a deadline related to a Complaint during periods of examinations or school closures

### **Privacy**

The District will take reasonable steps to protect the privacy of the Parties and Witnesses during its grievance procedures. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The Parties cannot engage in retaliation, including against Witnesses.



**Evidence**

The District will objectively evaluate all evidence that is relevant and otherwise permissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by the District to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether the evidence or question is relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or Witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or Witness, unless the District obtains that Party's or Witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

**Written Notice of Allegations**

Upon initiation of these grievance procedures, the District will notify the Parties of the following with sufficient time for the Parties to prepare a response before any initial interview:

- The District's Title IX grievance process and any informal resolution process ];
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited;
- For student Parties, notice regarding appropriate counseling resources the District has developed and maintains; and
- The Parties are entitled to an equal opportunity to access the relevant and otherwise permissible evidence or an accurate description of this evidence. The

Parties are entitled to an equal opportunity to access the relevant and otherwise permissible evidence upon the request of any party.

If, in the course of an investigation, the District decides to investigate allegations of sex discrimination by the Respondent toward the Complainant that are not included in the written notice provided or that are included in a consolidated Complaint, the District will provide notice in writing of the additional allegations to the Parties.

### **Dismissal of a Complaint**

The District may dismiss a Complaint of sex discrimination if:

- The District is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in the District's education program or activity and is not employed by the District;
- The Complainant voluntarily withdraws in writing any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and the District determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- The District determines the conduct alleged in the Complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the Complaint, the District will make reasonable efforts to clarify the allegations with the Complainant.

If the District dismissed the Complaint or any allegations, the Title IX Coordinator shall simultaneously provide the Parties with written notice of the dismissal and reason. The District will also notify the Parties of their right to appeal. Upon dismissal, the District will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the District will notify the Parties of the dismissal and the basis for the dismissal simultaneously in writing.

The District may commence proceedings under other policies and procedures after dismissing a Complaint.

The District will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then the District will also notify the Respondent that the dismissal may be appealed.

### **Appeal of Dismissal of Complaint**

A Complainant may appeal the dismissal of a Complaint or any allegations on the following bases no later than 10 business days from the date of the District's notice of dismissal of a Complaint or any allegations:

- Procedural irregularity that would change the outcome;

- New evidence that would change the outcome and that was not reasonably available when the District dismissed the Complaint; and
- The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.

If the Complainant appeals the dismissal of the Complaint or any allegations, the District will:

- Notify the Parties of any appeal within 10 days of receiving the Complainant's appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
- Allow the Respondent at least 10 days from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome;
- Implement appeal procedures equally for the Parties;
- Ensure that the Decision-Maker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
- Ensure that the Decision-Maker for the appeal has been trained consistent with the Title IX regulations; and
- Notify the Parties of the result of the appeal and the rationale for the result within 45 days after the Decision-Maker on appeal receives the response to the appeal or the last day to provide a response.

If a Complaint is dismissed, the District will:

- Offer supportive measures to the Complainant as appropriate;
- If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the District's education program or activity.

### **Role of Advisor**

The role of the Advisor is to provide support and assistance in understanding and navigating the grievance process.

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

### **Confidentiality Agreements**

To protect the privacy of those involved, the Parties and Advisors are required to sign a confidentiality agreement prior to attending an interview or otherwise participating in the District's grievance process. The confidentiality agreement restricts unauthorized disclosure of information and evidence obtained solely through the grievance procedure.

The confidentiality agreement will not restrict the ability of either Party to discuss the allegations under investigation.

**Investigations**

The District will provide for adequate, reliable, and impartial investigation of Complaints.

*Burden of Gathering Evidence*

The burden is on the District—not on the Parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

*Opportunity to Present Witnesses and Evidence*

The District will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and otherwise permissible.

*Evidence*

The District will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

The District will provide each Party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and otherwise permissible, in the following manner:

- The District will provide an equal opportunity to access either the relevant and otherwise permissible evidence, or an accurate description of this evidence. The District will provide the parties with an equal opportunity to access the relevant and otherwise permissible evidence upon the request of any Party;
- The District will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- The District will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint of sex discrimination are authorized.

Student Complainants should be aware that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing, if a hearing is required under this procedure. Written evidence submitted by a Party is limited to 20 pages and/or 10,000 words.

**Evidence of Past Sexual History**

An investigator or Decision-Maker shall not consider the past sexual history of Party except in the limited circumstances described below:

- The investigator or Decision-Maker shall not consider the prior or subsequent sexual history between the Complainant and anyone other than the Respondent

for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual; or

- The investigator or Decision-Maker shall not consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent unless the evidence is relevant to how the Parties communicated consent in prior or subsequent consensual sexual relations.
- Where the investigator or Decision-Maker allows consideration of questions or evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent, the mere fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

Before allowing the consideration of any evidence proffered pursuant to this section, the investigator or Decision-Maker shall provide a written explanation to the Parties as to why consideration of the evidence is consistent with this procedure.

### **Investigative Report**

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

- A description of the circumstances giving rise to the Complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony of each witness the investigator interviewed;
- A description of all evidence gathered through the investigation;
- A table of contents if the report exceeds ten pages; and
- Any other information deemed appropriate by the District.

The investigator will not make a determination regarding responsibility.

### **Questioning the Parties and Witnesses**

The District will provide a process that enables the Decision-Maker to question Parties and Witnesses to adequately assess a Party's or Witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

The District will use the following steps to complete this process: The Decision-Maker will request the Parties participation in meetings to question the Party and invite the Parties to submit questions for the Decision-Maker's consideration when meeting with the Parties. The Decision-Maker will schedule and conduct separate meetings with the Parties. The meetings will be in-person or with technology enabling the Party and Decision-Maker to see and hear each other in real time. During each meeting, the Decision-Maker will ask questions of the Party and allow the Party to comment on the evidence collected during the investigation. The Decision-Maker may meet with a Party

more than once, based on the Decision-Maker's judgment. The Decision-maker will meet with other witnesses, if needed based on the Decision-Maker's judgment.

### **Determinations Whether Sex Discrimination Occurred**

Following an investigation and evaluation of all relevant and otherwise permissible evidence, the District will:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the Decision-Maker to evaluate relevant and otherwise permissible evidence for its persuasiveness. If the Decision-Maker is not persuaded by a preponderance of the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the Decision-Maker will not determine that sex discrimination occurred.
- Notify the Parties simultaneously in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the Complainant and Respondent to appeal;
- Not impose discipline on a Respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the Respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - Coordinate the provision and implementation of remedies to the Complainant and other people the District identifies as having had equal access to the District's education program or activity limited or denied by sex discrimination;
  - Coordinate the imposition of any disciplinary sanctions on the Respondent, including notification to the Complainant of any such disciplinary sanctions; and
  - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the District's education program or activity.
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against the Respondent; and
- Not discipline a Party, Witness, or others participating in the Title IX grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

### **Appeal of Determinations**

The District offers the following process for appeals from a determination whether sex discrimination occurred: A Party may appeal the determination whether sex discrimination occurred on the following bases no later than 10 days from the date of the District's notice of determination whether sex discrimination occurred:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the District dismissed the Complaint; and

- The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.

If a Party appeals the determination whether sex discrimination occurred, the District will:

- Notify the Parties of any appeal within 10 days of receiving the Party's appeal;
- Allow the non-appealing Party at least 10 days from the date of receipt of the appeal to submit a written statement in support of, or challenging, the determination;
- Implement appeal procedures equally for the Parties;
- Ensure that the Decision-Maker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
- Ensure that the Decision-Maker for the appeal has been trained consistent with the Title IX regulations; and
- Notify the Parties of the result of the appeal and the rationale for the result within 10 days after the Decision-Maker on appeal receives the response to the appeal or the last day to provide a response.

### **Informal Resolution**

In lieu of resolving a Complaint through the District's Title IX grievance procedures, the Parties may instead elect to participate in an informal resolution process. The District does not offer informal resolution to resolve a Complaint when such a process would conflict with Federal, State, or local law. The District will inform the Parties in writing of any informal resolution process it offers and determines is appropriate, if any. Before the initiation of an informal resolution process, the District will explain in writing to the Parties:

- The allegations;
- The requirements of the informal resolution process;
- That any Party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
- That if the Parties agree to a resolution at the end of the informal resolution process, the Parties cannot initiate or resume grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- What information the District will maintain and whether and how the District could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.

### **Disciplinary Sanctions and Remedies**

Following a determination that sex discrimination occurred, the District may impose disciplinary sanctions or any other actions that are not supportive measures against the

Respondent. The action will be prompt, effective, and commensurate with the severity of the offense.

Possible disciplinary sanctions for student respondents include written or verbal reprimand, required training or counseling, non-academic probation, suspension, and expulsion. Possible disciplinary sanctions for employee Respondents include written or verbal reprimand, required training or counseling, reduction in pay, demotion, suspension, or discharge, per applicable collective bargaining agreement, handbook, and procedures described in BP/AP 7365 Discipline and Dismissals – Classified Employees and BP 7360 Discipline and Dismissals – Academic Employees.

The District may also provide remedies, which may include, but are not limited to:

- Providing an escort to ensure that the Complainant can move safely between classes and activities;
- Ensuring that the Complainant and Respondent do not attend the same classes or work in the same work area;
- Providing counseling services or a referral to counseling services;
- Providing medical services or a referral to medical services;
- Providing academic support services, such as tutoring;
- Arranging for a Complainant, if a student, to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and
- Reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant's discipline.

### **Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Parties**

For complaints of sex discrimination not including sex-based harassment involving students or complaints of sex-based harassment not involving students, see the preceding section entitled, "Grievance Procedures for Complaints of Sex Discrimination under Title IX."

### **Introduction**

The District has adopted the following Title IX grievance procedures that provide for the prompt and equitable resolution of complaints of sex-based harassment involving a student complainant(s) or a student respondent(s). These procedures ensure trauma-informed and impartial investigation of complaint of sex-based harassment.

Any individual may report sexual harassment to the District's Title IX Coordinator.

The District strongly encourages prompt reporting of sexual harassment. Prompt reporting allows for the collection and preservation of evidence, including physical evidence, digital media, and witness statements. A delay may limit the District's ability to effectively investigate and respond.



**Who May File a Complaint?**

The following people have a right to make a Complaint of sex-based harassment, requesting that the District investigate and make a determination about alleged sex-based harassment under Title IX:

- A “complainant,” which includes:
  - A student or employee of the District who is alleged to have been subjected to conduct that could constitute sex-based harassment under Title IX; or
  - A person other than a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex-based harassment under Title IX at a time when that individual was participating or attempting to participate in the District’s education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
- The District’s Title IX Coordinator.

Note that a person is entitled to make a Complaint of sex-based harassment only if he/she/they is alleged to have been subjected to the sex-based harassment, if he/she/they has a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a Complaint consistent with Title IX regulations.

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

**Obligations of Employees**

District employees who are Responsible Employees are not confidential resources and are required to report allegations of sexual harassment to the District’s Title IX Coordinator promptly. All other employees are encouraged to report allegations to the Title IX Coordinator but are not required to do so. An employee who has a confidential relationship with a student or students by law is exempt from having to report sexual harassment concerns to the Title IX coordinator or other designated employee, unless otherwise required by law.

The District has designated the following employees as Responsible Employees:

Designate Responsible Employees – The California Education Code requires that any individuals with any of the following positions or substantially similar positions or job duties, regardless of the specific title the District may be considered a Responsible Employee: Title IX coordinator or other coordinator designated to comply with and carry out the District’s responsibilities regarding anti-harassment;; Coordinators, Directors, or Deans of student life, laboratory, athletics, coaches of

any student athletic or academic team or activity; faculty (full-time, adjunct, or teachers); graduate student instructors, or principal investigators, internship or externship coordinators; study abroad program coordinators, and individuals identified as supervisors under California's Fair Employee and Housing Act.

Responsible are required to report all relevant information they know about sex-based harassment including the name of the Respondent, the Complainant, any other Witnesses, and the date, time, and location of the alleged incident.

### **Support Person or Advisor**

A student party has the opportunity to have a support person or advisor accompany the student party during any stage of the grievance process described below.

A student party has a right to consult with an attorney, at the party's own expense, at any stage of the grievance process if they wish to do so. An attorney may serve as a support person or advisor.

### **Sexual Assault and Domestic Violence Counselors**

For further information about services provided by sexual assault and domestic violence counselors on campus, see AP 3540 Sexual and Other Assaults on Campus and in Campus Programs.

### **Consolidation of Complaints**

The District may consolidate Complaints of sex-based harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex-based harassment arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

### **Emergency Removal**

The District may remove a non-employee Respondent from the District's education program or activity on an emergency basis after it conducts an individualized safety and risk analysis and determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other individual arising from the allegations of sex-based harassment justifies removal.

The District's Title IX Coordinator or designee will conduct the individualized safety and risk analysis.

If the Title IX Coordinator or designee determines emergency removal is appropriate, he/she/they or designee will provide the person the District is removing from campus on an emergency basis with a notice and opportunity to attend a meeting and challenge the basis of his/her/their removal. The Title IX Coordinator or designee will determine whether

the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal.

**Administrative Leave**

The District may place a non-student employee Respondent on administrative leave during the pendency of the grievance process described below. The District will follow any relevant policies, procedures, collective bargaining agreements, or state law in placing an employee on administrative leave.

**Student Complainant Requests for Confidentiality**

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

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

If the District determines that it can honor the student-Complainant's request for confidentiality, it shall still take reasonable steps to respond to the Complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating an investigation or revealing the identity of the Complainant. The District shall also take immediate steps to provide for the safety of the Complainant while keeping the Complainant's identity confidential as appropriate. The District shall notify the Complainant that the request for confidentiality will limit the steps the District will take to respond to the report of sexual harassment.

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

## **Basic Requirements of Title IX Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Parties**

The District will treat complainants and respondents equitably.

The District requires that any Title IX Coordinator, investigator, or decision-maker not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. As long as there is no conflict of interest or bias, a decision-maker may be the same person as the Title IX Coordinator or investigator.

The District presumes that the Respondent is not responsible for the alleged sex-based harassment until a determination is made at the conclusion of its grievance procedures. The investigation and adjudication of alleged sex-based harassment under this procedure is not an adversarial process between the Complainant, the Respondent, and the Witnesses, but rather a process for the District to comply with its obligations under existing law. The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

Because individuals may be deterred from reporting incidents of sex-based harassment if alcohol, drugs, or other violations of District or campus rules were involved, the District will inform individuals that the primary concern is for student safety and that use of alcohol or drugs never makes a Complainant at fault for sex-based harassment. An individual who participates as a Complainant or Witness in an investigation under this procedure will not be subject to disciplinary sanctions for a violation of the District's student conduct policy at or near the time of the incident, unless the District determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

## **Timeframes and Extensions**

The District has established the following timeframes for the major stages of the grievance procedures:

- **Complaint evaluation:** The District will determine whether to dismiss or investigate a Complaint within 10 business days.
- **Complaint investigation:** The District will complete an adequate, reliable, and impartial investigation of Complaints within 120 calendar days.
- **Questioning the Parties and Witnesses:** The District will complete the process that enables the Decision-Maker to question the Parties and Witnesses no later than 30 calendar days after the date that the investigation concludes.
- **Live Hearing** (if any): The District will conduct a live hearing no later than 30 calendar days after the date that the Decision-Maker completes the process that enables the Decision-Maker to question the Parties and Witnesses.
- **Determination Whether Sex-Based Harassment Occurred:** The District will issue a written determination whether sex-based harassment occurred no later

than 20 business days after the date that the Decision-Maker completes the process that enables the Decision-Maker to question the Parties and Witnesses or the date that the live hearing (if any) concludes, whichever occurs later.

- **Appeal** (if any): A Complainant or Respondent may submit a written appeal no later than 10 business days from the date of the notice of determination whether sex-based harassment occurred or from the date of the District's notice of dismissal of a Complaint or any allegations. If a Complainant or Respondent submits an appeal to the District, the District will notify the other Party in writing within 10 business days of receiving a Party's appeal and allow the non-appealing Parties at least 10 business days from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome. The appeal Decision-Maker will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 45 calendar days after the Decision-Maker on appeal receives the response to the appeal or the last day to provide a response.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the timeline(s) identified in the preceding paragraph to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the unavailability of witnesses or delays by the Parties, to account for District breaks or vacations, or due to the complexity of the investigation. The District will provide notice of this extension to the Parties in writing and include the reason for the delay and anticipated timing of completion.

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

### **Privacy**

The District will take reasonable steps to protect the privacy of the Parties and Witnesses during its grievance procedures. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to Witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

### **Evidence**

The District will objectively evaluate all evidence that is relevant and otherwise permissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

Student Complainants should be aware that any evidence available but not disclosed during the investigation might not be considered later in the grievance process. Written evidence submitted by a Party is limited to 20 pages and/or 10,000 words.

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by the District to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether the evidence or question is relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or Witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or Witness, unless District obtains that Party's or Witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.
- Evidence that relates to the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent unless the evidence is relevant to how the Parties communicated consent in prior or subsequent consensual sexual relations. Before allowing the consideration of any evidence that relates to the Complainant's sexual interests or prior sexual conduct, the investigator or Decision-Maker shall provide a written explanation to the Parties as to why consideration of the evidence is consistent with this procedure.

### **Written Notice of Allegations**

Upon initiation of these Title IX grievance procedures, District will notify the Parties in writing of the following with sufficient time for the parties to prepare a response before any initial interview:

- The District's Title IX grievance procedures and any informal resolution process;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex-based harassment, and the date(s) and location(s) of the alleged incident(s);

- Retaliation is prohibited;
- The Respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures. Prior to such a determination, the Parties will have an opportunity to present relevant and otherwise permissible evidence to a trained, impartial decision-maker;
- The Parties may have an Advisor of their choice who may be, but is not required to be, an attorney;
- The Parties are entitled to an equal opportunity to access the relevant and otherwise permissible evidence or an investigative report that accurately summarizes this evidence. and
- The District's BP 5500 ***Standards of Student Conduct*** prohibits knowingly making false statements or knowingly submitting false information during the grievance procedures].
- For a student Party, notice regarding appropriate counseling resources the District developed and maintains.

If, in the course of an investigation, the District decides to investigate additional allegations of sex-based harassment by the Respondent toward the Complainant that are not included in the written notice or that are included in a consolidated Complaint, the District will provide written notice of the additional allegations to the Parties.

**Dismissal of a Complaint:**

The District may dismiss a Complaint of sex-based harassment involving student parties if:

- The District is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in the District's education program or activity and is not employed by the District;
- The Complainant voluntarily withdraws in writing of any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and District determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex-based harassment under Title IX even if proven; or
- The District determines the conduct alleged in the Complaint, even if proven, would not constitute sex-based harassment under Title IX. Before dismissing the Complaint, the District will make reasonable efforts to clarify the allegations with the Complainant.

Upon dismissal, the District will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the District will notify the Parties of the dismissal and the basis for the dismissal simultaneously in writing.

The District will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then the District will also notify the Respondent that the dismissal may be appealed. For more information on the right to appeal, see the Appeals section below.

If a Complaint is dismissed, the District will:

- Offer supportive measures to the Complainant as appropriate;
- If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex-based harassment does not continue or recur within the District's education program or activity.

### **Investigation**

The District will provide for adequate, reliable, and impartial investigation of Complaints.

#### *Burden of Gathering Evidence*

The burden is on the District—not on the Parties—to conduct an investigation that gathers sufficient evidence to determine whether sex-based harassment occurred.

#### *Participation*

The District will provide to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate. The District will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

- The District will not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding.
- The District may establish restrictions regarding the extent to which the advisor may participate in these grievance procedures, as long as the restrictions apply equally to the Parties.

The District will provide the Parties with the same opportunities, if any, to have people other than the advisor of the Party's choice present during any meeting or proceeding involving the Party.

#### *Opportunity to Present Witnesses and Evidence*

The District will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and otherwise permissible. The District has discretion to determine whether the Parties may present expert witnesses as long as the determination applies equally to the Parties.



### *Evidence*

The District will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is permissible regardless of relevance.

The District will provide each Party and the Party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex-based harassment and otherwise permissible, in the following manner:

- The District will provide an equal opportunity to access either the relevant and otherwise permissible evidence, or the same written investigative report that accurately summarizes this evidence.
- The District will provide the Parties with a reasonable opportunity to review and respond to the evidence or the investigative report. If the District conducts a live hearing as part of its grievance procedures, it will provide this opportunity to review the evidence in advance of the live hearing. The District may decide whether to provide this opportunity to respond prior to the live hearing, during the live hearing, or both prior to and during the live hearing.; and
- The District will take reasonable steps to prevent and address the Parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-based harassment grievance procedures.

### **Questioning the Parties and Witnesses**

The District will provide a process that enables the Decision-Maker to question Parties and Witnesses to adequately assess a Party's or Witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment.

If the District chooses not to conduct a live hearing, the District's process for proposing and asking relevant and otherwise permissible questions and follow-up questions of the Parties and Witnesses, including questions challenging credibility, will:

- Allow the Investigator or Decision-Maker to ask such questions during individual meetings with a Party or Witness;
- Allow each Party to propose such questions that the Party wants asked of any Party or Witness and have those questions asked by the Investigator or Decision-Maker during one or more individual meetings, including follow-up meetings, with a Party or Witness, subject to the procedures for evaluating and limiting questions discussed below; and
- Provide each Party with an audio or audiovisual recording or transcript with enough time for the Party to have a reasonable opportunity to propose follow-up questions.

If the District chooses to conduct a live hearing, the District's process for proposing and asking relevant and otherwise permissible questions and follow-up questions of Parties and Witnesses, including questions challenging credibility, will allow the Decision-Maker to ask such questions, and either:

- Allow each Party to propose such questions that the Party wants asked of any Party or Witness and have those questions asked by the Decision-Maker, subject to the procedures for evaluating and limiting questions discussed below; or
- Allow each Party's advisor to ask any Party or Witness such questions, subject to the procedures for evaluating and limiting questions discussed below. Such questioning will never be conducted by a Party personally. If the District permits advisor-conducted questioning and a Party does not have an advisor to ask questions on their behalf, the District will provide the Party with an advisor of the District's choice, without charge to the Party, for the purpose of advisor-conducted questioning. In those instances, the District will not appoint a confidential employee and may appoint, but is not required to appoint, an attorney to serve as an advisor.

*Procedures for the Decision-Maker to evaluate the questions and limitations on questions*

The Decision-Maker will determine whether a proposed question is relevant and otherwise permissible before the question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible. Questions that are repetitive, unclear, or harassing of the Party or Witness being questioned will not be permitted. The Decision-Maker will give a Party an opportunity to clarify or revise a question that the Decision-Maker determines is unclear or harassing. If the Party sufficiently clarifies or revises the question, the question will be asked.

*Refusal to respond to questions and inferences based on refusal to respond to questions*

The Decision-Maker may choose to place less or no weight upon statements by a Party or Witness who refuses to respond to questions deemed relevant and permissible. The Decision-Maker will not draw an inference about whether sex-based harassment occurred based solely on a Party's or Witness's refusal to respond to such questions.

**Procedures for a Live Hearing, if offered**

The District will decide whether a live hearing is necessary to determine whether any sex-based harassment occurred. In making this decision, the District may consider whether the Parties elected to participate in the investigation and whether each Party had the opportunity to suggest questions to be asked of the other Party or witnesses, or both, during the investigation.

The District will conduct a live hearing with the Parties physically present in the same geographic location or, at the District's discretion or upon the request of either Party, will conduct the live hearing with the Parties physically present in separate locations with technology enabling the Decision-Maker and Parties to simultaneously see and hear the Party or Witness while that person is speaking.

Any cross-examination of a Party or a Witness shall not be conducted directly by a Party or a Party's advisor.

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

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

The District will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

The Decision-Maker shall provide an explanation of the meaning of the preponderance of the evidence standard and affirm that it shall apply to determinations under this procedure. The preponderance of the evidence standard is met if the District determines that it is more likely than not that the alleged sex-based harassment occurred, based on the facts available at the time of the decision.

### **Determination Whether Sex-Based Harassment Occurred**

Following an investigation and evaluation of all relevant and otherwise permissible evidence, the District will:

- Use the preponderance of the evidence standard of proof to determine whether sex-based harassment occurred. The standard of proof requires the Decision-Maker to evaluate relevant and otherwise permissible evidence for its persuasiveness. If the Decision-Maker is not persuaded by a preponderance of the evidence that sex-based harassment occurred, whatever the quantity of the evidence is, the Decision-Maker will not determine that sex-based harassment occurred.
- Notify the Parties simultaneously in writing of the determination whether sex-based harassment occurred under Title IX including:
  - A description of the alleged sex-based harassment;
  - Information about the policies and procedures that the District used to evaluate the allegations;
  - The Decision-Maker's evaluation of the relevant and otherwise permissible evidence and determination whether sex-based harassment occurred;
  - When the Decision-Maker finds that sex-based harassment occurred, any disciplinary sanctions the District will impose on the Respondent, whether remedies other than the imposition of disciplinary sanctions will be provided

- by the District to the Complainant, and, to the extent appropriate, other students identified by the District to be experiencing the effects of the sex-based harassment; and
  - The District's procedures and permissible bases for the Complainant and Respondent to appeal.
- The District will not impose discipline on the Respondent for sex-based harassment prohibited by Title IX unless there is a determination at the conclusion of the Title IX grievance procedures that the Respondent engaged in prohibited sex-based harassment.
- If there is a determination that sex-based harassment occurred, as appropriate, the Title IX Coordinator will:
  - Coordinate the provision and implementation of remedies to the Complainant and other people the District identifies as having had equal access to the District's education program or activity limited or denied by sex-based harassment;
  - Coordinate the imposition of any disciplinary sanctions on the Respondent, including notification to the Complainant of any such disciplinary sanctions; and
  - Take other appropriate prompt and effective steps to ensure that sex-based harassment does not continue or recur within the District's education program or activity.
- Comply with the Title IX grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
- Not discipline a Party, Witness, or others participating in the Title IX grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex-based harassment occurred.

The determination regarding responsibility becomes final either on the date that the District provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

### **Appeals**

A Party may appeal the dismissal of a Complaint or any allegations or the determination whether sex-based harassment occurred on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made; and
- The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.

If a Party appeals a dismissal or determination whether sex-based harassment occurred, the District will:

- Notify the Parties in writing of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
- Implement appeal procedures equally for the Parties;
- Ensure that the Decision-Maker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
- Ensure that the Decision-Maker for the appeal has been trained consistent with the Title IX regulations;
- Communicate to the Parties in writing that the District will provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the Parties in writing of the result of the appeal and the rationale for the result.

Any additional procedures or bases for appeal the District offers will be equally available to all Parties.

### **Informal Resolution**

In lieu of resolving a Complaint through the District's Title IX grievance procedures, the Parties may instead elect to participate in an informal resolution process. The District will not offer informal resolution to resolve a Complaint when such a process would conflict with Federal, State, or local law. The District will inform the Parties in writing of any informal resolution process it offers and determines is appropriate, if any. Before the initiation of an informal resolution process, the District will explain in writing to the Parties:

- The allegations;
- The requirements of the informal resolution process;
- That any party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
- That if the Parties agree to a resolution at the end of the informal resolution process, the Parties cannot initiate or resume grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- What information the District will maintain and whether and how the District could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.

### **Supportive Measures**

The District will offer and coordinate supportive measures as appropriate for the Complainant and Respondent to restore or preserve that person's access to the District's

education program or activity or provide support during the District's Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more Parties; leaves of absence; changes in class, work, District-provided housing, or extracurricular or any other activity, regardless of whether there is a comparable alternative; and training and education programs related to sex-based harassment.

When requested by a Complainant or otherwise determined to be appropriate, the District shall issue an interim no-contact directive prohibiting the Respondent from contacting the Complainant during the pendency of the investigation. The District shall not issue an interim mutual no-contact directive automatically, but instead shall consider the specific circumstances of each case to determine whether a mutual no-contact directive is necessary or justifiable to protect a Party's safety or well-being, or to respond to interference with an investigation. If the District issues any no-contact directive, the District shall provide the Parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action. If the District issues a mutual no-contact directive, the District shall also provide the Parties with a written justification for the directive.

**Disciplinary Sanctions and Remedies:**

Following a determination that sex-based harassment occurred, the District may impose disciplinary sanctions on a student respondent including written or verbal reprimand, required training or counseling, non-academic probation, suspension, and expulsion. Following a determination that sex-based harassment occurred, the District may impose disciplinary sanctions on an employee respondent including written or verbal reprimand, required training or counseling, reduction in pay, demotion, suspension, or discharge, per applicable collective bargaining agreement, handbook, and procedures described in BP/AP 7365 Discipline and Dismissals – Classified Employees and BP 7360 Discipline and Dismissals – Academic Employees. The District may also issue a no-contact directive against the Respondent following a determination that sex-based harassment occurred.

The District may also provide remedies, which may include, but are not limited to:

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

- Arranging for a Complainant, if a student, to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and
- Reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant's discipline.

### **Dissemination of Policy and Procedures**

The District will provide its policy and procedures related to Title IX on its website and in each handbook, catalog, announcement, bulletin, and application form that is makes available to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the District. The District will also provide its policy and procedures related to Title IX to all volunteers who will regularly interact with students and each individual or entity under contract with the District to perform any service involving regular interaction with students.

When hired, employees are required to sign acknowledging that they have received the policy and procedures. The District will place the signed acknowledgment of receipt in each employee's personnel file.

### **Training**

The District will provide a comprehensive trauma-informed training program to all employees on the District's obligation to address sex discrimination in its education program or activity, the scope of conduct that constitutes sex discrimination including sex-based harassment under Title IX, and all applicable notification and information requirements under Title IX regulations. The District will ensure that its Title IX Coordinator(s), investigators, Decision-Makers, facilitators of an information resolution process, and other persons who are responsible for implementing the District's grievance procedures or have the authority to modify or terminate supportive measures, have training on topics requires by Title IX regulations and State law and regulations.

Materials for this training must include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity. The District will make these training materials available upon request for inspection by members of the public.

The District will provide Officials with Authority with training regarding their obligation to report sexual harassment and instruction on how to report sexual harassment to the Title IX Coordinator.

### **File Retention**

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

- For each complaint of sex discrimination: records documenting the informal resolution process (if any) or the grievance procedures, and the resulting outcome
- For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this part, including notifications under 106.44(c) (1) or (2), records documenting the actions the District took to meet its obligations under Title IX regulations.
- All materials used to provide training pursuant to Title IX regulations.

**Complaint Reporting**

The Chancellor shall provide the Board of Trustees, upon request, a report of complaints filed pursuant to this procedure. This report must disaggregate the complaints by complaint type (Student Complainant and Student Respondent, Student Complainant and Employee Respondent, Employee Complainant and Student Respondent, Employee Respondent and Employee Respondent, etc.). This report must also disaggregate the complaints by the Complainant's race, age, gender, religion, or any other characteristic identified by the Board.