

College Council: Policy and Procedure Review

4-14-2022

[BP 1200 Mission](#) – Reviewed as part of annual review requirement. IDEA Committee revisions added.

[AP 3225 Institutional Effectiveness](#) – CCLC 38 Update added *optional* language to highlight diversity, equity, and inclusion issues.

[AP 3434 Responding to Harassment Based on Sex Under Title IX](#) – CCLC 38 updated this procedure to add optional language to highlight diversity, equity, and inclusion issues and to clarify other language.
and minor edits.

[AP 3435 Discrimination and Harassment Investigations](#) – CCLC Updates 34, 35, Title IX, 38 – Legally Required. This procedure has been created from Scratch on the advice of general counsel. This replaces existing AP 3435 in its entirety.

[AP 3515 Reporting of Crimes](#) – CCLC 36 legally required updates, contact updates, and added links to web references.

[AP 4250 Probation](#) – CCLC 38 updated this procedure to add optional language to highlight diversity, equity, and inclusion issues.

For current Board Policies and Administrative Procedures that are posted online please see [Policies & Procedures](#).

Status Update – Policies and Procedures Currently Under Review

Administrative – Under Review

AP 3420 Equal Employment Opportunity
AP 3725 Information and Communications Technology and Accessibility Acceptable Use
BP 4250 Academic Probation Dismissal and Readmission
AP 5020 Non-Resident Tuition
BP 6340 Bids and Contracts
BP 7100 Commitment to Diversity
BP 7120 Employment Recruitment
BP 7130 Compensation
BP 7160 Professional Development
BP 7250 Educational Administrators
BP 7345 Catastrophic Leave Program

Academic Senate – Under Review

BP/AP 4020 Program Curriculum and Course Development
BP/AP 4106 Nursing Programs
BP/AP 5050 Student Success and Support Program
AP 5055 Enrollment Priorities

The District

IDEA Committee Revisions. 3-8-2022

Classified Senate reviewed. 3-22-2022

BP 1200 MISSION**Reference:**

ACCJC Accreditation Standard I.A.

The mission of the Marin Community College District:

College of Marin's commitment to educational excellence is rooted in ~~providing equitable opportunities~~ equity practices and fostering success for all members of our diverse community by offering:

- preparation for transfer to four-year colleges and universities;
- associate degrees and certificates
- career technical education
- basic skills improvement
- English as a second language
- lifelong learning
- community and cultural enrichment

College of Marin responds to community needs by offering student-centered programs and services in a supportive, innovative learning environment that promotes social, racial, and environmental ~~responsibility~~ justice.

The mission is evaluated and revised on a regular basis. The District believes ~~a~~ that our commitment and accountability to diversity, equity, and ~~inclusion~~ belonging enriches the District's mission and supports students in achieving their educational goals.

Date Adopted: December 9, 2008 (*Replaced College of Marin Policy 1.7020*)

Date Revised: April 20, 2010, April 11, 2015, November 9, 2021

Date Revised:

General Institution

CCLC 38 Update added *optional* language to highlight diversity, equity, and inclusion issues.

Mici 2-1-2022

Approved without revisions. Student Learning and Success. 3-23-2022

AP 3225 INSTITUTIONAL EFFECTIVENESS

References:

Education Code Sections 78210 et seq. and 84754.6;
ACCJC Accreditation Standards I.B.5 - 9

The District shall develop, adopt, and publicly ~~ally~~ post goals that address the following:

- 1) Accreditation Status
- 2) Fiscal Viability
- 3) Student Performance and outcomes; and
- 4) Programmatic compliance with state and federal guidelines.

The goals should be challenging and quantifiable, address achievement gaps for underrepresented populations, and align the educational attainment of California's adult population ~~to~~ with the workforce and economic needs of the state.

Institutional effectiveness includes the assessment of goals and objectives with respect to the District's commitment to equity and inclusion.

Offices of Primary Responsibility: Office of the President; Student Learning and Success

Date Adopted: May 14, 2019

Date Reviewed/Revised:

General Institution

CCLC 38 updated this procedure to add optional language to highlight diversity, equity, and inclusion issues and to clarify other language.

and minor edits. Mici 2-25-2022

Human Resources has no revisions and approved. Nikki H. 3-3-2022

AP 3434 RESPONDING TO HARASSMENT BASED ON SEX UNDER TITLE IX**References:**

20 U.S. Code Sections 1681 et seq.;
34 Code of Federal Regulations Parts 106.1 et seq.;
Education Code Sections 67380 et seq.;
Office for Civil Rights Letter dated August 24, 2021

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 s 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 is Nekoda Harris, Executive Director of Human Resources, and the Title IX Coordinator's contact information is:

Address:

Indian Valley Campus
Building 11, Second Floor
1800 Ignacio Boulevard
Novato, CA 94949

Phone number: (415) 485-9520

Email: NHarris@marin.edu

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 will 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.

Jurisdictional Requirements – Application of Procedures

These procedures apply if the conduct meets the following three 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 and off-campus property and buildings the District owns or controls or student organizations officially recognized by the District own or control.
- The conduct meets the definition of Title IX “sexual harassment.”

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 its choice, free of charge. 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.

Complainant: A Complainant is an individual who alleges he/she/they is the victim of 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 he/she/they has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest, lack of resistance, or silence does not indicate consent. Affirmative consent must be ongoing throughout a sexual activity and one can revoke his/her/their consent at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, is not an indicator of consent.

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

- The Respondent’s belief arose from the Respondent’s own intoxication or recklessness;
- The Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented; or
- The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
 - asleep or unconscious;

- unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
- unable to communicate due to a mental or physical condition.

Decision-Maker: The person or persons who will oversee the live hearing and make a determination of responsibility. At its discretion, the District may have one Decision-Maker determine whether the Respondent is responsible, and another Decision-Maker determine the appropriate level of penalty for the conduct. 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, he/she/they will not become a Party to the complaint.

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

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;
- 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 carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the genital or anal opening of the body of another person.
 - **Sodomy.** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
 - **Sexual Assault with an Object.** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything the offender uses other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.
 - **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
 - **Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse.**
 - **Incest.** Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- **Statutory Rape – Non-Forcible.** Sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
- **Dating Violence.** Violence against 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.
- **Domestic Violence.** Violence committed:
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; or
 - By any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws of California.
- **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her/their safety or the safety of others or suffer substantial emotional distress.

Reporting Options

Any individual may report sexual harassment to the District's Title IX Coordinator.

The District strongly encourages prompt reporting of sexual harassment. Prompt reporting allows for the collection and preservation of evidence, including physical evidence, digital media, and witness statements. A delay may limit the District's ability to effectively investigate and respond.

Individuals have the opportunity to decide whether they want to pursue a formal Title IX complaint. Reporting sexual harassment to the Title IX Coordinator does not automatically initiate an investigation under these procedures. A report allows the District to provide a wide variety of support and resources to impacted individuals and to prevent the reoccurrence of the conduct. A Complainant 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 hinder 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 reports the type of conduct, and the time, date, and location. (Also see *BP/AP 3540 Sexual and Other Assaults on Campus* and *BP/AP 3515 Reporting of Crimes*)

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: all managers, supervisors, campus police officers, and the student conduct and community standards coordinator.

Officials with Authority are required to report 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.

All other employees are strongly encouraged to report 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.

Intake and Processing of Report

Receipt of Report

After receiving a report of sexual harassment, the Title IX Officer will contact the Complainant and reporting party to explain rights under this policy and procedure and invite the Complainant to an in-person meeting. The Title IX Officer will discuss supportive measures with the Parties.

Timeframe for Reporting

To promote timely and effective review, the District strongly encourages individuals to report sexual harassment as soon possible because a delay in reporting may affect the ability to collect relevant evidence and may affect remedies the District can offer.

Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a formal complaint has been filed. The District will provide the Complainant and Respondent 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 changes to academic, living, transportation, and working situation or protective measures such as counseling, extensions of deadlines, other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Removal of Respondent Pending Final Determination

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

Emergency Removal

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 may not use emergency removal to address a Respondent's threat of obstructing the sexual harassment investigation or destroying relevant evidence. Emergency removal is only available to address health or safety risks against individuals arising out of sexual harassment allegations, not to address other forms of misconduct that a Respondent might commit pending the processing of a complaint.

The District's Title IX Coordinator or designee, the Chief of Police or designee, or the Superintendent/President will conduct the individualized safety and risk analysis. The Title IX Coordinator is an authorized designee of the President for purposes of Withdrawal of Consent to be on Campus under *AP 5520 Student Discipline and Due Process*.

If the District's Title IX Coordinator or designee, the Chief of Police or designee, or the Superintendent/President determines emergency removal is appropriate, he/she/they or designee will provide the person the District is removing from campus on an emergency basis with withdrawal of consent to be on campus. Please refer to the procedure for withdrawal of consent to be on campus under AP 5520 Student Discipline and Due Process, or as an interim suspension or other student conduct measure under AP 5520.

The District's Title IX Coordinator or designee, the Chief of Police or designee, or the Superintendent/President will determine whether the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal. The Title IX Coordinator is an authorized designee of the President for purposes of Withdrawal of Consent to be on Campus under AP 5520.

Administrative Leave

The District may place an 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 Grievance 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;
- 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; and
- 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.

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 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 dismisses the formal complaint or any allegations, the Title IX Coordinator shall simultaneously provide the Parties with written notice of the dismissal and reason. The District will also notify the Parties of their right to appeal.

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

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 both Parties. The District will not discipline a Respondent for sexual harassment unless it determines the Respondent was responsible for sexual harassment at the conclusion of the grievance process.

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, Decision-Maker, an investigator, or any person designated by the District to facilitate an informal resolution process, will not have potential actual bias or conflict of

interest in the investigatory, hearing, sanctioning, or appeal process or bias for or against Complainants or Respondents generally. 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 210 calendar days.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend 210-calendar day period to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the unavailability of witnesses or delays by the Parties, to account for District breaks or vacations, or due to the complexity of the investigation. The District will provide notice of this extension to the Complainant and Respondent in writing and include the reason for the delay and anticipated timing of completion.

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.

Role of Advisor

The role of the Advisor is to provide support and assistance in understanding and navigating the investigation 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.

A Party does not have a right to self-representation at the hearing; an Advisor must conduct any cross-examination. The District must provide an Advisor of its choice, free of charge to any Party without an Advisor in order to conduct cross-examination. If an Advisor fails to appear at the hearing, the District will provide an Advisor to appear on behalf of the non-appearing Advisor. To limit the number of individuals with confidential information about the issues, each Party may identify one Advisor.

Confidentiality Agreements

To protect the privacy of those involved, the Parties and Advisors are required to sign a confidentiality agreement prior to attending an interview or otherwise participating in the District's grievance process. The confidentiality agreement restricts dissemination of any of the evidence subject to inspection and review or use of this evidence for any purpose unrelated to the Title IX grievance

process. The confidentiality agreement will not restrict the ability of either Party to discuss the allegations under investigation.

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.

Investigations

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

Both Parties have the right to have an Advisor present at every meeting with the Party 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 and how the District's grievance procedures operate. 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.

Gathering Evidence and Burden of Proof

The District, not the Parties, has the responsibility to gather information and interview witnesses. When the investigator evaluates the evidence, he/she/they will do so using the preponderance of the evidence standard. After considering all the evidence gathered, the investigator will decide whether it is more likely than not that reported conduct occurred.

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

Both 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 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.

Prior to the investigator preparing an investigative report, the District will make available ~~send~~ to each Party and the Party's Advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The Parties will have at least ten days to submit a written response. The investigator must consider this written response prior to completing the investigative report.

Investigative Report

The results of the investigation of a formal complaint will be set forth in a written report that will include at least all of the following information:

- 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 specific finding as to whether the allegations occurred using a preponderance of the evidence standard; and
- Any other information deemed appropriate by the District.

The investigator will not make a determination regarding responsibility.

The investigator may redact information not directly related to the allegations or privileged information. However, the investigator will keep a log of information he/she/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.

At least ten days prior to a hearing or other time of determination regarding responsibility, the District will send the investigative report to each Party and their Advisors, if any, the investigative report in an electronic format or a hard copy, for review and written response. The Parties will have at least ten days to submit a written response.

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 may provide a live hearing with all Parties physically present in the same geographic location or, at the District's discretion if either Party requests, the District may provide any or all Parties, witnesses, and other participants the ability to appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other in real time.

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.

Decision-Maker

The Decision-Maker will be free from conflict of interest or bias, including bias for or against Complainants or Respondents. If the Complainant or Respondent believes the Decision-Maker has a

conflict of interest, the Party shall inform the Title IX Coordinator in writing as soon as possible and within five business days after being notified of the Decision-Maker. The Title IX Coordinator will evaluate the information and determine whether to proceed with the Decision-Maker or select a different Decision-Maker.

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.

Cross-Examination

The District will permit each Party's Advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those 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.

Advisors may only ask relevant cross-examination and other questions of a Party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other 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.

The Decision-Maker may consider statements made by Parties or witnesses that are otherwise permitted under the Title IX regulations, even if those Parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility in the Title IX grievance process. For example, the Decision-Maker may consider statements made by the Parties and witnesses during the investigation, emails or text exchanges between the Parties leading up to the alleged sexual harassment, and statements about the alleged sexual harassment that satisfy the regulation's relevance rules, regardless of whether the Parties or witnesses submit to cross-examination at the live hearing. The Decision-Maker may also consider police reports, Sexual Assault Nurse Examiner documents, medical reports, and other documents even if those documents contain statements of a party or witness who is not cross-examined at the live hearing.

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 30 business 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 District will decide whether it is more likely than not that sexual harassment 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, 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 him/her/them as part of the written determination. The District can inform the Respondent that it will provide remedies to the Complainant. However, the District will inform the Complainant of the sanctions against the Respondent;
- The District's procedures and permissible bases for the Complainant and Respondent to appeal.

The District will provide the written determination to the Parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the Parties with the written determination of the result of the appeal, if the Parties file an appeal, or if the Parties do not file an appeal, the date on which an appeal would no longer be timely.

Disciplinary Sanctions and Remedies

The District must have completed the grievance procedures (investigation, hearing, and any appeal, if applicable) before the 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.

Remedies for the Complainant might include, but are not limited to:

- Providing an escort to ensure that the Complainant can move safely between classes and activities;

- Ensuring that the Complainant and Respondent do not attend the same classes or work in the same work area;
- Providing counseling services or a referral to counseling services;
- Providing medical services or a referral to medical services;
- Providing academic support services, such as tutoring;
- Arranging for a Complainant, if a student, to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and
- Reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant's discipline.

Possible disciplinary sanctions for student Respondents include written or verbal reprimand, required training or counseling, non-academic probation, suspension, and expulsion. Possible disciplinary sanctions for employee Respondents include written or verbal reprimand, required training or counseling, reduction in pay, demotion, suspension, or discharge, in accordance with any applicable collective bargaining agreement or Board Policies and Administrative Procedures.

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 business 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 appoint one or more persons to serve as the Decision-Maker on Appeal. The Decision-Maker on Appeal may not be the original Decision-Maker who made the decision the appellant is challenging, nor the Title IX Coordinator or 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 the Complainant or Respondent submit an appeal to the District, the District will:

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

The appeal Decision-Maker will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 45 days business days after the Decision-Maker on appeal receives the response to the appeal or the last day to provide a response. The District will provide the written decision simultaneously to both Parties.

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

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, including mediation, 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.

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.

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, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Any materials used to train the District's Title IX Coordinator, investigators, Decision-Makers, and any person who facilitates an informal resolution process, will not

rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

File Retention

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

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

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

Complaint Reporting

The Superintendent/President shall provide the Board, upon request, a report of complaints filed pursuant to AP 3434. This report must disaggregate the complaints by complaint type (Student Complainant and Student Respondent, Student Complainant and Employee Respondent, Employee Complainant and Student Respondent, Employee Respondent and Employee Respondent, etc.). This report must also disaggregate the complaints by the Complainant's race, age, gender, religion, or any other characteristic identified by the Board.

See AP 5520 Student Discipline and Due Process

Offices of Primary Responsibility: Human Resources, Campus Police, Student Services – Activities and Advocacy

Date Adopted: December 14, 2021

Reviewed/Revised:

General Institution

CCLC Updates 34, 35, Title IX, 38 – Legally Required. 1/12/2021 From Scratch on the advice of general counsel. This replaces existing AP 3435 in its entirety. Mici 2-2-2022

No changes. Nikki 2-25-2022

Revisions re: information provided to students instead of training because high turnover makes training impractical. Sadika 3-1-2022

No changes. Ryan B. 3-2-2022

AP 3435**DISCRIMINATION AND HARASSMENT COMPLAINT PROCEDURES****References:**

Education Code Sections 212.5, 231.5, 66281.5, and 67386;

Government Code Section 12950.1;

Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et seq.;

Title 2 Sections 11023 and 11024

For sexual harassment under Title IX, Complainants must proceed under BP 3433 Prohibition of Sexual Harassment under Title IX, AP 3433 Prohibition of Sexual Harassment under Title IX, and AP 3434 Responding to Harassment Based on Sex under Title IX. For other forms of sexual harassment or gender-based harassment, Complainants should use this procedure.

Reporting and Filing Complaints

The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in harassment, discrimination, or retaliation. Any person who has suffered harassment, discrimination, or retaliation or who has learned of harassment, discrimination, or retaliation may report harassment, discrimination, or retaliation. Complainants may have the option of filing a Complaint.

Complaints

A ~~formal~~ Complaint is a written and signed statement filed with the District or the California Community Colleges Chancellor's Office that alleges harassment, discrimination, or retaliation in violation of the District's Board Policies, Administrative Procedures, or in violation of state or federal law. An informal complaint is any of the following: (1) An unwritten allegation of harassment, discrimination, or retaliation; (2) a written allegation of harassment, discrimination, or retaliation that falls outside the timelines for a formal complaint; or (3) a written complaint alleging harassment, discrimination, or retaliation filed by an individual who expressly indicates that he/she/they does not want to file a formal Complaint.

Informal Complaints

Any person may submit an informal complaint to the Executive Director of Human Resources or any other District or college administrator. Administrators receiving an informal complaint shall immediately notify the Executive Director of Human Resources in writing of all pertinent information and facts alleged in the informal complaint.

Upon receipt of an informal complaint, the Executive Director of Human Resources will notify the person bringing the informal complaint of his/her/their right to file a formal complaint, if the incident

~~falls within the timeline for a formal complaint, and explain the procedure for doing so. The Complainant may later decide to file a formal complaint, if within the timelines to do so. If the individual chooses not to file a formal complaint, or if the alleged conduct falls outside the timeline to file a formal complaint, the Executive Director of Human Resources shall consider the allegations contained in the informal complaint and determine the appropriate course of action. This may include efforts to informally resolve the matter, or a fact finding investigation.~~

~~Investigation of an informal complaint will be appropriate if the Executive Director of Human Resources determines that the allegation(s), if proven true, would constitute a violation of the District policy prohibiting harassment, discrimination, or retaliation. The Executive Director of Human Resources will explain to any individual bringing an informal complaint that the Executive Director of Human Resources may decide to initiate an investigation, even if the individual does not wish the Executive Director of Human Resources to do so. The Executive Director of Human Resources shall not disregard any allegations of harassment, discrimination, or retaliation solely on the basis that the alleged conduct falls outside the deadline to file a formal complaint.~~

Formal Complaints

Formal Complaints must be filed with the Chancellor of the California Community Colleges or the Executive Director of Human Resources unless the Party submitting the Formal Complaint alleges discrimination, harassment, or retaliation against the responsible district officer, in which case it should be submitted directly to the Superintendent/President or the Chancellor of the California Community Colleges.

Formal Complaints should be submitted on the form prescribed by the Chancellor of the California Community Colleges. A copy of the form will be available at [the District Human Resources Department or Student Services – Activities and Advocacy](#).

If any Party submits a written allegation of harassment, discrimination, or retaliation not on the form described above, the District will seek to have the individual complete and submit the form. However, if the individual chooses not to do so, the District will attach the written allegation(s) to the form and treat it as a Formal Complaint. In no instance will the District reject a written allegation of harassment, discrimination, or retaliation on the basis that it was not submitted on the proper form.

A Formal Complaint must meet each of the following criteria:

- It must allege facts with enough specificity to show that the allegations, if true, would constitute a violation of District policies or procedures prohibiting discrimination, harassment, or retaliation;
- The Complainant must sign and date the Formal Complaint;
- The Complainant must file any Formal Complaint not involving employment within one year of the date of the alleged discriminatory, harassing, or retaliatory conduct or within one year of the date on which the Complainant knew or should have known of the facts underlying the allegation(s) of discrimination, harassment, or retaliation.
- The Complainant must file any Formal Complaint alleging discrimination, harassment, or retaliation in employment within 180 days of the date of the alleged discriminatory, harassing, or retaliatory conduct, except that this period shall extended by no more than 90 days following the expiration of the 180 days if the

Complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

If the Formal Complaint does not meet the requirements set forth above, the Executive Director of Human Resources will promptly return it to the Complainant and specify the defect. If the sole defect is that the Formal Complaint was filed outside the applicable proscribed timeline, the Executive Director of Human Resources will handle the matter as an informal complaint.

Oversight of Complaint Procedure: The Executive Director of Human Resources is the "responsible District officer" charged with receiving complaints of discrimination or harassment, and coordinating their investigation.

The actual investigation of complaints may be assigned by the Executive Director of Human Resources to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the Executive Director of Human Resources is named in the complaint or implicated by the allegations in the complaint.

Who May File a Complaint: Any student, employee, or third party who believes he/she/they has been discriminated against or harassed by a student, employee, or third party in violation of this procedure and the related policy.

Where to File a Complaint: A student, employee, or third party who believes he/she/they has been discriminated against or harassed in violation of these policy and procedures may make a complaint orally or in writing.

If a Complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, he/she/they must file the complaint on a form prescribed by the California Community Colleges Chancellor's Office. These approved forms are available from the Executive Director of Human Resources and at the California Community Colleges Chancellor's Office website.

The completed form must be filed with any of the following:

- the Executive Director of Human Resources;
- Director of Student Services – Activities & Advocacy; or
- the California Community Colleges Chancellor's Office.

Employment-Related Complaints

Complainants filing employment-related complaints shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH).

Complaints filed with the EEOC or the DFEH should be forwarded to the California Community Colleges Chancellor's Office.

Any District employee who receives a harassment or discrimination complaint shall notify the Executive Director of Human Resources immediately.

Filing a Timely Complaint: Since failure to report harassment and discrimination impedes the District's ability to stop the behavior, the District strongly encourages anyone who believes they are being harassed or discriminated against, to file a complaint. The District also strongly encourages the filing of such complaints within 30 days of the alleged incident. While all complaints are taken

seriously and will be investigated promptly, delay in filing impedes the District's ability to investigate and remediate.

All supervisors and managers have a mandatory duty to report incidents of harassment and discrimination; the existence of a hostile, offensive or intimidating work environment, and acts of retaliation.

The District will investigate complaints involving acts that occur off campus if they are related to an academic or work activity or if the harassing conduct interferes with or limits a student's or employee's ability to participate in or benefit from the school's programs or activities.

Communicating that the Conduct is Unwelcome: The District further encourages students and staff to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste or inappropriate.

Intake and Processing of the Complaint: Upon receiving notification of a harassment or discrimination complaint, the Executive Director of Human Resources or designee Director of Student Services – Activities & Advocacy or designee shall:

- Undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules, obtaining apologies, providing informal counseling, training, etc.
- Advise all Parties that he/she/they need not participate in an informal resolution of the complaint, as described above, and they have the right to end the informal resolution process at any time.
- Advise a student Complainant that he/she/they may file a complaint with the Office for Civil Rights of the U.S. Department of Education and employee Complainants may file a complaint with the Department of Fair Employment and Housing. All Complainants should be advised that they have a right to file a complaint with local law enforcement, if the act complained of is also a criminal act. The District must investigate even if the Complainant files a complaint with local law enforcement. In addition, the District should ensure that Complainants are aware of any available resources, such as counseling, health, and mental health services. The Executive Director of Human Resources or designee Director of Student Services – Activities & Advocacy or designee shall also notify the California Community Colleges Chancellor's Office of the complaint.
- Take interim steps to protect a Complainant from coming into contact with an accused individual, especially if the Complainant is a victim of sexual violence. The Executive Director of Human Resources or designee Director of Student Services – Activities & Advocacy or designee should notify the Complainant of his/her/their options to avoid contact with the accused individual and allow students to change academic situations as appropriate. For instance, the District may prohibit the accused individual from having any contact with the Complainant pending the results of the investigation. When taking steps to separate the Complainant and accused individual, the District shall minimize the burden on the Complainant. For example, it is not appropriate to remove Complainants from classes or housing while allowing accused individuals to remain.

Investigation

The Executive Director of Human Resources or designee shall:

- Authorize the investigation of the complaint, and supervise or conduct a thorough, prompt, and impartial investigation of the complaint, as set forth below. Where the Parties opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. In the case of a formal complaint, the investigation will include interviews with the Complainant, the accused, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.
- Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.

Investigation of the Complaint: The District shall promptly investigate every complaint and claim of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. This includes complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, on a District bus, or at a class or training program sponsored by the District at another location. The District shall promptly investigate complaints of harassment or discrimination that occur off campus if the alleged conduct creates a hostile environment on campus.

As set forth above, where the Parties opt for an informal resolution, the Executive Director of Human Resources may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the Complainant's age; whether there have been other harassment complaints about the same individual; and the accused individual's rights to receive information about the allegations if the information is maintained by the District as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. The District will inform the Complainant if it cannot maintain confidentiality.

Investigation Steps: The District will fairly and objectively investigate harassment and discrimination complaints. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the District's grievance procedures operate. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigators will use the following steps: interviewing the Complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses and evidence identified by each Party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District's

no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved Parties; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion. When the District evaluates the complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that discrimination or harassment has occurred.

Timeline for Completion: The District will undertake its investigation promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report within 90 days of the District receiving the complaint.

Cooperation Encouraged: All employees are expected to cooperate with a District investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a Complainant or witnesses does not relieve the District of its obligation to investigate. The District will conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed. No employee will be retaliated against as a result of lodging a complaint or participating in any workplace investigation.

Written Report

The results of the investigation of a complaint shall be set forth in a written report that 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 provided by each witness the investigator interviewed;
- An analysis of relevant evidence collected during the course of the investigation, including a list of relevant documents;
- A specific finding as to whether there is probable cause to believe that discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint;
- A table of contents if the report exceeds ten pages; and
- Any other information deemed appropriate by the District.

Confidentiality of the Process

Investigations are best conducted within a confidential climate. Therefore, the District does not reveal information about ongoing investigations except as necessary to fulfill its legal obligations. The District will keep the investigation confidential to the extent possible, but it cannot guarantee absolute confidentiality because release of some information on a “need-to-know-basis” is essential to a thorough investigation and to protect the rights of Accused students and employees during the investigation process and any ensuing discipline.

Administrative Determination

- In any case not involving employment discrimination, within 90 days of receiving a formal complaint, the district shall complete its investigation and forward a copy of the investigative report to the Chancellor of the California Community Colleges, a copy or summary of the report to both Parties, and written notice setting forth all of the following to both the Complainant and the Chancellor:

- The determination of the Superintendent/President or designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
 - A description of actions taken, if any, to prevent similar problems from occurring in the future;
 - The proposed resolution of the complaint; and
 - The Complainant's right to appeal to the District governing board and the Chancellor California Community Colleges.
- In any case involving employment discrimination, within 90 days of receiving a formal complaint, the district shall complete its investigation and forward a copy or summary of the report to the Complainant, and written notice setting forth all the following to the Complainant:
 - The determination of the Superintendent/President or designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
 - A description of actions taken, if any, to prevent similar problems from occurring in the future;
 - The proposed resolution of the complaint; and
 - The Complainant's right to appeal to the district governing board and to file a complaint with Department of Fair Employment and Housing or the U.S Equal Employment Opportunity Commission.

Discipline and Corrective Action

If harassment, discrimination, or retaliation occurred in violation of the policy or procedure, the District shall take disciplinary action against the accused and any other remedial action it determines to be appropriate consistent with state and federal law. The action will be prompt, effective, and commensurate with the severity of the offense. Remedies for the Complainant might include, but are not limited to:

- providing an escort to ensure that the Complainant can move safely between classes and activities;
- ensuring that the Complainant and alleged perpetrator do not attend the same classes or work in the same work area;
- preventing offending third parties from entering campus;
- providing counseling services or a referral to counseling services;
- providing medical services or a referral to medical services;
- providing academic support services, such as tutoring;
- arranging for a student-Complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and

- reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant being disciplined.

If the District imposes discipline, the nature of the discipline will not be communicated to the Complainant. However, the District may disclose information about the sanction imposed on an individual who was found to have engaged in harassment when the sanction directly relates to the Complainant; for example, the District may inform the Complainant that the harasser must stay away from the Complainant.

Disciplinary actions against faculty, staff, and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.

The District shall also take reasonable steps to protect the Complainant from further harassment, or discrimination, and to protect the Complainant and witnesses from retaliation as a result of communicating the complaint or assisting in the investigation.

The District will ensure that Complainants and witnesses know how to report any subsequent problems and should follow-up with Complainants to determine whether any retaliation or new incidents of harassment have occurred. The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all Parties to the extent possible without impeding the District's ability to investigate and respond effectively to the complaint.

If the District cannot take disciplinary action against the accused individual because the Complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

Appeals

If the District imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the procedure for appealing a disciplinary decision.

If the Complainant is not satisfied with the results of the administrative determination, he/she/they may, within 15 days, submit a written appeal to the Board of Trustees. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within 45 days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the Complainant and to the California Community Colleges Chancellor's Office. The Complainant shall also be notified of his/her/their right to appeal this decision.

If the Board does not act within 45 days, the administrative determination shall be deemed approved and shall become the final decision of the District in the matter.

In any case not involving workplace discrimination, harassment, or retaliation, the Complainant shall have the right to file a written appeal with the California Community Colleges Chancellor's Office within 30 days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Title 5 Section 59350.

In any case involving employment discrimination, including workplace harassment, the Complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the Department of Fair Employment and Housing.

Extension of Time

Within 150 days of receiving a formal complaint that does not involve employment discrimination, the District shall forward to the California Community Colleges Chancellor's Office the original complaint, the investigative report, a copy of the written notice to the Complainant setting forth the results of the investigation, a copy of the final administrative decision rendered by the Board or indicating the date upon which the decision became final, and a copy of the notification to the Complainant of his/her/their appeal rights. If, due to circumstances beyond its control, the District is unable to comply with the 150-day deadline for submission of materials, it may file a written request for an extension of time no later than ten days prior to the expiration of the deadline.

File Retention

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

- the original complaint;
- the investigatory report;
- the summary of the report if one is prepared;
- the notice provided to the Parties, of the District's administrative determination and the right to appeal;
- any appeal; and
- the District's final decision.

The District will make such documents available to the Chancellor of the California Community Colleges upon request.

Dissemination of Policy and Procedures

District Policy and Procedures related to harassment will include information that specifically addresses sexual violence. District policy and procedures will be provided to all students, faculty members, members of the administrative staff and members of the support staff and will be posted on campus and on the District's website.

When hired, employees are required to sign that they have received the policy and procedures, and the signed acknowledgment of receipt is placed in each employee's personnel file. In addition, these policies and procedures are incorporated into the District's course catalogs and orientation materials for new students.

Training

By January 1, 2021, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees. All new employees must be provided with the training and education within six months of their assumption of his/her/their position. After January 1, 2021, the District shall provide sexual harassment training and education to each employee once every two years. An employee who received this training and education in 2019 is not required to have refresher training until after two years thereafter.

The training and education required by this procedure shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and

the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment, a review of “abusive conduct,” and harassment based on gender identity, gender expression, and sexual orientation. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. Supervisor’s harassment training must also address potential exposure and liability for employers and individuals, supervisor’s obligation to report sexual harassment, discrimination, and retaliation when they become aware of it, appropriate remedial measures to correct harassing behavior.

The District will maintain appropriate records of the training provided, including the names of the supervisory employees trained, the date of training, sign in sheets, copies of all certificates of attendance or completion issued, the type of training provided, a copy of all written or recorded training materials, and the name of the training provider. If the training is provided by webinar, the District will maintain a copy of the webinar, all written materials used by the training and all written questions submitted during the webinar, and document all written response or guidance the trainer provided during the webinar. The District will retain these records for at least two years.

~~The District will also provide training to students who lead student organizations.~~ The District should provide copies of the sexual harassment policies and training to all District law enforcement unit employees regarding the grievance procedures and any other procedures used for investigating reports of sexual violence.

In years in which a substantive policy or procedural change has occurred, all District employees will attend a training update or receive a copy of the revised policies and procedures.

Participants in training programs will be required to sign a statement that they have either understood the policies and procedures, their responsibilities, and their own and the District’s potential liability, or that they did not understand the policy and desire further training.

Education and Prevention for Students

In order to take proactive measures to prevent sexual harassment and violence toward students, the District will provide preventive education programs and make victim resources, including comprehensive victim services, available. The District will include ~~such programs~~ information in their orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, the District’s policies and disciplinary procedures, and the consequences of violating these policies. A training program or informational services will be made available to all students at least once annually.

The education programs will also include information aimed at encouraging students to report incidents of sexual violence to the appropriate District and law enforcement authorities. Since victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of District or campus rules were involved, the District will inform students that the primary concern is for student safety and that use of alcohol or drugs never makes the victim at fault for sexual violence. If other rules are violated, the District will address such violations separately from an allegation of sexual violence.

Office of Primary Responsibility: Human Resources, Student Learning and Success, Student Services – Activities and Advocacy

Date Approved: November 6, 2008

Date Revised: January 15, 2013; September 15, 2015 ~~BOT~~

Date Revised:

General Institution

CCLC 36 Update – Legally Required updates, contact updates, and added links to web references.

Mici 2-9-2021

Human Resources reviewed and no changes. NH 10-14-2021, 3-2-2022

Approved without changes. Chief JF 3-3-2022

Approved without changes. Greg/ Admin Svcs. 3-8-2022

AP 3515 REPORTING OF CRIMES**References:**

Education Code Sections 212, 67380, 67383 and 87014;

Penal Code Sections 245 and 422.55;

Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998;

20 United States Code Section 1232g;

34 Code of Federal Regulations Part 99.31 subdivisions (a) (13), (14) and 668.46;

Campus Security Act of 1990

Members of the Marin Community College District who are witnesses or victims of a crime should immediately report the crime to District Police.

In the event an employee is assaulted, attacked, or menaced by a student, the employee should notify the District Police and shall notify his/her their supervisor as soon as practical after the incident. The supervisor of any employee who is attacked, assaulted, or menaced shall assist the employee to promptly report the attack or assault to the District Police if the employee has not done so already. The supervisor himself/herself themselves shall make the report if the employee is unable or unwilling to do so. Reporting a complaint to local law enforcement will not relieve the District of its obligation to investigate all complaints of harassment.

The District will instruct members of the District Police Department to notify students and employees complaining of sexual violence of their right to file a sex discrimination complaint with the District in addition to filing a criminal complaint, and to report incidents of sexual violence to Chief Human Resources Officer if the complainant consents.

The District shall publish warnings to the campus community about the following crimes:

- Criminal homicide – murder and non-negligent manslaughter;
- Criminal homicide – negligent manslaughter;
- Sex offenses – forcible and non-forcible sex offenses;
- Domestic violence, dating violence and stalking
- Robbery;
- Aggravated assault;
- Burglary;
- Motor vehicle theft;
- Arson;
- Arrests for liquor law violations, drug law violations, and illegal weapons possession;
- Persons who were not arrested for liquor law violations, drug law violations, and illegal weapons possession, but who were referred for campus disciplinary action for same;

- Crimes that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability and involve larceny-theft, simple assault, intimidation, destruction/damage/vandalism of property, or any other crime involving bodily injury;
- Those reported to the District Police; and
- Those that are considered to represent a continuing threat to other students and employees.

In the event that a situation arises, either on or off campus, that, in the judgment of the District Police Chief, constitutes an ongoing or continuing threat, a campus wide "timely warning" will be issued. The warning will be issued through the District notification system(s) to students, faculty, staff and the campus' student newspaper. The information shall be disseminated by District Police in a manner that aids the prevention of similar crimes.

Depending on the particular circumstances of the crime, especially in all situations that could pose an immediate threat to the community and individuals, the District Police Chief may also post a notice on the campus-wide electronic bulletin board on the District's web site at: www1.marin.edu, providing the community with more immediate notification. The electronic bulletin board is immediately accessible via computer by all faculty, staff, and students. Anyone with information warranting a timely warning should report the circumstances to the District Police Department, by phone at 911 or in person at the District Police Department Headquarters at 835 College Avenue, Kentfield, CA.

The District shall not be required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor. The Clery Act defines pastoral counselor as a person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. The definition of a professional counselor is a person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his/her/their license or certification. This definition applies even to professional counselors who are not employees of the institution, but are under contract to provide counseling at the institution. To be exempt from disclosing reported offenses, pastoral or professional counselors must be acting in the role of pastoral or professional counselors. This means that a dean of students who has a professional counselor's license, but is employed by the institution only as a dean and not as a counselor, is not exempt from reporting.

If there is an immediate threat to the health or safety of students or employees occurring on campus, the District shall follow its emergency notification procedures.

The District shall annually collect and distribute statistics concerning crimes on campus. All District staff with significant responsibility for student and campus activities shall report crimes about which they receive information.

The District shall publish an Annual Security Report every year by October 1 that contains statistics regarding crimes committed on campus and at affiliated locations for the previous three years. The Annual Security Report shall also include policies pertaining to campus security, alcohol and drug use, crime prevention, the reporting of crimes, sexual assault, victims' assistance program, student discipline, campus resources, and other matters. The District shall make the report available to all

current students and employees. The District will also provide prospective students and employees with a copy of the Annual Security Report upon request. A copy of the Annual Security Report can be obtained by contacting the District Police Department located at 835 College Avenue, Kentfield, CA 94904 or at the website address published in the College Schedule and College Catalog.

To Report a Crime:

Contact the District Police Department at 415-485-9696 (non-emergencies) and dial 911 (emergencies only). Any suspicious activity or person seen in the parking lots or loitering around vehicles or inside buildings should be reported to the District Police Department. In addition, individuals may report a crime to the following areas:

- Chief Student Services Officer
415-485-9~~395618~~
- Chief Counseling Officer
415-485-943~~21~~
- Chief Student Health Officer
415-485-94~~5862~~
- Chief Human Resources Officer
415-~~485-9504~~ 457-8811 Ext. 7520

If the individual is the victim of a crime and does not want to pursue action within the District's System or the criminal justice system, the individual may still want to consider making a confidential report. With the individual's permission, the District Police Department can file a report on the details of the incident without revealing his/her/their identity. The purpose of a confidential report is to comply with the individual's wish to keep the matter confidential, while taking steps to ensure the future safety of himself/herself/themselves and others. With such information, the District can keep an accurate record of the number of incidents involving students, determine where there is a pattern of crime with regard to a particular location, method, or assailant, and alert the campus community to potential danger. Reports filed in this manner are counted and disclosed in the annual crimes statistics for the institution.

The District Police Department encourages anyone who is the victim or witness to any crime to promptly report the incident to the police. Because police reports are public records under state law, the District Police Department cannot hold reports of crime in confidence. Confidential reports for purposes of inclusion in the annual disclosure of crime statistics can generally be made to other campus security authorities as identified below. Confidential reports of crime may also be made to Chief Human Resources Officer at 415-485-9520.

The District may disclose the final results of a student disciplinary proceeding to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense, regardless of the outcome. The District may also disclose to anyone, the final results of a student disciplinary proceeding in which it concludes that a student violated District policy with respect to a crime of violence or non-forcible sex offense. The offenses that apply to this permissible disclosure are:

- Arson
- Assault offenses
- Burglary
- Criminal homicide – manslaughter by negligence
- Criminal homicide – murder and non-negligent manslaughter
- Destruction, damage, or vandalism of property
- Kidnapping or abduction
- Robbery
- Forcible sex offenses

Required Reports to Local Law Enforcement Agency

Any report of willful homicide, forcible rape, robbery, aggravated assault, or hate crime, committed on or off campus, that is received by a campus security authority and made by the victim for the purposes of notifying the institution or law enforcement, must be immediately, or as soon as practically possible, disclosed to the local law enforcement agency. The report shall not identify the victim, unless the victim consents to be identified after the victim has been informed of his/her/~~their~~ right to have his/her/~~their~~ personally identifying information withheld. If the victim does not consent to being identified, the alleged assailant shall not be identified in the information disclosed to the local law enforcement agency unless the institution determines that both of the following apply, in which case the institution shall disclose the identity of the alleged assailant to the local law enforcement agency and notify the victim of the disclosure:

- the alleged assailant represents a serious or ongoing threat to the safety of students, employees or the institution; and
- the immediate assistance of the local law enforcement agency is necessary to contact and detain the assailant.

Offices of Primary Responsibility: ~~College Operations~~ Administrative Services, Campus Police, Human Resources

Date Approved: February 17, 2009

Date Revised: May 21, 2013; October 20, 2015

Date Revised:

Academic Affairs

CCLC 38 updated this procedure to add optional language to highlight diversity, equity, and inclusion issues. Mici 2-3-2022

Jon H. approved without changes. 3-8-2022

ASC Reviewed & Approved 3-8-2022

To Jon E./Cari 3-30-2022

AP 4250 PROBATION**References:**

Title 5 Sections 55031-55034

Placement on-Probation**Progress Probation:**

After enrolling in at least 12 units at College of Marin, if the percentage of a student's recorded entries of "W," "I," "NC," and "NP" reaches or exceeds 50 percent of all units in which a student has enrolled in at College, of Marin, he/she/they shall be placed on progress probation at the end of the term.

Academic Probation:

After attempting at least 12 units at College of Marin, a student shall be placed on academic probation at the end of the term in which the student's cumulative grade point average (GPA) falls below 2.0 in all units enrolled in at College of Marin.

Removal from Probation**Progress Probation:**

A student will be removed from progress probation when the student's cumulative Non-Progress Grade (NPG) drops below 50 percent.

Academic Probation:

A student will be removed from academic probation when the student's cumulative GPA reaches 2.0 or higher.

A student who is on academic probation and earns a term grade point average of 1.75 or better shall not be dismissed as long as this minimum term grade point average is maintained.

Notification of Probation

Students will be notified of their probationary status prior to the start of the next term.

The notice will consist of, at a minimum, the following: the significance of being on probation, enrollment limits, appeal procedures, and a description of the support services and classes available to prevent dismissal.

Enrollment Limits:

Students on *probation* may not register in more than 15 units total for that entire fall or spring term. For the summer term, students may enroll in one class regardless of the unit value or multiple classes not to exceed 5 units.

Appeal Procedures:

A student placed on probation may file a petition with Enrollment Services only if the student can provide evidence that additional units beyond the enrollment limits are needed to:

- 1) Graduate or transfer at the end of that term.
- 2) Meet a legally mandated training requirement.

Enrollment limits may not be appealed beyond the College Petitions Committee.

Probation, Dismissal, Readmission Data Reporting:

The Superintendent/President shall develop and provide to the Board for review an annual report of the number of students who were placed on probation, dismissed, and reinstated. This report must disaggregate the students by race, age, gender, or any other characteristic identified by the Board.

Office of Primary Responsibility: Office of Enrollment Services

Date Approved: May 18, 2010 (*Replaces~~sd~~ portions of College of Marin Procedure 4.0003 DP.10*)

Date Revised: June 18, 2019

Date Reviewed/Revised: