SAN FRANCISCO COMMUNITY COLLEGE DISTRICT
ADMINISTRATIVE PROCEDURE MANUAL

Title: **RESPONDING TO SEX DISCRIMINATION UNDER TITLE IX (2024)**	**Number:** **AP 2.35**
Legal Authority: **Title IX, Education Amendments of 1972; Title 5 Sections 59320 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e**	**Related to** **CCLC AP 3433**

I. INTRODUCTION

***These procedures apply to conduct that occurred on or after August 1, 2024.**
The District encourages members of the District community to report sex discrimination including sex-based harassment. This procedure only applies to conduct defined as sex-discrimination, including sex-based harassment under Title IX and applicable federal regulations and that meets Title IX jurisdictional requirements. The District will respond to discrimination including sex-based harassment that falls outside that definition and outside the jurisdiction of the Title IX federal regulations using California law and applicable District policies and procedures. In implementing these procedures discussed below, the District will also provide supportive measures, training, and resources in compliance with California law, unless they are preempted by the Title IX regulations.
This procedure outlines the regulations and procedures of the District in connection with Board Policy and Administrative Procedure 2.30 – Unlawful Discrimination.

II. TITLE IX COORDINATOR

Questions concerning Title IX may be referred to the District's Title IX Coordinator whose contact information is:

Compliance Officer/Title IX Coordinator/Section 504 Coordinator
City College of San Francisco
415-452-5123
gabrown@ccsf.edu

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

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

III. JURISDICTION

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

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

IV. DEFINITIONS

Advisor: Throughout the grievance process, both the Complainant and Respondent have a right to an Advisor of their choice. The District may establish restrictions regarding the extent to which the Advisor may participate in the proceedings as long as the restrictions apply equally to both Parties.
Parties have the right to consult with an attorney, at his/her/their own expense, at any stage of the grievance process if he/she/they wishes to do so. An attorney may serve as an advisor.

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

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

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

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

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

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

Decision-Maker: The individual or group of people who will question the parties and witnesses, conduct a live hearing and make a determination whether sex discrimination occurred. The District will have different individuals serving as the Investigator and Decision-Maker, and as discussed in more detail below, the District will permit the Decision-Maker to question the parties and all witnesses when credibility is in dispute and relevant.

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

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

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

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

that person's access to the District's education program or activity after the District determines that sex discrimination occurred.

Preponderance of the Evidence: The standard of proof used throughout the grievance procedure. A *preponderance of the evidence* means that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side. This is a qualitative, not quantitative, standard. Thus, the Decision-Maker(s) will decide whether alleged facts are more likely than not to be true.

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

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

- *Quid pro quo harassment.* An employee, agent, or other person authorized by the District to provide an aid, benefit, or service under the District's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- *Hostile environment harassment.* Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe, or pervasive that it limits or denies a person's ability to participate in or benefit from the District's education program or activity (*i.e.*, creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
    - The degree to which the conduct affected the Complainant's ability to access the District's education program or activity;
    - The type, frequency, and duration of the conduct;
    - The parties' ages, roles within the District's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
    - The location of the conduct and the context in which the conduct occurred; and
    - Other sex-based harassment in the District's education program or activity.
- *Sexual assault*, including the following:

- *Sex Offenses*: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sex offenses include sexual exploitation.
- *Rape* (except Statutory Rape): The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the genital or anal opening of the body of another person.
- *Statutory Rape*: Sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
- *Sexual Assault with an Object*: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of 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.
- *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, and where. T 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.

V. GRIEVANCE PROCEDURES FOR COMPLAINTS OF SEX DISCRIMINATION UNDER TITLE IX

For Complaints of sex-based harassment involving students, see Section VI entitled, "Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Parties"

A. REPORTING RESPONSIBILITIES

District Officials with Authority are not confidential resources and are required to report allegations of sex discrimination to the Title IX Coordinator promptly. All other employees who have information about conduct that may reasonably constitute sex discrimination are required to report allegations to the Title IX Coordinator OR provide the potential Complainant with the Title IX Coordinator's contact information and instructions on how to file a Complaint. Employees who have been notified that an individual is pregnant must promptly inform a pregnant student, or a person who has legal right to act on behalf of the student, of the Title IX Coordinator's contact information and inform them that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the District's education program or activity.

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

- The Chancellor;
- The Presidents of each College;
- All Vice Chancellors and Vice Presidents;
- Deans, department heads and supervisors who have the authority to hire, discharge, discipline or effectively recommend such actions.

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

Confidential employees are employees whose communications are privileged or confidential under Federal or State law. They are not required to report allegations of sex discrimination to the Title IX Coordinator that they receive ***while performing*** their privileged or confidential duties. Examples may include counselors, psychologists, and/or psychiatrists who receive information while performing privileged or confidential duties.

B. INTAKE AND PROCESSING OF REPORTS

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

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

In addition to the people listed above, the following persons have a right to make a Complaint, of sex discrimination <u>other than sex-based harassment</u>:

- 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.

Receipt of Report, Intake Process and Assessment of District-Initiated Complaints: After receiving a report of sex discrimination, even if a formal complaint is not filed, the Title IX Coordinator shall contact the Complainant to conduct the intake process, including to discuss the availability of supportive measures. The Title IX Coordinator will consider the Complainant's wishes with respect to supportive measures, and explain to the Complainant the process for filing a formal complaint. The Title IX Coordinator will also notify the Complainant of the formal complaint process and the informal resolution process. If the Complainant decides to file a complaint, The Title IX Coordinator will also notify the Respondent of the Complaint and offer to meet with the Respondent to review and discuss the Complaint. The Title IX Officer will also discuss supportive measures with the Respondent.

If a Complainant declines to submit a Complaint or withdraws the Complaint, the Title IX Coordinator must decide whether to initiate a Complaint. The Title IX Coordinator shall consider the following factors when determining whether to initiate a Complaint:

- The Complainant's wishes;
- The Complainant's reasonable safety concerns;
- Risk of additional sex discrimination;
- Severity of the allegations, including whether they justify removing the Respondent;
- Age and relationship of the Parties;
- Scope of the discrimination;
- Availability of evidence; and
- Whether the District can end the discrimination and prevent reoccurrence without a Complaint.

If the Title IX Coordinator initiates a Complaint, the Complainant must first be notified, and any safety concerns must be addressed.

Reporting Timeframes: To promote timely and effective review, the District strongly encourages individuals to report sex discrimination as soon possible because a delay in reporting may affect the ability to collect relevant evidence and may affect remedies the District can offer. Students may report sex discrimination even if they are no longer participating in the District's education program or activity.

Supportive Measures: Supportive measures are 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.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or 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 absences, increased security and monitoring of certain areas of the campus, and other similar measures. Parties may request a review of any decisions regarding supportive measures to an impartial employee.

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

1. *Emergency Removal*

The District may remove a student 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 and serious threat to the physical health or safety of any student 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 sex discrimination investigation or destroying relevant evidence. Emergency removal is only available to address health or safety risks against individuals arising out of sex discrimination allegations, not to address other forms of misconduct that a Respondent might commit pending the processing of a complaint.

The Title IX Coordinator or designee will conduct the individualized safety and risk analysis and determine whether emergency removal is appropriate.

If the Title IX Coordinator or designee determines emergency removal is appropriate, he/she/they will provide the student who is being removed 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 District will hear any challenge to the removal, and determine whether the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal.

2. *Administrative Leave*

The District may place an employee Respondent on administrative leave during the pendency of the grievance process described herein. The District will conform to any relevant policies, procedures, collective bargaining agreements, or state law when placing an employee on administrative leave.

C. FORMAL COMPLAINT GRIEVANCE PROCEDURES

Notice to Parties: Upon receipt of a formal complaint, the Title IX Coordinator will provide Notice of Investigation and Allegations in writing, to the Parties which shall include the following:

- Notice of the District's Title IX grievance process;

- Notice of the allegations of alleged sex discrimination with sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- The specific policies implicated;
- Notice that retaliation is prohibited;
- 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;
- A statement of the potential sanctions/responsive actions that could result;
- Notice that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney. The District may provide suggestions for ways to identify an Advisor;
- Detail on how the party may request disability accommodations during the grievance process;
- 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;
- The name(s) of the Investigator(s), if known, along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have;
- 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; and
- An instruction to preserve any evidence that is directly related to the allegations.
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If, in the course of an investigation, the District decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided above, the Title IX Coordinator will provide notice in writing of the additional allegations to the Parties.

Dismissal of Formal Complaint: The District must investigate the allegations in a formal complaint. However, the District may dismiss the formal complaint under these procedures if any of the following circumstances exist:

- The Respondent is unidentifiable even after a reasonable attempt to identify the Respondent;

- The Respondent is not participating in the District's educational program or activity or is not employed by the District;
- The Complainant voluntarily withdraws some or all of the allegations and any remaining allegations would not constitute sex discrimination; or
- The allegations, even if proven, would not violate Title IX after reasonable efforts have been made to clarify the allegations with the Complainant.

Upon dismissal, the Title IX Coordinator shall promptly, and simultaneously to the Parties, send written notice of the dismissal and the reasons for the dismissal. The Title IX Coordinator shall also notify the Complainant of their right to appeal the dismissal.

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

A Complainant may appeal the dismissal of a complaint or any allegations no later than ten (10) business days from the date of the District's notice of dismissal of a Complaint or any allegations:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome or was not previously available; and
- The Title IX Coordinator or investigator had a conflict of interest or bias for or against Complainant or Respondent that would change the outcome.

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 within 5 business days. 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 within 5 business days.

If a Complaint is dismissed, the District will still offer supportive measures to the Complainant and Respondent as appropriate, and take other prompt and effective steps to ensure sex discrimination is not occurring in 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 sex discrimination 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 sex discrimination 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 follow the grievance process

described herein before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

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 that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures. 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, or an individual Complainant or Respondent. *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-Makers in the process. The District will ensure that the Title IX Coordinator, Deputy Title IX Coordinators, investigators, Decision-Makers, and facilitators receive training on:

- The definition of sex discrimination 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 endeavor to complete the investigation and its determination regarding responsibility or the informal resolution process within **180 calendar days** from the date of the Notice of Investigation and Allegations is issued to the Parties.

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.

Role of Advisor: The Parties may each have an Advisor of their choice and a support person present with them for all meetings, interviews, and hearings within the grievance process. The

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

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

Investigations: The District will provide for adequate, reliable, and impartial investigation of Complaints. The burden is on the District—not on the Parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

The parties shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence that are relevant and otherwise permissible. The Parties shall not be restricted from discussing the allegations under investigation or to gather and present relevant 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.

An investigator or Decision-Maker shall not consider the past sexual history of a Party as evidence 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; or
- The investigator or Decision-Maker shall not consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent unless the evidence is relevant to how the Parties communicated consent in prior or subsequent consensual sexual relations.

- The investigator or Decision-Maker shall not consider the Complainant's prior sexual behavior unless the questions or evidence concern specific incidents of the Complaint'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.

Investigative Report: The results of the investigation of a formal complaint will include at the following information:

- A description of the circumstances giving rise to the formal complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony of each witness the investigator interviewed;
- A description of all evidence gathered through the investigation;
- A table of contents if the report exceeds 10 pages; and
- Any other information deemed appropriate by the District.

The investigator will not make a determination regarding responsibility.

Determination of Responsibility: The Decision-Maker will determine responsibility.

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 may 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.

Following an investigation and evaluation of all relevant and otherwise permissible evidence, the 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-Makers will use the preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the Decision-Maker will decide whether it is more likely than not that sex discrimination, as defined herein, occurred.

The written determination will include:

- Identification of the allegations potentially constituting Title IX sex discrimination 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(s) 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(s) 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, policies and procedures 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, including remedies other than disciplinary sanctions;
- 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's Title IX Coordinator 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.

D. APPEALS OF A 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 therein. A Complainant or Respondent must submit a written appeal within **10 calendar 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 Appeal Officer for an appeal will be a trained individual who has not been involved in any aspect of the process as Title IX Coordinator, Advisor, Investigator or Decision-Maker. 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 exists that 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 Title IX Coordinator, the Title IX Coordinator will:

- Notify the other Party in writing within **5 business days** of receiving a Party's appeal;
- Allow the non-appealing Party at least **10 calendar days** from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome;

The Appeal Officer will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within **30 business days** after the Appeal Officer receives the non-appealing party's response to the appeal or the last day for the non-appealing party to provide a response. The District's Title IX Coordinator will provide the written decision simultaneously to both Parties.

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

VI. 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 V entitled, "Grievance Procedures for Complaints of Sex Discrimination under Title IX."

All procedural requirements under the preceding section V are applicable to complaints of sex-based harassment involving student parties. In addition, the following procedures ensure trauma-informed and impartial investigation of a complaint of sex-based harassment. 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.

Reporting a Complaint: A person is entitled to make a Complaint of sex-based harassment only if they are alleged to have been subjected to the sex-based harassment, if they have 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.

Sexual Assault and Domestic Violence Counselors: For further information about services provided by sexual assault and domestic violence counselors on campus, see AP 2.32 Sexual and Other Assaults on Campus and in Campus Programs.

Student Complainant Requests for Confidentiality: If a student complainant requests confidentiality when reporting sexual harassment, which could preclude a meaningful investigation or potential discipline of the Respondent, if found responsible, or that no

investigation or disciplinary action be pursued to address alleged sexual harassment, the District shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the Complainant. The District shall normally grant the request when possible. In determining whether to disclose a Complainant's identity or proceed to an investigation over the objection of the Complainant, the District may consider whether any of the following apply:

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

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

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

Live Hearing: In addition, the District shall conduct a live hearing for complaints of sex-based harassment involving students.

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.

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.

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.

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

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

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

Determination of Whether Sex-Based Harassment Occurred: Following an investigation and evaluation of all relevant and otherwise permissible evidence, the District will:

- 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.

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: 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.

Supportive Measures: 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.

VII. 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(s) determine(s) the Respondent was responsible for conduct that constitutes sex discrimination, 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 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.

In cases involving student Respondents, the hearing process detailed herein shall serve as the due process hearing outlined in Administrative Procedure 5.17. Possible disciplinary sanctions

for student Respondents include written or verbal reprimand, required training or counseling, non-academic probation, suspension, and expulsion. Employee Respondents shall be afforded due process as required by any applicable collective bargaining agreements, Education Code, and policies and procedures. Possible disciplinary sanctions for employee Respondents include written or verbal reprimand, required training or counseling, reduction in pay, demotion, suspension, or discharge.

VIII. INFORMAL RESOLUTION

If the District's Title IX Coordinator determines that a formal complaint is appropriate for informal resolution, they may provide the Parties with the opportunity to participate in an informal resolution process, including, but not limited to, mediation, at any time prior to reaching a determination regarding responsibility, including prior to a formal complaint being filed.

The District's Title IX Coordinator 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's Title IX Coordinator 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 sex discrimination. 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.

IX. RETALIATION PROHIBITED

The District prohibits any intimidation, threats, coercion, or discrimination against any individual who made a report or complaint of sex discrimination, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Individuals who experience retaliation, including peer retaliation, may file a complaint using the formal complaint process described above. The exercise of rights protected under the First Amendment does not constitute retaliation.

X. 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 provided to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining with the District.

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.

XI. TRAINING

The District will provide a comprehensive trauma-informed training program to Title IX Coordinators, investigators, District appointed Advisors, Decision-Makers, and any individual who facilitates an informal resolution process, on the definition of sex discrimination herein, the scope of the District's education program or activities, 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. 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 sex discrimination. The District will provide a training to all employees on the District's obligation to address sex discrimination in its education programs and activities, the scope of conduct that constitutes sex discrimination, including the applicable definition of "sex-based harassment," and all applicable notification and information requirements.

XII. FILE RETENTION

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

- 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.

XIII. COMPLAINT REPORTING

The Chancellor shall provide the Board of Trustees, upon request, a report of complaints filed pursuant to AP 2.35. This report must disaggregate the complaints by complaint type (Student Complainant and Student Respondent, Student Complainant and Employee Respondent, Employee Complainant and Student Respondent, Employee Respondent and Employee Respondent, etc.). This report must also disaggregate the complaints by the Complainant's race, age, gender, religion, or any other characteristic identified by the Board.