

AP 3434 Responding to Harassment Based on Sex under Title IX

References:

Education Code Sections 67380 et seq.;
34 Code of Federal Regulations Parts 106.1 et seq.;
20 U.S. Code Sections 1681 et seq.
California Senate Bill 493 (2020)
California Senate Bill 967 (2014)

Introduction

The District encourages members of the District community to report sexual harassment. This procedure only applies to conduct defined as sexual harassment under Title IX and applicable federal regulations and that meets Title IX jurisdictional requirements. The District will respond to sexual harassment and sexual misconduct that falls outside that definition and outside the jurisdiction of the Title IX federal regulations using California law and applicable District policies and procedures. In implementing these procedures discussed below, the District will also provide supportive measures, training, and resources in compliance with California law, unless they are preempted by the Title IX regulations.

Title IX Coordinator

Questions concerning Title IX may be referred to the District Title IX Coordinator whose contact information is below.

The District's Title IX Coordinator, Investigator Manager is **Megan Staudenraus** and their contact information is:

Address and Office Location: 1570 E. Colorado Blvd, D Building #108A

Phone number: 626-585-7375

Email: titleix@pasadena.edu

The Title IX Coordinator is also designated as Coordinator for compliance with the California laws governing sexual misconduct.

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

A report of sexual harassment to the Title IX Coordinator does not necessarily lead to a full investigation, as discussed more fully below. However, the Title IX Coordinator will make an assessment to determine if there is a safety risk to the campus. If the Title IX Coordinator finds there is a continued risk, the Title IX Coordinator may file the formal complaint without the Complainant's consent or cooperation.

Title IX Harassment Complaints, Investigations, and Hearings

These Title IX sexual harassment procedures and the related policy protect students, employees, applicants for employment, and applicants for admission.

The investigation and adjudication of alleged sexual harassment under this procedure is not an adversarial process between the Complainant, the Respondent, and the witnesses, but rather a process for the District to comply with its obligations under existing law. The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

Jurisdictional Requirements – Application of Procedures

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

- The conduct took place in the United States.
- 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 property and buildings the District owns or controls.
- The conduct meets the definition of Title IX “sexual harassment.”
- The Complainant(s) is/are participating or attempting to participate in the District’s education program or activity and the District has jurisdiction over Respondent(s).

Conduct not covered under this policy, may be covered under BP3410 on Nondiscrimination or BP5500 Standards of Student Conduct, and other policies as applicable.

Definitions

Advisor: Throughout the grievance process, both the Complainant and Respondent have a right to an Advisor of their choice. 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, for the purpose of conducting cross-examination at the hearing. The District may establish restrictions regarding the extent to which the Advisor may participate in the proceedings as long as the restrictions apply equally to both Parties.

Parties have the right to consult with an attorney, at their own expense, at any stage of the Complaint process if they wish to do so. An attorney may serve as an advisor.

Complainant: A Complainant is an individual who alleges they have experienced conduct that could constitute sexual harassment.

Consent: **Consent** means affirmative, conscious, and voluntary agreement to engage in sexual activity. Both Parties must give affirmative consent to sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Lack of protest, lack of resistance, or silence does not indicate consent. Affirmative consent must be ongoing throughout a sexual activity and one can revoke their consent at any time. The existence of a dating relationship between

the persons involved, or the fact of past sexual relations between them, is not an indicator of consent.

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

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

Days: Days are business days in which the District is open for business.

Decision-Maker: The Decision maker will oversee the live hearing and make a determination of responsibility. The Decision-Maker cannot be the Title IX Coordinator or the investigator.

Formal Complaint: A written complaint signed by the Complainant or Title IX Coordinator, alleging sexual harassment and requesting an investigation. If the Title IX Coordinator signs the formal complaint, they will not become a Party to the complaint.

Official with Authority: An employee who is not designated as confidential resources and is required to report allegations of sexual harassment to the Title IX Coordinator

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

Reporting party: An individual who reports misconduct. This may include but is not limited to an Employee Official with Authority, a complainant, or a witness

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

Sexual Harassment under Title IX: Conduct that satisfies one or more of the following:

- A District employee conditions the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (*quid pro quo harassment*);

- 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 (***hostile environment harassment***);
- **Stalking:** Engaging in a course of conduct (two or more acts including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property) 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.
- **Dating violence:** Violence committed 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.
- **Domestic Violence:** A felony or misdemeanor crime of violence committed:
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; or
 - By any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws of California.
- **Sexual assault**, including the following:
 - **Sex Offenses:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - **Rape** (except Statutory Rape): The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - **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.
 - **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.

- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

Reporting and Timeframe for Reporting

Any individual may report sexual harassment to the District's Title IX Coordinator. To promote timely and effective review, the District strongly encourages individuals to report sexual harassment as soon possible. Prompt reporting allows for the collection and preservation of evidence, including physical evidence, digital media, and witness statements. Individuals may report sexual harassment anonymously. A delay in reporting or an anonymous report with limited information may limit the District's ability to effectively investigate and respond. The District encourages all reporting, even delayed, and will take whatever steps are reasonable and available under the law.

Amnesty

Because individuals may be deterred from reporting or discussing incidents of sexual harassment if alcohol, drugs, or other violations of District or campus rules were involved, the District will inform individuals that the primary concern is for student and employee safety and that use of alcohol or drugs never makes a Complainant at fault for sexual harassment. An individual who participates as a party or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the District's student conduct policy at or near the time of the incident, unless the District determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

Individuals have the opportunity to decide whether they want to pursue a formal Title IX complaint. Disclosing sexual harassment to the Title IX Coordinator does not automatically initiate an investigation under these procedures. A disclosure may allow the District to offer a wide variety of support and resources to impacted individuals and to prevent the recurrence of the conduct. A Complainant, or the Title IX Coordinator filing a formal complaint, will initiate an investigation.

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

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 discloses the number of certain types of crimes and incidents that were reported to have taken place in certain locations (on-campus, non-campus, and public property). These statistics are counted for the year in which they were reported, rather than the year they are alleged to have occurred. For more information regarding the District's compliance with the Clery Act, contact Heather Meier, Clery, Records and Training Specialist, Campus Police, at HXMEIER@pasadena.edu or 626 585-7246.)

District Employees and Officials with Authority

District Officials with Authority are not confidential resources and 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.

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

The California Education Code requires that any individuals with any of the following positions or substantially similar positions or job duties, regardless of the specific title the District may attach to the position be considered Officials with Authority, referred to in California law as Responsible Employees:

- Title IX coordinator or other coordinator designated to comply with and carry out the District's responsibilities regarding anti-harassment;
- Supervisors or managers;
- Student life directors, coordinators, or deans;
- Athletic directors, coordinators, or deans;
- Coaches of any student athletic or academic team or activity;
- Faculty and associate faculty, teachers, instructors, or lecturers;
- Graduate student instructors, laboratory directors, coordinators, or principal investigators, internship or externship directors or coordinators; and
- Study abroad program directors or coordinators

Officials with Authority are required to promptly report to the Title IX Coordinator all relevant information they know about sexual harassment, including the name of the Respondent, the Complainant, any other witnesses, and the date, time, and location of the alleged incident.

Officials with Authority does not include those in positions listed above who are also a therapist or other professional described in the California Evidence Code or an individual acting in a professional capacity for which confidentiality is mandated by law. Such an individual must inform each student who provides them with information regarding sexual harassment of the student's ability to report to an Official with Authority and direct the student to those specific reporting resources.

Receipt of Report

After receiving a report of sexual harassment, the Title IX Officer will contact the Complainant and, if not reported by the Complainant, the reporting party, to explain rights under this policy and procedure and the available resolution processes. The Title IX Officer will invite the Complainant to a meeting and, where applicable, invite Respondent to a meeting. The Title IX Officer will discuss supportive measures with the Complainant and, where applicable, the Respondent.

Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the parties, regardless of whether a formal complaint has been filed. The District will provide the parties with written notice of options for, available assistance in, and how to request

available supportive measures. The District will provide such measures to Complainant and Respondent 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 not disclose that the District is providing supportive measures except to those with a need to know to enable the District to provide the service.

Supportive measures may include but are not limited to:

- Academic support and course-related adjustments (e.g., extension of deadlines, alternative grading, arranging for a course re-take or withdraw from a class without penalty)
- Campus safety escort services
- Changes to academic, transportation, and/or working situation
- Increased security and monitoring of certain areas of the campus
- Leaves of absence
- Modifications of work or class schedules
- Providing academic support services, such as tutoring
- Providing counseling services or a referral to counseling services
- Providing medical services or a referral to medical services
- Restrictions on contact between the Parties (No Contact Orders)

No Contact Orders

When requested by a Complainant or otherwise determined to be appropriate, the District shall issue a no-contact directive prohibiting the Respondent from contacting the Complainant during the pendency of the investigation. The District shall not issue a mutual no-contact directive automatically, but instead shall consider the specific circumstances of each report of sexual harassment to determine whether a mutual no-contact directive is necessary or justifiable to protect a Party's safety or well-being, or to respond to interference with an investigation. If the District issues any no-contact directive, the District shall provide the Parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action. If the District issues a mutual no-contact directive, the District shall also provide the Parties with a written justification for the directive.

Emergency Removal Pending Final Determination

The District may remove a non-employee Respondent from the District's education program or activity on an emergency basis after it conducts an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.

The District will designate a member of the Behavioral Intervention Team to conduct the individualized safety and risk analysis.

If the designee determines emergency removal is appropriate, they will provide the person the District is removing from campus on an emergency basis with a notice and opportunity to attend

a meeting with a Chair of the Behavioral Intervention Team or designee (selected by the District) and challenge the basis of their removal. The Chair or designee will determine whether the emergency removal from campus order is warranted after considering information provided by the Parties or other knowledgeable individuals challenging or supporting the emergency removal.

Administrative Leave

The District may place a non-student employee Respondent on administrative leave during the pendency of a grievance process described in the formal complaint process below. The District will follow any relevant policies, procedures, collective bargaining agreements, or state law in placing an employee on administrative leave.

Formal Complaint

A Formal Complaint is a written complaint signed by the Complainant, or Title IX Coordinator, alleging sexual harassment and requesting an investigation.

Grievance Process

Informal Resolution

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 at any time prior to reaching a determination regarding responsibility.

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.

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 grievance process with respect to the formal complaint.

The informal resolution process is not available to resolve allegations that an employee sexually harassed a student or any allegations of sexual violence.

The District shall not mandate mediation to resolve allegations of sexual harassment and shall prohibit mediation, even on a voluntary basis, to resolve allegations of sexual violence. The district shall not require that the Complainant enter into a voluntary resolution agreement to receive remedial measures that safeguard access to education.

Formal Complaint Resolution Process

Notice to Parties

Upon receipt of a formal complaint, the Title IX Coordinator will provide the following notice in writing, to the Parties:

- Notice of the District's Title IX grievance process;
- 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;
- Statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Statement that prohibits retaliation against any person for filing a complaint or participating in a complaint process.
- Notice that, where a crime has occurred, the student has the right, but not the obligation, to report the matter to law enforcement.
- The importance of preserving evidence.
- Potential interim measures.
- Notice that the Parties may have Advisor of their choice, who may be, but is not required to be, an attorney;
- 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;
- Inform the Parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process; and
- For student Parties, notice regarding appropriate counseling resources the District has developed and maintains.

If, in the course of an investigation, the District decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided above, the Title IX Coordinator will provide notice in writing of the additional allegations to the Parties.

Dismissal of Formal Complaint

The District must investigate the allegations in a formal complaint. However, the District must dismiss the formal complaint and will not process the complaint under these Title IX grievance procedures if any of the following three circumstances exist:

- If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in this procedure;
- If the conduct alleged did not occur in the District's education program or activity;
- If the conduct alleged did not occur against a person in the United States.

The District has discretion to dismiss a formal complaint or any allegation under the following circumstances:

- If at any time during the investigation or hearing: a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations;

- If the Respondent is no longer enrolled or employed by the District; or
- 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.

If the District dismissed 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 dismissal.

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

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.

Equitable Treatment of the Parties

The District's determination of responsibility is a neutral, fact-finding process. The District will treat Complainants and Respondents equitably. The procedures will apply equally to all Parties.

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 grievance process.

Bias or Conflict of Interest

The District's Title IX Coordinator, investigator, Decision-Maker, or any person designated by the District to facilitate an informal resolution process, will not have bias or conflict of interest in the investigatory, hearing, sanctioning, or appeal process or bias for or against Complainants or Respondents 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 the Decision-Maker in the process. The District will ensure that the Title IX Coordinator, investigator, Decision-Maker, and facilitator receive training on:

- The definition of sexual harassment in this procedure;
- The scope of the District's education program or activity;
- How to conduct an investigation;
- The grievance process including conducting hearings, appeals, and informal resolution processes; and
- How to serve impartially, including: avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Timeline for Completion

The District will undertake its grievance process promptly and as swiftly as possible. The District will complete the investigation and its determination regarding responsibility, or the informal resolution process, within 90 days.

Below is the estimated timeline for the major stages of the investigation and resolution process. Days are business days, as defined in the Definitions section above.

Investigation Stage

- About 40 days for the investigation
- 10 days with the preliminary report and to submit any response or additional information or questions
- 10 days before hearing – final investigative report provided to the parties

Decision & Appeals

- 10 days or less after the hearing
- 5 days from the notice of outcome
- If someone appeals, District has 5 days to notify the other party in writing
- Allow the non-appealing party at least 5 days to respond or submit their own appeal
- 5 days for the Decision Maker on Appeal to issue a decision

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the timeline to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the unavailability of witnesses or delays by the Parties, to account for District breaks or vacations, or due to the complexity of the investigation. The District will provide notice of this extension to the Complainant and Respondent in writing and include the reason for the delay and anticipated timing of completion.

A Party may request an extension from the Title IX Coordinator in writing by explaining the reason for the delay and the length of the continuance requested. The Title IX Coordinator will notify the Parties and document the grant or denial of a request for extension or delay as part of the case recordkeeping. The District shall grant a student Party's reasonable request for an extension of a deadline related to a Complaint during periods of examinations or school closures.

The District will provide parties with periodic updates on the status of the investigation consistent with the timeline described above.

Role of Advisor

The Parties have the right to their Advisor of choice. Cross-examination in the live hearing may only be conducted by an Advisor.

If a Party doesn't have an Advisor, the District must provide an Advisor of its choice, free of charge to any Party without an Advisor in order to conduct cross-examination at the hearing. If an Advisor fails to appear at the hearing, the District will provide an Advisor to appear on behalf of the non-appearing Advisor for the purpose of conducting cross-examination of the other party and witnesses.

The Advisor may also provide support and assistance in understanding and navigating the investigation and hearing process.

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

To limit the number of individuals with confidential information about the issues, each Party may identify one Advisor.

Confidentiality

The District values the privacy of its students, employees, and other community members. Community members should be able to seek the assistance they need without fear that the information they provide will be shared more broadly.

The District will maintain as confidential any supportive measures provided to a party, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the support measures. The District will keep confidential who has made a report or complaint of sex discrimination, including sexual harassment, as well as any respondent or witness, outside of necessary disclosures of information to comply with federal and state law, including to conduct an investigation or hearing under this Policy.

As to matters involving students, under federal privacy laws, the investigative report, statements of one party that are shared with the other party in the resolution process, and any documents prepared by the District, including documents by or for the adjudicators in advance of the hearing, constitute education records which may not be disclosed outside of the proceedings, except as may be required or authorized by law. Parties are free to discuss their own experiences. Access to materials will be provided only by a secure method and parties and advisors are not permitted to make copies of any documents shared or make use of the documents outside of the processes described in this policy. Inappropriately sharing materials provided during this process may constitute retaliation and result in disciplinary action.

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.

Student Complainant Requests for Confidentiality

If a student Complainant requests confidentiality when reporting sexual harassment, which could preclude a meaningful investigation or potential discipline of the Respondent, if found responsible, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the District shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the Complainant. The District shall normally grant the request when possible. In determining

whether to disclose a Complainant's identity or proceed to an investigation over the objection of the Complainant, the District may consider whether any of the following apply:

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

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

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

Investigations

The Title IX Coordinator is responsible for overseeing investigations to ensure timely resolution and compliance with Title IX and this procedure.

The Parties have the right to have an Advisor present at every meeting described in this section.

Trained Investigators

The District will investigate Title IX formal complaints fairly and objectively. Individuals serving as investigators under this procedure will have adequate training on what constitutes sexual harassment, how the District's grievance procedures operate, and trauma-informed investigation techniques. The District will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence and complies with this procedure.

Burden of Gathering Evidence

The District, not the Parties, has the responsibility to gather information and interview witnesses. As part of the District's burden of gathering evidence, the District's investigator will create an

investigative report that fairly summarizes relevant evidence, whether it is inculpatory or exculpatory. The investigator shall not make findings or determinations of law or fact.

Student Complainants should be aware that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing, if a hearing is required under this procedure. Written evidence submitted by a Party is limited to five pages of text, single-spaced, Times New Roman or Arial Font, 12 points, 1-inch margins. The five-page limitation does not include documentary evidence (such as screenshots of text messages or websites, or medical documentation) submitted as an attachment or appendix to the submission.

In complicated cases, parties can request from the Title IX Coordinator the ability to submit a longer document. If the Title IX Coordinator extends the page limitation, that new longer limitation will be offered to all parties. Requests for the ability to submit longer documents must be received no later than 48 hours prior to the deadline.

Evidence of Past Sexual History

An investigator or Decision-Maker shall not consider the past sexual history of the Complainant except in the limited circumstances described below:

- The investigator or Decision-Maker shall not consider the Complainant's prior sexual history unless such questions or evidence is offered to prove that someone other than the Respondent committed the alleged conduct; or
- The investigator or Decision-Maker shall not consider the Complainant's prior sexual behavior unless the questions or evidence concern the parties' prior behavior and patterns with respect to the Respondent and are offered to prove consent.
 - Where the investigator or Decision-Maker allows consideration of questions or evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent pursuant to this circumstance, the mere fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

Before allowing the consideration of any evidence proffered pursuant to this section, the investigator or Decision-Maker shall provide a written explanation to the Parties as to why consideration of the evidence is consistent with this procedure.

Notice of Investigative Interview

The District will provide written notice of the date, time, location, participants, and purpose of all investigative interviews to a Party whose participation is invited or expected, with sufficient time for the Party to prepare to participate.

Evidence Review

During the investigation, all 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 inculpatory and exculpatory evidence.

Investigative Report

Prior to the conclusion of the investigation, the investigator will prepare a preliminary investigative report summarizing the information gathered and outlining the contested and uncontested information. This preliminary report will not include any findings or credibility assessments, which are reserved for the Decision-Maker, but may note observations relevant to credibility. The Parties, in consultation with their Advisors if they so choose, will have an opportunity to review the preliminary report, respond to it in writing, meeting with the investigator if needed, submit additional comments and information to the investigator, identify any additional witnesses or evidence for the investigator to consider, and submit any further questions that they believe should be directed by the investigator to the other party or parties or to any witnesses.

The preliminary written report will include at least all of the following information:

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

The investigator may redact information not directly related to the allegations or privileged information. However, the investigator will keep a log of information they do not produce to the Parties. The investigator will provide this log only to the Title IX Coordinator. The Title IX Coordinator will not disclose the log to the Parties but will maintain the log in the Title IX Coordinator's file, in the event it later becomes relevant.

As part of the review of the preliminary report, the Title IX Coordinator will make available to all Parties any evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a Party or other source.

The Parties will have ten days for the review and response after the submission of the preliminary report.

The Investigator will consider any written response by the parties prior to the completion of the investigative report. The Parties may submit information, witness names and any evidence during the investigation or designated review and response period.

At least ten days prior to a hearing, the District will send the final investigative report to each Party and their Advisors, if any, the investigative report in an electronic format or a hard copy.

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 Respondent an opportunity to respond to the evidence gathered before a Decision-Maker. 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.

Notice

If the District proceeds to a hearing, the District will provide all Parties written notice of the date, time, location, participants, and purpose of the hearing with sufficient time for the Party to prepare to participate.

Hearing Format

The District will provide a live (synchronous) hearing in a virtual environment, with technology enabling participants simultaneously to see and hear each other in real time, but may provide a live hearing with all Parties physically present in the same geographic location if requested by all parties and agreed to by the District.

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.

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

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

Decision-Maker

The Decision-Maker will be free from conflict of interest or bias, including bias for or against Complainants or Respondents. In cases where the Complainant or Respondent objects to the Decision-Maker based on a conflict of interest, the Complainant or Respondent may request the Title IX Coordinator select a different Decision-Maker. The Complainant or Respondent must make this request to the Title IX Coordinator in writing at least five days prior to the hearing.

The Decision-Maker may ask the Parties and the witnesses questions during the hearing. The Decision-Maker must objectively evaluate all relevant evidence both inculpatory and exculpatory and must independently reach a determination regarding responsibility without giving deference to the investigative report. The Decision-Maker must receive training on issues of relevance, how to apply the rape-shield protections for Complainants, and any technology to be used at the hearing.

Presenting Witnesses

The District will provide the Complainant and Respondent an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Witnesses, like Parties, are not required to participate in the live hearing process.

Only relevant evidence will be admissible during the hearing. Relevant evidence means evidence, including evidence relevant to the credibility of a Party or witness, having any tendency in reason to prove or disprove any disputed fact material to the allegations under investigation.

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

Cross-Examination

The District shall permit each Party's Advisor to ask the other Party and any witness relevant questions, including questions challenging credibility. The Party's Advisor must conduct cross-examination directly, orally, and in real time. A Party may never personally conduct cross-examination. Other Parties shall have an opportunity to object to a question posed. The District may limit such objections to written form, and neither the Decision-Maker nor the District are obligated to respond, other than to include any objection in the record. The Decision-Maker shall have the authority and obligation to discard or rephrase any question that the Decision-Maker deems to be irrelevant. In making these determinations, the Decision-Maker is not bound by, but may take guidance from, the formal rules of evidence.

Before a Complainant, Respondent, or witness answers a question, the Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-Maker need not provide a lengthy or complicated explanation in support of a relevance determination.

If a Party or witness disagrees with a relevance determination, that individual has the choice of either (1) abiding by the Decision-Maker's determination and answering the question or (2) refusing to answer the question.

If a Party or witness does not submit to cross-examination at the live hearing, the Decision-Maker may admit any statement of that Party or witness in reaching a determination regarding responsibility. The Decision-Maker will give the statements whatever weight the Decision-Maker determines appropriate, bearing in mind that the statements have not been tested by cross-examination. In doing so, the Decision-Maker should consider, and if possible, determine, whether the witness or Party made the statement and what the statement proves.

The Decision-Maker cannot draw an inference about the determination of responsibility based solely on a Party's or witness's absence from the live hearing or refusal to submit to cross-examination or to answer any question.

The Decision-Maker may also ask any Party or witness questions. If a Party or witness refuses to respond to a Decision-Maker's questions, the Decision-Maker is not precluded from relying on that Party or witness' statements.

Determinations of Responsibility

When the Decision-Maker makes a determination of responsibility or non-responsibility, the Decision-Maker will issue a written determination regarding responsibility, no later than 10 days after the date that the hearing ends.

When making a determination regarding responsibility, a Decision-Maker will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. A Decision-Maker may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness. In evaluating the evidence, the Decision-Maker will use the preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the Decision-Maker will decide whether it is more likely than not that a policy violation occurred.

The written determination will include:

- Identification of the allegations potentially constituting Title IX sexual harassment as defined in these procedures;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including who conducted the investigation and gave notifications to the Parties. The determination will also state when, where, and the date the investigator interviewed the Parties and witnesses, conducted site visits, and the methods used to gather other evidence. The procedural section should also discuss the dates and how the Parties were provided the opportunity to review and inspect evidence and the date of any hearings held and who attended the hearing;
- Findings of fact supporting the determination. In making these findings, the Decision-Maker will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility;
- Conclusions regarding the application of the District's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- A statement of, and rationale for, any disciplinary sanctions the District imposes on the Respondent;
- A statement of whether the District will provide the Complainant with remedies designed to restore or preserve equal access to the District's education program or activity;
- The District need not disclose to the Respondent remedies that do not affect them as part of the written determination. The District can inform the Respondent that it will provide remedies to the Complainant. However, the District will inform the Complainant of the sanctions against the Respondent;
- The District's procedures and permissible bases for the Complainant and Respondent to appeal.

The District will provide the written determination to the Parties simultaneously. If the Parties do not file an appeal, the determination is final at the expiration of the time to file an appeal. If any of the Parties file an appeal, the determination regarding responsibility becomes final on the date that the District provides the Parties with the appeal determination.

Disciplinary Sanctions

The District must have completed the grievance procedures (investigation, hearing, and any appeal, if applicable) before imposing disciplinary sanctions or any other actions that are not supportive measures against a Respondent. If the Decision-Maker determines the Respondent was responsible for conduct that constitutes sexual harassment, the District will take disciplinary action against the Respondent and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense.

Possible disciplinary sanctions for student Respondents are, loss of privileges, required education, training or counseling, non-academic disciplinary probation, suspensions of 1, 2, 3, 4, 5, or 6 semesters, and expulsion. Possible disciplinary sanctions for employee Respondents include but are not limited to required training or counseling, suspension, or termination.

Appeal of Dismissal of a Formal Complaint or of the Determination of Responsibility

A Complainant or Respondent may appeal the District's determination regarding responsibility or the dismissal of a formal complaint or any allegations. A Complainant or Respondent must submit a written appeal within 5 days from the date of the notice of determination regarding responsibility or from the date of the District's notice of dismissal of a formal complaint or any allegations.

Grounds for Appeal

The District will designate a Decision-Maker on Appeal who will not be the initial Decision-Maker, the Title IX Coordinator, or the investigator. In filing an appeal of the District's determination regarding responsibility or the District's dismissal of a formal complaint, the Party must state the grounds for appeal and a statement of facts supporting those grounds. The grounds for appeal are as follows:

- A procedural irregularity affected the outcome;
- New evidence was not reasonably available at the time the District's determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome; or
- The District's Title IX Coordinator, investigator, or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

Appeal Procedure

If a Complainant or Respondent submits an appeal to the District, the District will:

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

The Decision-Maker on Appeal will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within five days after the Decision-Maker on appeal receives the response to the appeal or the last day to provide a response. The District may extend this timeline for complicated appeals or where the record or other calendar requirements necessitate an extension, by notifying all parties. The District will provide the written decision simultaneously to all Parties.

The Decision-Maker on Appeal may extend or otherwise modify the deadlines provided above. Any 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 Decision-Maker will respond to the request within 48 hours in writing and will inform the Parties simultaneously whether the extension is granted.

Retaliation Prohibited

The District prohibits any intimidation, threats, coercion, or discrimination against any individual who made a report or complaint of sexual harassment, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Individuals who experience retaliation may file a complaint using the formal complaint process described above.

Dissemination of Policy and Procedures

The District will provide its policy and procedures related to Title IX on its website and in each handbook or catalog provided to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining with the District. The District will also provide its policy and procedures related to Title IX to all volunteers 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.

When hired, employees are required to sign acknowledging that they have received the policy and procedures. The District will place the signed acknowledgment of receipt in each employee's personnel file.

Training

The District will provide a comprehensive trauma-informed training program to Title IX Coordinators, Investigators, Decision-Makers, and any individual who facilitates an informal resolution process, on the definition of sexual harassment, the scope of the District's education program or activities, best practices for assessment of a sexual harassment complaint, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, bias, and implicit bias and racial inequities, both broadly and in school disciplinary processes. Any materials used to train the District's Title IX Coordinator, investigators, Decision-Makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment. Materials for this training must

include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity.

The District will provide Officials with Authority with training regarding their obligation to report sexual harassment and instruction on how to report sexual harassment to the Title IX Coordinator.

File Retention

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

- The original report or complaint;
- Any actions taken in response to the complaint, including supportive measures;
- The investigative report including all evidence gathered and any responses from the Parties;
- The District's determination regarding responsibility;
- Audio or audiovisual recording or transcript from a hearing;
- Records of any disciplinary sanctions imposed on the Respondent;
- Records of any remedies provided to the Complainant;
- Any appeal and the result;
- Any informal resolution and the result; and
- All materials used to train Title IX Coordinators, investigators, Decision-Makers, and any person who facilitates an informal resolution process. The District will make these training materials publicly available on its website.