

**Rancho Santiago Community College District**  
**ADMINISTRATIVE REGULATION**  
Chapter 3  
General Institution

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**AR 3425 Title IX (9) Sexual Harassment (INTERIM)**

**References:**

- Title IX of the Education Amendments of 1972
- 34 CFR Part 106 of the Code of Federal Regulations
- ATIXA Interim Model Policy and Procedure

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**I. RATIONALE**

Rancho Santiago Community College District (“the District”) is dedicated to creating and fostering a campus environment free of discrimination based on sex, including Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking (“Prohibited Conduct”). The District has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment or retaliation. The District values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the Formal Grievance Process during what is often a difficult time for all those involved.

The District hereby implements this interim administrative regulation in response to the Department of Education’s new Title IX (9) regulations, pending revision and adoption of a final policy and regulation. This interim administrative procedure supersedes all board policies and administrative regulations with respect to cases that fall under the jurisdiction of Title IX (9).

When the Respondent is a member of the District’s community, a Formal Grievance Process may be available regardless of the status of the Complainant, who may or may not be a member of the District’s community. This community includes, but is not limited to, students, student

organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and program participants. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this administrative regulation.

## **II. JURISDICTION**

This administrative regulation applies to conduct within the District's education program and activities that takes place on the campus or on property owned or controlled by the District, or at District-sponsored events. The Respondent must be a member of District's community in order for this administrative regulation to apply.

This administrative regulation can also be applicable to address the effects of off-campus misconduct that effectively deprives someone of access to District's educational program. Regardless of where the conduct occurred, the District will address complaints or notice to determine whether the conduct occurred in the context of employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

If the Respondent is unknown or is not a member of the District community, the Title IX (9) Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

In addition, the District may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from District property and/or events.

When the Respondent is enrolled in or employed by another institution, the Title IX (9) Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX (9) Coordinator may be able to assist and support a student or employee Complainant who experiences sexual harassment or retaliation in an externship or other environment external to the District where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

## **III. TITLE IX (9) COORDINATOR**

The District's Title IX (9) Coordinator is:

Jean Pryor Estevez  
District Administrator, Institutional Equity, Compliance & Title IX  
Rancho Santiago Community College District  
2323 N. Broadway, Santa Ana, California 92706-1640  
Email: Estevez\_jean@rscdd.edu  
Phone: 714-480-7404  
Web: [www.rscdd.edu/titleix](http://www.rscdd.edu/titleix)

The Title IX (9) Coordinator acts with independence and authority free from bias and conflicts of interest. This individual is charged with primary oversight of the District's compliance with Title IX (9) including education, monitoring, and addressing complaints.

The Title IX (9) Coordinator may designate a Deputy Title IX (9) Coordinator at the respective campuses to assist with coordinating the District's responsibilities under Title IX and this interim administrative procedure. All Deputy Title IX (9) Coordinators report to the Title IX (9) Coordinator in their capacity as a Deputy Title IX (9) Coordinators. The designated Deputy Title IX (9) Coordinators are:

Jennifer De La Rosa  
Deputy Title IX (9) Coordinator  
Santa Ana College  
2900 W. Edinger Ave., Santa Ana, CA  
92704  
Email: De\_La\_Rosa\_Jennifer@sac.edu  
Phone: 714-564-6212

Dr. Loretta Jordan  
Deputy Title IX (9) Coordinator  
Santiago Canyon College  
8045 E. Chapman Ave., Orange, CA  
92869  
Email: Jordan\_loretta@sccollege.edu  
Phone: 714-628-4933

To raise any concern involving bias or conflict of interest by the Title IX (9) Coordinator, contact the Vice Chancellor of Human Resources. Concerns of bias or a potential conflict of interest by any other Title IX (9) Team member should be raised with the Title IX (9) Coordinator. Reports of misconduct committed by the Title IX (9) Coordinator should be reported to the Vice Chancellor of Human Resources. Reports of misconduct committed by any other Title IX (9) Team member should be reported to the Title IX (9) Coordinator.

Tracie Green  
Vice Chancellor of Human Resources  
2323 N. Broadway  
Santa Ana, California 92706-1640  
Email: Green\_tracie@rsccd.edu  
Phone Number: 714-480-7489

#### **IV. REPORTING**

Any person may report sex discrimination, including sexual harassment and other Prohibited Conduct, as defined in this interim administrative regulation (whether or not the person reporting is the person alleged to be the victim of conduct that could be prohibited), at any time, in person, by mail, by telephone, or by electronic mail, using the contact information listed above for the Title IX (9) Coordinator or Deputy Title IX (9) Coordinator, or by any other means that results in the Title IX (9) Coordinators receiving the person's verbal or written report. This interim Title IX (9) administrative regulation also applies to allegations of sexual harassment that are made to any District employee who has authority to institute corrective measures on behalf of the District. The District encourages those impacted by Prohibited Conduct to speak with someone in order to obtain resources and support.

There is no time limitation on submitting notice/complaints to the Title IX (9) Coordinator(s). However, if the Respondent is no longer subject to the District's jurisdiction and/or significant time has passed, the ability to investigate, respond and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX (9) Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate. When notice/complaint is affected by

significant time delay, the District will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

Complaints or inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Employment-related complaints or inquiries may be made externally to:

U.S. Equal Employment Opportunity Commission (EEOC)  
Royal Federal Building, 255 East Temple Street, 4th Floor  
Los Angeles, CA 90012

California Department of Fair Employment and Housing (DFEH)  
2218 Kausen Drive, Suite 100  
Elk Grove, CA 95758

## **V. STANDARD OF PROOF**

The District will use the “preponderance of the evidence” standard of proof throughout the process of reaching factual findings, conclusions and determinations of responsibility for policy violations pursuant to this Administrative Regulation. 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.

## **VI. SUPPORTIVE MEASURES**

The District will offer and implement appropriate and reasonable supportive measures to the Parties upon notice of alleged sexual harassment and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services, offered as appropriate, as reasonably available and without fee or charge to the Parties, which are intended to restore or preserve equal access to the District’s education program or activity, to protect the safety of all Parties or the District’s educational environment, and/or deter sexual harassment and/or retaliation.

The Title IX (9) Coordinator will promptly make supportive measures available to the Parties upon receiving notice or a complaint, and will coordinate the effective implementation of such measures. At the time that supportive measures are offered, the District will inform the Complainant, in writing, that they may file a formal complaint with the District either at that time or in the future, if they have not done so already.

The District will maintain the privacy of the supportive measures, provided that privacy does not impair the District’s ability to provide the supportive measures. The District will act to ensure as minimal an academic/occupational impact on the Parties as possible. The District will implement

measures in a way that does not unreasonably burden the other party. Supportive measures may include, but are not limited to:

- Counseling and referral to medical and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Student financial aid counseling
- Altered work arrangements for employees or student-employees
- Safety planning
- Campus safety escorts
- Implementing mutual contact limitations (no contact orders) between the Parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass orders
- Class or work schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX (9) Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

## **VII. EMERGENCY REMOVAL**

The District can act to remove a student Respondent entirely or partially from an education program or activity on an emergency basis when the District has completed an individualized safety and risk analysis and determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX (9) Coordinator in conjunction with the District's Behavioral Intervention Team using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student Respondent will be given notice of the action and the opportunity to challenge the removal decision at a meeting with a Vice President of Student Services who has not been previously involved in the District's individualized threat assessment of the Respondent. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. A Respondent may be accompanied by an Advisor of their choice. This meeting must be requested within three (3) calendar days or objections to the emergency removal will be deemed waived.

Violation of an emergency removal under this regulation will be grounds for discipline, which may include expulsion.

While an emergency removal is in effect, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the Parties.

Where the Respondent is a non-student employee, the District may place the employee on administrative leave during the Resolution Process and provide the Respondent with an opportunity to respond. The District will conform to all relevant statutes, regulations, and District personnel policies and regulations, including the provisions of any applicable collective bargaining agreement.

## VIII. DEFINITIONS

The District has adopted the following definitions so as to address the unique environment of an academic community.

**Affirmative Consent** means an affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent. In California, a minor (meaning a person under the age of 18) cannot consent to sexual activity.

It shall not be a valid response to alleged lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:

- The Respondent's belief in affirmative consent arose from the intoxication or recklessness of the Respondent. Any allegation that alcohol or other drugs were involved in an incident will be reviewed.
- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the complainant affirmatively consented.

It shall not be a valid response that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

- The Complainant was asleep or unconscious.
- The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity.
- The Complainant was unable to communicate due to a mental or physical condition.

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment, as defined herein, whether the notice/complaint is presented by the individual or someone on the individual's behalf, such as a report by one who learned of the conduct in his or her official capacity as a faculty member or administrator.

**District** means the Rancho Santiago Community College District, including the colleges it operates, Santa Ana College and Santiago Canyon College, and centers.

**Education program or activity** means locations, events, or circumstances where the District exercises substantial control over both the Respondent and the context in which the Prohibited Conduct occurs and also includes any building owned or controlled by a student organization that is officially recognized by the District.

**Formal Complaint** means a document submitted or signed by a Complainant or signed by the Title IX (9) Coordinator alleging Prohibited Conduct against a Respondent and requesting that the District investigate the allegation.

**Formal Grievance Process** means the process for adjudicating Formal Complaints of Prohibited Conduct through investigation, live hearing, determination of responsibility, and appeals.

**Hearing Decision-maker** refers to those who have decision-making and sanctioning authority within the District's Formal Grievance process.

**Investigator** means the person tasked by the District with investigating a Complaint. All Investigators shall receive annual training regarding such issues as the laws governing Title IX (9) and VAWA/Campus SaVE Act; as well as other related state and federal laws prohibiting discrimination, harassment and retaliation based on gender or sex, including sex discrimination, sexual harassment, sexual misconduct, dating and domestic violence, and stalking; complainant, respondent, employee, and witness privacy rights; and the Family Educational Rights and Privacy Act of 1974 (FERPA).

**Notice** means that an employee, student, or third-party informs the Title IX (9) Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

**Official with Authority (OWA)** means an employee of the District explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the District.

**Parties** include the Complainant(s) and Respondent(s), collectively.

**Prohibited Conduct** means any sexual misconduct, gender or sex-based discrimination or harassment, dating violence, domestic violence, stalking, and retaliation.

**Remedies** are actions taken to address safety, prevent recurrence of Prohibited Conduct, and restore equal access to the District's educational program.

**Resolution Process** refers broadly to the process for addressing Formal Complaints either by informal resolution or through a Formal Grievance Process that includes investigation, live hearing, and appeal.

**Respondent** means an individual who has been reported to be the perpetrator of Prohibited Conduct, as defined herein.

**Sanction** means a consequence imposed by the District on a Respondent who is found to have engaged in Prohibited Conduct under this interim administrative regulation.

**Sexual Harassment** means conduct on the basis of sex that satisfies one or more of the following:

- A. Quid Pro Quo Sexual Harassment: When an employee of the District conditions (implicitly or explicitly) the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct; or
- B. Hostile Environment Sexual Harassment: Unwelcome conduct determined by a reasonable person standing in the shoes of the Complainant to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or

C. Sexual assault, dating violence, domestic violence, or stalking, as defined herein.

1. **Sexual assault** means any sexual act (forcible or non-forcible), directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual acts include the following:

(a) Rape, which is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

(b) Sodomy, which is defined as oral or anal sexual intercourse with another person, forcibly committed and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(c) Sexual Assault with an Object, which is defined as the use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(d) Fondling, which is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(e) Incest, which is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(d) Statutory Rape, which is defined as sexual intercourse with a person who is under the statutory age of consent.

2. **Dating violence** means violence committed, on the basis of sex, by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall 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. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

3. **Domestic violence** means conduct, on the basis of sex, that includes the requisite components of felony or misdemeanor crimes of violence committed by (a) a current or former spouse or intimate partner of the victim; (b) a person with whom the victim shares a child in common; (c) a person who is cohabitating with or has cohabitated with the victim as a spouse; (d) a person similarly situated to a spouse of the victim under California law; or (e) any other

person against an adult or youth victim who is protected from that person's acts under California law.

4. **Stalking** means a course of conduct directed at a specific person on the basis of sex that would cause a reasonable person to fear for the person's safety or the safety of others, or to suffer substantial emotional distress. For the purposes of this definition: (a) A course of conduct is two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property; (b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant; and (c) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

**Student/Students** means any as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the District.

**Third Party** means a person other than the Complainant and the Respondent.

## **IX. GENERAL PROVISIONS**

Making deliberately false and/or malicious accusations under this interim administrative regulation is a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

The District community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to District officials or participate in Resolution Processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Accordingly, to foster participation in Resolution Processes, an individual who participates as a Complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the District's student conduct policy at or near the time of the incident, unless the District determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

## **X. RESOLUTION PROCESS FOR ALLEGED PROHIBITED CONDUCT**

### **A. Overview**

The procedures below apply only to qualifying allegations of Prohibited Conduct under this administrative regulation involving students, staff, administrator, or faculty members. The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another).

Complaints or allegations that are dismissed or not within the jurisdiction of this administrative regulation may be referred for action under another provision of the District's board policy and administrative regulations, such as BP 5500, AR3435, or an applicable collective bargaining

agreement, as determined by the Title IX (9) Coordinator.

## **B. Notice/Formal Complaint**

Within five business days of receipt of a Formal Complaint or notice to a Title IX (9) Coordinator of alleged Prohibited Conduct under this interim administrative regulation, the Title IX (9) Coordinator or Deputy Title IX (9) Coordinator shall initiate a prompt initial assessment by contacting the Complainant to determine the next steps the District needs to take, which shall include one or more of the following:

- Offer supportive measures, regardless of whether the Complainant wants to file a Formal Complaint; and/or
- An Informal Resolution (upon submission of a Formal Complaint); and/or
- A Formal Grievance Process including an investigation and a hearing (upon submission of a Formal Complaint).

### **1. Formal Complaint — Formal complaints may be filed as follows:**

#### **a) Who May File a Formal Complaint**

At the time of filing a formal complaint, the Complainant must be enrolled as a student or employed by the District, or attempting to enroll or apply for an education program or activity of the District.

If the Complainant does not file a formal complaint, the Title IX (9) Coordinator or Deputy Title IX (9) Coordinator of the college may file and sign a formal complaint requesting that the District investigate the allegation(s) of Prohibited Conduct if it is clearly not unreasonable in light of the known circumstances.

#### **b) How to File a Formal Complaint**

A formal complaint may be submitted in person, by mail, or by electronic transmission, but must meet each of the following criteria: (1) The allegations of Prohibited Conduct in the complaint must have occurred in the District's education program or activity in the United States. (2) The complaint must be a document (such as the District's complaint form) or electronic transmission (such as by electronic mail or through an online portal provided for this purpose by the District at [www.rscdd.edu/incidentreportingform](http://www.rscdd.edu/incidentreportingform)) filed by a Complainant or signed by the Title IX (9) Coordinator alleging Prohibited Conduct against a Respondent and requesting that the District investigate the allegation(s). (3) District encourages complaints to be filed on its form prescribed by the Chancellor of the California Community Colleges. A copy of the form will be available from the Title IX (9) Coordinator, at the California Community Colleges Chancellor's website, and at the following URL: [https://www.cccco.edu/-/media/CCCCO-Website/Files/General-Counsel/x\\_discrimcomplaintform-ada.pdf?la=en&hash=CEA65F34EEAE900CB00E68281A3907726B48CF08](https://www.cccco.edu/-/media/CCCCO-Website/Files/General-Counsel/x_discrimcomplaintform-ada.pdf?la=en&hash=CEA65F34EEAE900CB00E68281A3907726B48CF08). (4) The document or electronic submission contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.

#### **c) When to File a Complaint**

The District does not impose a time limit or statute of limitations on a Complainant's decision to file a formal complaint of Sexual Harassment for purposes of this interim policy. Since failure to report Sexual Harassment impedes the District's ability to stop the behavior, the District strongly encourages anyone who believes they are being sexually harassed to file a complaint.

d) **Where to File a Complaint**

A formal complaint must be filed with The Title IX (9) Coordinator or a designated Deputy Title IX (9) Coordinator, whose contact information appears in Section III, above.

**2. Dismissal of Formal Complaints**

A formal complaint must be dismissed by the District for purposes of this interim administrative procedure based on one or more of the following factors:

- a) The allegations in the formal complaint do not meet the definition of Prohibited Conduct under this interim administrative regulation even if proved; and/or;
- b) The alleged conduct did not occur in an educational program or activity controlled by the District; and/or
- c) The conduct did not occur against a person in the United States; and/or
- d) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the District.

The District may also dismiss a formal complaint, if at any time during the investigation or hearing:

- a) A Complainant notifies the Title IX (9) Coordinator or Deputy Title IX (9) Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
- b) The Respondent is no longer enrolled or employed by the District; or
- c) Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

**3. Notice of Dismissal of Formal Complaints**

The District must promptly send written notice of the dismissal and reasons for the dismissal simultaneously to the Parties. This written notification must also include the Parties right to appeal the District's dismissal of a formal complaint based only on one or more of the appeal issues as identified in Section X(N), below.

A dismissal of a Formal Complaint under this interim administrative regulation does not preclude action under another provision of the District's board policy and administrative regulation, as applicable.

A Complainant who decides to withdraw a Formal Complaint may later request to reinstate it or refile it.

**C. Consolidation of Formal Complaints**

The District may, but is not require to, consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one

or more Respondents, or by one Party against the other Party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances.

#### **D. Resolution Timeline**

The District will make a good faith effort to complete the Resolution Process within ninety (90) to one hundred and twenty (120) business days. The timeline may be extended as necessary for appropriate cause, as determined by the Title IX (9) Coordinator. The Parties will receive written notice of and the rationale for any extensions or delays as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

#### **E. Right to an Advisor**

The Parties may each have up to two Advisors of their choice—a primary Advisor and a support Advisor—present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The role of the Advisor is to provide support and assistance in understanding and navigating the Resolution Process. The Advisor may not testify in or obstruct an interview or disrupt the process. The District has the right to determine what constitutes appropriate behavior of an Advisor and take reasonable steps to ensure compliance with this procedure. A Party does not have a right to self-representation at the hearing; the primary Advisor must conduct any cross-examination. The District must provide an Advisor of its choice, free of charge to any Party without an Advisor, in order to conduct cross-examination. If an Advisor fails to appear at the hearing, the District will provide an Advisor to appear on behalf of the non-appearing Advisor.

#### **F. Informal Resolution**

After a Formal Complaint has been received, the District may offer an Informal Resolution process, which can include, but not be limited to mediation, rearrangement of work/academic schedules, providing informal counseling or training, etc. The Informal Resolution process is intended to resolve a formal Complaint without a full investigation and adjudication process. The Informal Resolution process must not be used to resolve allegations that a District employee sexually harassed a student.

Informal Resolution may be viable when (1) the Title IX (9) Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation; (2) the Parties agree to resolve the matter through an alternate resolution mechanism, including mediation, usually before a formal investigation takes place; or (3) the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the Resolution Process (similar to above, but usually occurs post-investigation).

To initiate Informal Resolution, a Complainant needs to submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX (9) Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the District will provide the Parties with written Notice of Allegations and Request of Informal Resolution, which will include the allegations within the Formal Complaint; the right to withdraw from the Informal Resolution process at any time prior to

agreeing to a resolution; the sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the District; and that an agreed-upon resolution will preclude the Parties from resuming the Formal Grievance Process on the same allegations identified in the Formal Complaint.

The District must obtain voluntary, written consent to the Informal Resolution process from all Parties before proceeding and will not pressure the Parties to participate in Informal Resolution.

### **G. Formal Grievance Process: Notice of Investigation and Allegations**

Upon receipt of a Formal Complaint, the Title IX (9) Coordinator or Deputy Title IX (9) Coordinator will provide written Notice of Investigation and Allegations to the Parties of the District's receipt of the Formal Complaint, and include the information listed below:

- A meaningful summary of all of allegations;
- The identity of the involved Parties (if known);
- The precise misconduct being alleged;
- The date and location of the alleged incident(s) (if known);
- The specific policies implicated;
- A description of the applicable procedures;
- A statement of the potential sanctions/responsive actions that could result;
- A statement that the District presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination;
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period;
- A statement about the District's policy on retaliation;
- Information about the privacy of the process;
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor;
- A statement informing the Parties that the District's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process;
- Detail on how the party may request disability accommodations during the interview process;
- A link to the District's VAWA Brochure, if appropriate based on the allegations;
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX (9) Coordinator any conflict of interest that the Investigator(s) may have; and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the notice of allegations may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges. Notice will be made in writing and may be delivered by one or more of the following methods: in person, by mail to the last known address on file, or by email to the Parties' listed email address or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## H. Investigation

### 1. Timeline

The District will normally complete its investigation within 90 calendar days from the date of the Notice of Investigation and Allegations, unless extended by the Title IX (9) Coordinator or Deputy Title IX (9) Coordinator for good cause. For example, some investigations more time due to the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, the need for language assistance, the absence of Parties and/or witnesses, and/or accommodations for disabilities or health conditions, etc. The Title IX (9) Coordinator or Deputy Title IX (9) Coordinator will communicate regularly with the Parties to update them on the progress and timing of the investigation and will notify them in writing of the reason for any extension and the projected new timeline.

District action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### 2. The Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all the Parties and relevant witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. The Parties will have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The District must gather evidence sufficient to create an investigative report that fairly summarizes the relevant witness statements and other evidence. Throughout the investigation, the Investigator(s) shall:

- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination remain on the District, not the Parties;
- Provide all Parties and equal opportunity to present all relevant evidence, including expert witnesses, and other inculpatory and exculpatory evidence;
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- Provide to the Parties, invited or expected to participate, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate; and,
- Decline a party's request to gather information if the request seeks access to privileged information, or information about the Complainant's sexual history with anyone other than the Respondent, unless offered to prove that someone other than the Respondent committed the alleged misconduct, or if the evidence is offered to prove consent.

The District must send the Parties and their Advisors, an investigative report with evidence directly related to the allegations, in electronic format or a hard copy, with at least **10 calendar days** for the Parties to inspect, review, and submit a written response to the evidence. Any evidence the District does not intend to rely on in reaching a determination regarding responsibility must also be provided to each party, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The Investigator must consider the Parties' response to the evidence prior to the completion of the investigative report.

The District must make all such evidence subject to the Parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

The District must send the Parties, and their Advisors, a final investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, at least **10 calendar days** prior to the hearing, for their review and written response.

Although in-person interviews for the Parties and potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The District will take appropriate steps to reasonably ensure the security/privacy of remote interviews. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the Parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Provided that the Formal Complaint is not resolved through Informal Resolution, once the final investigation report is shared with the Parties, the Title IX (9) Coordinator will refer the matter for a hearing.

## **I. Hearing**

The District will designate a single Decision-maker (hearing officer) or a three-member Decision-maker panel, at the discretion of the Title IX (9) Coordinator. With a panel, one of the three members will be appointed as Chair by the Title IX (9) Coordinator. For purposes of this regulation, the term Hearing Chair is used to refer to the single Decision-maker or the Chair of the three-person Decision-maker panel. The Decision-maker(s) must not have had any previous involvement in the matter, and therefore, cannot be the Title IX (9) Coordinator or investigator(s) in the case.

### **1. Roles and Responsibilities**

The Title IX (9) Coordinator or designee shall be responsible for managing the hearing process and the necessary logistics (scheduling, notifying witnesses, providing the Parties and Decision-maker(s) with appropriate documentation and evidence, coordinating the location of the hearing, and any other support that is necessary for the hearing to run smoothly), provided their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role.

The Decision-maker(s) is responsible for conducting an impartial live hearing and issuing a written determination regarding responsibility to the Parties without bias or conflict of interest.

The Parties' Advisor of choice may be, but is not required to be, an attorney. The Parties' Advisors may be present for meetings and proceedings throughout the grievance process, subject to equal restrictions on Advisors' participation, in the District's discretion. If the party does not have an

Advisor at the hearing, the District must provide an Advisor of the District's choice, without fee or charge, solely for the purpose of conducting cross-examination.

## **2. Location**

Live hearings may be conducted with all Parties physically present in the same geographic location or, at the District's discretion, any or all Parties, witnesses, and other participants may appear at the live hearing virtually. The District must create an audio or audiovisual recording, or transcript, of any live hearing.

At the request of either party, the District must also provide for the entire live hearing (including cross-examination) to occur with the Parties located in separate rooms with technology enabling the Parties to see and hear each other.

## **J. Notice of Hearing**

The Title IX (9) Coordinator will send notice of the hearing to the Parties no less than **ten (10) business days** prior to the hearing, unless the Parties agree to an expedited schedule. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the Parties located in separate rooms using technology that enables the Decision-maker(s) and Parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX (9) Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX (9) Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the Parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Hearing Chair may reschedule the hearing.
- Notification that the Parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX (9) Coordinator if they do not have an Advisor, and the District will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.
- An invitation to contact the Title IX (9) Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- A statement that Parties cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming

the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the District and remain within the 90-120 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

If a party or Parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX (9) Coordinator at least five (5) business days prior to the hearing. Similarly, any witness who cannot attend in person should let the Title IX (9) Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

### **K. Testimony and Questioning**

At the live hearing, the Decision-maker(s) must permit each party's primary Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally.

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the Parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the Parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and Parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-maker(s) shall disregard or the Chair of a three-person panel will direct that it be disregarded.

After the Investigator(s) has/have testified, the Parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Hearing Chair. The Parties/witnesses will submit to questioning by the Decision-maker(s) and then by the Parties through their Advisors (referred to herein as "cross-examination").

All questions are subject to a relevance determination by the Hearing Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (electronically is the default, but other means of submission may be permitted by the Hearing Chair upon request if agreed to by the Parties and the Hearing Chair), the proceeding will pause to allow the Hearing Chair to consider it (and state it if it has not been stated aloud), and the Hearing Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Hearing Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Chair has final say on all questions and determinations of relevance. The Hearing Chair may consult with legal counsel on any questions of admissibility of evidence. The Hearing Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Hearing Chair has ruled on a question.

If the Parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Hearing Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX (9) Coordinator, and/or preserve them for appeal. If bias is not an issue at the hearing, the Hearing Chair should not permit irrelevant questions that probe for bias.

The Decision-maker(s) may not rely on the statement of a party or witness who does not submit to cross-examination or otherwise draw any inference about the determination regarding responsibility under this interim administrative regulation based solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

Any evidence deemed relevant and credible by the Decision-maker(s) may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the Parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If charges of policy violations other than Prohibited Conduct under this interim administrative regulation are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all Parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions in rendering a decision as to those other policy violations.

Hearings (but not deliberations) are recorded by the District for purposes of review in the event of an appeal. The Parties may not record the proceedings and no other unauthorized recordings are permitted. The Decision-maker(s), the Parties, their Advisors, and appropriate administrators of the District will be permitted to listen to the recording in a controlled environment determined by the Title IX (9) Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX (9) Coordinator.

#### **L. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether, based on the preponderance of the evidence, the Respondent is responsible or not responsible for the violation(s) of this interim administrative regulation. If a panel is used, a simple majority vote is required to make this determination. The hearing facilitator may be invited to attend the deliberation by the Hearing Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

The Hearing Chair will prepare a written determination regarding responsibility to the Parties and deliver it to the Title IX (9) Coordinator. The written determination shall include:

- Identification of the allegations potentially constituting Prohibited Conduct;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- The findings of fact supporting the determination (which includes analysis of the evidence and credibility assessments, as relevant);

- Conclusions regarding the application of the District's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, information about the disciplinary sanctions that the District may initiate against the Respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the Complainant; and,
- The Parties' right to appeal the determination as set forth in Article X.

The Title IX (9) Coordinator will provide the determination to the Parties simultaneously within seven (7) business days of receipt of the written determination through a Notice of Outcome, including their right to appeal.

### **M. Remedies and Sanctions**

Should a violation of the interim administrative regulation be substantiated, the District will effectively implement remedies for the Complainant, designed to restore or preserve the Complainant's equal educational access, such as long-term supportive measures, and may impose disciplinary sanctions on the Respondent in conformity with all relevant statutes, regulations, and District personnel policies and regulations, including the provisions of any applicable collective bargaining agreement. Factors considered when determining a sanction/recommendation may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the Prohibited Conduct
- The need for sanctions/responsive actions to prevent the future recurrence of the Prohibited Conduct
- The need to remedy the effects of the Prohibited Conduct on the Complainant and the community
- The impact on the Parties
- Any other information deemed relevant by the Decision-maker(s)

#### **1. Student Sanctions**

In cases involving Respondents who are students, the hearing process detailed herein shall serve as the due process hearing outlined in Section IV of Board Policy 5500. The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- Warning: A verbal statement that the conduct was unacceptable and that further violation of any District policy, procedure, or directive will result in more severe sanctions/responsive actions.
- Reprimand: A written statement, included in the student's disciplinary file, that the conduct was unacceptable and that further misconduct will result in more severe sanctions/responsive actions.
- Required Counseling: A mandate to meet with and engage in either District-sponsored or external counseling to better comprehend the misconduct and its effects.
- Probation: Authorization for the Respondent to return to classes, but with an understanding of expected appropriate future behavior and terms that may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed

appropriate. Any violations of the Standards of Student Conduct during this probationary period will result in further, more serious disciplinary action against the Respondent.

- Suspension: Termination of student status for a definite period of time not to exceed two academic years.
- Expulsion: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend District-sponsored events.
- Withholding Diploma: The District may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- Revocation of Degree: The District reserves the right to revoke a degree previously awarded from the District for serious violations committed by a student prior to graduation.
- Student Organizational Sanctions: Deactivation, loss of recognition, loss of some or all privileges for a specified period of time.
- Other Actions: In addition to or in place of the above sanctions, the District may assign any other sanctions as deemed appropriate.

## 2. **Employee Sanctions**

Responsive actions for an employee who is found to have engaged in Prohibited Conduct, as defined herein include:

- Warning – Verbal or Written
- Performance Improvement Plan
- Enhanced supervision, observation, or review
- Required Counseling
- Required Training or Education
- Demotion
- Transfer
- Reassignment
- Assignment to new supervisor
- Restriction of stipends, research, and/or professional development resources
- Suspension with pay
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the District may assign any other responsive actions as deemed appropriate.

## **N. Appeals**

Any party who is not satisfied with the determination of responsibility, or the dismissal of a Formal Complaint or any allegations of Prohibited Conduct in the Formal Complaint, may submit a written Request for Appeal to the Title IX (9) Coordinator within 15 calendar days of the delivery of the Notice of Outcome. Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or

3. The Title IX (9) Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

The Title IX (9) Coordinator will notify the other party in writing that an appeal was filed and forward the Request for Appeal to an assigned Appeal Officer to consider the appeal. The Appeal Officer cannot be the same person as the Title IX (9) Coordinator, Investigator(s), or Decision-maker(s) that reached the determination regarding responsibility or dismissal of the Formal Complaint.

If any of the grounds in the Request for Appeal do not meet the grounds listed above, the Appeal Officer will deny request and notify the Parties and their primary Advisors in writing of the denial and the rationale in a Notice of Appeal Outcome. Alternatively, if appropriate grounds have been identified, the Appeal Officer will (a) give both Parties a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome; and (b) prepare and issue simultaneously to the Parties a Notice of Appeal Outcome, describing the result of the appeal on each approved ground and the rationale for the result(s).

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official institutional records, or emailed to the Parties' District-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

#### **O. Retaliation**

The District prohibits retaliation against any individual who has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure. Retaliatory acts may include (1) intimidation; (2) threats; (3) coercion, (4) discrimination for the purpose of interfering with any right or privilege secured by Title IX (9) or this interim administrative regulation, or (5) charges for code of conduct violations that arise out of the same facts or circumstances as the report or complaint of sex discrimination are specifically prohibited by the District. The exercise of rights protected under the First Amendment does not constitute retaliation

Acts of alleged retaliation should be reported immediately to the Title IX (9) Coordinator and will be promptly investigated. The District will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Formal Grievance proceeding does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

#### **P. Confidentiality**

The District will maintain as confidential the identity of any Complainant, any Respondent, or any witness, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Formal Grievance process under this interim administrative regulation.

Responsible Manager: Vice Chancellor, Human Resources

**Adopted: August 12, 2020**