



**DRAFT**

**BP 3122 – Sexual Misconduct**

Sexual Misconduct comprises a broad range of unwelcome behaviors focused on Sex and/or gender that may or may not be sexual in nature. Any intercourse or other intentional sexual touching or activity without the other person's Consent is Sexual Assault, and is a form of sexual misconduct under this Regulation. Sexual misconduct encompasses Sexual Harassment, Sexual Assault, Sexual Exploitation, or Gender-based Harassment, which is a form of Harassment based on gender identity, gender expression, or non-conformity with gender stereotypes. Sexual misconduct may also encompass acts of a sexual nature, including acts of Sexual Stalking, Domestic Violence, and Dating Violence, intimidation, or Retaliation following an incident where alleged sexual misconduct has occurred.

Any sexual misconduct committed by an employee, student or member of the public, that occurs on District property or at District activities, is a violation of District policies and procedures, and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. Students, faculty, and staff who may be victims of sexual misconduct shall be treated with dignity and provided comprehensive assistance.

The Superintendent/President shall establish administrative procedures that ensure that students, faculty, and staff who are victims of sexual misconduct receive appropriate information and treatment, that educational information about preventing sexual violence is provided and publicized as required by law, and that perpetrators of sexual misconduct are appropriately punished.

**Santa Monica Community College District**

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**AR 3122 Sexual Misconduct**

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## SUMMARY

This Administrative Regulation outlines the regulations and procedures of the District in connection with Board Policy 3122–Sexual Misconduct. This Board policy prohibits sexual misconduct in any of the District’s educational programs and activities, as well as its workplaces and employment programs.

This Regulation applies in all aspects of the District’s educational programs and activities, including but not limited to, classroom conditions, campus conditions, grades, academic standing, scholarships, recommendations, student employment, disciplinary action, extracurricular activities, campus activities, athletic activities, and field trips.

This Regulation also applies in the District’s workplaces and employment programs, including but not limited, the terms and conditions of employment, or related to recruitment, consideration, or selection for employment.

Employees who violate BP 3122 and/or this Regulation may be subject to disciplinary action up to and including dismissal in accordance with all applicable laws, District policies and regulations, and collective bargaining agreements. Students who violate BP 3122 and/or this Regulation may be subject to disciplinary measures up to and including expulsion in accordance with all applicable laws and District policies and regulations.

## SECTION I—DEFINITIONS

**Complainant:** A person(s) alleging that they are the victim of sexual misconduct by another person subject to the District’s policy on sexual misconduct. The District or College shall also be considered a Complainant if the District or College elects to investigate reports of potential violation(s) of the District’s policy on sexual misconduct. Any person(s), other than the alleged victim (Complainant), who reports possible violation(s) of the District’s policy on sexual misconduct, shall be identified as a Reporter, as defined herein.

**College:** Any program or facility of Santa Monica College or the District.

**College Disciplinary Officer:** Means the College official(s) designated by the College President, or designee, to administer the Sanctions under Administrative Regulation 4410 concerning sexual misconduct by a student.

**Consent:** The District uses an “affirmative consent” standard in the determination of whether consent was given by both parties to sexual activity. Affirmative consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has 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.

If coercion, intimidation, threats and/or physical force are used, there is no consent. If a person is mentally or physically incapacitated so that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent; this includes conditions due to alcohol or drug consumption or being asleep or unconscious. A person also cannot give consent if the person is under the legal age required to give consent to the sexual situation or the person has a disability so that the person cannot understand the fact, nature or extent of the sexual situation. Whether one has taken advantage of a position of influence over another may be a factor in determining consent.

In evaluating a charge of sexual misconduct, it shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the victim consented to the sexual activity under the following circumstances: (1) the accused's belief in affirmative consent arose from the intoxication or recklessness of the accused; (2) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the victim affirmatively consented; (3) the accused knew or reasonably should have known that the victim was unable to consent because the victim was asleep or unconscious; (4) the accused knew or reasonably should have known that the victim was unable to consent because the victim was incapacitated due to the influence of drugs, alcohol, or medication, so that the victim could not understand the fact, nature, or extent of the sexual activity; (5) the accused knew or reasonably should have known that the victim was unable to consent because the victim was unable to communicate due to a mental or physical condition.

**Dating Violence:** Is the use of physical violence, coercion, threats, intimidation, isolation, or Stalking on another while in a dating relationship, or a social relationship of romantic or sexually intimate nature. Such violence includes other forms of emotional, sexual or economic abuse directed towards a person who is or has been in a dating relationship, or a social relationship of a romantic or sexually intimate nature with the victim. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Dating Violence can be a single act or a pattern of behavior in relationships.

**District:** Refers to the Santa Monica Community College District.

**District Community:** Means 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 any of the Colleges within the District.

**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 misconduct cases involving employees to ensure conformance with applicable District Human Resources/Personnel Policies and Procedures.

**Domestic Violence:** Use of physical violence, coercion, threats, intimidation, isolation, Stalking, or other forms of emotional, sexual, or economic abuse directed towards (a) a current or former spouse or intimate partner; (b) a person with whom one shares a child; or (c) anyone who is protected from the Respondent's acts under the domestic or family violence laws of California, including Family Code Section 6250 et seq., and any applicable federal law, including the Violence Against Women Act of 1994 (VAWA), as amended. This can include behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Domestic Violence can be a single act or a pattern of behavior in relationships.

**Gender-based Harassment:** Unwelcome Conduct of a nonsexual nature based on a Student's actual or perceived gender, including conduct based on gender identity, gender expression, or nonconformity with gender stereotypes.

**Hostile Environment:** Exists when Unwelcome Conduct of a sexual or gender-based type is sufficiently serious and/or pervasive to deny or limit a person's ability to fully participate in or benefit from the College's programs or activities. A Hostile Environment can be created by anyone involved in a College's program or activity (e.g., administrators, faculty members, staff, Students, or campus visitors). In determining whether conduct has created a Hostile Environment, the District considers the conduct in question from both objective and subjective perspectives. The District will base findings on a variety of factors, including the severity, persistence, or pervasiveness of the conduct. The more severe the conduct, the less need there is to show a repetitive series of incidents to find a Hostile Environment. Likewise, a series of incidents may be sufficient even if the conduct is not particularly severe.

**Not Responsible:** Means, based on the applicable evidence collected during the investigation, it is not more likely than not that the persons did not commit a violation of BP/AR 3122.

**Party/Parties:** Means either the Complainant or the Respondent, involved in the alleged violation of Board Policy 3122 or Administrative Regulation 3122. The term Parties means both the Complainant and the Respondent collectively.

**Reporter:** Any person(s), other than the Complainant, who reports potential violation(s) of the District's policy on sexual misconduct.

**Respondent:** A person/s who are alleged to have violated the District's policy on sexual misconduct.

**Responsible:** Means, based on the applicable evidence collected during the investigation, that it is more likely than not that the person committed one or more violation(s) of Board Policy 3122 or Administrative Regulation 3122.

**Retaliation:** Any act of reprisal against a person who is involved in an allegation of sexual misconduct including but not limited to the Complainant, the Respondent, witnesses, investigators, and adjudicators. Examples of actions that might be Retaliation against a Complainant, witness, or other participant in the complaint process include: (a) Singling the person out 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 College Disciplinary Officer or designee to impose upon a Student upon the finding of the Student's responsibility for violation(s) of the Student Code of Conduct or of this administrative regulation. Any sanctions on an employee will be imposed in accordance with established disciplinary procedures.

**Sex:** For purposes of this administrative regulation, sex may refer to gender designation as male or female gender or 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 Assault:** Actual or attempted sexual contact with another person without that person's Consent. Sexual Assault includes, but is not limited to: (1) intentional touching of another person's body in a sexual nature without that person's Consent; (2) unwanted kissing; (3) other intentional sexual contact with another person without that person's Consent; (4) coercing, forcing, or attempting to coerce or force a person to touch another person's body in a sexual nature without that person's Consent; (5) rape, which is penetration, no matter how slight, of the vagina, or anus of a person by any body part of another person, or by an object, or the mouth of a person, or by a sex organ of another person, without the other person's Consent; or (6) any other sex crime made a felony by the California Penal Code.

**Sexual Exploitation:** Occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without the other person's Consent. Examples of behavior that could rise to the level of Sexual Exploitation include:

- Prostituting another person;
- Recording, photographing transmitting, viewing, or distributing of intimate, or sexual images without the knowledge and content of all parties involved;
- Distributing images (e.g. video, photograph) or audio of another person's sexual activity, images of another's body for sexual purposes, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not Consent to such disclosure and objects to such disclosure; and
- Viewing or distributing images of an individual's sexual activity, body parts, or nakedness in a place where that person would have a reasonable expectation of privacy,

without that person's Consent to have the image shared, or advance Consent to view such an image, and for the purposes of arousing or gratifying sexual desire.

**Sexual Harassment:** Unwelcome Conduct of a sexual nature, including but not limited to unwelcome sexual advances; requests for sexual favors; or other verbal or nonverbal conduct of a sexual nature, including rape, Sexual Assault, and Sexual Exploitation. In addition, depending on the facts, Dating Violence, Domestic Violence, and Stalking may also be forms of Sexual Harassment.

**Sexual Misconduct:** Comprises a broad range of unwelcome behaviors focused on Sex and/or gender that may or may not be sexual in nature. Any intercourse or other intentional sexual touching or activity without the other person's Consent is Sexual Assault, and is a form of sexual misconduct under this Regulation. Sexual misconduct encompasses Sexual Harassment, Sexual Assault, Sexual Exploitation, or Gender-based Harassment, which is a form of Harassment based on gender identity, gender expression, or non-conformity with gender stereotypes. Sexual misconduct may also encompass acts of a sexual nature, including acts of Sexual Stalking, Domestic Violence, and Dating Violence, intimidation, or Retaliation following an incident where alleged sexual misconduct has occurred.

Sexual misconduct can occur between strangers or acquaintances, or people who know each other well, including between people involved in an intimate or sexual relationship, can be committed by anyone regardless of gender identity, and can occur between people of the same or different Sex or gender.

**Stalking:** Stalking behavior in which a Student repeatedly engages in a course of conduct directed at another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her family; where the threat is reasonably determined by the College Disciplinary Officer to create substantial emotional distress, torment, create fear, or to terrorize the person.

**Sexual Stalking:** Course of conduct directed at a specific person that would cause a reasonable person to feel fear or suffer substantial emotional distress due to another's sexual interest or gender interest. Sexual Stalking involves repeated and continued harassment of a sexual or gender-based nature, against the expressed Consent of another individual, which causes the targeted individual to feel emotional distress, including fear or apprehension. Such Sexual Stalking behaviors may include: pursuing or following; unwanted communication or contact—including face-to-face encounters, telephone calls, voice messages, electronic messages, web-based messages, text messages, unwanted gifts, etc.; trespassing; and surveillance or other types of observation.



**Student/Students:** Means any person(s) 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 misconduct occurred.

**Title IX Coordinator:** The person designated by the Superintendent/President to be responsible for oversight and implementation of Title IX. The District will publicize the identity of the District's Title IX Coordinator to the entire District community. The 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 about students or employees. Such other Federal and California laws include, without limitation, VAWA, the SaVE Act, the Clery Act, Education Code Section 67386, and applicable sections of Title 5 of the California Code of Regulations.

**Title IX Deputy:** The Title IX Coordinator's designated person(s) responsible for assisting in the oversight and implementation of Title IX compliance.

**Title IX Investigator(s):** The Title IX Coordinator's designated person(s) responsible for the investigation of complaints of sexual misconduct.

**Unwelcome Conduct:** Conduct of a sexual, gender-based, or harassing nature, which is not solicited, invited, or consented to. Such conduct would be deemed unwelcome if the person receiving it did not request or invite it, and considered the conduct to be undesired, or offensive. Such conduct may take various forms, including name-calling, graphic or written statements (including the use of cell phones or the Internet), hazing, bullying, offensive, or other conduct that may be physically or psychologically threatening, harmful, or humiliating. Unwelcome Conduct does not have to include intent to harm, or directed at a specific target, or involve repeated incidents. Unwelcome Conduct can involve persons of the same or opposite Sex. Participation in the conduct or the other Party's failure to complain does not mean that the conduct was welcome.

## SECTION II—JURISDICTION

In response to a complaint about sexual misconduct alleged to be related in some way to the District's educational programs or activities, the District will respond to the complaint 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 or had continuing effects on campus or in an off-campus education program or activity of the District.

If the alleged off-campus misconduct 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

misconduct took place in the context of an education program or activity of the District, the fact that the alleged misconduct took place off campus does not relieve the District of its obligation to investigate the complaint as it would investigate a complaint of unlawful sex discrimination that occurred on campus.

Whether the alleged misconduct occurred in this context may not always be apparent from the complaint, so 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.

Once the District is on notice of sexual misconduct that occurred off-campus, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment and, if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct. The mere presence on campus or in an off-campus education program or activity of the alleged perpetrator of alleged misconduct can have continuing effects that create a hostile environment. The District will also take steps to protect a student who alleges off-campus misconduct from further discrimination or harassment by the alleged perpetrator or his or her friends, and the District may have to take steps to protect other students from possible similar misconduct by the alleged perpetrator. In other words, the District should protect the school community in the same way it would have had the misconduct occurred on campus. Even if there are no continuing effects of the off campus sexual harassment experienced by the student on campus or in an off-campus education program or activity, the District still should handle these incidents as it would handle other off-campus incidents of misconduct or violence and consistent with any other applicable laws and District policies, regulations, and procedures.

### **SECTION III—DISTRICT COMMUNICATIONS RELATING TO GENDER-BASED DISCRIMINATION/SEXUAL MISCONDUCT NOTICE AND INVESTIGATIONS**

The District's primary correspondence and notification mechanism with students shall be through the Student's District assigned email account. At the District's discretion, Students may be notified via U.S. certified mail, delivery in person, or by an alternate email on record as shown on record from the Student.

The District's primary correspondence and notification mechanism with employees shall be through the employee's District assigned email account. At the District's discretion, employees may be notified via U.S. certified mail, delivery in person, or by an alternate email on record as shown on record from the Student.

## **SECTION IV—STANDARD OF PROOF**

The evidentiary standard used for all determinations under this Administrative 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.

## **SECTION V—REPORTING SEXUAL MISCONDUCT**

The following types of employees are considered to be “Responsible Employees” who have responsibility for reporting allegations of sexual misconduct to the District’s Title IX Coordinator:

- A. Academic Administrators (including project managers)
- B. Classified Managers
- C. Full-time Faculty
- D. Part-time Faculty

Excluded employees: Employees of the Student Health Center, Ombuds Office, and Psychological Services are excluded from being Responsible Employees. The exclusion of these employees is intended to provide Students with a mechanism to confidentially report incidents of sexual misconduct. This section is not intended to negate the mandatory reporting responsibilities required under any other provision of law.

Responsible Employees do not have any responsibility to verify or gather facts about alleged sexual misconduct, and should refrain from doing so. However, Responsible Employees must report any details that they observe or hear about to the District’s Title IX Coordinator.

### **5.1 Timeframe for Reporting a Complaint**

The District does not limit the time for filing a complaint of sexual misconduct. However, the failure to file complaints in a timely manner may limit the administrative remedies available to the District. Incidents that are not reported while evidence is still available may reduce the District’s ability to effectively investigate and respond to such complaints.

### **5.2 Methods for Reporting Sexual Misconduct**

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

Employees and students may submit reports online via the incident reporting feature of the Maxient System used by the College, or in person to the College’s designated Title IX

Coordinator. Students may report incidents of sexual misconduct directly to the Title IX Coordinator, the Human Resources Office, Campus Police, or to the local law enforcement where the incident occurred. Students may also report incidents of sexual misconduct to the Student Health Center if they wish to remain confidential (see Confidentiality section below).

Complainants may file a complaint about sexual misconduct using complaint procedures outlined in Administrative Regulation 3120 (“AR 3120”) – Complaint Procedures Regarding Charges of Unlawful Discrimination & EEO Violations. Complainants may also file an Unlawful Discrimination Form directly to the California Community College State Chancellor’s Office.

A complainant with a complaint about sexual misconduct may also file a complaint with the Campus Disciplinarian in the District’s Office of Student Life. The filing of the complaint with the Campus Disciplinarian can be in addition to or in lieu of filing a complaint pursuant to the procedures of AR 3120, and whether the complainant wishes to file a complaint only under AR 3120, or only with the Campus Disciplinarian, or both under AR 3120 and with the Campus Disciplinarian is at the sole discretion of the complainant. If a complaint is filed under both AR 3120 and with the Campus Disciplinarian, the Title IX Coordinator may determine which process will provide the most prompt and equitable determination regarding the allegations and have the complaint reviewed under that process.

Complaints filed pursuant to AR 3120 will be investigated and addressed consistent with the requirements and procedures of AR 3120. Complaints filed with the Campus Disciplinarian’s Office will be investigated and addressed consistent with the requirements and procedures of the Campus Disciplinarian’s Office.

### **5.3 Confidentiality in Connection with a Report of Sexual Misconduct**

Before a complainant reveals information that he or she may wish to keep confidential, a Responsible Employee should make every effort to ensure that the complainant understands: (1) the Responsible Employee’s obligation to report the names of the alleged perpetrator and complainant involved in the alleged sexual misconduct, as well as all other relevant facts, to the Title IX Coordinator or other appropriate school officials; (2) the complainant’s option to request that the school maintain his or her confidentiality, which the Title IX Coordinator or designee on behalf of the District will consider, and (3) the complainant’s ability to share the information confidentially with Student Health Center, Ombuds Office, and Psychological Services or with non-College entities that provide advocacy, health, mental health or sexual assault related services.

When the College becomes aware of sexual misconduct, the College 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 College or District’s ability to effectively respond to the incident.

If a complainant requests that his or her 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.

If the complainant continues to ask that his or her 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 alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act ("FERPA").

If a complainant insists that his or her 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.

If the complainant continues to ask that his or her 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 alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act ("FERPA").

## **SECTION VI—INVESTIGATIONS OF SEXUAL MISCONDUCT**

All College investigations of sexual misconduct shall take place using the procedures set forth in Administrative Regulation 3120 or Administrative Regulation 4410. The Title IX Coordinator shall determine the appropriate regulation to utilize. Both of these Administrative Regulations are deemed to incorporate all of the procedures set forth in this Administrative Regulation. In

the event that neither Administrative Regulation is applicable (e.g., conduct by a visitor to the campus), the Title IX Coordinator shall conduct the investigation, make findings, and take appropriate action.

### **6.1 Timeframe for Investigating Sexual Misconduct Complaints**

The District will investigate and communicate its findings within 60 Days or the date in which 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 60 Calendar Days, the District will inform the Complainant and the Respondent in writing of such delay.

The Title IX Coordinator, or designee, shall use reasonable, diligent efforts to resolve sexual misconduct reports within 60 Days of an initial report, not including appeals.

### **6.2 Alcohol and Drug Use Are Not Barriers to Reporting Sexual Misconduct**

The District understands that Students may be reluctant to file complaints of sexual misconduct when alcohol and/or drugs were used. Whenever possible, the College will respond educationally, rather than punitively, to the use of drugs and/or alcohol so as to promote the reporting of sexual misconduct. However, the College reserves the right to other remedies dependent upon the severity of the alcohol or drug use.

### **6.3 Reports Involving Unknown/Non-College Offenders**

The District will investigate reports of sexual misconduct incidents allegedly committed by Students against other Students, committed by a District employee against a Student, or by a non-Student against a Student. The District will also investigate reports of sexual misconduct incidents allegedly committed by Students against District employees, or Students against non-Students.

The District will investigate reports of sexual misconduct where the identity of the victim is not known to the extent it is able, and take appropriate actions designed to protect affected Students and members of the District Community. When appropriate, the College will offer reasonable supportive remedies, such as class scheduling alternatives, escort services, and medical and counseling care to the Complainant.

Sexual misconduct investigations are subject to the jurisdictional limitations of the District as set forth herein.

### **6.4 Anti-Retaliation/Anti-Intimidation**

Any form of Retaliation or intimidation against anyone who has complained of or formally reported discrimination, harassment, or sexual misconduct, 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. This means that if an individual raises concerns about possible sexual misconduct,

including publicly opposing such alleged misconduct or filing a complaint with the District or any State or Federal agency, it is unlawful for the District or its employees, students, or third parties to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an investigation or related proceeding. Prohibited forms of retaliation include intimidation, threats, coercion, or any type of discrimination of any type because of that individual's complaint or participation.

The District will take steps as necessary to prevent retaliation against an individual who filed a complaint either on his or her own behalf or on behalf of another student, 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 and witnesses and ensure their safety as necessary. At a minimum, this includes making sure that the complainant and witnesses know how to report retaliation and by responding promptly and appropriately to address continuing or new problems.

### **6.5 Parallel Proceedings**

Title IX investigations and/or Student Conduct Code proceedings are independent from court or other administrative proceedings. Discipline may be instituted against a Respondent also charged in civil or criminal courts based on the same facts that constitutes the alleged violation of the Student Code of Conduct or other applicable Board Policy or collective bargaining agreement. The District may proceed before, concurrently with, or after any judicial, criminal, or administrative proceedings, except in cases involving sexual misconduct. In sexual misconduct cases, the District shall proceed with investigation without undue delay in accordance with federal and state law requirements, and District Policies and Procedures.

### **6.6 Steps in the Administrative Process**

#### **Step 1—Notice**

When a complaint is received, the notice of receipt of complaint sent to the complainant should include the following information:

- Information about the complainant's Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance.
- Information about interim measures (as set out in the section below titled "Interim Measures"), including complainant's right to request any interim measures from the District's Title IX Coordinator or designee.

- Information about the complainant’s right to file or not file a criminal complaint if the alleged unlawful sex discrimination involved a potential crime, and where the complainant may get assistance with filing a criminal complaint.
- Information about the prohibition of unlawful retaliation under Title IX, and that school officials will not only take steps to prevent retaliation but will also take strong responsive action if it occurs.
- Information about AR 3120 and this Regulation.

Notice to the Respondent will include:

- A description of the alleged violation(s).
- A description of the applicable policies
- A statement of the potential Sanctions/responsive actions that could result
- Information about the prohibition of unlawful retaliation under Title IX, and that school officials will not only take steps to prevent retaliation but will also take strong responsive action if it occurs.
- Information about AR 3120 and this Regulation.
- A required date, time, and location for a review, an interview, or proceeding.

If any Party does not appear at the scheduled review, investigation, or proceeding, the meeting will be held in his/her absence. For compelling reasons, the Title IX Coordinator, or designee, may reschedule the meeting.

Time frames for reviews, investigations, and proceedings may vary depending on the details of a case and at certain times of the academic year for possible violations that occur near, during, or after District holidays, breaks, or the end of an academic terms, in which meetings will be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by this policy and procedures.

### **Step 2—Interim Accommodations and Sanctions**

Once the Title IX Coordinator or designee has received a complaint of sexual misconduct, the College will make an interim assessment to determine if any immediate remedies are warranted, pending investigation. The College will work with Students affected by the sexual misconduct report to ensure their safety and promote their well-being. Sometimes this assistance will take the form of immediate interim actions or accommodations to support and protect the involved Students in the immediate aftermath of an incident and while an investigation or disciplinary action is pending.



The Title IX Coordinator may determine other remedies, such as, but not limited to, accommodations relating to changing academic schedules, Public Safety escort services, restrictions on the alleged perpetrator pending investigation, and other remedies to promote the well-being, safety, and restoration of alleged victim.

### **Interim Actions and Requests to Stay**

As set forth in the District' Student Code of Conduct (AR 4410), a Student may be subject to interim actions pending investigation of a complaint. The College Disciplinary Officer, Title IX Coordinator, or designee, may impose interim Sanctions deemed reasonably necessary to protect the Student, or the campus community. The Student shall be notified of any interim action in accordance with the Student Code of Conduct.

### **Step 3—Investigation**

The District will investigate all reports of alleged violations of sexual misconduct. The investigators will interview the Complainant, Respondent, and any witnesses (if appropriate). The investigator will also gather information, documents, and materials (if any) that are relevant to the case. The investigation of complaints will be adequate, reliable, and impartial. The investigation may include, but is not limited to, conducting interviews of the complainant, the alleged perpetrator, and any witnesses; reviewing law enforcement investigation documents or disciplinary documents, if applicable; reviewing student and personnel files; and gathering and examining other relevant documents or evidence.

### **Declining/Reluctance to Participate in an Investigation**

A Complainant and/or Respondent may decline to participate in the investigation and any subsequent proceeding. In these cases, the investigation and adjudication process will continue and a determination of Responsible or Not Responsible will be made without the benefit of the Complainant and/or Respondent's input.

As a Complainant/victim of an incident of sexual misconduct, Students may inform the College that they are unwilling to participate further in any investigation and/or disciplinary action against the Student(s) who has been accused (Respondent). The District has an obligation to investigate to the extent of the information that available and known. If during the investigation that the investigator finds corroborating information, it may be determined that is necessary to move forward with the Student conduct process without the involvement to the Complainant or to implement other appropriate remedies. If a Complainant does not wish to participate in the Student conduct process, the District is obligated to record the incident for federal reporting compliance. When a report is being recorded into a document, there will be no personally identifying information about the Complainant within the document. The Complainant will be notified of any actions by the District, coupled with a letter stating the choice to participate in the investigation and/or Student conduct process.

#### **Step 4—Determination of Findings**

Once the investigation has been concluded, a determination will be made based on the preponderance of the evidence that the Respondent is Responsible or Not Responsible for the alleged violation of sexual misconduct.

**Responsible**—if after the conclusion of an investigation, the preponderance of the evidence indicates that it is more likely than not that the Respondent violated District BP/AR 3122, the Respondent will be found Responsible for the violation. Both the Complainant and the Respondent will be informed of the outcome and any right to appeal.

**Not Responsible**— if after the conclusion of an investigation, the preponderance of the evidence indicates that it is NOT more likely than not that the Respondent violated the District policy, the Respondent will be found Not Responsible for the violation. Both the Complainant and the Respondent will be informed of the outcome, and advised of any right to appeal.

#### **Guidelines Used During Interviews, Proceedings, and Determination of Findings**

Information Regarding Romantic or Sexual History. College investigators and adjudication panels will not consider the romantic or sexual history of either the Complainant or the Respondent in cases involving allegations of sexual misconduct, except for testimony offered by one or the other about the Complainant's and Respondent's shared sexual history that the adjudication panel deems relevant. The existence of a sexual relationship between the Complainant and Respondent may not support the inference of Consent to alleged sexual misconduct.

#### **Step 5—Sanctions**

Sanctions issued shall be:

- Fair and appropriate given the facts of the particular case;
- Consistent with the individual College's handling of similar cases;
- Adequate to protect the safety of the District Community; and
- Reflective of the seriousness of the sexual misconduct.

The relevant factors that are considered, as applicable to the specifics of each type of sexual misconduct, when imposing Sanctions are:

- The specific sexual misconduct at issue (such as penetration, touching, unauthorized recording, etc.)
- The circumstances accompanying the lack of Consent (such as force, threat, coercion, incapacitation, etc.);
- The Respondent's state of mind (intentional, knowing, bias-motivated, reckless, etc.);
- The impact of the offense of the Complainant;

- The Respondent's disciplinary history;
- The safety of the District Community; and
- The Respondent's conduct during the disciplinary process.

### **Impact Statements**

The purpose of impact statements is to allow the Complainant and Respondent, during the sanctioning process, to describe how the sexual misconduct has had an impact on them. Impact statements may provide information about damage to Complainant/Respondent that would otherwise have been unavailable to the decision-maker. A Complainant is not required to appear at a proceeding, but, if the Complainant so desires, to convey her/his experience(s) in the case in written form.

### **Step 6—Appeals of the Investigation Process or Imposed Sanctions**

Both the Respondent and the Complainant have the right to submit an appeal for review of the investigation process and/or the imposed Sanctions in accordance with the procedure set forth in the applicable Administrative Regulation. To the extent only the complainant or respondent has the right to appeal, the Administrative Regulation shall be deemed to allow an appeal by both parties if the matter involves sexual misconduct.

### **Step 7—Ongoing Accommodations for Complainants**

Whatever the outcome of the informal resolution, investigation, or adjudication process, a Complainant may request ongoing or additional accommodations. In consultation with other campus departments, a determination will be made on whether such measures are appropriate. Potential ongoing accommodations include:

- Providing an escort by Public Safety
- Changing the Complainant's academic schedule
- Adjusting the Complainant's on campus job work schedule
- Allowing the Complainant to withdraw from or retake a class without penalty
- Providing access to tutoring or other academic support, such as extra time to complete or re-take a class

The District's Colleges may also determine that additional measures are appropriate to respond to the effects of the incident. Additional responses for the benefit of the District Community may include:

- Revision of the District's policies and procedures regarding sexual misconduct
- Additional training and education materials for Students, faculty, and staff
- Increased monitoring, supervision, or security at locations or events where the sexual misconduct occurred

- Ensuring relevant climate surveys that focus on safety, security, inclusion are gathered to improve on developing a culture that is intolerant of sexual misconduct

### **SECTION VII—APPEAL PROCESS**

Within the time period set forth in the applicable Administrative Regulation, the Complainant or the Respondent or both may appeal the determination of findings and/or Sanctions.

### **SECTION VIII—COMPLAINANT AND RESPONDENT RIGHTS**

Throughout this process, both the Complainant and Respondent have the following rights:

- To be treated with respect by District official
- To take advantage of campus support resources, such as mental health services, Health Services, etc. to help remedy and restore
- To experience a safe education and work environment
- To have an advisor during an adjudication process
- To be free of Retaliation
- To have complaints heard in accordance with policy and procedures
- To fully participate in any process whether the injured Party is serving as the Complainant, or where the institution is serving as Complainant
- To be informed in writing of the progress of the investigation.
- To be notified concurrently, and in writing, of the outcome/resolution of the complaint, of any Sanctions imposed, and the basis for the determination, and the right of appeal (when applicable).

#### **8.1 Student Right to Review Records**

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of Student education records. FERPA permits a school to disclose to a complainant information about the sanction imposed upon a student who was found to have engaged in unlawful sex discrimination, stalking, or relationship violence when the sanction directly relates to the complainant and the complained about conduct. This includes an order that the perpetrator stay away from the complainant, or that the perpetrator is prohibited from attending school for a period of time or transferred to other classes. Disclosure of other information in the student's "education record," including information about sanctions that do not relate to the complainant, may result in a violation of FERPA.

In addressing complaints of unlawful sex discrimination, stalking, or relationship violence, the District will take into consideration an alleged student perpetrator's right under FERPA to request to inspect and review information about the allegations if the information directly relates to the alleged student perpetrator and the information is maintained by the District as an education record. In such a case, the District must either redact the complainant's name and all identifying information before allowing the alleged perpetrator to inspect and review the sections of the complaint that relate to him or her, or must inform the alleged perpetrator of the specific information in the complaint that are about the alleged perpetrator. The District should also make complainants aware of this right and explain how it might affect the District's ability to maintain complete confidentiality.

### **8.2 Special Requests/Accommodations**

Any Party may have an interpreter attend the investigation meeting or proceeding. An interpreter accompanying a Student must provide evidence of his/her certification as a certified interpreter to the Investigator and/or College Disciplinary Officer at least 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 Investigator and/or College Disciplinary Officer at least 5 Days prior to the commencement of the proceeding.

### **8.3 Advisors**

Sexual misconduct proceedings are not formal court hearings, but instead are administrative actions imposed by the District. Although District-related Sanctions may be imposed, the process is intended to provide an opportunity of learning. Both the Complainant and the Respondent may elect to be accompanied by an Advisor, including a collective bargaining representative, as permitted by existing bargaining agreements, to any meeting(s) or interview(s). The advisor's role is limited to observing and consulting with and providing support to the Complainant or Respondent. An Advisor may not participate (speak) in the investigation and hearing processes on the Student's/Complainant's behalf. The advisor should also maintain confidentiality.

### **8.4 Victim Advocates**

Information about victim advocate resources will be made available to assist victims of crime, Sexual Assault, and domestic violence.

### **8.5 Legal Counsel (*Not an Advisor*)**

An attorney duly licensed to practice in the State of California may accompany a Party to any interview. The attorney shall not make any statements or presentations at the interview. The attorney's role at any proceeding shall be in accordance with the applicable Administrative Regulation.

### **8.6 Judicial Restraining and Protective Orders**

A restraining order (also called a “protective order”) is a court order that can protect someone from being physically or sexually abused, threatened, stalked, or harassed. The person getting the restraining order is called the “protected person.” The person the restraining order is against is the “restrained person.” Sometimes, restraining orders include other “protected persons” like family or household members of the protected. More information on restraining orders can be obtained from the California Courts Self-Help Center (<http://www.courts.ca.gov/1260.htm#domestic>). In some circumstances Campus Police can assist in the obtaining of a restraining order. If a restraining order is obtained, it should be provided to Campus Police; Campus Police will enforce a restraining order on College property.

### **8.7 First Amendment**

Federal and California laws, including without limitation Title IX, protect individuals from prohibited unlawful discrimination and do not restrict the exercise of any expressive activities or speech protected under the U.S. Constitution. The intent of Federal and California unlawful discrimination laws is not to regulate the content of speech. Therefore, when the District works to prevent and redress unlawful discrimination, it will respect the free-speech rights of students, employees and other speakers. According to the Office of Civil Rights for the U.S. Department of Education, the offensiveness of a particular expression as perceived by some persons, standing alone, is not a legally sufficient basis to establish an unlawful hostile environment under Title IX.

## **SECTION IX—EDUCATION AND TRAINING PROGRAMS**

### **9.1 Prevention and Education**

The District is committed to educating the District Community of the impact that sexual misconduct has on an individual and the District Community. Therefore, the District will:

- Provide campus-wide awareness programs and initiatives (fall and spring) on sexual misconduct, bystander intervention, and affirmative Consent.
- Publish an online video on sexual misconduct, bystander intervention, and affirmative Consent for all new Students entering our College campus.
- Communicate effectively with faculty, staff, and Students regarding sexual misconduct policies, protocols, and any federal/state legislation changes through an interactive campus website.
- Collect, assess, and devise campus-wide strategies to improve campus climate among faculty, staff, and Students.
- Develop sustainable partnerships with outside agencies to promote awareness and increase services for faculty, staff, and Students, and/or provide victim advocacy to

Students impacted by gender-based discrimination and any other forms of sexual misconduct.

- Provide training for faculty, staff, and students participating in sexual misconduct adjudication processes.
- In collaboration with District Human Resources, provide gender-based discrimination and other forms of sexual misconduct awareness and reporting training for all District employees.

## **9.2 Title IX Coordinator Responsibilities**

The Title IX Coordinator will be responsible for the following:

- Providing information to Students during orientations regarding the District's Sexual Misconduct Policies and Procedures
- Updating information on the College website
- Providing updates for the College catalog
- Publishing brochures and other related publications regarding the District's Sexual Misconduct Policy and Procedures
- Scheduling campus events to promote awareness and safety (including information about by-standers)
- Conducting a bi-annual climate survey
- Ensuring that Deputy Investigators and Title IX Coordinators are properly trained in Title IX Regulations and understand how to conduct investigations of sexual misconduct.
- Ensuring that faculty, staff, and students participating in sexual misconduct adjudication processes are properly trained on Title IX Regulations and District Board Policies.

### **References:**

California Education Code Sections 67385, 67389(a)(1), 67395.7, and 76200 et seq.;

California Penal Code Sections 242, 243, 245, and 261 et seq.;

20 U.S. Code Section 1092(f) - The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)

34 Code of Federal Regulations Section 668.46(b)(11);

Title IX of the Education Amendments of 1972 Implementing Regulations at: 20 U.S.C. 1681 & 34 C.F.R. PART 106);

