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**Kern Community College District**  
**Administrative Procedures**  
Chapter 3 – General Institution

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**AP 3434** Responding to ~~Harassment Based on Sex~~ Sex Discrimination under Title IX

**References:**

20 U.S. Code Sections 1681 et seq.;  
34 Code of Federal Regulations Parts 106.1 et seq.;  
Education Code Sections s 212.5, 66262.5, 66281.8, and 67380 et seq. ~~67386~~

~~Note: This procedure is legally required.~~

**Introduction**

The District encourages members of the District community to report ~~sexual harassment~~ sex discrimination including sex-based harassment. This procedure only applies to conduct defined sex ~~discrimination~~ sexual harassment under Title IX and applicable federal regulations and that meet Title IX jurisdictional requirements. The District will respond to sex discrimination including sex-based harassment ~~sexual harassment and sexual misconduct~~ 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.

The District's Title IX Coordinator is the VP of Human Resources and the Title IX Coordinator's contact information is:

2100 Chester Avenue, Bakersfield California

(661) 336-5100

[abeali@kccd.edu](mailto:abeali@kccd.edu)

The Title IX Coordinator is required to respond to reports of sex discrimination including sex-based harassment ~~sexual harassment or misconduct~~. 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~~ ~~sexual 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 ~~make an assessment to determine if there is a safety risk to the campus. If the Title IX Coordinator finds there is a continued risk, the Title IX Coordinator will file the formal complaint without the Complainant's consent or cooperation~~ evaluate a Complaint to determine whether to investigate a Complaint pursuant to these procedures.

### **Title IX Harassment Complaints, Investigations, and Hearings**

~~These Title IX sexual harassment procedures and the related policy protect students, employees, applicants for employment, and applicants for admission.~~

~~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 ~~three~~ jurisdictional requirements:

- The conduct took place in the United States;
- The conduct meets the definition of Title IX discrimination; and ~~“sexual harassment.”~~
- 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. ~~If a Party does not have an Advisor at the time of the hearing, the District must provide the Party an Advisor of the District's choice, free of charge.~~ 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 Complaint grievance process if he/she/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 and 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. ~~an individual who alleges he/she/they is the victim of conduct that could constitute sexual harassment.~~

**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 regulation.

**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 who will ~~oversee the live hearing~~ question the parties and witnesses, conduct a live hearing (if offered), and make a determination of responsibility whether sex discrimination occurred. [OPTIONAL: The District may have one Decision-Maker determine whether the Respondent is responsible for sex discrimination and another Decision-Maker determine the appropriate level of disciplinary sanctions for the conduct.] ~~The Decision-Maker cannot be the Title IX Coordinator or the investigator.~~

**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.

~~Formal Complaint: A written complaint signed by the Complainant or Title IX Coordinator, alleging sexual harassment and requesting an investigation. If the Title IX Coordinator signs the formal complaint, he/she/they will not become a Party to the complaint.~~

**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 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 an individual reported to be the perpetrator of conduct that could constitute sexual harassment~~  
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**~~ual Harassment~~ under Title IX: ~~Conduct~~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. A District employee, agent, or other person authorized by the District to provide ~~conditions the provision of~~ an aid, benefit, or service ~~under~~of the District's education program or activity explicitly or impliedly condition the provision of such an aid, benefit, or service on a person's an individual's participation in unwelcome sexual conduct (~~quid pro quo harassment~~);
- Hostile environment harassment. Unwelcome sex-based conduct ~~that, based on a totality of the circumstances, is subjectively and objectively offensive and is determined by a reasonable person to be~~ so severe, or pervasive that it limits or

~~denies a person's ability to participate in or benefit from, and objectively offensive that it effectively denies a person equal access to~~ the District's education program or activity ~~(i.e., creates a hostile work environment)~~. Whether a hostile environment has been created is a fact-specific inquiry that includes the 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.
    - **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 age or 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.
    - ~~Sodomy—Oral or anal sexual intercourse with another person, 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.~~
    - **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.
    - **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 his/her/their age or because of his/her/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.

◉ ~~Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse.~~

- **Incest.** Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Dating violence.** Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the victim. 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 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's 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.

**[NOTE: The following sections regarding Removal of a Respondent Pending Final Determination is optional]**

### **Removal of Respondent Pending Final Determination**

Upon receiving a report ~~of sex discrimination regarding sexual harassment~~, 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 ~~immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment~~ imminent and serious threat to the health and safety of a complainant or any students, employees, or other individual arising from the allegations of sex discrimination justifies removal.

~~The District may not use emergency removal to address a Respondent's threat of obstructing the sexual harassment investigation or destroying relevant evidence. Emergency removal is only available to address health or safety risks against individuals arising out of sexual harassment allegations, not to address other forms of misconduct that a Respondent might commit pending the processing of a complaint.~~

The District's ~~Title IX Coordinator designated officer~~ will conduct the individualized safety and

risk analysis.

If the ~~Title IX Coordinator~~ ~~designated officer~~ 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~~ ~~designated officer~~ 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 ~~described in the formal complaint process~~ below. The District will follow any relevant policies, procedures, collective bargaining agreements, or state law in placing an employee on administrative leave.

### **Reporting Options**

~~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.~~

~~Because individuals may be deterred from reporting incidents of sexual 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 and employee safety and that use of alcohol or drugs never makes a Complainant at fault for sexual harassment. An individual who participates as a Complainant or witness in an investigation of sexual assault, domestic violence, or stalking 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. If other rules are violated, the District will address such violations separately from an allegation of sexual violence.~~

~~Individuals have the opportunity to decide whether they want to pursue a formal Title IX complaint. Reporting sexual harassment to the Title IX Coordinator does not automatically initiate an investigation under these procedures. A report allows the District to provide a wide variety of support and resources to impacted individuals and to prevent the recurrence of the conduct. A Complainant or the Title IX Coordinator filing a formal complaint will initiate an investigation.~~

~~If there are parallel criminal and Title IX investigations, the District will cooperate with the external law enforcement agency and will coordinate to ensure that the Title IX process does not hinder legal process or proceedings.~~

~~The District will document reports of sexual harassment in compliance with the Clery Act, a federal law requiring data collection of crime within the campus geography. Under the~~



~~Clery Act, the District does not document personal information; the District reports the type of conduct, and the time, date, and location. (Also see BP/AP 3540 Sexual and Other Assaults on Campus.)~~

### **District Employees and Officials with Authority**

~~District Officials with Authority are not confidential resources and are required to report allegations of sexual harassment to the Title IX Coordinator promptly. All other employees are encouraged to report allegations to the Title IX Coordinator but are not required to do so.~~

~~The District has designated the following employees as Officials with Authority:~~

#### **Title IX Coordinator and Deputy Title IX Coordinators**

~~Officials with Authority are required to report all relevant information they know about sexual harassment including the name of the Respondent, the Complainant, any other witnesses, and the date, time, and location of the alleged incident.~~

### **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.**

### **Intake and Processing of Report**

#### **Receipt of Report**

~~After receiving a report of sexual harassment, the Title IX Officer will contact the Complainant and reporting party to explain rights under this policy and procedure and invite the Complainant to an in-person meeting. The Title IX Officer will discuss supportive measures with the Parties.~~

#### **Timeframes and Extensions for Reporting**

~~To promote timely and effective review, the District strongly encourages individuals to report sexual harassment as soon possible because a delay in reporting may affect the ability to collect relevant evidence and may affect remedies the District can offer.~~

- **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**

**Commented [E01]:** We are not consistent in capitalizing Complainant and Respondent. We need to be consistent. The same with "Party," "Witness," "Investigator," and "Decision-Maker"

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 five 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 within five business days of receiving a Party's appeal and allow the non-appealing Parties at least ten 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 responses to the appeal or the last day to provide a response.

**[NOTE: The District may designate reasonably prompt timelines for additional major stages of grievance process as desired.]**

When appropriate, the Title IX Coordinator may determine that good cause exists to extend ~~the 180-calendar day period~~ 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~~ Complainant and Respondent 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.

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.

### **Supportive Measures**

~~Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a formal complaint has been filed. The District will provide the Complainant and Respondent with supportive measures as appropriate and as reasonably available to restore or preserve equal access to the District's education program or activities. These measures are designed to protect the safety of all Parties, protect the District's educational environment, or deter sexual harassment. The District will provide supportive measures on a confidential basis and will only make disclosures to those with a need to know to enable the District to provide the service. Supportive measures may include changes to academic, living, transportation, and working situation or protective measures such as counseling, extensions of deadlines, other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.~~

When requested by a Complainant or otherwise determined to be appropriate, the District shall issue a no-contact directive prohibiting the Respondent from contacting the Complainant during the pendency of the investigation. The District shall not issue a mutual no-contact directive automatically, but instead shall consider the specific

circumstances of each report of sexual harassment 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.

### 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.

## **Formal Complaint Grievance Process**

### **Written Notice of Allegations to Parties**

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

- Notice of the District's Title IX grievance process and any informal resolution process;
- Notice of the allegations of alleged sexual harassment with sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- Statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Notice that the Parties may have Advisor of their choice, who may be, but is not required to be, an attorney;
- Notice that the Parties may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a Party or other source; and
- Inform the Parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. 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; and
- For student Parties, notice regarding appropriate counseling resources the District has developed and maintains.
- The Parties are entitled to an equal opportunity to access the relevant and otherwise

permissible evidence or an accurate description of this evidence.

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

### **Dismissal of ~~a~~ Formal Complaint**

~~The District must investigate the allegations in a formal complaint. However, the District must dismiss the formal complaint and will not process the complaint under these procedures if any of the following three circumstances exist:~~

- ~~• If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in this procedure;~~
- ~~• If the conduct alleged did not occur in the District's education program or activity;~~
- ~~• If the conduct alleged did not occur against a person in the United States.~~

~~The District has discretion to dismiss a formal complaint or any allegation under the following circumstances:~~

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

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 ~~formal~~ eComplaint 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 ~~formal~~ 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 five 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 and 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 five 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 ten business 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 calendar 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.*

### **Consolidation of Formal Complaints**

~~The District may, but is not required to, consolidate formal complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of sexual harassment arise out of the same facts or circumstances.~~

### **Equitable Treatment of the Parties**

~~The District's determination of responsibility is a neutral, fact finding process. The District will treat Complainants and Respondents equitably. The procedures will apply equally to both Parties. The District will not discipline a Respondent unless it determines the Respondent was responsible for sexual harassment at the conclusion of the grievance process.~~

### **Statement of Presumption of Non-Responsibility**

~~The investigation is a neutral, fact-finding process. The District presumes all reports are in good faith. Further, the District presumes the Respondent is not responsible for the alleged conduct. The District makes its determination regarding responsibility at the conclusion of the grievance process.~~

### **Bias or Conflict of Interest**

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

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

### **Timeline for Completion**

~~The District will undertake its grievance process promptly and as swiftly as possible. The District will complete the investigation and its determination regarding responsibility or the informal resolution process within 180 calendar days.~~

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

~~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.~~

#### **Role of Advisor**

The role of the Advisor is to provide support and assistance in understanding and navigating the [grievance](#) investigation process.

The Advisor may not ~~testify in or~~ 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.

~~A Party does not have a right to self representation at the hearing; an Advisor must conduct any cross examination. The District must provide an Advisor of its choice, free of charge to any Party without an Advisor in order to conduct cross examination. If an Advisor fails to appear at the hearing, the District will provide an Advisor to appear on behalf of the non appearing Advisor. To limit the number of individuals with confidential information about the issues, each Party may identify one Advisor.~~

#### **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 ~~dissemination of any of the evidence subject to inspection and review or use of this evidence for any purpose unrelated to the Title IX grievance process~~ [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.

#### **Use of Privileged Information**

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



## **Investigations**

~~The District will provide for adequate, reliable, and impartial investigations of Complaints. The Title IX Coordinator is responsible to oversee investigations to ensure timely resolution and compliance with Title IX and this procedure.~~

~~Both Parties have the right to have an Advisor present at every meeting described in this section.~~

### **Burden of Gathering Evidence**

~~The burden is on the District – not 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 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.~~

### **Trained Investigators**

~~The District will investigate Title IX formal complaints fairly and objectively. Individuals serving as investigators under this procedure will have adequate training on what constitutes sexual harassment, and how the District's grievance procedures operate, and trauma-informed investigation techniques. The District will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence and complies with this procedure.~~

### **Burden of Gathering Evidence**

~~The District, not the Parties, has the responsibility to gather information and interview witnesses. As part of the District's burden of gathering evidence, the District's investigator will create an investigative report that fairly summarizes relevant evidence, whether it is inculpatory or exculpatory. The investigator shall not make findings or determinations of law or fact.~~

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. [OPTIONAL: Written evidence submitted by a Party is limited to 20 pages or 10,000 words.]

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

An investigator or Decision-Maker shall not consider the past sexual history of the Complainant 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~~the Complainant's prior sexual history unless such questions or evidence is offered to prove that someone other than the Respondent committed the alleged conduct; or~~
- The investigator or Decision-Maker shall not consider -the existence of a dating relationship or prior subsequent consensual sexual relations between the Complainant and the Respondent unless the evidence is relevant to how the Parties communicated consent prior or subsequent consensual sexual relations~~the Complainant's prior sexual behavior unless the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.~~
  - 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 pursuant to this circumstance, the mere fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

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.

### **Notice of Investigative Interview**

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

### **Evidence Review**

Both Parties have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a Party or other source.

Prior to the investigator preparing an investigative report, the District will send to each Party and the Party's Advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The Parties will have at least ten days to submit a written

~~response. The investigator must consider this written response prior to completing the investigative report.~~

### **Investigative Report**

The results of the investigation of a ~~formal e~~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 ~~formal e~~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;
- ~~An analysis of relevant evidence collected during the investigation, including a list of relevant documents~~A description of all evidence gathered through the investigation;
- ~~A specific finding as to whether the allegations occurred using a preponderance of the evidence standard;~~
- 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.

~~The investigator may redact information not directly related to the allegations or privileged information. However, the investigator will keep a log of information he/she/they do not produce to the Parties. The investigator will provide this log only to the Title IX Coordinator. The Title IX Coordinator will not disclose the log to the Parties but will maintain the log in the Title IX Coordinator's file, in the event it later becomes relevant.~~

~~At least ten days prior to a hearing, the District will send the investigative report to each Party and their Advisors, if any, the investigative report in an electronic format or a hard copy, for review and written response. The Parties will have at least ten days to submit a written response.~~

### **Hearing**

~~After completing an investigation and prior to completing a determination regarding responsibility, the District will hold a live hearing to provide the Complainant and Respondent an opportunity to respond to the evidence gathered before a Decision-Maker. Neither Party may choose to waive the right to a live hearing, but the Parties can choose whether to participate in the hearing or answer some or all cross-examination questions.~~

### **Notice**

~~If the District proceeds to a hearing, the District will provide all Parties written notice of the date, time, location, participants, and purpose of the hearing with sufficient time for the Party to prepare to participate.~~

### **Hearing Format**

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

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

The District will create 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 adjudications 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 misconduct occurred, based on the facts available at the time of the decision.*

### **Decision-Maker**

The Decision-Maker will be free from conflict of interest or bias, including bias for or against Complainants or Respondents. In cases where the Complainant or Respondent objects to the Decision-Maker based on a conflict of interest, the Complainant or Respondent may request the Title IX Coordinator select a different Decision-Maker. The Complainant or Respondent must make this request to the Title IX Coordinator in writing at least five business days prior to the hearing.

The Decision-Maker may ask the Parties and the witnesses questions during the hearing. The Decision-Maker must objectively evaluate all relevant evidence both inculpatory and exculpatory and must independently reach a determination regarding responsibility without giving deference to the investigative report. The Decision-Maker must receive training on issues of relevance, how to apply the rape shield protections for Complainants, and any technology to be used at the hearing.

### **Presenting Witnesses**

The District will provide the Complainant and Respondent an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Witnesses, like Parties, are not required to participate in the live hearing process.

Only relevant evidence will be admissible during the hearing. Relevant evidence means evidence, including evidence relevant to the credibility of a Party or witness, having any tendency in reason to prove or disprove any disputed fact material to the allegations under investigation.

*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.~~

### **Cross Examination**

~~The District shall permit each Party's Advisor to ask the other Party and any witness relevant questions, including questions challenging credibility. The Party's Advisor must conduct cross examination directly, orally, and in real time. A Party may never personally conduct cross examination. The other Party shall have an opportunity to object to a question 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 irrelevant. In making these determinations, the Decision-Maker is not bound by, but may take guidance from, the formal rules of evidence.~~

~~Before a Complainant, Respondent, or witness answers a question, the Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-Maker need not provide a lengthy or complicated explanation in support of a relevance determination.~~

~~If a Party or witness disagrees with a relevance determination, that individual has the choice of either (1) abiding by the Decision-Maker's determination and answering the question or (2) refusing to answer the question.~~

~~If a Party or witness does not submit to cross examination at the live hearing, the Decision-Maker may admit any statement of that Party or witness in reaching a determination regarding responsibility. The Decision-Maker will give the statements whatever weight the Decision-Maker determines appropriate, bearing in mind that the statements have not been tested by cross examination. In doing so, the Decision-Maker should consider, and if possible determine, whether the witness or Party made the statement and what the statement proves. the Decision-Maker will not rely on any statement of that Party or witness in reaching a determination regarding responsibility.~~

~~The Decision-Maker cannot rely on the statements or testimony of a Party or witness who has refused to answer a question the Decision-Maker had found relevant unless the Decision-Maker reconsiders and changes the ruling before reaching the determination of responsibility. If the Decision-Maker changes the determination of relevance of an unanswered question, the Decision-Maker must explain the decision to reconsider the ruling in the written determination of responsibility.~~

~~The Decision-Maker cannot draw an inference about the determination of responsibility based solely on a Party's or witness's absence from the live hearing or refusal to submit to cross examination or to answer any question.~~

~~The Decision-Maker may also ask any Party or witness questions. If a Party or witness refuses to respond to a Decision-Maker's questions, the Decision-Maker is not precluded from relying on that Party or witness' statements.~~

### 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.

**Commented [MJJ2]:** The District must describe the questioning process it will use. This language is an example.

### Determinations ~~Whether Sex Discrimination Occurred~~ of Responsibility

~~When the Decision-Maker makes a determination of responsibility or non-responsibility, the Decision-Maker will issue a written determination regarding responsibility, no later than 20 business days after the date that the hearing ends.~~

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

~~The written determination will include:~~

- ~~• Identification of the allegations potentially constituting Title IX sexual harassment as defined in these procedures;~~
- ~~• A description of the procedural steps taken from the receipt of the formal complaint through the determination, including who conducted the investigation and gave notifications to the Parties. The determination will also state when, where, and the date the investigator interviewed the Parties and witnesses, conducted site visits, the methods used to gather other evidence. The procedural section should also discuss the dates and how the Parties were provided the opportunity to review and inspect evidence and the date of any hearings held and who attended the hearing;~~
- ~~• Findings of fact supporting the determination. In making these findings, the Decision-Maker will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility;~~
- ~~• Conclusions regarding the application of the District's code of conduct to the facts;~~
- ~~• A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;~~

- ~~A statement of, and rationale for, any disciplinary sanctions the District imposes on the Respondent;~~
- ~~A statement of whether the District will provide the Complainant with remedies designed to restore or preserve equal access to the District's education program or activity;~~
- ~~The District need not disclose to the Respondent remedies that do not affect him/her/them as part of the written determination. The District can inform the Respondent that it will provide remedies to the Complainant. However, the District will inform the Complainant of the sanctions against the Respondent;~~
- ~~The District's procedures and permissible bases for the Complainant and Respondent to appeal.~~

~~The District will provide the written determination to the Parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the Parties with the written determination of the result of the appeal, if the Parties file an appeal, or if the Parties do not file an appeal, the date on which an appeal would no longer be timely.~~

*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 determinations 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 five business 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 five business days of receiving the Party's appeal;
- Allow the non-appealing Party at least ten business 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 45 calendar days after the Decision-Maker on appeal receives the response to the appeal or the last day to provide a response.

### **Disciplinary Sanctions and Remedies**

~~The District must have completed the grievance procedures (investigation, hearing, and any appeal, if applicable) before imposing disciplinary sanctions or any other actions that are not supportive measures against a Respondent. If the Decision-Maker determines the Respondent was responsible for conduct that constitutes sexual harassment, the District will take disciplinary action against the Respondent and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense.~~

~~Remedies for the Complainant might 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.~~

~~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.~~

#### **~~Appeal of Dismissal of a Formal Complaint or of the Determination of Responsibility~~**

~~A Complainant or Respondent may appeal the District's determination regarding responsibility or the dismissal of a formal complaint or any allegations. A Complainant or Respondent must submit a written appeal within **5 to 10 business** days from the date of the notice of determination regarding responsibility or from the date of the District's notice of dismissal of a formal complaint or any allegations.~~

#### **~~Grounds for Appeal~~**

~~The Vice Chancellor, Educational Services **Decision Maker on Appeal** will serve as the Decision Maker on Appeal. In filing an appeal of the District's determination regarding responsibility or the District's dismissal of a formal complaint, the Party must state the grounds for appeal and a statement of facts supporting those grounds. The grounds for appeal are as follows:~~

- ~~• A procedural irregularity affected the outcome;~~
- ~~• New evidence was not reasonably available at the time the District's determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome; or~~
- ~~• The District's Title IX Coordinator, investigator, or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.~~

#### **~~Appeal Procedure~~**

~~If the Complainant or Respondent submit an appeal to the District, the District will:~~

- ~~• Notify the other Party in writing within **5** business days of receiving a Party's appeal;~~

- ~~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 business days after the Decision-Maker on appeal receives the response to the appeal or the last day to provide a response. The District will provide the written decision simultaneously to both Parties.~~

~~The Decision Maker on appeal may extend or otherwise modify the deadlines provided above. Either Party may seek an extension by submitting a written request to the appeal Decision-Maker explaining the need for the extension and the proposed length of the extension. The Decision Maker will respond to the request within 48 hours in writing and will inform the Parties simultaneously whether the extension is granted.~~

### **Informal Resolution**

~~If the District determines that a formal complaint is appropriate for informal resolution, it may provide the Parties with the opportunity to participate in an informal resolution process, including mediation, at any time prior to reaching a determination regarding responsibility.~~

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

~~The District must obtain the Parties' voluntary, written consent to the informal resolution process. If the Parties reach an agreement, the District does not have to complete a full investigation and adjudication of a report of sexual harassment. At any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.~~

~~The informal resolution process is not available to resolve allegations that an employee sexually harassed a student or any allegations of sexual assault.~~

~~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.

### **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.

### **Disciplinary Sanctions and Remedies**

~~The District must have completed the grievance procedures (investigation, hearing, and any appeal, if applicable) before the~~ 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. ~~If the Decision Maker determines the Respondent was responsible for conduct that constitutes sexual harassment, the District will take disciplinary action against the Respondent and any other remedial action it determines to be appropriate.~~ The action will be prompt, effective, and commensurate with the severity of the offense.

Possible disciplinary sanctions for student ~~R~~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.

The District may also provide Remedies, which may ~~for the Complainant might~~ 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.

### **Retaliation Prohibited**

~~The District prohibits any intimidation, threats, coercion, or discrimination against any individual who made a report or complaint of sexual harassment, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Individuals who experience retaliation may file a complaint using the formal complaint process described above.~~

### **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:

- Title IX Coordinator or other coordinator designated to comply with and carry out the District's responsibilities regarding anti-harassment;
- Residential advisors;
- Housing directors, coordinators, or deans;
- Student life directors, coordinators, or deans;
- Athletic directors, coordinators, or deans;
- Coaches of any student athletic or academic team or activity;
- Faculty and associate faculty, teachers, instructors, or lecturers;
- Graduate student instructors, laboratory directors, coordinators, or principal investigators, internship or externship directors or coordinators;
- Study abroad program directors or coordinators; and
- Individuals identified as supervisors under California's Fair Employment 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 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 Complaint 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 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 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 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 five 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 within five business days of receiving a Party's appeal and allow the non-appealing Parties at least ten 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 responses to the appeal or the last day to provide a response.

**[NOTE: The District may designate reasonably prompt timelines for additional major stages of grievance process as desired.]**

When appropriate, the 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. [OPTIONAL: Written evidence submitted by a Party is limited to 20 pages 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 the District obtains that Party's or Witness's voluntary, written consent for use in its grievance procedures;
- 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; and

- Evidence that relates to the existence of a dating relationship or prior subsequent consensual sexual relations between the Complainant and the Respondent unless the evidence is relevant to how the Parties communicated consent 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. The Parties are entitled to an equal opportunity to access the relevant and permissible evidence upon the request of any Party;
- The District's BP/AP 5500 Standards of Student Conduct prohibits knowingly furnishing false information to the District; and
- For a student Party, notice regarding appropriate counseling resources the District developed and maintains.

If, in the course of 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 the 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 of 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 to 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 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 further 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 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 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 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

**Commented [MJJ3]:** Title IX regulations do not require a postsecondary institution to conduct live hearings. However, a postsecondary institution may conduct live hearings, as long as it complies with certain regulatory requirements. The following section is suggested as recommended language. If the District does not conduct live hearings, it may omit this language.

the Parties have 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.

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 actions; 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.

**Commented [MJJ4]:** NOTE: Title IX regulations do not require the District to offer an informal resolution process for sex-based harassment complaints. A District may provide such a process, as long as it complies with certain regulatory requirements. The following paragraph is suggested as good practice. If a District does not offer an informal resolution process for sex-based harassment complaints involving students, it may omit this language.

The District's original procedure offered informal resolution, so it is included here.



### **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. 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, ~~or catalog,~~ announcement, bulletin, and application form that it makes available to ~~provided 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 informal 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 required by Title IX regulations and State law and regulations. ~~Title IX Coordinators, investigators, Decision Makers, and any individual who facilitates an informal resolution process, on the definition of sexual harassment, the scope of the District's education program or activities, best practices for assessment of a sexual harassment complaint, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias, and implicit bias and racial inequities, both broadly and in school disciplinary processes.~~ Any materials used to train the District's Title IX Coordinator, investigators, Decision Makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment. 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.

~~[OPTIONAL:]The District will provide Officials with Authority with training regarding~~

his/her/their obligation to report sexual harassment and instruction on how to report sexual harassment to the Title IX Coordinator.

The District shall ensure that residential life student and nonstudent staff, or their equivalent, annually receive training on how to handle, in a trauma-informed manner, reports made to them of sexual harassment and situations in which they are aware of sexual harassment in student residential facilities.

### **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 obligation under Title IX regulations.
- All materials used to provide training pursuant to Title IX regulations.
- ~~The original report or complaint;~~
- ~~Any actions taken in response to the complaint, including supportive measures;~~
- ~~The investigative report including all evidence gathered and any responses from the Parties;~~
- ~~The District's determination regarding responsibility;~~
- ~~Audio or audiovisual recording or transcript from a hearing;~~
- ~~Records of any disciplinary sanctions imposed on the Respondent;~~
- ~~Records of any remedies provided to the Complainant;~~
- ~~Any appeal and the result;~~
- ~~Any informal resolution and the result; and~~
- ~~All materials used to train Title IX Coordinators, investigators, Decision Makers, and any person who facilitates an informal resolution process. The District will make these training materials publicly available on its website.~~

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

### **OPTIONAL: Complaint Reporting**

The District 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 Complainant 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.*