

## UNLAWFUL HARASSMENT AND DISCRIMINATION PREVENTION AND COMPLAINTS

### I. GENERAL

As provided in *Board Policy 4500 Unlawful Harassment and Discrimination Prevention and Complaints*, the District is committed to providing an academic and work environment that respects the dignity of all individuals and groups. This regulation defines sexual harassment as well as other forms of harassment on campus, and sets forth a procedure for the investigation and resolution of complaints by or against any staff or faculty member or student within the District.

This regulation and the related policy protects students, employees, unpaid interns, and volunteers in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, a District vehicle, or at a class or training program sponsored by the District at another location.

### II. DEFINITIONS

#### A. General Harassment

Harassment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status, the perception that a person has one or more of these characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics is illegal and violates District policy. Harassment shall be found where a reasonable person with the same characteristics as the complainant of the harassing conduct would be adversely affected to a degree that interferes with their ability to participate in or to realize the intended benefits of an institutional activity, employment, or resource.

Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment if it meets the definition above. For example, repeated derisive comments about a person's competency to do the job, when based on that person's gender, could constitute gender-based harassment. Harassment comes in many forms, including but not limited to the following conduct that could, depending on the circumstances, meet the definition above, or could contribute to a set of circumstances that meets the definition:

1. Verbal

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

2. Physical

Inappropriate or offensive touching, assault, or physical interference with free movement. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, pinching, leering, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's gender, race, national origin, sexual orientation or other protected status. Physical sexual harassment includes acts of sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the complainant's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability.

3. Visual or Written

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

4. Environmental

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

- an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment;
- an unwarranted focus on, or stereotyping of particular racial or ethnic groups, sexual orientations, genders, or other protected statuses;

An environment may be hostile toward anyone who merely witnesses unlawful harassment in their immediate surroundings, although the conduct is directed at others.

The determination of whether an environment is hostile is based on the totality of the

circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work activities.

## **B. Sexual Harassment**

In addition to the above forms of harassment, sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature made by someone from, or in, the work or educational setting when:

- Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, progress, internship, or volunteer activity;
- Submission to or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual;
- The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment (as more fully described below); or
- Submission to, or rejection of, the conduct by the individual is used as the basis for any decisions affecting the individual regarding benefits and services, honors, programs, or activities available at or through the District or the colleges.

This definition encompasses two kinds of sexual harassment:

1. **Quid Pro Quo:** Quid pro quo sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.
2. **Hostile Environment:** Hostile environment sexual harassment occurs when unwelcome conduct based on a person's gender alters the conditions of an individual's academic or work performance, unreasonably interferes with an individual's academic or work performance, or creates an intimidating, hostile, or abusive learning or work environment. The complainant must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it unreasonably interfered with the person's academic or work performance or created an intimidating, hostile, or offensive learning or working environment

Sexual harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the complainant would perceive the conduct as harassment based on sex.

### C. Consensual Relationships

Romantic and/or sexual relationships between either employees of the District or between an employee and a student where there is an inherent imbalance of power and/or the potential for exploitation are prohibited.

#### 1. Employee-to-Employee

Consensual romantic and/or sexual relationships between employees of the District have the potential for creating negative conflicts that can affect the work and/or educational environment. Thus, individuals serving in supervisory roles are prohibited from engaging in consensual relationships with subordinates.

#### 2. Employee-to-Student

Faculty members are prohibited from engaging in consensual romantic and/or sexual relationships with students enrolled in their class. So, too, are administrators, staff, or any other employee who has a supervisory role over a student.

Conflicts of interest may arise if the administrator, faculty member, or staff member must evaluate the employee's or student's work or make decisions affecting the employee or student. The relationship may create an appearance of impropriety and lead to charges of favoritism by other students or employees. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

In the event that such relationships do occur, the District has the authority to transfer and or change an assignment of any involved employee, to eliminate or attenuate the supervisory authority of one over the other, or of a faculty member over a student. Such action by the District is a proactive and preventive measure to avoid possible charges of harassment and does not constitute discipline against any affected employee.

### D. Academic Freedom

No provision of this Administrative Regulation shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. Freedom of speech and academic freedom are, however, not limitless and this regulation will not protect speech or expressive conduct that violates federal or California anti-discrimination laws.

## III. COMPLAINTS

The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in harassment, discrimination, or retaliation. Any person who has suffered harassment, discrimination, or retaliation may file a formal or informal complaint of harassment, discrimination, or retaliation.

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Written and signed complaints on a form prescribed by the State Chancellor's Office are encouraged but not required. A formal complaint is a written and signed statement filed with the District or the California Community Colleges Chancellor's Office that alleges harassment, discrimination, or retaliation in violation of the District's Board Policies, Administrative Regulations or in violation of state or federal law. An informal complaint is any of the following: (1) An unwritten allegation of harassment, discrimination, or retaliation; (2) a written allegation of harassment, discrimination, or retaliation that falls outside the timelines for a formal complaint; or (3) a written complaint alleging harassment, discrimination, or retaliation filed by an individual who expressly indicates that they do not want to file a formal complaint.

#### **A. Informal Complaints**

Any person may submit an informal complaint to the Vice Chancellor, Human Resources or any other District or college administrator. Administrators receiving an informal complaint shall immediately notify the Vice Chancellor, Human Resources in writing of all pertinent information and facts alleged in the informal complaint.

Upon receipt of an informal complaint, the Vice Chancellor, Human Resources or designee will notify the person bringing the informal complaint of their right to file a formal complaint, if the incident falls within the timeline for a formal complaint, and explain the process for doing so. The complainant may later decide to file a formal complaint, if within the timelines to do so. If the individual chooses not to file a formal complaint, or if the alleged conduct falls outside the timeline to file a formal complaint, the Vice Chancellor, Human Resources or designee shall consider the allegations contained in the informal complaint and determine the appropriate course of action. This may include efforts to informally resolve the matter, or a fact-finding investigation.

Investigation of an informal complaint will be appropriate if the Vice Chancellor, Human Resources or designee determines that the allegation(s), if proven true, would constitute a violation of the District policy prohibiting harassment, discrimination, or retaliation. The Vice Chancellor, Human Resources or designee will explain to any individual bringing an informal complaint that the Vice Chancellor, Human Resources or designee may decide to initiate an investigation, even if the individual does not wish the Vice Chancellor, Human Resources or designee to do so. The Vice Chancellor, Human Resources or designee shall not disregard any allegations of harassment, discrimination, or retaliation solely on the basis that the alleged conduct falls outside the deadline to file a formal complaint.

#### **B. Formal Complaints**

Formal complaints must be filed with the Chancellor of the California Community Colleges or the Vice Chancellor, Human Resources unless the party submitting the formal complaint alleges discrimination, harassment, or retaliation against the responsible District officer, in which case it should be submitted directly to the Chancellor of the California Community Colleges.

Formal complaints should be submitted on the form prescribed by the Chancellor of the California Community Colleges. A copy of the form will be available from the Vice

Chancellor, Human Resources, at the California Community Colleges Chancellor's website, and at the following URL:

<http://www.socccd.edu/humanresources/documents/UnlawfulDiscriminationComplaintFormFillableREV.1-05-17.pdf>.

If any party submits a written allegation of harassment, discrimination, or retaliation not on the form described above, the District will seek to have the individual complete and submit the form. However, if the individual chooses not to do so, the District will attach the written allegation(s) to the form and treat it as a formal complaint. In no instance will the District reject a written allegation of harassment, discrimination, or retaliation on the basis that it was not submitted on the proper form.

A formal complaint must meet each of the following criteria:

1. It must allege facts with enough specificity to show that the allegations, if true, would constitute a violation of District policies or regulations prohibiting discrimination, harassment, or retaliation;
2. The complainant must sign and date the formal complaint;
3. The complainant must file any formal complaint not involving employment within one year of the date of the alleged discriminatory, harassing, or retaliatory conduct or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation(s) of discrimination, harassment, or retaliation.
4. The complainant must file any formal complaint alleging discrimination, harassment, or retaliation in employment within 180 days of the date of the alleged discriminatory, harassing, or retaliatory conduct, except that this period shall be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

If the formal complaint does not meet the requirements set forth above, the Vice Chancellor, Human Resources or designee will promptly return it to the complainant and specify the defect. If the sole defect is that the formal complaint was filed outside the applicable prescribed timeline, the Vice Chancellor, Human Resources or designee will handle the matter as an informal complaint.

### C. Oversight of Complaint Process

The Vice Chancellor, Human Resources is the "responsible District officer" charged with receiving complaints of discrimination or harassment, and coordinating their investigation.

The actual investigation of complaints may be assigned by the Vice Chancellor, Human Resources to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the Vice Chancellor, Human Resources is named in the complaint or implicated by the allegations in the complaint.

**D. Who May File a Complaint**

Any student, employee, or third party who believes they have been discriminated against or harassed by a student, employee, or third party in violation of this regulation and related policy.

**E. Where to File a Complaint**

A student, employee, or third party who believes they have been discriminated against or harassed in violation of this policy and regulation may make a complaint orally or in writing.

If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, they are encouraged to file the complaint on a form prescribed by the California Community Colleges Chancellor's Office. These approved forms are available from the Vice Chancellor, Human Resources and at the California Community Colleges Chancellor's Office website.

The completed form must be filed with any of the following:

- The Vice Chancellor, Human Resources, if the complainant is an employee;
- The Vice President, Student Services, if the complainant is a student; or
- The California Community Colleges Chancellor's Office

**F. Employee-Related Complaints**

Complainants filing employment-related complaints shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH).

Complaints filed with the EEOC or the DFEH should be forwarded to the California Community Colleges Chancellor's Office.

Any District employee who receives a harassment or discrimination complaint shall notify the Vice Chancellor, Human Resources immediately.

**G. Filing a Timely Complaint**

Since failure to report harassment and discrimination impedes the District's ability to stop the behavior, the District strongly encourages anyone who believes they are being harassed or discriminated against, to file a complaint. The District also strongly encourages the filing of such complaints within 30 days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the District's ability to investigate and remediate.

All supervisors and managers have a mandatory duty to report incidents of harassment and discrimination or the existence of a hostile, offensive or intimidating work environment, and acts of retaliation.

The District will investigate complaints involving acts that occur off campus if they are related to an academic or work activity or if the harassing conduct interferes with or limits a student's or employee's ability to participate in or benefit from educational or employment activities.

**H. Communicating that the Conduct is Unwelcome**

The District encourages faculty, students and staff to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste or inappropriate. However, a complainant need not tell the respondent to stop or that the conduct makes them feel uncomfortable.

**IV. INTAKE AND PROCESSING OF THE COMPLAINT:**

Upon receiving notification of a harassment or discrimination complaint, the Vice Chancellor, Human Resources or designee shall:

- A.** Advise a student complainant that they may file a complaint with the Office for Civil Rights of the U.S. Department of Education and employee complainants may file a complaint with the California Department of Fair Employment and Housing or with the federal Equal Employment Housing or with the federal Equal Employment Opportunity Commission. All complainants should be advised that they have a right to file a complaint with local law enforcement. The District must investigate even if the complainant files a complaint with local law enforcement. In addition, the District should ensure that complainants are aware of any available resources, such as counseling, health, and mental health services. The Vice Chancellor, Human Resources or designee shall also notify the Chancellor of California Community Colleges of the complaint.
- B.** Undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling or training, etc.;
- C.** Advise the complainant that they need not participate in an informal resolution of the complaint, as described below, and that they have the right to end the informal resolution process at any time
- D.** Take interim steps to protect a complainant from coming into contact with a respondent, especially if the complainant is a victim of sexual violence. The Title IX Coordinator, the responsible District officer or the designee should notify the complainant of their options to avoid contact with the respondent and allow students to change academic situations as appropriate. For instance, the District may prohibit the respondent from having any contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and respondent, the District shall minimize the burden on the complainant. For example, it is not appropriate to remove complainants from classes or housing while allowing the respondent(s) to remain.



## V. INVESTIGATION

The Title IX Coordinator, the responsible District officer or designee shall:

- A. Authorize the investigation of the complaint, and supervise or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. Where complainants opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. In the case of a formal complaint, the investigation will include interviews with the complainant, the respondent, and any other persons who may have relevant knowledge concerning the complaint. This may include complainants of similar conduct.
- B. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.
- C. Investigation of the Complaint

The District shall promptly investigate every complaint of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. This includes complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, in a District vehicle, or at a class or training program sponsored by the District at another location. The District shall promptly investigate complaints of harassment or discrimination that occur off campus if the alleged conduct creates a hostile environment on campus.

As set forth above, where the complainant opts for an informal resolution, the Vice Chancellor, Human Resources or designee may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the respondent's rights to receive information about the allegations if the information is maintained by the District as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.15. The District will inform the complainant if it cannot maintain confidentiality.

### D. Investigation Steps

The District will fairly and objectively investigate harassment and discrimination complaints. Employees designated to serve as investigators under this regulation shall have adequate training on what constitutes sexual harassment, including sexual violence, and

how the District's grievance process operates. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigators will use the following steps: interviewing the complainant(s); interviewing the respondent(s); identifying and interviewing witnesses and evidence identified by each party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion. When the District evaluates the complaint, it shall do so using a 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 discrimination or harassment has occurred.

**E. Timeline for Completion**

The District will undertake its investigation promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report within 90 days of the District receiving the complaint.

**F. Cooperation Encouraged**

All employees are expected to cooperate with a District investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the District of its obligation to investigate. The District will conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the complainant(s) and regardless of whether a complaint is filed. No employee will be retaliated against as a result of lodging a complaint or participating in any workplace investigation.

**G. Written Report**

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

1. A description of the circumstances giving rise to the formal complaint;
2. A summary of the testimony of each witness interviewed by the investigator;
3. An analysis of any relevant evidence collected during the investigation;
4. A specific finding as to whether there is probable cause to believe that discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint; and
5. Any other information deemed appropriate by the District.

#### H. Confidentiality of the Process

Investigations are best conducted within a confidential climate. Therefore, the District does not reveal information about ongoing investigations except as necessary to fulfill its legal obligations. The District will keep the investigation confidential to the extent possible, but it cannot guarantee absolute confidentiality because release of some information on a “need-to-know-basis” is essential to a thorough investigation and to protect the rights of student respondents and employees during the investigation process and any ensuing discipline.

#### I. Administrative Determination

In any case not involving employment discrimination, within 90 days of receiving a formal complaint, the District shall complete its investigation and forward a copy of the investigative report to the Chancellor of the California Community Colleges, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:

1. The determination of the Chancellor or designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
3. The proposed resolution of the complaint; and
4. The complainant's right to appeal to the District Board of Trustees and the Chancellor of California Community Colleges.

In any case involving employment discrimination, within 90 days of receiving a formal complaint, the District shall complete its investigation and forward a copy or summary of the report to the complainant, and written notice setting forth all the following to the complainant:

1. The determination of the Chancellor or designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
3. The proposed resolution of the complaint; and
4. The complainant's right to appeal to the District governing board and to file a complaint with Department of Fair Employment and Housing or the U.S Equal Employment Opportunity Commission.

J. Discipline and Corrective Action

If harassment, discrimination or retaliation occurred in violation of the policy or regulation, the District shall take appropriate 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:

1. Providing an escort to ensure that the complainant can move safely between classes and activities;
2. Ensuring that the complainant and respondent do not attend the same classes or work in the same work area;
3. Preventing offending third parties from entering campus;
4. Providing counseling services or a referral to counseling services;
5. Providing medical services or a referral to medical services;
6. Providing academic support services, such as tutoring;
7. Arranging for a student-complainant 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
8. 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 being disciplined.

If the District imposes discipline, the nature of the discipline will not be communicated to the complainant. However, the District may disclose information about the sanction imposed on an individual who was found to have engaged in harassment when the sanction directly relates to the complainant; for example, the District may inform the complainant that the respondent must stay away from the complainant.

Disciplinary actions against faculty, staff and students will conform to all relevant statutes, regulations, personnel policies and regulations, including the provisions of any applicable collective bargaining agreement.

The District shall also take reasonable steps to protect the complainant from further harassment, or discrimination, and to protect the complainant, respondent, and witnesses from retaliation as a result of communicating the complaint or assisting in the investigation. The District will ensure that complainants and witnesses know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred. The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the extent possible without impeding the District's ability to investigate and respond effectively to the complaint.

If the District cannot take disciplinary action against the respondent because the complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

## VI. APPEALS

If the District imposes discipline against a respondent as a result of the findings in its investigation, the respondent may appeal the decision using the process for appealing a disciplinary decision.

If the complainant is not satisfied with the results of the administrative determination, they may, within 15 days, submit a written appeal to the Board of Trustees. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within 45 days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the complainant and to the California Community Colleges Chancellor's Office. The complainant shall also be notified of their right to appeal this decision.

If the Board does not act within 45 days the administrative determination shall be deemed approved and shall become the final decision of the District in the matter.

In any case not involving workplace discrimination, harassment, or retaliation, the complainant shall have the right to file a written appeal with the state Chancellor's Office within 30 days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Section 59350 of Title 5 of the California Code of Regulations.

In any case involving employment discrimination, including workplace harassment, the complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the Department of Fair Employment and Housing.

### A. Extension of Time

Within 150 days of receiving a formal complaint that does not involve employment discrimination, the District shall forward to the California Community Colleges Chancellor's Office the original complaint, the investigative report, a copy of the written notice to the complainant setting forth the results of the investigation, a copy of the final administrative decision rendered by the Board or indicating the date upon which the decision became final, and a copy of the notification to the complainant of their appeal rights. If, due to circumstances beyond its control, the District is unable to comply with the 150-day deadline for submission of materials, it may file a written request for an extension of time no later than ten days prior to the expiration of the deadline.

### B. File Retention

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

1. the original complaint;

2. the investigatory report;
3. the summary of the report if one is prepared;
4. the notice provided to the complainant, of the District's administrative determination and their right to appeal;
5. any appeal; and
6. the District's final decision.

The District will make such documents available to the Chancellor of the California Community Colleges upon request.

## VII. SEXUAL MISCONDUCT COMPLAINTS

Where the complaint allegation consists of Sexual Misconduct, as defined by Title IX, the following applies:

### A. Sexual Misconduct

Sexual misconduct includes sexual harassment and sexual violence.

1. Sexual harassment may include unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or education setting.
2. Sexual violence refers to physical sexual acts perpetrated against a person's will or when a person is incapable of giving consent due to the complainant's use of drugs or alcohol or due to an intellectual or other disability. Sexual violence includes rape, sexual assault, sexual battery, and sexual coercion.
3. Affirmative consent means an affirmative, conscious, and voluntary agreement to engage in sexual activity.

Sexual misconduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the District's program. A single or isolated incident may create a hostile environment if the incident is sufficiently severe.

### B. Complaint Process

Where the complaint involves a minor, the District will comply with California mandated reporting requirements.

All responsible employees are required to report all actual or suspected sexual misconduct to the Title IX Coordinator or Title IX Officers immediately. A responsible employee is any employee who has the authority to take action to redress sexual misconduct, who has been given the duty of reporting incidents of sexual misconduct to the Title IX Coordinator

or designee, or whom a student or employee could reasonably believe has this authority or duty. The District is on notice if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual misconduct.

Any person may make a complaint by contacting the Title IX Coordinator and/or Title IX Officers directly. The District's Title IX Coordinator is the Vice Chancellor, Human Resources, (949) 582-4699, located in District Human Resources (third floor of Saddleback College Health Sciences Building). The Irvine Valley College Title IX Officer is the Vice President for Student Services, (949) 451-5214, located in the Administration Building (A 100). The Saddleback College Title IX Officer is the Vice President for Student Services, (949) 582-4566, located in the Administration Building (Room 126).

The Title IX Coordinator or Title IX Officers will receive all relevant details about the alleged sexual misconduct reported to the District responsible employee in order to determine what occurred and how to resolve the situation. This includes the names of the complainant and respondent (if known), and the date, time, and location of the alleged sexual misconduct.

#### C. Privileged or Confidential Reporting

A District employee should, whenever possible, before a student or employee reveals information that they may wish to keep confidential, ensure that the person making the report understands the employee's obligations to report to the Title IX Coordinator or Title IX Officers, the complainant's option to request confidentiality, which the District will take into consideration, and the complainant's ability to share the information confidentially with designated District employees.

Professional, licensed, mental health counselors who provide mental-health counseling to members of the District community, or interns, graduate students, and others supervised by professional licensed counselors, are not required to report any information to the Title IX Coordinator. Professional, licensed medical professionals are bound to confidentiality, if a patient requests for information to be confidential.

Non-professional counselors who work or volunteer in a student health, wellness or counseling center, including front desk personnel and student employees in the course of their duties, must maintain confidentiality. They are not required to report actual or suspected sexual misconduct to the Title IX Coordinator or Title IX Officer in a way that identifies the student without the complainant's consent. These individuals are limited to senior health office assistants, health office assistants, and student help/college work study.

#### D. Authority over Parties

The District has authority over students, employees, and third parties for alleged violations of this policy that occur on District property. The District has authority over District employees and students for alleged violations of this policy that occur at District activities or events. The District may exercise authority over events that occur off-campus to determine if the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

E. Standard of Proof

The District will use a “preponderance of the evidence” standard of proof in determining whether there has been a violation of this policy. This standard of proof is also known as “more likely than not” standard.

F. Upon Receiving the Complaint – Health and Safety

The Title IX Coordinator, together with the Title IX Officer, will make an immediate assessment concerning the health and safety of the complainant and campus community as a whole. The District will provide the reporting party and responding party with immediate, interim measures necessary to protect their health and safety. These immediate, interim measures may include:

1. providing an escort to ensure that the complainant can move safely between classes and activities;
2. ensuring that the complainant and respondent do not attend the same classes or work in the same work area;
3. preventing offending third parties from entering campus;
4. providing counseling services or a referral to counseling services;
5. providing medical services or a referral to medical services;
6. providing academic support services, such as tutoring;
7. arranging for a student-complainant 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
8. 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 being disciplined.

Where the District determines that there is a substantial threat to the campus community, it will issue a timely warning. The District will issue the warning according to District administrative regulations. The District will not disclose the complainant’s name or other identifying information when issuing the warning.

G. Communicating that the Conduct is Unwelcome

The employee or student may, but is not required to, let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste, or inappropriate.



## H. Intake and Processing of the Complaint

If the District determines that a sexual misconduct complaint is appropriate for informal resolution, it may permit an informal resolution, including mediation. All parties, including the complainant and respondent, must receive full disclosure of the allegations and information about options for formal resolution before voluntarily agreeing to participate in an informal resolution. If parties agree to an informal resolution, the District does not have to complete a full investigation and adjudication of a report of sexual misconduct.

## I. Confidentiality

Where the complainant requests confidentiality regarding a reportable incident, the District will take all reasonable steps to comply with the complainant's request or inform the complainant when it cannot ensure confidentiality. The District will not disclose the name of the complainant unless the complainant provides written consent after being informed of their right to have the information withheld. Where the complainant insists that the District not disclose their name or other identifiable information to the respondent, the District will inform the complainant that its ability to respond will be limited. The District will evaluate this request in the context of its responsibility to provide a safe and nondiscriminatory environment for all employees and students. When weighing a request for confidentiality against the seriousness of the alleged harassment, the Title IX Coordinator will take the factors listed above into consideration.

## J. Fact-Finding Investigation

Where the complainant has filed a criminal complaint with local law enforcement, the District will consider what information the District is able to share, pursuant to state and federal law, to ensure that complainants are not unnecessarily required to give multiple statements about a traumatic event. The District will continue to conduct its own thorough, reliable, prompt, and impartial investigation. The District will normally complete its sexual misconduct investigation within 90 days of receiving the complaint, unless extended by the Title IX Coordinator or Title IX Officers for good cause. The Title IX Coordinator or Title IX Officers will notify the complainant and respondent in writing of the reason for the extension and the projected new timeline.

The complainant and respondent will have equal opportunity to present relevant witnesses and other evidence to the District investigator. The District will provide the same opportunities or apply the same restrictions to the complainant and respondent.

The results of the fact-finding investigation will be set out in a formal investigative report, which will include the requirements listed above and a credibility determination of the complainant, respondent, and witnesses.

## K. Reporting to California Community Colleges Chancellor's Office

The District considers all sexual misconduct complaints to be formal complaints. The Title IX Coordinator or other designated person must notify the State Chancellor's Office of any

sexual misconduct complaints. Upon completing the investigation, the District shall forward to the California Community Colleges Chancellor's Office a copy of the investigative report and administrative determination and to the complainant a copy or summary of the investigative report and administrative determination.

## VIII. DISSEMINATION OF POLICY AND REGULATIONS

District policy and regulations related to harassment will include information that specifically addresses sexual violence. District policy and regulations will be provided to all students, faculty members, members of the administrative staff and members of the support staff, and will be posted on campus and on the District website.

When hired, employees are required to sign that they have received the policy and regulations, and the signed acknowledgment of receipt is placed in each employee's personnel file. In addition, these policies and procedures are incorporated into the District's course catalogs and orientation materials for new students.

## IX. TRAINING

### A. For Employees

By January 1, 2020, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one-hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees. All new employees must be provided with the training and education within six months of their assumption of their position. After January 1, 2020, the District shall provide sexual harassment training and education to each employee once every two years.

The training and education required by this regulation shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to complainants of sexual harassment in employment, a review of "abusive conduct," and harassment based on gender identity, gender expression, and sexual orientation. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. Supervisor's harassment training must also address potential exposure and liability for employers and individuals, supervisor's obligation to report sexual harassment, discrimination, and retaliation when they become aware of it, and appropriate remedial measures to correct harassing behavior.

The District will maintain appropriate records of the training provided, including the names of the supervisory employees trained, the date of training, sign in sheets, copies of all certificates of attendance or completion issued, the type of training provided, a copy of all written or recorded training materials, and the name of the training provider. If the training is provided by webinar, the District will maintain a copy of the webinar, all written

materials used by the training and all written questions submitted during the webinar, and document all written response or guidance the trainer provided during the webinar. The District will retain these records for at least two years.

The District will also provide training to students who lead student organizations. The District should provide copies of the sexual harassment policies and training to all District law enforcement unit employees regarding the grievance processes and any other processes used for investigating reports of sexual violence.

In years in which a substantive policy or procedural change has occurred, all District employees will attend a training update or receive a copy of the revised policies and regulations.

Participants in training programs will be required to sign a statement that they have either understood the policies and regulations, their responsibilities, and their own and the District's potential liability, or that they did not understand the policy and desire further training.

#### **B. Education and Prevention for Students**

In order to take proactive measures to prevent sexual harassment and violence toward students, the District will provide preventive education programs and make victim resources, including comprehensive victim services, available. The District will include such programs in their orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, the District's policies and disciplinary procedures, and the consequences of violating these policies. A training program or informational services will be made available to all students at least once annually.

The education programs will also include information aimed at encouraging students to report incidents of sexual violence to the appropriate District and law enforcement authorities. Since complainants or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of District or campus rules were involved, the District will inform students that the primary concern is for student safety and that use of alcohol or drugs never makes the complainant at fault for sexual violence. If other rules are violated, the District will address such violations separately from an allegation of sexual violence.

#### *References:*

*20 U.S. Code Sections 1681 et seq.;*  
*Education Code Sections 212.5, 231.5, 44100, 66281.5, and 67386;*  
*Government Code Sections 12940 and 12950.1;*  
*Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et seq.;*  
*Title 2 Sections 10500 et seq., 11023, and 11024;*  
*Title 2 Sections 11023 and 11024*  
*34 Code of Federal Regulations Section 106.8(b).*

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