



**Policy**

**3434 Responding to Harassment Based on Sex under Title IX**

The Chancellor shall ensure procedures are enacted, as appropriate and permitted by law, regarding responding to harassment based on sex under Title IX.

**Cross References (see also):**

- YCCD Policy 3430 – Prohibition of Harassment
- YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX
- YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
- YCCD Policy 3540 – Sexual and Other Assaults on Campus
- YCCD Policy 3-8020 – Due Process
- YCCD Policy 5500 – Standards of Student Conduct
- YCCD Policy 5530 – Compliant Policy
- YCCD Policy 7700 – Whistleblower Protection

**References:**

[20 U.S. Code Sections 1681 et seq.](#); [34 Code of Federal Regulations Part 106.1 et seq.](#)

**Adopted:** February 10, 2021

**Last Reviewed:** February 10, 2021

## Administrative Procedure

### 3434 Responding to Harassment Based on Sex under Title IX

#### I. Introduction

The District encourages members of the District community to report alleged instances of sexual harassment. This procedure only applies to conduct defined as sexual harassment under Title IX and applicable federal regulations and that meet 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. The District will ensure that this administrative procedure conforms to the due process requirements of state and federal laws and regulations, and to the requirements of YCCD Board Policy 3-8020 Due Process.

#### II. 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: Director of District Public Safety, Compliance and Emergency Preparedness  
 Address and office location: YCCD District Office, 2201 Blue Gum Avenue Modesto, CA 95358  
 Phone number: (209) 575-7906  
 Email: *(this information shall be updated with a general Title IX email address)*

The Title IX Coordinator is required to respond to reports of alleged instances 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.

#### III. 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.

#### IV. Jurisdictional Requirements – Application of Procedures

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

- A. The conduct took place in the United States;

- 1 B. The conduct took place in a District “education program or activity.” This includes locations,  
2 events, or circumstances over which the District exercised substantial control over both the  
3 Respondent and the context in which the harassment occurred, including on-campus and off-  
4 campus property and buildings the District owns or controls or student organizations officially  
5 recognized by the District own or control.
- 6 C. The conduct meets the definition of Title IX “sexual harassment.”

7  
8 V. Definitions

- 9  
10 A. Advisor: Throughout the grievance process, both the Complainant and Respondent have a right  
11 to an Advisor of their choice. If a Party does not have an Advisor at the time of the hearing, the  
12 District must provide the Party an Advisor of the District’s choice, free of charge.
- 13  
14 B. Complainant: A Complainant is an individual who alleges he/she/they is the victim of conduct  
15 that could constitute sexual harassment.
- 16  
17 C. Consent: Consent means affirmative, conscious, and voluntary agreement to engage in sexual  
18 activity. Both Parties must give affirmative consent to sexual activity. It is the responsibility of  
19 each person involved in the sexual activity to ensure that he/she/they has the affirmative consent  
20 of the other or others to engage in the sexual activity. Lack of protest, lack of resistance, or silence  
21 does not indicate consent. Affirmative consent must be ongoing throughout a sexual activity and  
22 one can revoke his/her/their consent at any time. The existence of a dating relationship between  
23 the persons involved, or the fact of past sexual relations between them, is not an indicator of  
24 consent.

25  
26 The Respondent’s belief that the Complainant consented will not provide a valid defense unless  
27 the belief was actual and reasonable, based on the facts and circumstances the Respondent knew,  
28 or reasonably should have known, at the time of the incident. A Respondent’s belief is not a valid  
29 defense where:

- 30 1. The Respondent’s belief arose from the Respondent’s own intoxication or recklessness;
- 31 2. The Respondent did not take reasonable steps to ascertain whether the Complainant  
32 affirmatively consented; or
- 33 3. The Respondent knew or a reasonable person should have known that the Complainant was  
34 unable to consent because the Complainant was incapacitated, in that the Complainant was:
  - 35 a. asleep or unconscious;
  - 36 b. unable to understand the fact, nature, or extent of the sexual activity due to the  
37 influence of drugs, alcohol, or medication; or
  - 38 c. unable to communicate due to a mental or physical condition.

- 39  
40 D. Decision-Maker: The District or College assigned administrator will oversee the live hearing and  
41 make a determination of responsibility. The District may have one Decision-Maker determine  
42 whether the Respondent is responsible, and another Decision-Maker determine the appropriate  
43 level of penalty for the conduct. The Decision-Maker cannot be the Title IX Coordinator or the  
44 investigator.
- 45  
46 E. Formal Complaint: A written complaint signed by the Complainant or Title IX Coordinator, alleging  
47 sexual harassment and requesting an investigation. If the Title IX Coordinator signs the formal  
48 complaint, he/she/they will not become a Party to the complaint.

- 1 F. Parties: As used in this procedure, this means the Complainant and Respondent.  
 2  
 3 G. Respondent: A Respondent is an individual reported to be the perpetrator of conduct that could  
 4 constitute sexual harassment.  
 5  
 6 H. Sexual Harassment under Title IX: Unwelcome conduct on the basis of sex that is so severe,  
 7 pervasive, and objectively offensive that it effectively denies a person equal access to the  
 8 recipient's education program or activity. Sexual harassment includes one or more of the  
 9 following types of conduct:  
 10 1. A District employee conditions the provision of an aid, benefit, or service of the District on an  
 11 individual's participation in unwelcome sexual conduct (*quid pro quo* harassment);  
 12 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and  
 13 objectively offensive that it effectively denies a person equal access to the District's education  
 14 program or activity;  
 15 3. Sexual assault, including the following:  
 16 a. Sex Offenses. Any sexual act directed against another person, without the consent of the  
 17 victim, including instances where the victim is incapable of giving consent.  
 18 b. Rape (except Statutory Rape). The carnal knowledge of a person, without the consent of  
 19 the victim, including instances where the victim is incapable of giving consent because of  
 20 his/her/their age or because of his/her/their temporary or permanent mental or physical  
 21 incapacity. There is carnal knowledge if there is the slightest penetration of the genital  
 22 or anal opening of the body of another person.  
 23 c. Sodomy. Oral or anal sexual intercourse with another person, without the consent of the  
 24 victim, including instances where the victim is incapable of giving consent because of  
 25 his/her/their age or because of his/her/their temporary or permanent mental or physical  
 26 incapacity.  
 27 d. Sexual Assault with an Object. To use an object or instrument to unlawfully penetrate,  
 28 however slightly, the genital or anal opening of the body of another person, without the  
 29 consent of the victim, including instances where the victim is incapable of giving consent  
 30 because of his/her/their age or because of his/her/their temporary or permanent mental  
 31 or physical incapacity. An "object" or "instrument" is anything the offender uses other  
 32 than the offender's genitalia, e.g., a finger, bottle, handgun, stick.  
 33 e. Fondling. The touching of the private body parts of another person for the purpose of  
 34 sexual gratification, without the consent of the victim, including instances where the  
 35 victim is incapable of giving consent because of his/her/their age or because of  
 36 his/her/their temporary or permanent mental or physical incapacity.  
 37 f. Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse.  
 38 i. Incest. Non-Forcible sexual intercourse between persons who are related to each  
 39 other within the degrees wherein marriage is prohibited by law.  
 40 ii. Statutory Rape – Non-Forcible. Sexual intercourse with a person who is under  
 41 the statutory age of consent. There is no force or coercion used in Statutory Rape;  
 42 the act is not an attack.  
 43 g. Dating violence. Violence against a person who is or has been in a social relationship of a  
 44 romantic or intimate nature with the victim. The existence of a relationship will be  
 45 determined based on a consideration of the following factors: the length of the  
 46 relationship, the type of relationship, and the frequency of interaction between the  
 47 persons involved in the relationship.  
 48 h. Domestic Violence. Violence committed:  
 49 i. By a current or former spouse or intimate partner of the victim;

- ii. By a person with whom the victim shares a child in common;
  - iii. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - iv. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; or
  - v. 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.
- i. 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.
  - j. Supportive Measures to include individualized services reasonably available that are non-punitive, non-disciplinary, and not reasonably burdensome to the other party while designated to ensure equal educational access, protect safety, or deter sexual harassment.

## VI. 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.

Because individuals may be deterred from reporting incidents of sexual harassment if alcohol, drugs, or other violations of District or campus rules were involved, the District will inform individuals that the primary concern is for student and employee safety and that use of alcohol or drugs never makes a Complainant at fault for sexual harassment. If other rules are violated, the District will address such violations separately from an allegation of sexual violence.

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.)

## VII. 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:

1  
2 Officials with Authority are required to report all relevant information they know about sexual harassment  
3 including the name of the Respondent, the Complainant, any other witnesses, and the date, time, and  
4 location of the alleged incident.

5  
6 VIII. Intake and Processing of Report

7  
8 A. Receipt of Report

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

12  
13 B. Timeframe for Reporting

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

17  
18 C. Supportive Measures

19 Supportive measures are non-disciplinary, non-punitive individualized services offered free of  
20 charge to the Complainant or the Respondent regardless of whether a formal complaint has been  
21 filed. The District will provide the Complainant and Respondent with supportive measures as  
22 appropriate and as reasonably available to restore or preserve equal access to the District's  
23 education program or activities. These measures are designed to protect the safety of all Parties,  
24 protect the District's educational environment, or deter sexual harassment. The District will  
25 provide supportive measures on a confidential basis and will only make disclosures to those with  
26 a need to know to enable the District to provide the service. Supportive measures may include  
27 counseling, extensions of deadlines, other course-related adjustments, modifications of work or  
28 class schedules, campus escort services, mutual restrictions on contact between the Parties,  
29 changes in work or housing locations, leaves of absence, increased security and monitoring of  
30 certain areas of the campus, and other similar measures.

31  
32 D. Removal of Respondent Pending Final Determination

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

37  
38 E. Emergency Removal

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

43  
44 The District may not use emergency removal to address a Respondent's threat of obstructing the  
45 sexual harassment investigation or destroying relevant evidence. Emergency removal is only  
46 available to address health or safety risks against individuals arising out of sexual harassment  
47 allegations, not to address other forms of misconduct that a Respondent might commit pending  
48 the processing of a complaint.

1 The District’s Title IX Coordinator or designee will conduct the individualized safety and risk  
 2 analysis.  
 3

4 If the Title IX Coordinator determines emergency removal is appropriate, he/she/they or designee  
 5 will provide the person the District is removing from campus on an emergency basis with a notice  
 6 and opportunity to attend a meeting and challenge the basis of his/her/their removal. The Title  
 7 IX Coordinator or designee will determine whether the emergency removal from campus order is  
 8 warranted after considering information provided by the Respondent challenging the emergency  
 9 removal.  
 10

11 F. Administrative Leave

12 The District may place a non-student employee Respondent on administrative leave during the  
 13 pendency of a grievance process described in the formal complaint process below. The District  
 14 will follow any relevant policies, procedures, collective bargaining agreements, or state law in  
 15 placing an employee on administrative leave.  
 16

17 IX. Procedure Process for Investigation of Title IX Complaints

18  
 19 In order to prevent conflict of interest and possible contamination of the investigative processes, Title IX  
 20 Investigations to be conducted in the following manner:  
 21

- 22 • Student vs. Student = Assigned to Campus Safety Title IX Officer to Investigate
- 23 • Student vs. Employee = Assigned for Investigation through Human Resources
- 24 • Employee vs. Employee = Assigned for Investigation through Human Resources

25  
 26 A. Step 1: Intake

- 27 1. Receive Formal Complaint/Incident reported through the District’s online reporting system.
- 28 2. Determination by the Director of District Public Safety, Compliance and Emergency  
 29 Preparedness for appropriate assignment based on the status of the involved parties (student,  
 30 employee, etc.) using above criteria.
  - 31 a. In conjunction with the appropriate College Title IX Coordinator or Human Resources,  
 32 consideration should be immediately given to whether any involved person should be  
 33 removed from the campus pending completion of informal resolution or investigation.
  - 34 b. Required notifications:
    - 35 i. For students, provided by Student Services.
    - 36 ii. For employees, provided by Human Resources.
  - 37 c. Note: If the conduct as alleged by the Complainant would not constitute sexual  
 38 harassment, as defined above, or did not occur within the District’s program or activity,  
 39 the District must terminate its grievance process with regard to that conduct.  
 40

41 B. Step 2: Attempt to Resolve

- 42 1. Undertake efforts to informally resolve the charges, including but not limited to mediation,  
 43 rearrangement of work/academic schedules; obtaining apologies; providing informal  
 44 counseling, training, etc.
  - 45 a. Take interim steps to protect a Complainant from coming into contact with an accused  
 46 individual, especially if the Complainant is a victim of sexual violence.

47  
 48 C. Step 3: Investigate

- 49 1. Initiate a fact-finding investigation (minimally to include the following):

- 1 a. Interviewing the Complainant(s)
- 2 b. Interviewing the accused individual
- 3 c. Identifying and interviewing witnesses and evidence identified by each party
- 4 d. Identifying and interviewing any other witnesses, if needed
- 5 e. Reminding all individuals interviewed of the District's no-retaliation policy
- 6 f. Reviewing personnel/academic files of all involved parties
- 7 g. Reach a conclusion as to the allegations

8  
9 Title IX YCCD Investigation Report Format

- 10 I. Investigation Overview/Executive Summary
- 11 II. Summary of Findings
- 12 III. The Investigative Background
  - 13 A. Witnesses
  - 14 B. Documents
  - 15 C. The Policies
  - 16 D. Scope of Findings
  - 17 E. Evidentiary Standard
  - 18 F. Independence
  - 19 G. Timing
- 20 IV. Factual Background
  - 21 A. Department and Parties
  - 22 B. Interim Measures
  - 23 C. Notice To
- 24 V. Overview of Allegations and Response
  - 25 A. (Name)'s Complaint
    - 26 i. Overview of (Name)'s Perspective
    - 27 ii. Requested Resolution
    - 28 iii. Timing of Complaint
  - 29 B. (Name)'s Response
    - 30 i. Overview of (Name)'s Perspective
    - 31 ii. Requested Resolution
    - 32 iii. Timing of Complaint
- 33 VI. Chronology of Undisputed Facts and Key Events
  - 34 A. Chart and Description or Other Evidence
  - 35 B. Factual Findings Based on Undisputed Facts
- 36 VII. Summary of Disputed Allegations
- 37 VIII. Evidence, Analysis and Findings Related to the Disputed Allegations
  - 38 A. Issue 1
  - 39 B. Issue 2
  - 40 C. Issue 3
  - 41 D. Credibility Assessment
- 42 IX. Policy Analysis and Determination

43  
44 D. Step 4: Report Findings

- 45 1. Draft report completed, turned in to Senior Director of Human Resources for review.
- 46 2. A review of the completed report will be conducted for grammatical and formatting errors,  
47 and corrections made as needed.
- 48 3. Report corrections completed, etc.



- 1 E. Step 5: Final Report Distribution
- 2 1. Student vs. Student – Student Conduct Officer
- 3 2. Employee vs. Student – Student Conduct Officer and/or Human Resources Administrator
- 4 3. Employee vs. Employee – Human Resources Administrator
- 5
- 6 F. Step 6: Corrective Action Taken
- 7 1. Student Action – Student Conduct Officer
- 8 2. Employee Action – As deemed appropriate by Human Resources Administrator or
- 9 Manager/Dean as determined through disciplinary processes
- 10
- 11 G. Step 7: Notifications
- 12 1. All notification letters regarding employees sent by Human Resources.
- 13 2. All notification letters for investigations regarding students will be sent by Title IX Coordinator.
- 14
- 15 X. Formal Complaint Grievance Process

- 16
- 17 A. Notice to Parties
- 18 Upon receipt of a formal complaint, the Title IX Coordinator will provide the following notice in
- 19 writing, to the Parties:
- 20 1. Copy of BP 3-8020;
- 21 2. Copy of written complaint, unless otherwise prohibited by law or if such disclosure would
- 22 compromise the integrity of the investigation;
- 23 3. Notice of the District’s Title IX grievance process;
- 24 4. Notice of the allegations of alleged sexual harassment with sufficient details known at the
- 25 time and with sufficient time to prepare a response before any initial interview;
- 26 5. Statement that the Respondent is presumed not responsible for the alleged conduct and that
- 27 a determination regarding responsibility is made at the conclusion of the grievance process;
- 28 6. Notice that the Parties may have Advisor of their choice, who may be, but is not required to
- 29 be, an attorney;
- 30 7. Notice that the Parties may inspect and review any evidence obtained as part of the
- 31 investigation that is directly related to the allegations raised in the formal complaint, including
- 32 the evidence upon which the District does not intend to rely in reaching a determination
- 33 regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a
- 34 Party or other source; and
- 35 8. Inform the Parties of any provision in the District’s code of conduct that prohibits knowingly
- 36 making false statements or knowingly submitting false information during the grievance
- 37 process.
- 38

39 If, in the course of an investigation, the District decides to investigate allegations about the

40 Complainant or Respondent that are not included in the notice provided above, the Title IX

41 Coordinator will provide notice in writing of the additional allegations to the Parties.

42

- 43 B. Dismissal of Formal Complaint
- 44 The District must investigate the allegations in a formal complaint. However, the District must
- 45 dismiss the formal complaint and will not process the complaint under these procedures if any of
- 46 the following three circumstances exist:
- 47 1. If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment
- 48 as defined in this procedure;
- 49 2. If the conduct alleged did not occur in the District’s education program or activity;

1 3. If the conduct alleged did not occur against a person in the United States.  
2

3 Though the District must dismiss the allegations for purposes of Title IX, the District may still  
4 address the allegations in any manner that the District deems appropriate under the District's  
5 own code of conduct policies.  
6

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

- 9 1. If at any time during the investigation or hearing: a Complainant notifies the Title IX  
10 Coordinator in writing that the Complainant would like to withdraw the formal complaint or  
11 any allegations;  
12 2. If the Respondent is no longer enrolled or employed by the District; or  
13 3. If there are specific circumstances that prevent the District from gathering evidence sufficient  
14 to reach a determination regarding responsibility as to the formal complaint or allegations.  
15

16 If the District dismissed the formal complaint or any allegations, the Title IX Coordinator shall  
17 simultaneously provide the Parties with written notice of the dismissal and reason. The District  
18 will also notify the Parties of their right to appeal.  
19

20 The District may commence proceedings under other policies and procedures after dismissing a  
21 formal complaint.  
22

23 C. Consolidation of Formal Complaints

24 The District may, but is not require to, consolidate formal complaints as to allegations of sexual  
25 harassment against more than one Respondent, or by more than one Complainant against one or  
26 more Respondents, or by one Party against the other Party, where the allegations of sexual  
27 harassment arise out of the same facts or circumstances.  
28

29 D. Equitable Treatment of the Parties

30 The District's determination of responsibility is a neutral, fact-finding process. The District will  
31 treat Complainants and Respondents equitably. The procedures will apply equally to both Parties.  
32 The District will not discipline a Respondent unless it determines the Respondent was responsible  
33 for sexual harassment at the conclusion of the grievance process.  
34

35 E. Statement of Presumption of Non-Responsibility

36 The investigation is a neutral, fact-finding process. The District presumes all reports are in good  
37 faith. Further, the District presumes the Respondent is not responsible for the alleged conduct.  
38 The District makes its determination regarding responsibility at the conclusion of the grievance  
39 process.  
40

41 F. Bias or Conflict of Interest

42 The District's Title IX Coordinator, investigator, Decision-Maker, or any person designated by the  
43 District to facilitate an informal resolution process, will not have potential actual bias or conflict  
44 of interest in the investigatory, hearing, sanctioning, or appeal process or bias for or against  
45 Complainants or Respondents generally. Actual bias is an articulated prejudice in favor of or  
46 against one Party or position; it is not generalized concern about the personal or professional  
47 backgrounds, positions, beliefs, or interests of the Decision-Maker in the process. The District will  
48 ensure that the Title IX Coordinator, investigator, Decision-Maker, and facilitator receive training  
49 on:

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

8  
9 G. Timeline for Completion

10 The District will undertake its grievance process promptly and as swiftly as possible. The District  
11 will complete the investigation and its determination regarding responsibility or the informal  
12 resolution process within 180 calendar days.

13  
14 When appropriate, the Title IX Coordinator may determine that good cause exists to extend the  
15 180-calendar day period to conduct a fair and complete investigation, to accommodate an  
16 investigation by law enforcement, to accommodate the unavailability of witnesses or delays by  
17 the Parties, to account for District breaks or vacations, or due to the complexity of the  
18 investigation. The District will provide notice of this extension to the Complainant and  
19 Respondent in writing and include the reason for the delay and anticipated timing of completion.

20  
21 A Party may request an extension from the Title IX Coordinator in writing by explaining the reason  
22 for the delay and the length of the continuance requested. The Title IX Coordinator will notify the  
23 Parties and document the grant or denial of a request for extension or delay as part of the case  
24 recordkeeping.

25  
26 H. Role of Advisor

27 The role of the Advisor is to provide support and assistance in understanding and navigating the  
28 investigation process. Representatives are permitted to be active participants (but not obstruct)  
29 any hearings, meetings, or interviews. The advisor’s role will comply with BP 3-8020 and Title IX  
30 regulations.

31  
32 Investigation Interviews: The Advisor may not testify in or obstruct an interview or disrupt the  
33 process. The Title IX Coordinator has the right to use reasonable discretion to determine what  
34 constitutes inappropriate behavior of an Advisor and take reasonable steps to ensure compliance  
35 with this procedure during both the investigation interviews and hearings.

36  
37 Hearings: A Party does not have a right to self-representation at the hearing; an Advisor must  
38 conduct any cross-examination. The District must provide an Advisor of its choice, free of charge  
39 to any Party without an Advisor in order to conduct cross-examination, question evidence and  
40 relevance; consult with his or her respective party; and request reasonable breaks as needed, and  
41 any other activities consistent with the representation of his or her respective party so long as  
42 such activity is not inconsistent with the provisions of Title IX. If an Advisor fails to appear at the  
43 hearing, the District will provide an Advisor to appear on behalf of the non-appearing Advisor. To  
44 limit the number of individuals with confidential information about the issues, each Party may  
45 identify one Advisor, with the exception of collective bargaining unit members who may have  
46 both a union representative and an Advisor.

47  
48 I. Confidentiality Agreements

1 To protect the privacy of those involved, the Parties and Advisors are required to sign a  
2 confidentiality agreement prior to attending an interview or otherwise participating in the  
3 District’s grievance process. The confidentiality agreement restricts dissemination of any of the  
4 evidence subject to inspection and review or use of this evidence for any purpose unrelated to  
5 the Title IX grievance process. The confidentiality agreement will not restrict the ability of either  
6 Party to discuss the allegations under investigation.

7  
8 J. Use of Privileged Information

9 The District’s formal complaint procedure does not require, allow, rely upon, or otherwise use  
10 questions or evidence that constitute, or seek disclosure of, information protected under a legally-  
11 recognized privilege (e.g., attorney-client privilege, doctor-patient privilege, spousal privilege,  
12 etc.), unless the person holding the privilege provides voluntary, written consent to waive the  
13 privilege.

14  
15 K. Investigations

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

18  
19 Both Parties have the right to have an Advisor present at every meeting described in this section.

20  
21 L. Trained Investigators

22 The District will investigate Title IX formal complaints fairly and objectively. Individuals serving as  
23 investigators under this procedure will have adequate training on what constitutes sexual  
24 harassment and how the District’s grievance procedures operate. The District will also ensure  
25 that investigators receive training on issues of relevance to create an investigative report that  
26 fairly summarizes relevant evidence and complies with this procedure.

27  
28 M. Burden of Gathering Evidence

29 The District, not the Parties, has the responsibility to gather information and interview witnesses.  
30 As part of the District’s burden of gathering evidence, the District’s investigator will create an  
31 investigative report that fairly summarizes relevant evidence, whether it is inculpatory or  
32 exculpatory. When the investigator evaluates the evidence, he/she/they will do so using the clear  
33 and convincing evidence standard. The investigator shall not make findings or determinations of  
34 law or fact.

35  
36 N. Notice of Investigative Interview

37 At least 10 business days in advance, the District will provide a written notice of the date, time,  
38 location, participants, and purpose of all investigative interviews to a Party whose participation is  
39 invited or expected.

40  
41 O. Evidence Review

42 Both Parties have an equal opportunity to inspect and review any evidence obtained as part of  
43 the investigation that is directly related to the allegations raised in the formal complaint, including  
44 the evidence upon which the District does not intend to rely in reaching a determination regarding  
45 responsibility and inculpatory or exculpatory evidence whether obtained from a Party or other  
46 source.

47  
48 Prior to the investigator preparing an investigative report, the District will send to each Party and  
49 the Party’s Advisor, if any, the evidence subject to inspection and review in an electronic format

1 or a hard copy. The Parties will have at least ten days to submit a written response. The  
2 investigator must consider this written response prior to completing the investigative report.

3  
4 XI. Investigative Report

- 5  
6 A. The results of the investigation of a formal complaint will be set forth in a written report that will  
7 include at least all of the following information:  
8 1. A description of the circumstances giving rise to the formal complaint;  
9 2. A description of the procedural steps taken during the investigation, including all individuals  
10 contacted and interviewed;  
11 3. A summary of the testimony of each witness the investigator interviewed;  
12 4. An analysis of relevant evidence collected during the investigation, including a list of relevant  
13 documents;  
14 5. A specific finding as to whether the allegations occurred using a clear and convincing evidence  
15 standard;  
16 6. A table of contents if the report exceeds ten pages; and  
17 7. Any other information deemed appropriate by the District.

18  
19 The investigator will not make a determination regarding responsibility.

20  
21 The investigator may redact information not directly related to the allegations or privileged  
22 information. However, the investigator will keep a log of information he/she/they do not produce  
23 to the Parties. The investigator will provide this log only to the Title IX Coordinator. The Title IX  
24 Coordinator will not disclose the log to the Parties, but will maintain the log in the Title IX  
25 Coordinator's file, in the event it later becomes relevant.

26  
27 At least ten days prior to a hearing, the District will send the investigative report to each Party  
28 and their Advisors, if any, the investigative report in an electronic format or a hard copy, for review  
29 and written response. The Parties will have at least ten days to submit a written response.

30  
31 B. Hearing

32 After completing an investigation and prior to completing a determination regarding  
33 responsibility, the District will hold a live hearing to provide the Complainant and Respondent an  
34 opportunity to respond to the evidence gathered before a Decision-Maker. Neither Party may  
35 choose to waive the right to a live hearing, but the Parties can choose whether to participate in  
36 the hearing or answer some or all cross-examination questions.

37  
38 For the purpose of this section, a live hearing means in person or live video feed.

39  
40 C. Notice

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

44  
45 D. Hearing Format

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

1  
2 The District will make the information reviewed during the Evidence Review available at the  
3 hearing for reference and consultation. The District will not restrict the ability of either Party to  
4 discuss the allegations under investigation or to gather and present relevant evidence.

5  
6 The District will create an audio or audiovisual recording, or transcript, of any live hearing and  
7 make it available to the Parties for inspection and review.  
8

9 E. Decision-Maker

10 The Decision-Maker will be free from conflict of interest or bias, including bias for or against  
11 Complainants or Respondents. In cases where the Complainant or Respondent objects to the  
12 Decision-Maker based on a conflict of interest, the Complainant or Respondent may request the  
13 Title IX Coordinator select a different Decision-Maker. The Complainant or Respondent must  
14 make this request to the Title IX Coordinator in writing at least five business days prior to the  
15 hearing.  
16

17 The Decision-Maker may ask the Parties and the witnesses questions during the hearing. The  
18 Decision-Maker must objectively evaluate all relevant evidence both inculpatory and exculpatory  
19 and must independently reach a determination regarding responsibility without giving deference  
20 to the investigative report. The Decision-Maker must receive training on issues of relevance, how  
21 to apply the rape-shield protections for Complainants, and any technology to be used at the  
22 hearing.  
23

24 F. Presenting Witnesses

25 The District will provide the Complainant and Respondent an equal opportunity to present  
26 witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.  
27 Witnesses, like Parties, are not required to participate in the live hearing process.  
28

29 Only relevant evidence will be admissible during the hearing. Relevant evidence means evidence,  
30 including evidence relevant to the credibility of a Party or witness, having any tendency in reason  
31 to prove or disprove any disputed fact material to the allegations under investigation.  
32

33 G. Cross-Examination

34 The District shall permit each Party's Advisor to ask the other Party and any witness relevant  
35 questions, including questions challenging credibility. The Party's Advisor must conduct cross-  
36 examination directly, orally, and in real time. A Party may never personally conduct cross-  
37 examination.  
38

39 If a Party or witness does not submit to cross-examination at the live hearing, the Decision-Maker  
40 will not rely on any statement of that Party or witness in reaching a determination regarding  
41 responsibility.  
42

43 Before a Complainant, Respondent, or witness answers a question, the Decision-Maker must first  
44 determine whether the question is relevant and explain any decision to exclude a question as not  
45 relevant. The Decision-Maker need not provide a lengthy or complicated explanation in support  
46 of a relevance determination.  
47

1 If a Party or witness disagrees with a relevance determination, that individual has the choice of  
2 either (1) abiding by the Decision-Maker’s determination and answering the question or (2)  
3 refusing to answer the question.  
4

5 The Decision-Maker cannot rely on the statements or testimony of a Party or witness who has  
6 refused to answer a question the Decision-Maker had found relevant unless the Decision-Maker  
7 reconsiders and changes the ruling before reaching the determination of responsibility. If the  
8 Decision-Maker changes the determination of relevance of an unanswered question, the  
9 Decision-Maker must explain the decision to reconsider the ruling in the written determination of  
10 responsibility.  
11

12 The Decision-Maker cannot draw an inference about the determination of responsibility based  
13 solely on a Party’s or witness’ absence from the live hearing or refusal to submit to cross-  
14 examination or to answer any question.  
15

16 The Decision-Maker may also ask any Party or witness relevant questions. If a Party or witness  
17 refuses to respond to a Decision-Maker’s questions, the Decision-Maker is not precluded from  
18 relying on that Party or witness’ statements.  
19

20 H. Determinations of Responsibility

21 When the Decision-Maker makes a determination of responsibility or non-responsibility, the  
22 Decision-Maker will issue a written determination regarding responsibility, no later than 20  
23 business days after the date that the hearing ends.  
24

25 When making a determination regarding responsibility, a Decision-Maker will objectively evaluate  
26 all relevant evidence, including both inculpatory and exculpatory evidence. A Decision-Maker may  
27 not make credibility determinations based on an individual’s status as a Complainant,  
28 Respondent, or witness. In evaluating the evidence, the Decision-Maker will use the clear and  
29 convincing evidence standard. Thus, after considering all the evidence it has gathered, the District  
30 will decide whether sexual harassment occurred.  
31

32 I. The written determination will include:

- 33 1. Identification of the allegations potentially constituting Title IX sexual harassment as defined  
34 in these procedures;
- 35 2. A description of the procedural steps taken from the receipt of the formal complaint through  
36 the determination, including who conducted the investigation and gave notifications to the  
37 Parties. The determination will also state when, where, and the date the investigator  
38 interviewed the Parties and witnesses, conducted site visits, the methods used to gather  
39 other evidence. The procedural section should also discuss the dates and how the Parties  
40 were provided the opportunity to review and inspect evidence and the date of any hearings  
41 held and who attended the hearing;
- 42 3. Findings of fact supporting the determination. In making these findings, the Decision-Maker  
43 will focus on analyzing the findings of fact that support the determination of responsibility or  
44 non-responsibility;
- 45 4. Conclusions regarding the application of the District’s code of conduct to the facts;
- 46 5. A statement of, and rationale for, the result as to each allegation, including a determination  
47 regarding responsibility;
- 48 6. A statement of, and rationale for, any disciplinary sanctions the District imposes on the  
49 Respondent;

- 1 7. A statement of whether the District will provide the Complainant with remedies designed to  
2 restore or preserve equal access to the District's education program or activity;
- 3 8. The District need not disclose to the Respondent remedies that do not affect him/her/them  
4 as part of the written determination. The District can inform the Respondent that it will  
5 provide remedies to the Complainant. However, the District will inform the Complainant of  
6 the sanctions against the Respondent;
- 7 9. The District's procedures and permissible bases for the Complainant and Respondent to  
8 appeal.  
9

10 The District will provide the written determination to the Parties simultaneously. The  
11 determination regarding responsibility becomes final either on the date that the District provides  
12 the Parties with the written determination of the result of the appeal, if the Parties file an appeal,  
13 or if the Parties do not file an appeal, the date on which an appeal would no longer be timely.  
14

15 J. Disciplinary Sanctions and Remedies

16 The District must have completed the grievance procedures (investigation, hearing, and any  
17 appeal, if applicable) before the imposing disciplinary sanctions or any other actions that are not  
18 supportive measures against a Respondent. If the Decision-Maker determines the Respondent  
19 was responsible for conduct that constitutes sexual harassment, the District will take disciplinary  
20 action against the Respondent and any other remedial action it determines to be appropriate.  
21 The action will be prompt, effective, and commensurate with the severity of the offense.  
22

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

- 24 1. Providing an escort to ensure that the Complainant can move safely between classes and  
25 activities;
- 26 2. Ensuring that the Complainant and Respondent do not attend the same classes or work in the  
27 same work area;
- 28 3. Providing counseling services or a referral to counseling services;
- 29 4. Providing medical services or a referral to medical services;
- 30 5. Providing academic support services, such as tutoring;
- 31 6. Arranging for a Complainant, if a student, to re-take a course or withdraw from a class without  
32 penalty, including ensuring that any changes do not adversely affect the Complainant's  
33 academic record; and
- 34 7. Reviewing any disciplinary actions taken against the Complainant to see if there is a causal  
35 connection between the harassment and the misconduct that may have resulted in the  
36 Complainant's discipline.  
37

38 Possible disciplinary sanctions for student Respondents include written or verbal reprimand,  
39 required training or counseling, non-academic probation, suspension, and expulsion. Possible  
40 disciplinary sanctions for employee Respondents include written or verbal reprimand, required  
41 training or counseling, reduction in pay, demotion, suspension, or discharge.  
42

43 K. Appeal of Dismissal of a Formal Complaint or of the Determination of Responsibility

44 A Complainant or Respondent may appeal the District's determination regarding responsibility or  
45 the dismissal of a formal complaint or any allegations. A Complainant or Respondent must submit  
46 a written appeal within 15 business days from the date of the notice of determination regarding  
47 responsibility or from the date of the District's notice of dismissal of a formal complaint or any  
48 allegations.  
49



1 L. Grounds for Appeal

2 The Board of Trustees will serve as the Decision-Maker on Appeal. In filing an appeal of the  
3 District's determination regarding responsibility or the District's dismissal of a formal complaint,  
4 the Party must state the grounds for appeal and a statement of facts supporting those grounds.

5 The grounds for appeal are as follows:

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

12  
13 M. Appeal Procedure

14 If the Complainant or Respondent requests an appeal to the District, the District will:

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

18  
19 The appeal Decision-Maker will issue a written decision on whether to grant or deny the appeal,  
20 and the rationale for the decision, within 45 business days after the Decision-Maker on appeal  
21 receives the response to the appeal or the last day to provide a response. The District will provide  
22 the written decision simultaneously to both Parties.

23  
24 The Decision-Maker on appeal may extend or otherwise modify the deadlines provided above.  
25 Either Party may seek an extension by submitting a written request to the appeal Decision-Maker  
26 explaining the need for the extension and the proposed length of the extension. The Decision-  
27 Maker will respond to the request within 48 hours in writing and will inform the Parties  
28 simultaneously whether the extension is granted.

29  
30 N. Informal Resolution

31 If the District determines that a formal complaint is appropriate for informal resolution, it may  
32 provide the Parties with the opportunity to participate in an informal resolution process, including  
33 mediation, at any time prior to reaching a determination regarding responsibility.

34  
35 The District will provide the Complainant and Respondent written disclosure of the allegations,  
36 the requirements of the informal resolution process including the circumstances under which it  
37 precludes the Parties from resuming a formal complaint arising from the same allegations, and  
38 any consequences resulting from participating in the informal resolution process, including the  
39 records that will be maintained or could be shared.

40  
41 The District must obtain the Parties' voluntary, written consent to the informal resolution process.  
42 If the Parties reach an agreement, the District does not have to complete a full investigation and  
43 adjudication of a report of sexual harassment. At any time prior to agreeing to a resolution, any  
44 Party has the right to withdraw from the informal resolution process and resume the grievance  
45 process with respect to the formal complaint.

46  
47 The informal resolution process is not available to resolve allegations that an employee sexually  
48 harassed a student.

1 O. Retaliation Prohibited

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

7  
8 P. Dissemination of Policy and Procedures

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

12  
13 When hired, employees are required to sign acknowledging that they have received the policy  
14 and procedures. The District will place the signed acknowledgment of receipt in each employee's  
15 personnel file.

16  
17 Q. Training

18 The District will provide training to Title IX Coordinators, investigators, Decision-Makers, and any  
19 individual who facilitates an informal resolution process, on the definition of sexual harassment,  
20 the scope of the District's education program or activities, how to conduct an investigation and  
21 grievance process including hearings, appeals, and informal resolution processes, as applicable,  
22 and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of  
23 interest, and bias. Any materials used to train the District's Title IX Coordinator, investigators,  
24 Decision-Makers, and any person who facilitates an informal resolution process, will not rely on  
25 sex stereotypes and must promote impartial investigations and adjudications of formal  
26 complaints of sexual harassment.

27  
28 R. File Retention

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

- 30 1. The original report or complaint;  
31 2. Any actions taken in response to the complaint, including supportive measures;  
32 3. The investigative report including all evidence gathered and any responses from the Parties;  
33 4. The District's determination regarding responsibility;  
34 5. Audio or audiovisual recording or transcript from a hearing;  
35 6. Records of any disciplinary sanctions imposed on the Respondent;  
36 7. Records of any remedies provided to the Complainant;  
37 8. Any appeal and the result;  
38 9. Any informal resolution and the result; and  
39 10. All materials used to train Title IX Coordinators, investigators, Decision-Makers, and any  
40 person who facilitates an informal resolution process. The District will make these training  
41 materials publicly available on its website.

42  
43 The District will make these documents available to the U.S. Department of Education Office for  
44 Civil Rights upon request.

45  
46 **Cross References (see also):**

47 YCCD Policy 3430 – Prohibition of Harassment

48 YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX

49 YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations

- 1 YCCD Policy 3540 – Sexual and Other Assaults on Campus
- 2 YCCD Policy 3-8020 – Due Process
- 3 YCCD Policy 5500 – Standards of Student Conduct
- 4 YCCD Policy 5530 – Compliant Policy
- 5 YCCD Policy 7700 – Whistleblower Protection

6

7 **References:**

8 Education Code Section [67386](#); [20 U.S. Code Sections 1681 et seq.](#); [34 Code of Federal Regulations Part](#)  
9 [106.1 et seq.](#)

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10

11 **Procedure Last Revised:** February 10, 2021

12 **Last Reviewed:** February 10, 2021