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**Administrative Regulation**  
Chapter 3 – General Institution

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**AR 3430            PROHIBITION OF HARASSMENT**

AR 3434 Prohibition of Sexual Harassment under Title IX

1. Introduction.

- 1.1. Santa Monica Community College District (District) is committed to providing a respectful and inclusive academic and work environment free from unlawful sex discrimination in its education programs and activities consistent with Title IX of the Education Amendments of 1972 (Title IX). Under Title IX, sexual harassment, including sexual assault, dating violence, domestic violence, and stalking is unlawful sex discrimination.
- 1.2. This Administrative Regulation (hereinafter “Regulation”) outlines the regulations and procedures of the District in connection with Board Policy 3433 – Prohibition of Sexual Harassment under Title IX. Board Policy 3433 prohibits sexual harassment in any of the District’s educational programs and activities, as well as its workplaces and employment programs.
- 1.3. This Regulation applies in all aspects of the academic environment, including but not limited to classroom conditions, grades, academic standing, employment opportunities, scholarships, recommendations, disciplinary actions, and participation in any community college activity.
- 1.4. This Regulation also applies to all terms and conditions of employment, including but not limited to recruitment, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities, and compensation.
- 1.5. This Regulation and the related policy protect students, employees, applicants for employment, and applicants for admission.
- 1.6. This Regulation applies to the District’s response to sexual harassment that allegedly occurred after August 14, 2020.

2. Definitions.

Advisor: Throughout the investigation and hearing process set forth in this regulation, both the Complainant and Respondent have a right to an Advisor of their choice, with the exception that no SMC District Title IX Deputy shall serve as an Advisor. If a Party does not have an Advisor at the time of the hearing, the District must provide the Party an Advisor of the District’s choice, free of charge. The District will maintain a list of Advisors and provide it to the Complainant or the Respondent on request. The District has no obligation to pay for an attorney or other person selected by a Party to serve as an Advisor. A Party may not ask questions at the hearing. Each Party’s Advisor is responsible for asking the

other Party and any witnesses all relevant questions and follow-up questions at the hearing. An Advisor may not testify, obstruct interviews or hearings, or disrupt proceedings.

College Disciplinary Officer/College Disciplinarian: Means the District official(s) designated by the Superintendent/President, or designee, to administer the sanctions under Administrative Regulation 4410 concerning sexual harassment by a student.

Complainant: A Complainant is an individual who alleges they are the victim of conduct that could constitute sexual harassment. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the College.

Consent: Consent means affirmative, conscious, ongoing, 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 the affirmative consent of the other or others to engage in the sexual activity has been given by each Party. 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. Under California Penal Code Section 261.5 a person under the age of 18 years cannot give consent to a person who is at least 18 years of age.

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.

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: (1) the Respondent's belief arose from the Respondent's own intoxication or recklessness; (2) the Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented; or (3) 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: (a) sleep or unconscious; (b) unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or (c) unable to communicate due to a mental or physical condition.

If coercion, intimidation, threats and/or physical force are used, there is no consent.

Days: Days refers to calendar days.

Decision-Maker: There are two separate Decision-Makers in the Title IX investigation process.

The Hearing Officer Decision-Maker (hereinafter "Hearing Officer"): The person designated by the District to oversee the hearing process and make a determination of responsibility. The Hearing Officer cannot be the Title IX Coordinator or the investigator.

Appeal Decision-Maker: The Superintendent/President or designee. The designee cannot be any person who participated in the hearing process.

District: Refers to the "Santa Monica Community College District," "Santa Monica College" or the "College," and includes all students, employees, programs, activities, property, and facilities of the Santa Monica Community College District.

**District Community:** Refers to any employee, contractor, student, member of the public, or invitee present on District property, or on property being used by the District. For purposes of this definition, a student is deemed a member of the District community while enrolled in, or in the process of applying for, enrollment as a student at the College.

**District Human Resources Representative:** The District's Vice President of Human Resources, or designee assigned to work with the Title IX Coordinator in the investigation of sexual harassment cases where an employee is accused of sexual harassment.

**Not Responsible:** Is a term used in the determination process of an investigation on the applicable evidence presented during a hearing, that the Respondent more likely than not did not commit a violation of this Regulation.

**Notice of Title IX Sexual Harassment:** Notice of Title IX sexual harassment means any allegations of sexual harassment communicated to the Title IX Coordinator or any official of the college who has the authority to institute corrective measures on behalf of the College.

**Party/Parties:** As used in this regulation, Party means either the Complainant or the Respondent. The term Parties means the Complainant and the Respondent.

**Respondent:** A Respondent is an individual reported to be the perpetrator of conduct that could constitute sexual harassment.

**Responsible:** A term used in the determination process of an investigation, based on the applicable evidence presented during a hearing, that it is more likely than not that the Respondent committed one or more violations of this Regulation.

**Retaliation:** Any act of reprisal against a person who is involved in an allegation of sexual harassment including but not limited to the Complainant, the Respondent, witnesses, investigators, and decision makers. Examples of actions that might be retaliation against the Complainant, witness, or other participant in the complaint process include: (a) singling out the person for harsher treatment; (b) lowering a grade or evaluation; (c) failing to hire, failing to promote, withholding pay increase, demotion, or discharge; (d) providing negative information about the person in order to interfere with his or her prospects for employment, admission, or academic program.

**Sanctions:** Those disciplinary measures available to the District upon the finding of the Respondent's responsibility for violations of this Regulation. Any sanctions on an employee or student will be imposed in accordance with established disciplinary procedures.

**Sex:** For purposes of this Regulation, sex may refer to sexual orientation and gender identity, or may be based on a perceived association with a particular gender/s, or to a physical act of a sexual nature, depending upon the context in which the term is used in this procedure.

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

Education Code Section 212.5 defines sexual harassment and additional examples are set forth below. Section 212.5 states:

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual’s employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

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

- Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, aid, benefit, service, progress, internship, or volunteer activity.
- Submission to, or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual.
- The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment.
- Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the community college.
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District’s education program or activity.

This definition encompasses two kinds of sexual harassment:

- "Quid pro quo" sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.
- "Hostile environment" sexual harassment occurs when unwelcome conduct based on a person’s gender is sufficiently severe, pervasive, and objectively offensive so as to alter the conditions of an individual's learning or work environment, unreasonably interferes with an individual's academic or work performance, or creates an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the

environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it unreasonably interfered with the person's academic or work performance or created an intimidating, hostile, or offensive learning or working environment.

Examples of sexual harassment which may create a hostile environment include, but are not limited to the following misconduct:

**Environmental:** An academic or work environment that is permeated with sexually-oriented talk, innuendo, insults or abuse not relevant to the subject matter of the class. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment. An environment may be hostile if unwelcome sexual behavior is directed specifically at an individual or if the individual merely witnesses unlawful harassment in their immediate surroundings. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency and severity of the conduct, and whether the conduct is humiliating, physically threatening, or unreasonably interferes with an individual's academic or work performance.

**Physical:** Inappropriate or offensive touching, assault or physical interference with free movement. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, pinching, leering, staring, unnecessarily brushing against, blocking another person, whistling or sexual gestures.

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

**Visual/Written:** The display or circulation of offensive, sexually oriented visual or written material. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.

Sexual harassment includes:

Sexual Assault.

**Dating Violence.** 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 victim. The existence of a relationship will be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. 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.

**Domestic Violence.** Violence committed by:

- a current or former spouse or intimate partner of the victim;
- a person with whom the victim shares a child in common;

- a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; and/or
- any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws of California.

To categorize an incident as domestic violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates.

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 their age or because of their temporary or permanent mental or physical incapacity.

Rape (except Statutory Rape). The District uses the definition of rape set forth in Penal Code 261.

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.

Sexual Assault with an Object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything the offender uses other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.

Sodomy. Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. This covers stalking that occurs online or through message platforms, commonly known as cyber stalking, when it occurs in the educational program or activity.

Standard of Proof: The evidentiary standard used for all determinations under this regulation shall be the preponderance of the evidence standard, i.e., that it is more likely than not that the alleged conduct occurred. Any determination shall be based upon the thorough investigation of allegations, and the weighing of evidence in totality.

Student: Any person who has applied for admission, who is or has been enrolled, or who has expressed their intent to enroll for any program within the District for the period in which the harassment occurred.

Supportive Measures: Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a formal complaint has been filed. The District will provide the Complainant and the Respondent with supportive measures as appropriate and as reasonably available to restore or preserve equal access to the District's education program or activities. These measures are designed to protect the safety of all Parties, protect the District's educational environment, or deter sexual harassment. The

District will provide supportive measures on a confidential basis and will only make disclosures to those with a need to know to enable the District to provide the service. Supportive measures may include counseling, extensions of deadlines and other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Parties, changes in work, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Title IX Coordinator: The person designated by the Superintendent/President to be responsible for oversight and implementation of Title IX. The Assistant Director of Human Resources, Compliance and Title IX (hereinafter "Title IX Coordinator") is responsible for overseeing the District's compliance with Title IX and all other related and applicable Federal and California laws regarding sex discrimination, stalking, and relationship violence against the District Community. Whenever these regulations provide that the Title IX Coordinator shall take certain action, such action may be performed by an authorized designee.

The District will publicize the identity of the Title IX Coordinator to the entire District community.

Title IX Deputy: A person designated by the Title IX Coordinator responsible for assisting in the oversight and implementation of Title IX compliance.

Title IX Investigator: The Title IX Coordinator or the Title IX Coordinator's designated person responsible for the investigation of complaints of sexual harassment.

### 3. Jurisdiction

3.1. This regulation applies if the conduct meets the following three jurisdictional requirements:

3.1.1.1. The conduct took place in the United States.

3.1.1.2. 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.

3.1.1.3. The conduct meets the definition of sexual harassment as set forth in this Regulation.

3.2. The District will respond to complaints consistent with the requirements of this Regulation regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity of the District.

3.3. If the alleged off-campus sexual harassment occurred in the context of an education program or activity of the District, the District will treat the complaint in the same manner that it treats complaints regarding on-campus conduct. In other words, if the District determines that the alleged harassment took place in the context of an education program or activity of the District, the fact that the alleged sexual harassment took place off campus does not relieve the District of its obligation to investigate the complaint.

3.4. Whether the alleged sexual harassment occurred in this context may not always be apparent from the complaint. The District may need to gather additional information in order to make such a determination. Off-campus education programs and activities are clearly covered and include, but are not limited to District-sponsored field trips, including athletic team travel and events for school clubs that occur off campus.

#### 4. Oversight of the Title IX Process

4.1. The Title IX Coordinator oversees implementation of this Regulation and has the primary responsibility for coordinating the District's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment and retaliation prohibited under this Regulation.

4.2. The Title IX Coordinator is required to respond to reports of sexual harassment or misconduct, will handle information received with the utmost discretion, and will share information with others on a need-to-know basis.

#### 5. Reporting of Sexual Harassment

##### 5.1. Reporting Overview

5.1.1. Any individual may report sexual harassment to the Title IX Coordinator.

5.1.2. 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.

5.1.3. Individuals have the opportunity to decide whether they want to pursue a formal Title IX complaint. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus personnel. On campus, some personnel will maintain confidentiality and are not required to report actual or suspected sexual harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless the Complainant has requested the information be shared. Other personnel may be required to report actual or suspected sexual harassment to the Title IX Coordinator.

5.1.4. Reporting sexual harassment to the Title IX Coordinator does not automatically initiate an investigation under these procedures. A report allows the District to provide a wide variety of support and resources to impacted individuals and to prevent the reoccurrence of the conduct. A Complainant filing a formal complaint will initiate an investigation. In addition, the Title IX Coordinator may initiate an investigation by filing a complaint if a formal complaint is not filed by the Complainant.

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

- 5.1.6. The District will document reports of sexual harassment in compliance with the Clery Act, a federal law requiring data collection of crime within the campus geography. Under the Clery Act, the District does not document personal information; the District reports the type of conduct, and the time, date, and location.

## 5.2. Responsible Employees with Authority to Act.

- 5.2.1. Responsible Employees are those employees who have authority to take action to redress sexual harassment or provide supportive measures to students, or who have the duty to report sexual harassment to an appropriate school official who has that authority. Responsible Employees are required to report allegations of sexual harassment to the Title IX Coordinator promptly. All other employees are encouraged to report allegations to the Title IX Coordinator but are not required to do so.

### 5.2.2. The following are considered Responsible Employees:

- 5.2.2.1. Academic Administrators (including project managers)
  - 5.2.2.2. Classified Managers
  - 5.2.2.3. Coaches of any student athletic or academic team or activity.
  - 5.2.2.4. Faculty and associate faculty, teacher, instructors, or lecturers
- 5.2.3. Responsible Employees are required to report all relevant information they know about sexual harassment including the names of the Respondent, the Complainant, any other witnesses, the date, time, and location of the alleged incident.
  - 5.2.4. Excluded employees: To ensure that students have a mechanism to confidentially report incidents of sexual harassment, employees of the Center for Wellness and Wellbeing, Student Health Services Center, and Ombuds Office are not Responsible Employees and therefore are able to hold confidentiality.
  - 5.2.5. Nothing in this regulation shall negate the mandatory reporting responsibilities required under any other provision of law such as California's child abuse reporting law.

## 5.3. Receipt of Report. Upon receiving a report of sexual harassment, the Title IX Coordinator must:

- 5.3.1. Promptly contact the Complainant to discuss the availability of supportive measures.
- 5.3.2. Provide the Complainant with support measures as appropriate. The Complainant's wishes with respect to supportive measures should be considered.
- 5.3.3. Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint and provide them as appropriate.
- 5.3.4. Advise the Complainant that they have the opportunity to decide whether they want to pursue a formal Title IX complaint.
- 5.3.5. Explain to the Complainant the process for filing a formal complaint, including:
  - 5.3.5.1. An informal resolution option (upon submission of a formal complaint).

5.3.5.2. A formal complaint process including an investigation and a hearing (upon submission of a formal complaint).

5.4. Timeframe for Reporting a Complaint. The District does not limit the time for filing a complaint of sexual harassment. However, the failure to file complaints in a timely manner may limit the administrative remedies available to the District and impede the District's ability to stop unlawful behavior. Incidents that are not reported while evidence is still available may reduce the District's ability to effectively investigate and respond to such complaints.

#### 5.5. Methods for Reporting Sexual Harassment.

5.5.1. Responsible Employees are required, under this Section, to report known or reasonably suspected incidents of sexual harassment to the Title IX Coordinator. Responsible Employees should report all known facts about the alleged sexual harassment, including, if known: the name of the alleged perpetrator; the person who experienced the alleged sexual harassment; other persons involved; and any other relevant facts, including the date, time, and location of the alleged sexual harassment.

5.5.2. Complainants may submit reports online or in person to the Title IX Coordinator. Any person may report sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual harassment) at any time, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Complainants may also report incidents of sexual harassment directly to the Office of Human Resources, Campus Police, or to the local law enforcement where the incident occurred. Students may also report incidents of sexual harassment to the Center for Wellness and Wellbeing, Student Health Services Center, or Ombuds Office if they wish the details of an incident to be kept confidential.

#### 5.6. Confidentiality in Connection with a Report of Sexual Harassment.

5.6.1. Before the Complainant reveals information that they may wish to keep confidential, Responsible Employees should make every effort to ensure that the Complainant understands: (1) Responsible Employees' obligation to report the names of the alleged perpetrator and the Complainant involved in the alleged sexual harassment, as well as all other relevant facts, to the Title IX Coordinator; (2) the Complainant's option to request that the school keep the details of an incident confidential, which the Title IX Coordinator on behalf of the District will consider but cannot guarantee, and (3) the Complainant's ability to share the information confidentially with the Center for Wellness and Wellbeing, Student Health Services or Ombuds Office or with non-College entities that provide advocacy, health, mental health or sexual assault related services.

5.6.2. When the District becomes aware of sexual harassment, the District may have an obligation to proceed with an investigation, regardless of a Complainant's wishes to the contrary, in order to ensure the safety of the District community. Complainants are not required to participate; however, this may limit the District's ability to effectively respond to the incident.

- 5.6.3. If the Complainant requests or insists that their name or other identifiable information not be disclosed to the alleged perpetrator, the District will inform the Complainant that honoring the request may limit the District's ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. The District will also explain that Title IX includes protections against retaliation, and that District officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs, including without limitation, against any retaliatory actions taken by the District and District officials.
- 5.6.4. If the Complainant continues to ask or insists that their name or other identifiable information not be revealed, the District will evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment throughout the District. Thus, the District will weigh the request for confidentiality against the following factors: (1) the seriousness of the alleged harassment; (2) whether other students or employees are at risk; (3) the Complainant's age; (4) whether there have been other similar complaints about the same individual; (5) whether there are other means of obtaining relevant evidence; and (6) the Respondent's rights to receive information about the allegations.
- 5.6.5. The District understands that persons may be reluctant to file complaints of sexual harassment when alcohol and/or drugs were used. Whenever possible, the District will respond educationally, rather than punitively, to the use of drugs and/or alcohol so as to promote the reporting of sexual harassment. However, the District reserves the right to other remedies dependent upon the severity of the alcohol or drug use.
- 5.7.** Formal Complaints. To file a formal complaint, the Complainant must be participating in or attempting to participate in the education program or activity of the District with which the formal complaint is filed. If the Complainant does not file a formal complaint, the Title IX Coordinator may file and sign a formal complaint.
- 5.8.** Retaliation. Any form of retaliation or intimidation against anyone who has complained of or formally reported discrimination, harassment, or sexual harassment, or has participated in an investigation of such a complaint, regardless of whether the complaint relates to the complaining person or someone else, will not be tolerated, and violates Board Policy, this procedure, and applicable law. The District will take steps as necessary to prevent retaliation against an individual who filed a complaint, or against those who participated in investigatory or other proceedings such as by providing information as witnesses. If the District knows of possible retaliation, it will take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the District to protect the Complainant, the Respondent and witnesses. At a minimum, this includes making sure that the Complainant, the Respondent, and witnesses know how to report retaliation and by responding promptly and appropriately to address continuing or new problems. A complaint of retaliation can be filed under Administrative Regulation 3435 - Discrimination, Harassment Complaints, and Investigations. The exercise of rights under the First Amendment of the U.S. Constitution does not constitute retaliation for purposes of this Regulation.

**5.9. Filing of Formal Complaints.** The District encourages complaints to be filed on the District's prescribed complaint form. The complaint must be a document (such as described above) or electronic transmission of that document filed by the Complainant or signed by the Title IX Coordinator alleging sexual harassment against the Respondent and requesting that the District investigate the allegation of sexual harassment. The complaint must contain the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint. A formal complaint of sexual harassment must be filed with the Title IX Coordinator via one of the following methods:

- emailed to [hrcomplaints@smc.edu](mailto:hrcomplaints@smc.edu)
- in person delivery to: Office of Human Resources, 2714 Pico Blvd., Santa Monica, CA 90405
- mailed to: Santa Monica College, Attention: Title IX Coordinator, Office of Human Resources, 1900 Pico Boulevard, Santa Monica, CA 90405

## **6. Investigations**

**6.1.** The District will investigate any allegation of sexual harassment using the procedures set forth in this Regulation.

**6.2.** Timeframe for Investigating Sexual Harassment Complaints. The District will investigate and complete an Investigate Report (as described below) within 90 days from the date the complaint was filed unless there are extenuating circumstances that prohibit the timeliness of the completion of the investigation. If an extenuating circumstance exists that prohibits the completion of an investigation within 90 days, the District will inform the Complainant and the Respondent in writing of such delay.

**6.3.** Interim Measures. The District may pursue interim measures to protect the District community during the pendency of an investigation. These measures may include:

6.3.1. Seeking a judicial order barring a student entering District property as authorized by Education Code Section 76030(b).

6.3.2. Seeking a judicial order barring an employee from entering District property as authorized by Code of Civil Procedure Sections 527.6 and 527.8.

6.3.3. Placing an employee on paid administrative leave pending the outcome of the investigation so long as Education Code Section 87623 is followed.

6.3.4. Seeking an interim suspension of a student in accordance with Administrative Regulation 4410. In any such proceeding which seeks only a suspension pending conclusion of the Title IX proceeding, the issues shall be limited to whether there is reasonable cause that a violation of Title IX occurred; that the student committed such violation, and that the interim suspension is necessary in order to protect the safety or welfare of persons or property.

6.3.5. Directing the parties to have no contact with one another during the pendency of the investigation.

- 6.4.** Notice to Parties. Upon receipt of a formal complaint, the Title IX Coordinator will provide:
- 6.4.1. Notice of the District's Title IX policies and procedures and the evidentiary standard used for the determination of facts.
  - 6.4.2. Notice of the allegations of alleged sexual harassment with sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
  - 6.4.3. 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 complaint process.
  - 6.4.4. Notice that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney.
  - 6.4.5. 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.
  - 6.4.6. Notice that both Parties have the right to receive supportive measures as appropriate.
  - 6.4.7. 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 complaint process.
  - 6.4.8. During the investigation, the District may decide to investigate allegations not contained in the notice to Complainant and Respondent referenced above; the Title IX Coordinator will therefore provide notice in writing of the additional allegations to the Parties.
- 6.5.** Mandatory dismissal of formal complaint. The District must investigate the allegations in a formal complaint. However, the District must dismiss the formal complaint and will not process the complaint under these procedures if any of the following three circumstances exist:
- 6.5.1. If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in this Regulation.
  - 6.5.2. If the conduct alleged did not occur in the District's education program or activity.
  - 6.5.3. If the conduct alleged did not occur against a person in the United States.
- 6.6.** Discretionary dismissal of formal complaint. The District has discretion to dismiss a formal complaint or any allegation under the following circumstances:
- 6.6.1. If at any time during the investigation or hearing, the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations.
  - 6.6.2. If the Respondent is no longer enrolled or employed by the District.

- 6.6.3. If there are specific circumstances that prevent the District from gathering evidence sufficient to reach a determination regarding responsibility as to the formal complaint or allegations.
- 6.7. Notification of Dismissal. If the District dismisses the formal complaint or any allegations, the Title IX Coordinator shall simultaneously provide the Parties with written notice of the dismissal and reason. The District will also notify the Parties of their right to appeal. The District may commence proceedings under other policies and procedures after dismissing a formal complaint.
- 6.8. Consolidation of Formal Complaints. The District may, but is not required to, consolidate formal complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of sexual harassment arise out of the same facts or circumstances.
- 6.9. Equitable Treatment of the Parties. The District's determination of responsibility is a neutral, fact-finding process. The District will treat the Complainant and the Respondent equitably. The procedures will apply equally to both Parties. The District will not discipline the Respondent unless it determines the Respondent was responsible for sexual harassment at the conclusion of the complaint process.
- 6.10. Statement of Presumption of Non-Responsibility. The investigation is a neutral, fact-finding process. The District presumes all reports are in good faith. Further, the District presumes the Respondent is not responsible for the alleged conduct. The District makes its determination regarding responsibility at the conclusion of the complaint process.
- 6.11. Bias or Conflict of Interest. The Title IX Coordinator, investigators, Hearing Officer, Appeal 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 the Complainant or the Respondent generally. Actual bias is an articulated prejudice in favor of or against one Party or position; it is not generalized concern about the personal or professional backgrounds, positions, beliefs, or interests of a person involved in the process.
- 6.12. Training. The District will ensure that the Title IX Coordinator, investigators, Decision-Makers, Advisors, Title IX Deputies, and facilitators receive training on:
- 6.12.1. The definition of sexual harassment in this procedure.
  - 6.12.2. The scope of the District's education program or activity.
  - 6.12.3. Procedures and processes for conducting an investigation.
  - 6.12.4. The complaint process including conducting hearings, appeals, and informal resolution processes.
  - 6.12.5. How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Any materials used to train the Title IX Coordinator, investigators, Decision-Makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

- 6.13.** Non-Disclosure Agreements. Prior to the inspection of any evidence, the Parties and Advisors are required to sign a non-disclosure agreement. The non-disclosure agreement restricts dissemination of any of the evidence subject to inspection and review or use of this evidence for any purpose unrelated to the Title IX complaint under investigation. The non-disclosure agreement will not prohibit communication by the Parties which are protected by applicable law.
- 6.14.** Use of Privileged Information. The District's formal complaint procedure does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g., attorney-client privilege, doctor-patient privilege, spousal privilege, etc.), unless the person holding the privilege provides voluntary, written consent to waive the privilege.
- 6.15.** Informal Resolution.
- 6.15.1. If the District determines that a formal complaint is appropriate for informal resolution, it may provide the Parties with the opportunity to participate in an informal resolution process, including mediation, at any time prior to reaching a determination regarding responsibility. The Title IX Coordinator shall facilitate the informal resolution process.
- 6.15.2. The District will provide the Complainant and Respondent written disclosure of the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
- 6.15.3. The District must obtain the Parties' voluntary, written consent to the informal resolution process. If the Parties reach an agreement, the District does not have to complete a full investigation and adjudication of a report of sexual harassment. At any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and resume the complaint process with respect to the formal complaint.
- 6.15.4. The informal resolution process is not available to resolve allegations that an employee sexually harassed a student.
- 6.16.** Gathering Evidence and Burden of Proof. The District, not the Parties, has the responsibility to gather information and interview witnesses. The investigator will interview the Complainant, the Respondent, and any witnesses, if appropriate. The investigator will also gather information, documents, and materials that are relevant to the investigation. The investigation of complaints will be adequate, reliable, and impartial.
- 6.17.** Notice of Investigative Interview. The District will provide written notice of the date, time, location, participants, and purpose of all investigative interviews to the Party whose participation is invited or expected, with sufficient time for the Party to prepare to participate. The Party has the right to have an Advisor present at the interview.

- 6.18.** Declining/Reluctance to Participate in an Investigation. The Complainant and/or the Respondent may decline to participate in the investigation and any subsequent proceeding. In these cases, the investigation and adjudication process will continue without the benefit of the Complainant's and/or the Respondent's input.
- 6.19.** No consideration of certain relationships. Investigators and decision-makers will not consider the romantic or sexual history of either the Complainant or the Respondent in cases involving allegations of sexual harassment, except for testimony about the Complainant's and the Respondent's shared sexual history that the decision-makers deems relevant. The existence of a sexual relationship between the Complainant and the Respondent shall not support the inference of consent to alleged sexual harassment.
- 6.20.** Investigative Report. The results of the investigation of a formal complaint will be set forth in a written report that will include at least all of the following information:
- 6.20.1. A description of the circumstances giving rise to the formal complaint.
  - 6.20.2. A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed.
  - 6.20.3. A summary of the testimony of each witness the investigator interviewed.
  - 6.20.4. An analysis of relevant evidence collected during the investigation, including a list of relevant documents.
  - 6.20.5. A specific finding as to whether the allegations occurred using a preponderance of the evidence standard.
  - 6.20.6. The investigator will not make a determination regarding responsibility.
- 6.21.** Preliminary Investigative Report and Evidence Review. Prior to the completion of the report, the District will send the preliminary investigative report and evidence obtained during the investigation to the Parties and their Advisors, if any. The preliminary investigative report may be provided in electronic format or a hard copy, for review and written response. The Parties have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from the Party or other source. The Parties will have at least ten (10) days to submit a written response to the preliminary investigative report.
- 6.22.** Final Investigative Report. The investigator, after reviewing and considering the Parties' responses to the preliminary investigative report and conducting any additional investigation warranted by the responses, will complete the final investigative report that fairly summarizes the relevant evidence. The investigator shall send the final investigative report to the Title IX Coordinator and to the Party and their Advisors in an electronic form or a hard copy. The Parties will have at least ten (10) days to submit a written response.
- 6.23.** Receipt of Investigative Report. Within five (5) days of receipt of the final investigative report, the Title IX Coordinator will make a determination that:

- 6.23.1. The District will convene a hearing before an impartial fact-finding Hearing Officer who will hear testimony from the Parties and relevant witnesses, review the relevant evidence, and make a determination as to responsibility.
- 6.23.2. The matter will be dismissed because the investigation revealed facts that either: (a) require a dismissal under Title IX (e.g., the conduct alleged would not constitute Title IX Prohibited Conduct, even if true, did not occur in the District's education program or activity, or did not occur in the United States); or (b) allow for a dismissal (e.g., if the Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint, the Respondent is no longer enrolled or employed by the District, or specific circumstances prevent the investigator from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein). If a determination is made to dismiss the Formal Complaint, the Parties may exercise their right to appeal using one or more of the bases for appeal set forth below. In the absence of a dismissal, the matter will proceed to hearing.

## 7. Hearings and Appeals

- 7.1. **Hearing.** After completing an investigation and prior to completing a determination regarding responsibility, the District will hold a live hearing to provide the Complainant and the Respondent an opportunity to respond to the evidence gathered before the Hearing Officer. Neither Party may choose to waive the right to a live hearing, but the Parties can choose whether to participate in the hearing or answer some or all cross-examination questions.
- 7.2. **Management of Hearing Process.** The Title IX Coordinator shall be responsible for managing the hearing process and the necessary logistics (scheduling, notifying witnesses, providing the Parties, Advisors and Hearing Officer with appropriate documentation and evidence, coordinating the location of the hearing, and any other support that is necessary for the hearing to run smoothly).
- 7.3. **Notice.** The District will provide the Parties at least fifteen (15) days advance written notice of the date, time, location, participants, the identity of the Hearing Panel, and purpose of the hearing.
- 7.4. **Hearing Officer.** The District shall appoint a Hearing Officer. Only individuals who have participated in Hearing Officer training conducted by the District or comparable in-depth panel training will be permitted to serve as a Hearing Officer. Students are not permitted to serve as a Hearing Officer.
- 7.5. **Hearing Format.** The District may provide a live hearing with the Parties physically present in the same geographic location. A live hearing also includes a hearing at which any or all Parties, witnesses, and other participants appear virtually, with technology enabling participants simultaneously to see and hear each other in real time. In the event a hearing is conducted with the Parties physically present, either Party may request that they appear from a separate location using technology that allows all participants to simultaneously see and hear each other in real time. 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.
- 7.6. The District will make the information reviewed during the evidence review available at the hearing for reference and consultation. The District will not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence.

- 7.7.** Objection to Officer. In cases where the Complainant or the Respondent objects to the Hearing Officer based on a conflict of interest, the Complainant or the Respondent may request the Title IX Coordinator to select a different Hearing Officer. The Complainant or the Respondent must make this request to the Title IX Coordinator in writing within five (5) days of the receipt of notice of the hearing. The Title IX Coordinator will respond to the objection in writing within five (5) days either rejecting the objection or designating a different Hearing Officer.
- 7.8.** Responsibilities of the Hearing Officer. The Hearing Officer shall:
- 7.8.1. Ensure that only relevant cross-examination questions must be answered by the Party or witness before the Party or witness answers. The Hearing Officer may exclude questions that are irrelevant or duplicative.
  - 7.8.2. Ensure that the hearing process is administered in a fair and impartial manner and that all participants observe basic standards of decorum and that all questions are asked and answered in a respectful, non-argumentative, and non-abusive way. The Hearing Officer will be responsible for ensuring that the Parties and witnesses are protected from answering questions designed to be harassing, intimidating, or abusive.
  - 7.8.3. Not make credibility determinations based on an individual's status as the Complainant, the Respondent, or witness.
  - 7.8.4. Render a decision using a preponderance of the evidence standard using the facts as presented through careful examination of the final investigative report, witness testimony, including cross-examination, and the review of all relevant evidence.
- 7.9.** Responsibilities of the Parties at the Hearing. The Parties shall:
- 7.9.1. Truthfully answer questions posed by the Hearing Officer.
  - 7.9.2. Truthfully answer relevant questions posed by the other Party via their Advisor.
  - 7.9.3. Attend the hearing in its entirety, being present for all witness testimony.
  - 7.9.4. Adhere to basic standards of decorum by answering questions posed by the Hearing Officer or the Party's Advisor in a respectful, non-argumentative, and non-abusive way.
- 7.10.** General Rules for the Hearing.
- 7.10.1. Technical rules of process and evidence, such as those applied in criminal or civil court, are not used in these proceedings. Evidence permitted at the live hearing is limited to only that which is relevant to the allegations in the formal complaint. Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. Evidence not previously provided in advance of the hearing may be accepted for consideration at the discretion of the Hearing Officer.
  - 7.10.2. All witnesses will be considered the District's witnesses. Names of witnesses may be provided by either Party or others who may have been involved with the case. To assist this process, those who have not met with the investigator will be requested to provide a brief statement to the Title IX Coordinator outlining the relevant information they will share at least three (3) days in advance of the hearing.

- 7.10.3. Parties, through their Advisors, will ask each question one at a time and allow the Hearing Officer to determine the relevance of the question before the other Party or witness is asked to answer. This process will be strictly adhered to throughout the entire hearing process. A lengthy or complicated explanation in support of a relevance determination need not be given. Submission of written questions for the purpose of ascertaining relevance is not permitted.
- 7.10.4. Parties have the right to cross-examine any witness, including the investigator, and present both fact and expert witnesses which may include investigators. Only Advisors can conduct cross-examination on behalf of the Party. The Party's Advisor must conduct cross-examination directly, orally, and in real time. A Party may never personally conduct cross-examination; however, the Party should be an active participant in forming the questions posed by their Advisor. Cross-examination is designed to allow the Party to challenge the consistency, accuracy, memory, and credibility of the opposing Party or witness. Cross-examination must be relevant, respectful, and conducted in a non-abusive way.
- 7.10.5. The District retains discretion under Title IX to apply rules of decorum at a live hearing that require participants (including Parties, witnesses, and Advisors) to refrain from engaging in abusive, aggressive, or disruptive behavior. Failure to adhere to the rules outlined by the Hearing Officer may result in a decision to cease the hearing and reconvene once the disruptive behavior has been addressed.
- 7.10.6. At the request of one or both Parties, the Complainant and the Respondent will be permitted to participate in the hearing in separate rooms, assisted by technology that allows each party to see, hear, and ask questions of the other party live and in real-time. Witnesses may also appear in separate rooms, but also must be clearly visible and audibly clear to the Hearing Officer, the Parties, and their Advisors.
- 7.10.7. There shall be a single audio record of all Title IX hearings which will be available to the Parties. The Parties are not permitted to record the hearing. The recording shall be the property of the District and will be maintained with all records of any actions, including any supportive measures, taken in response to a report or formal complaint of prohibited conduct for no fewer than seven (7) years.
- 7.10.8. If a party or witness does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party or witness in reaching a determination regarding responsibility to the extent required by 34 C.F.R. § 106.45(b)(6)(i) but may reach a determination regarding responsibility based on evidence that does not constitute a statement by that party. The decision-maker may also consider evidence created by the party where the evidence itself constituted the alleged prohibited conduct. Such evidence may include, by way of example but not limitation, text messages, e-mails, social media postings, audio or video recordings, or other documents or digital media created and sent by a party as a form of alleged sexual harassment, or as part of an alleged course of conduct that constitutes stalking. The Hearing Officer may not draw any inference as to the responsibility of the Respondent based on any Party or witness's absence or refusal to undergo cross-examination. If the Party's Advisor does not appear at the time of the hearing, the District will provide an Advisor for that Party without fee or charge, to conduct cross-examination on behalf of that Party.

- 7.10.9. If the matter involves more than one Respondent, the Title IX Coordinator, in their discretion, may permit the hearing concerning each Respondent to be conducted either jointly or separately.
- 7.10.10. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant and thus not permitted, unless the 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.
- 7.11.** Hearing Officer Determination. Following the conclusion of the hearing, the Hearing Officer will determine whether the evidence, including the information provided in and by the final investigative report, the Parties' written statements, if any, the evidence presented at the hearing, and the testimony of the Parties and witnesses, establishes that it is more likely than not that the Respondent committed a violation of this Regulation. The Hearing Officer will typically submit its finding of responsibility or non-responsibility and rationale in writing to the Title IX Coordinator within 15 days of the hearing. The Hearing Officer may extend this time for not more than 30 days for good cause. The Hearing Officer will notify the Title IX Coordinator and the Parties of any extension. Decisions made by the Hearing Officer are final pending the appeal process.
- The written determination will include:
- 7.11.1. Identification of the allegations potentially constituting Title IX sexual harassment as defined in these procedures.
- 7.11.2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including who conducted the investigation and gave notifications to the Parties. The determination will also state when, where, and the date the investigator interviewed the Parties and witnesses, conducted site visits, the methods used to gather other evidence. The procedural section should also discuss the dates and how the Parties were provided the opportunity to review and inspect evidence and the date of any hearings held and who attended the hearing.
- 7.11.3. Findings of fact supporting the determination. In making these findings, the Hearing Officer will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility.
- 7.11.4. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility.
- 7.11.5. The District's procedures and permissible bases for the Complainant and the Respondent to appeal.
- 7.12.** Receipt of Hearing Determination. Within five (5) days of receipt of the Hearing Officer determination, the Title IX Coordinator shall take the following action:
- 7.12.1. In the event the Hearing Officer finds the Respondent not responsible for a violation of this regulation, provide the written determination required by Section 7.14.

7.12.2. In the event the Hearing Officer finds the Respondent responsible for a violation of this regulation, provide a copy of the determination to the appropriate sanctioning authority, if applicable. The sanctioning body will assign sanctions within 15 days of receipt of the finding in both student cases and employee cases. Upon receipt of the proposed sanctions, the Title IX Coordinator shall provide the written determination required by Section 7.14.

**7.13. Disciplinary Sanctions and Remedies.**

7.13.1. The District will take disciplinary action against the Respondent found responsible for a violation of this regulation and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense.

7.13.2. The District must have completed the complaint procedures (investigation, hearing, and any appeal, if applicable) before imposing disciplinary sanctions or any other actions that are not supportive measures against a Respondent.

7.13.3. Sanctions for Student Respondents. If the Respondent is found to be responsible as an outcome of the Title IX Hearing, the Office of Student Judicial Affairs will determine appropriate sanctions, taking into account whether a sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation. Sanctions for a finding of responsibility will depend upon the nature and gravity of the misconduct, and any record of prior student discipline, if applicable. Sanctions may include, without limitation, written warning, removal from extracurricular activities, disciplinary probation, suspension or expulsion, mandated counseling, and/or other educational sanctions as deemed appropriate, including No Contact Orders. The student will have the right to appeal the sanction, but not the finding of responsibility to the Student Conduct Appeals Committee in accordance with established administrative regulations.

7.13.4. Sanctions for Employee Respondents. If the Respondent is found to be responsible as an outcome of the Title IX Hearing, the Vice President for Human Resources, in consultation with the relevant District officials and the employee's supervisor, will determine the appropriate remedy and/or sanction to be imposed. Sanctions may include written reprimand, notice of unprofessional conduct, mandatory training or education, No Contact Order, demotion, loss of associate faculty status, loss of temporary employment, recommended revocation of tenure, and/or termination of employment depending on the circumstances and severity of the violation. All sanctions shall be imposed in accordance with the applicable provisions of the Education Code, Merit Rules, or governing collective bargaining agreement.

7.13.5. Remedies. Within five (5) days of receipt of the determination finding the Respondent responsible for a violation of this Regulation, the Title IX Coordinator shall identify the appropriate remedies to be provided to the Complainant, which may include:

7.13.5.1. Providing an escort to ensure that the Complainant can move safely between classes and activities.

7.13.5.2. Ensuring that the Complainant and the Respondent do not attend the same classes or work in the same work area.

- 7.13.5.3. Providing counseling services or a referral to counseling services.
- 7.13.5.4. Providing a referral to medical services.
- 7.13.5.5. Providing academic support services, such as tutoring.
- 7.13.5.6. Arranging for the 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.
- 7.13.5.7. 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.

**7.14.** Written Determination. The Title IX Coordinator shall provide written determination to the Parties simultaneously. The determination shall include the Hearing Officer determination, any sanctions imposed on the Respondent, and any remedies provided to the Complainant. The determination 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.

**7.15.** Appeal of Dismissal of a Formal Complaint or of the Determination of Responsibility.

7.15.1. The Complainant or the Respondent may appeal the District's determination regarding responsibility or the dismissal of a formal complaint or any allegations. The Complainant or the Respondent must submit a written appeal to the Title IX Coordinator within ten (10) 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.

7.15.2. Grounds for Appeal. In filing an appeal, the Party must state the grounds for appeal and a statement of facts supporting those grounds. The grounds for appeal are as follows:

7.15.2.1. A procedural irregularity affected the outcome.

7.15.2.2. New evidence was not reasonably available at the time the District's determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome.

7.15.2.3. The Title IX Coordinator, investigator, or Hearing Panel had a conflict of interest or bias for or against the Complainant or the Respondent generally or the individual Complainant or Respondent that affected the outcome.

7.15.3. Appeal Procedure. If the Complainant or the Respondent submits an appeal to the District, the Title IX Coordinator will:

7.15.3.1. Notify the other Party in writing within five (5) days of receiving a Party's appeal.

7.15.3.2. Allow the non-appealing Party at least ten (10) days from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome.

- 7.15.4. The Superintendent/President or designee will serve as the Appeal Decision-Maker. Any designee shall not have participated in the investigation or hearing. The Appeal Decision-Maker will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 30 days after the Appeal Decision-Maker receives the response to the appeal or the last day to provide a response. The District will provide the written decision simultaneously to both Parties.
    - 7.15.5. The Appeal Decision-Maker may extend or otherwise modify the deadlines provided above. Either Party may seek an extension by submitting a written request to the Appeal Decision-Maker explaining the need for the extension and the proposed length of the extension. The Appeal Decision-Maker will respond to the request within 48 hours in writing and will inform the Parties simultaneously whether the extension is granted.
8. Special Accommodations. Any Party may have an interpreter attend any interview or hearing. An interpreter accompanying either Party must provide evidence of their certification as a certified interpreter to the investigator and Title IX Coordinator at least five (5) days prior to the interview or proceeding. The interpreter may only interpret for the Party who requested them and shall not expand or enhance the Party's testimony. Likewise, the use of assistive technology must be reviewed and approved by the Title IX Coordinator at least five (5) days prior to the commencement of the proceeding.
9. Prevention and Education. The District is committed to educating the District community of the impact that sexual harassment has on an individual and the District community. Therefore, the District will:
  - 9.1. Provide campus-wide awareness programs and initiatives (fall and spring) on sexual harassment, bystander intervention, and affirmative consent.
  - 9.2. Publish an online video on sexual harassment, bystander intervention, and affirmative consent for all new students entering our College campus.
  - 9.3. Communicate effectively with administrators, faculty members, staff and students regarding sexual harassment policies, protocols, and any federal/state legislation changes through an interactive campus website.
  - 9.4. Collect, assess, and devise campus-wide strategies to improve campus climate among administrators, faculty members, staff, and students.
  - 9.5. Develop sustainable partnerships with outside agencies to promote awareness and increase services for administrators, faculty members, staff and students, and/or provide victim advocacy to students impacted by gender-based discrimination and any other forms of sexual harassment.
  - 9.6. Develop a comprehensive, trauma-informed training program for campus officials and students involved in investigating and adjudicating sexual harassment cases.
  - 9.7. In collaboration with the District's Office of Human Resources, provide gender-based discrimination and other forms of sexual harassment awareness and reporting training for all District employees.

## 10. False Reports

- 10.1. A student found to have wrongfully and intentionally accused another of any violation of this regulation shall be subject to discipline up to and including expulsion in accordance with the Code of Student Conduct.
- 10.2. An employee found to have wrongfully and intentionally accused another of any violation of this regulation shall be subject to discipline up to and including termination in accordance with Board policies, Merit Rules, procedures, and collective bargaining agreements.
- 10.3. Any other person found to have wrongfully and intentionally accused another of any violation of this regulation shall face such consequence as determined by the District after consideration of the nature and circumstances of the act and may include contract termination or filing reports to appropriate law enforcement officials.

## 11. File retention. The District will retain on file for a period of at least seven (7) years after closing the case copies of:

- 11.1. The original report or complaint.
- 11.2. Any actions taken in response to the complaint, including supportive measures.
- 11.3. Any informal resolution and the result.
- 11.4. The investigative report including all evidence gathered and any responses from the Parties.
- 11.5. The District's determination regarding responsibility.
- 11.6. Audio or audiovisual recording or transcript from a hearing.
- 11.7. Any appeal and the result.
- 11.8. Records of any disciplinary sanctions imposed on the Respondent.
- 11.9. Records of any remedies provided to the Complainant.
- 11.10. All Title IX training materials.

The District will make these documents available to the U.S. Department of Education Office for Civil Rights in response to an official request.

## 12. District Notification

The District will distribute a notice of nondiscrimination, including, but not limited to all information required by Ed Code § 66281.5 to all of the following:

- each employee of the District;
- each volunteer who will regularly interact with students; and
- each individual or entity under contract with the District to perform any service involving regular interaction with students at the institution.

*Received and Reviewed by DPAC: 12-8-2021*

*Approved by Senior Staff: 12-14-2021*