



# El Camino College

## Office of Title IX, Diversity, and Inclusion

### Provisional Title IX Procedures<sup>1</sup>

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<sup>1</sup> Disclaimer: These provisional procedures are subject to change without prior notice to keep the District in compliance with Board Policies and/or state and federal laws and do not apply to Sexual or Gender-Based Misconduct alleged to occur before August 14, 2020.

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## SECTION 1 - INTRODUCTION

El Camino Community College District (referred to as the 'District') is committed to maintaining an inclusive, safe, and respectful educational and working environment. All members of the District Community, guests and visitors, regardless of gender, gender identity, and/or sexual orientation, have a right to an environment free from harassment, including Sexual Harassment<sup>2</sup>, and, where Sexual Harassment occurs Supportive Measures, due process, and a fair and equitable process in which such allegations can be reviewed and addressed. This procedure has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This procedure is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

All individuals are expected to conduct themselves in a manner that does not infringe upon the rights of others. When an allegation of misconduct is brought to the District's attention appropriate support services will be offered and, when a Respondent is found to have violated this policy, Sanctions will be used to address such behavior and prevent further violations.

Any Sexual or Gender-Based Misconduct is a violation of District policies and regulations, and is subject to all applicable punishment, including criminal procedures and Employee or Student Sanction procedures. Sexual or Gender-Based Misconduct encompasses Sexual harassment, which includes, but is not limited to, Sexual Violence, Dating or Domestic Violence, or Stalking, as defined by California law and/or set forth below. Sexual Harassment can be committed by or against an Employee, Student, or member of the public of any gender or gender identity.

It is within the District's authority to review and address allegations of Sexual Harassment when they occur on District property, in connection with academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities or at another location, or on an off-campus site or facility maintained by the District, or on grounds or facilities maintained by a student organization.<sup>3</sup> Additionally, it is within the District's authority review and address allegations of Sexual Harassment that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based

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<sup>2</sup> California Education Code Sections 67385.7, 67386, 67390, and 76200 et seq.; California Penal Code Sections 242, 243, 245, and 261 et seq.; 20 U.S. Code Section 1092(f) - The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act); 34 Code of Federal Regulations Section 668.46(b) (11); Title IX of the Education Amendments of 1972 Implementing Regulations at: 20 U.S.C. 1681 & 34 C.F.R. PART 106);

<sup>3</sup> See BP 3540 - Sexual or Gender-Based Misconduct; AP 5500 - Standards of Student Conduct. See generally Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq, Title IX, 34 C.F.R. § 106.1et seq; Violent Crime Control and Law Enforcement Act of 1994, Title IV, sec. 40001-40703 of the Violence Against Women Act of 1994

on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education.<sup>4</sup>

These Provisional Procedures do not apply to Sexual or Gender-Based Misconduct alleged to occur before August 14, 2020. With respect to Sexual or Gender-Based Misconduct that allegedly occurred prior to August 14, 2020, the District will utilize Title IX regulations and District provisional procedures in place at the time the alleged misconduct occurred.<sup>5</sup>

This provisional procedure is issued in response to legal requirements and is considered the prevailing District procedure under Title IX pending updates to District Board Policies (BP) and Administrative Procedures (AP) through District policy making and collegial consultation requirements.

## SECTION 2 - RELEVANT DEFINITIONS

**Appellant:** A Complainant or Respondent who appeals the District's Investigative Findings, pursuant to Section 9.1 (Appeals of the Investigative Findings and Administrative Determination).

**Administrative Determination:** The determination made by the Hearing Officer at the conclusion of the Title IX Hearing as to whether Respondent violated relevant District BPs/APs. The Administrative Determination will be set forth in the Hearing Outcome Notice.

**Advisor:** A designated District employee to provide support to the Parties during the investigation process. Alternatively, either Party may elect a collective bargaining representative (if applicable), attorney, family member, or friend to serve as their Advisor.

**Administrative Procedures (AP):** Administrative Procedures are issued by the Superintendent/President of the District as statements of methods to be used in implementing Board Policy. Such Administrative Procedures shall be consistent with the intent of Board Policy.

**Board Policy (BP):** Policies adopted by the District's Board of Trustees as are authorized by law or determined to be necessary for the efficient and effective operation of the District.

**District:** El Camino Community College District.

**Complainant:** A person alleging that they are the victim of Sexual or Gender-Based Misconduct by another person subject to Board Policy 3540. Any person, other than Complainant, who

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<sup>4</sup> Senate Bill 493 which amends California Education Code, Section 66262.5 and adds Section 66281.8

<sup>5</sup> See El Camino College Provisional Title IX Procedures Updated 8.28.19.

reports possible violation(s) of the District's policy on Sexual or Gender-Based Misconduct, shall be identified as a Reporter, as defined herein.

**Consent/Affirmative Consent:** Ongoing, affirmative, conscious, and voluntary agreement for the act in which the participants are involved. Consent is active, not passive. It is the responsibility of each person involved in the sexual activity to ensure that they have the Affirmative Consent of the other or others to engage in the sexual activity. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in sexual activity. Consent to any one form of sexual activity does not automatically imply Consent to any other forms of sexual activity.

Lack of protest or resistance does not mean Consent, nor does silence mean Consent. Affirmative Consent cannot be given under duress, force, or coercion including where threats, physical aggression, or intimidation is used to produce consent. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of Consent. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no Consent; this includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious. The legal age of Consent is 18 years of age; anyone under the age of 18 is unable to provide consent to sexual activity. Any sexual activity with a minor under the age of 18 may constitute Statutory Rape.

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**District:** El Camino Community College District.

**District Appeals Body:** The District Board of Trustees or designee who determines whether the Hearing Officer's determination of a Title IX hearing is upheld or overturned.

**District Community:** Means any Employee, contractor, Student, member of the public, volunteer, intern, or guest present on District property, or on property being used by the District. For purposes of this definition, a Student is deemed a member of the District Community while enrolled in, or in the process of applying for, admission as a Student at the District.

**District Disciplinary Officer:** Where Respondent is a **Student**, the Director of Student Development, or designee, shall act as the District Disciplinary Officer to administer the Sanctions under Administrative Procedure 5500.

Where Respondent is an **Employee**, Respondent's Supervisor or designee, in consultation with Human Resources, shall act as the District Disciplinary Officer to administer the Sanctions under applicable District Administrative Procedure, bargaining unit agreements, and in compliance with the Education Code.

**Domestic Violence:** A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

**Employee:** Any person employed for wages or salary by the El Camino Community College District.

**Final Investigation Report:** The final version of Preliminary Investigation Report, written by the Title IX Investigator, which may include any response or feedback provided by the Parties. The Final Investigation Report concludes the Title IX Investigation. See also Preliminary Investigation Report.

**Final Review Period:** The time period in which Parties may review the Final Investigation Report. This is the last of two (2) review periods presented by the Title IX Investigator. This review period allows the Parties and the Hearing Officer ten (10) working days to review the Final Investigation Report prior to the Hearing Date.

**Gender:** For purposes of this procedure, Gender refers to an individual's actual or perceived Gender as Male, Female, or non-binary (see California Senate Bill 179), Gender Identity, or Sexual Orientation, as well as any assumptions or stereotypes based on one's actual or perceived Gender.

**Gender-based Harassment and/or Misconduct:** Unwelcome Conduct of a nonsexual nature based on a Complainant's actual or perceived gender, including conduct based on gender identity, gender expression, or nonconformity with gender stereotypes that effectively denies a student services, benefits, or access to campus programs and activities based on gender.

**Hearing Officer:** A designated District administrator who determines whether or not Respondent has violated District policy for complaints of Sexual or Gender-Based Misconduct brought forth by a Student that, if substantiated, could result in a severe sanction (suspension or expulsion), where credibility of any Party or witness is central to the finding.

**Hearing Outcome Notice:** A final notice written by the Hearing Officer following completion of the Hearing notifying Parties of the Administrative Determination. This document will contain a

summary of the Final Investigation Report, the outcome of the Hearing, recommended Sanctions if applicable, and advisement of the right to appeal the outcome.

**Initial Review Period:** The time period in which Parties may review the Preliminary Investigation Report. This is the first of two (2) review periods presented by the Title IX Investigator. This review period allows parties ten (10) working days to review and respond to the Preliminary Investigation Report and evidence files, to propose questions to be posed to the other party, provide new and relevant evidence or information, or identify new and relevant witnesses.

**Investigative Findings:** A Title IX process determination based on the available evidence and made at the conclusion of the Investigative Process that the allegation that Respondent violated Board Policy 3540 has been Substantiated or Not Substantiated. The Investigative Findings may form the basis of any applicable Sanctions.

**Not Substantiated:** Means, based on the applicable evidence collected during the investigation, it is determined by a preponderance of the evidence that the allegations against Respondent more likely than not did not occur and/or that they would not constitute a violation of the District's Board Policy 3540 Sexual or Gender-Based Misconduct, or Administrative Procedure 3540 Sexual or Gender-Based Misconduct.

**Party/Parties:** refers to the individuals involved in the alleged violation of Board Policy 3540. The term Party refers to either Complainant or Respondent individually; the term Parties means both Complainant and Respondent collectively.

**Preliminary Investigation Report:** A product of the Formal Complaint and investigation process, this report is compiled by the Title IX Investigator which includes a compilation of evidence (e.g., interviews, documents, materials, etc.) and analysis relevant to the complaint and investigation. The Preliminary Investigation Report will be reviewed by the Parties during the Initial Review Period.

**Quid pro quo Sexual Harassment:** Unwelcome sexual advances, requests for sexual favors or other verbal, non-verbal, or physical conduct of a sexual nature; **and** where submission to or rejection of such conduct is a determining factor in adverse educational or employment action.

**Reporter:** Any person(s), other than Complainant, who reports potential violation(s) of the District's policy on Sexual or Gender-Based Misconduct.

**Respondent:** Person/s who are alleged to have violated the District's policy on Sexual or Gender-Based Misconduct.

**Responsible Employees:** District Employees designated by the District to mandatorily report all known or suspected incidents of Sexual or Gender-Based Misconduct to the District Title IX Coordinator.

**Retaliation:** Any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation of unlawful discrimination or Sexual or Gender-Based Misconduct. Victims of Retaliation may include, but are not limited to Complainant, Respondent, witnesses, Title IX Investigator, Hearing Officer, and Appeals Body. Examples of actions that might constitute Retaliation against a Complainant, witness, or other participant in the complaint or investigation process include: a) singling the person out for harsher treatment; b) lowering a grade or evaluation; c) failing to hire, failing to promote, withholding pay increase, demotion, or discharge; d) providing negative information about the person in order to interfere with their prospects for employment, admission, or academic program.

**Sanctions:** Those disciplinary measures available to the District Disciplinary Officer or designee to impose upon a Respondent upon the substantiation of an allegation that a Respondent violated Board Policy 3540 Sexual or Gender-Based Misconduct.

**Sexual Assault:** Actual or attempted sexual contact with another person without that person's consent. Sexual Assault includes but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of Sexual Assault.

**Sexual Activity:** Intentional physical contact with another individual's intimate body parts (such as the breasts, buttock, groin, or genitals), touching another individual with one's own intimate body parts, or making another individual touch one's own or their own intimate body parts. Sexual Activity encompasses kissing, touching, fondling, intercourse, oral sex, or masturbation.

**Sexual Exploitation:** A form of Sexual Harassment wherein one takes non-consensual or abusive sexual advantage of another for the benefit of anyone other than the one being exploited without their consent. Examples of Sexual Exploitation may include, but are not limited to:

- Prostituting another person;
- Non-consensual video or audio-taping of sexual activity;
- Viewing or distributing images of an individual's sexual activity, body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent to have the image shared, or advance consent to view such an image, and for the purposes of arousing or gratifying sexual desire;
- Knowingly transmitting an STD, HIV, or other communicable disease to another;
- Exposing one's body parts in non-consensual circumstances; inducing another to expose their genitals.

**Sexual Harassment:** Unwelcome verbal, non-verbal, or physical conduct of a sexual nature and/or on the basis of sex that would be considered in the eyes of a reasonable person so severe, pervasive, and objectively offensive that effectively denies a student services, benefits, or access to campus programs and activities based on gender. Harassment based on gender identity, gender expression, or non-conformity with gender stereotypes are considered forms



of Sexual Harassment. Sexual Harassment encompasses quid pro quo harassment, sexual misconduct, sexual exploitation, stalking, dating violence, domestic violence. Sexual Harassment may include in-person, electronic, written, verbal, and third-party communications.

**Sexual Misconduct:** Unwelcome physical conduct of a sexual nature without affirmative consent. Any sexual activity without affirmative consent is Sexual Misconduct. Sexual Misconduct encompasses Sexual Assault, Sexual Exploitation, Rape, Fondling, and Incest.

- Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- 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 age and/or because of his/her temporary or permanent mental incapacity.
- 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.
- Sexual Exploitation: See definition above.

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

**Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

**Student:** Any person who is enrolled, applying to enroll, or was enrolled within the last two academic terms at the District during the period in which the misconduct occurred.

**Substantiated:** Means, based on the applicable evidence collected during the investigation, that it is determined by a preponderance of the evidence that the allegations made against Respondent are considered more likely than not to have occurred and constitute violation of the District’s Board Policy 3540 Sexual or Gender-Based Misconduct, or Administrative Procedure 3540 – Sexual or Gender-Based Misconduct.

**Title IX Coordinator:** The Director of the Office of Title IX, Diversity, and Inclusion, or designee; the person(s) responsible for oversight and implementation of Title IX compliance at the District for the effective oversight of the District’s Sexual or Gender-Based Misconduct Policy and Procedure and for the responsibilities outlined in this Procedure.

**Title IX Investigator(s):** The Title IX Coordinator’s designated person(s) responsible for the investigation of complaints of Sexual or Gender-Based Misconduct at the District.

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

### **SECTION 3 - DISTRICT JURISDICTION**

It is within the District’s authority to review and address allegations of Sexual Harassment when they occur on District property, in connection with academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District’s facilities or at another location, or on an off-campus site or facility maintained by the District, or on grounds or facilities maintained by a student organization, or when and incident occurs outside the campus activities or programs but could contribute to a hostile educational environment or otherwise interfere with a student’s access to education.

Pursuant to District Board Policy 5500 and Administrative Procedure 5500, the District’s jurisdiction concerning alleged Student Code of Conduct violations extends to the District or any of its activities occurring on District property within the United States. This jurisdiction may also apply to off-campus electronic activity (such as e-mail, texting, telephone contact, social media and other technology) when the off-campus conduct affects, disrupts, or interferes with a Complainant’s equal access to educational programs or activities.

## **SECTION 4 - RANGE OF SANCTIONS FOR VIOLATIONS OF BOARD POLICY 3540**

Any Student found Responsible for violating Board Policy 3540 on Sexual or Gender-Based Misconduct, and/or Board Policy 5500 on Student Conduct may receive Sanctions ranging from warning to expulsion, as well as educational sanctions, depending on the severity of the incident, and considering the severity of the incident and any previous campus conduct code violations.<sup>6</sup>

Any Employee found Responsible for violating Board Policy 3540 on Sexual or Gender-Based Misconduct may face disciplinary action, depending on the severity of the incident, subject to any applicable existing bargaining unit agreements, the Education Code, and any other applicable policies and procedures.<sup>7</sup>

## **SECTION 5 - DISTRICT NOTICES AND COMMUNICATION**

The District's primary correspondence and notification mechanism with Parties shall be through the District assigned email account. At the District's discretion, Complainants may be notified via other communication methods, such as U.S. certified mail, delivery in person, telephone, or by an alternate email on record to the contact information provided by the Student.

## **SECTION 6 - EMPLOYEE REPORTING OBLIGATIONS**

Where a Complainant may report potential violations of BP/AP 3540 to a District Employee, all employees are encouraged to refer Complainant to the District Title IX Coordinator for Supportive Measures, resources, and complaint filing options. While most employees are encouraged to refer a Complainant, the following Employees of the District are designated as Responsible Employees, who are required to notify the Title IX Coordinator and/or appropriate Law Enforcement, of any incidents and relevant details of Sexual or Gender-Based Misconduct that are reported to them by a member of the District Community:

- Managers/Administrators
- All Faculty

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<sup>6</sup> The District Disciplinary Officer or designee reserves the right to broaden or lessen any range of recommended Sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the District Disciplinary Officer nor any appeals body or officer will deviate from the range of recommended Sanctions unless compelling justification exists to do so (see AP 5500 Standards of Student Conduct).

<sup>7</sup> See El Camino Classified Employees Agreement effective January 1, 2017; El Camino College Federation of Teachers Agreement effective January 1, 2017; El Camino College Police Officers Association Agreement effective January 1, 2015

District Employees are not expected, nor encouraged, to investigate, question, or seek further information regarding a potential allegation of Sexual or Gender Based Misconduct. Employees are not to take any corrective actions against a member of the community based on suspected violations of BP/AP 3540 outside of the appropriate grievance process following an investigation through the Title IX process.

### **6.1 Federal Statistical Reporting Obligations**

The Jeanne Clery Act is a landmark federal law that requires Districts and universities, including the District, to disclose certain timely and annual information about crimes that occur on or near campus. The District has a duty to report Sexual Assault, Domestic Violence, Dating Violence and Stalking for federal statistical reporting purposes pursuant to the Jeanne Clery Act. All personally identifiable information is kept confidential, but statistical information must be passed along to District law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal Reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for Student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category.

## **SECTION 7 - FILING A COMPLAINT**

### **7.1 Timeframe for Reporting a Complaint**

Complainants are encouraged to report violations of BP/AP 3540 within one hundred and eighty (180) calendar days of the violation. While there is no restriction on submitting complaints after the one hundred and eighty (180) day period, the extended timeframe may impede the District's ability to investigate and remediate. Where Complaints are submitted outside the one hundred and eighty (180) day timeframe, Supportive Measures and services may still be provided.

### **7.2 Methods for Reporting and Filing a Complaint**

Members of the District Community may report known or reasonably suspected incidents of Sexual or Gender-Based Misconduct to Campus Police and/or to the District Title IX Coordinator. All incidents where imminent physical danger is known or suspected should be reported to Campus Police or local law enforcement via 9-1-1 immediately. Students may also report incidents of Sexual or Gender-Based Misconduct to the Student Health Services if they wish to remain confidential (see section 7.3, Confidentiality).

#### **Campus Police:**

(310) 660-3100  
16007 South Crenshaw Blvd.

**Title IX Coordinator:**

Jaynie Ishikawa, Director of Title IX, Diversity, and Inclusion  
[titleixcoordinator@elcamino.edu](mailto:titleixcoordinator@elcamino.edu)

(310) 660-3813

Administration Building, Suite 140

Website and information: <https://www.elcamino.edu/departments/title-ix-diversity-and-inclusion/>

Online Reporting Form:

[https://cm.maxient.com/reportingform.php?ElCaminoCollege&layout\\_id=2](https://cm.maxient.com/reportingform.php?ElCaminoCollege&layout_id=2)

Students and Employees may also file a Complaint of Unlawful Discrimination with the Office of Title IX, Diversity, and Inclusion or directly to the California Community Districts State Chancellor's Office.

### **7.3 Confidentiality**

Confidentiality in a complaint filed with the Title IX Coordinator cannot be guaranteed, however the information in a report will only be disclosed on a need-to-know basis. Complainants may request to seek Supportive Measures from the Title IX Coordinator without their name or information being disclosed to Respondent. Where Supportive Measures require coordination with other campus offices, limited information will be provided and the details of the alleged conduct will not be disclosed.

Where a Complainant wishes to file a complaint, either for the purposes of an Informal Resolution or a Formal Complaint and investigation, Complainant's name and details of the allegations will be disclosed to Respondent and the relevant advisors, administrators, and other individuals involved in the complaint process.

When the District becomes aware of Sexual or Gender-Based Misconduct that poses a serious or ongoing threat to the District Community, the Title IX Coordinator has the authority to determine if an investigation into the allegations is warranted, regardless of a Complainant's wishes to the contrary, in order to ensure the safety of the District Community. In these cases, Complainants are not required to participate in the District's investigation. However, this may significantly limit the District's ability to effectively and efficiently respond to the incident.

If a complainant requests confidentiality, which could preclude a meaningful investigation or potential Sanctions of the potential respondent, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the District shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the complainant.

In determining whether to disclose a complainant's identity or proceed to an investigation over the objection of the complainant, the institution may consider whether any of the following apply:

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

If the District determines that it must disclose the complainant's identity to the respondent or proceed with an investigation, it shall inform the complainant prior to making this disclosure or initiating the investigation.

Complainants who wish to receive confidential support services may utilize any of the confidential resources listed below.

#### **7.4 Confidential Reporting Options**

Certain resources are not required to disclose private, personally identifiable information unless there is cause for fear for your safety, or the safety of others.

#### **Student Health Services**

District Employees (such as psychologists, doctors, and other medical health professionals) who work at the Student Health Services and whose primary job duty is to render medical or counseling care to Students and are working within the scope of their professional license or certification are excluded from being Responsible Employees. In addition, employees providing administrative support within the Student Health Services are also excluded from the category of Responsible Employees. The exclusion of these Employees rendering medical or counseling care or administrative support in the Student Health Services is intended to provide Students with a mechanism to report incidents of Sexual or Gender-Based Misconduct without obligation to report to the Title IX Coordinator. **This section is not intended to negate the mandatory reporting responsibilities required under California Welfare and Institutions Code Section 15630 or legal requirements for medical health professionals to report injuries suspected or report to have been the result of assault, domestic abuse, sexual assault, and gunshots.**

Counseling services are available to Students free of charge on an appointment and drop-in basis. Reports to Employees of the Student Health Services, such as psychologists, doctors, and other medical health professionals, who work at the Student Health Services and whose primary job duty is to render medical or counseling care to Students and are working within the

scope of their professional license or certification, will remain confidential. In addition, reports to employees providing administrative support within the Student Health Services are maintained on a need-to-know basis within the Student Health Services and for the purposes on providing care to students within the scope of their position.

In addition, reports to members of the clergy and chaplains off-campus are also confidential resources. For off campus resources, visit <https://www.elcamino.edu/departments/title-ix-diversity-and-inclusion/resources.aspx>.

## **7.5 Non-Confidential Reporting Options**

Responsible Employees, including all Faculty and Administrators, are designated by the District for purposes of putting the District on notice and for whom mandatory reporting is required, other than in stated limited circumstances. Notice to a Responsible Employee is official notice to the District. Other non-confidential reporting options include, but are not limited to:

- Student Club and Organization Advisors
- Student Support Services Staff
- Academic Affairs
- Campus Police
- Athletics staff
- Academic Counseling Staff

Members of the District Community have the right and can expect to have incidents of Sexual or Gender-Based Misconduct taken seriously by the District when formally reported, and to have those incidents investigated and properly resolved. Formal reporting means that only people who need to know will be told, and information will be shared only as necessary.

## **7.6 Amnesty**

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

The District's primary concern is student safety. As such, an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

## **7.7 Reports Involving Unknown/Non-District Offenders**

When Respondent is not a District Employee or Student, the District will offer reasonable supportive remedies, such as class scheduling alternatives, escort services, and medical and counseling care to Complainant. However, Sexual or Gender-Based Misconduct investigations are subject to the jurisdictional limitations of the District as set forth herein.

## **7.8 Anti-Retaliation/Anti-Intimidation**

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because they have complained of unlawful discrimination (including sexual misconduct) or are otherwise involved in a related investigation. Any substantiated allegation of Retaliation violates Board Policies 3430 and 3540, this procedure, and applicable law and may result in disciplinary action.

## **7.9 Parallel Student Conduct, Police and Court Proceedings**

Complainants are strongly encouraged to report all incidents of Sexual or Gender-Based Misconduct to law enforcement. Title IX investigations are independent from court or other administrative proceedings. Complainants may seek outside remedies including orders of protection or similar lawful orders issued by a criminal, civil, or tribal court. Sanctions may be instituted against a Respondent also charged in civil or criminal courts based on the same facts that constitutes the alleged violation of the Student Code of Conduct or other applicable Board Policy or collective bargaining agreement. The District may proceed before, concurrently with, or after any judicial, criminal, or administrative proceedings, except in cases involving Sexual or Gender-Based Misconduct. In Sexual or Gender-Based Misconduct cases, the District shall proceed with investigation without undue delay, typically within fourteen (14) calendar days, in accordance with federal and state law requirements, and District Policies and Procedures.

# **SECTION 8 - COMPLAINT REVIEW PROCESS AND SUPPORTIVE MEASURES**

## **8.1 Preliminary Assessment**

The District will review and respond to all reports of alleged violations of Sexual or Gender-Based Misconduct. Where the Title IX Coordinator is notified of potential Sexual or Gender-based Misconduct, the Title IX Coordinator, or their designee(s), will provide Complainant with information on Supportive Measures and filing options, including Informal Resolution, where applicable, and the Formal Complaint process.

The Title IX Coordinator has the authority to determine jurisdiction of a complaint based on the nature of the allegations, location of the incident, status of the parties, and/or other relevant factors. Where a case falls outside the jurisdiction of Title IX, the Title IX Coordinator may provide Complainant with Supportive Measures, resources, and/or a referral to the appropriate



administrative office. Where the allegations, if found to be true, would not rise to a policy violation it is the discretion of the Title IX Coordinator to determine if a complaint may be accepted for review or investigation.

Complainant may opt to pursue an Informal Resolution, prior to or instead of a Formal Complaint in most cases. If the Title IX Coordinator determines it is warranted based on a safety concern, a Formal Complaint will be initiated and an investigation will be conducted.

## **8.2 Interim Action and Supportive Measures**

Once the Title IX Coordinator or designee has received a complaint and/or report of Sexual or Gender-Based Misconduct, the District will make an assessment to determine if any immediate remedies are warranted, pending an investigation. The District will work with Complainants affected by the Sexual or Gender-Based Misconduct report to ensure their safety and promote their well-being. The Title IX Coordinator may determine immediate or long-term Supportive Measures, such as, but not limited to, changing academic schedules, police escort services, restrictions on the Parties pending investigation, and other measures to promote the well-being, safety, and restoration of the Parties.

Examples of Supportive Measures that may be implemented are subject to the discretion of the Title IX Coordinator and may include:

- Access to counseling services and assistance in setting up an initial appointment, both on and off campus;
- Imposition of campus “No Contact Order” issued to the respondent, or, where appropriate, to both parties;
- Rescheduling of exams and assignments (in conjunction with appropriate faculty and deans as necessary);
- Providing alternative course completion options (with the agreement of the appropriate faculty);
- Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sections (with the agreement of the appropriate faculty);
- Change in work schedule or job assignment;
- Limiting an individual or organization’s access to certain District facilities or activities pending resolution of the matter;
- Voluntary leave of absence;
- Providing an escort to ensure safe movement between classes and activities;
- Providing medical services;
- Providing academic support services, such as tutoring;
- Interim suspension or District-imposed leave;
- Monitoring, supervision, or security at locations or activities where the alleged misconduct occurred;
- Providing additional training and education materials for students and employees;

- Conducting climate surveys regarding sexual violence;
- Any other remedy that can be tailored to the Parties to reasonably achieve the goals of this Policy.

### **Ongoing Supportive Measures for Complainants**

The District shall take reasonable and necessary steps to prevent the recurrence of any Sexual or Gender-Based Misconduct and to remedy discriminatory effects on both Complainant and Respondent, if appropriate.

### **8.3 Informal Resolution**

If the Office of Title IX, Diversity, and Inclusion or either Party believes that it may be possible to resolve the Complaint in a prompt, fair, and reasonable manner without conducting a Formal Complaint and Investigation, the Office of Title IX, Diversity, and Inclusion may suggest the Parties consider Informal Resolution. Supportive Measures and interim remedies may be implemented in Informal Resolution.

**Both Parties** must agree to participate in the Informal Resolution process and must agree in writing to the proposed remedies. Where Respondent does not agree to participate in Informal Resolution or where the Parties do not agree to the proposed remedies, Complainant will have the option to pursue a Formal Complaint or withdraw their complaint.

Where Complainant is a District Student and Respondent is a District Employee, Informal Resolution is not permitted. Where the complaint involves allegations of sexual violence, Informal Resolution is not permitted.

The purpose of the informal process is not to investigate the matter or determine fault, but to 1) provide Supportive Measures and remedies to the involved parties, 2) share with the person at issue feedback from the aggrieved Party to prevent further potential issues and/or miscommunications, and 3) notify them of the type of behavior that can be construed as being in violation of our school board policies. The Title IX Coordinator may work with relevant administrative offices, such as deans, faculty, or the District Disciplinary Officer, to coordinate and provide proposed Supportive Measures and remedies. There is no timeline associated with the informal process. Informal Resolution can be changed to a formal investigation if the circumstances warrant it. The protections against Retaliation apply in both informal and formal processes.

Where Respondent is a District Employee, the relevant supervisor is notified of the issue as well, not only to help monitor the situation, but to work with Human Resources on instituting any necessary interim actions. Where Respondent is a District Student, relevant instructors and administrative staff may be notified of the issue as well, to assist in monitoring the situation.

Once the Office of Title IX, Diversity, and Inclusion has met with all relevant Parties to discuss the matter, the complaint will be considered resolved. Accordingly, there is no appeals process for informal resolution.

However, the Formal Complaint and Investigation process may be used prior to the final resolution at the request of Complainant or if information is provided that indicates a substantial or ongoing threat to the safety of the campus community.

Where Informal Resolution is not applicable, elected, or agreed upon by both parties a Complainant may choose to file a Formal Complaint, in which an investigation will be conducted (see steps 1-5 below). The Formal Complaint and Investigation Process has disciplinary implications and is governed by the California Code of Regulations (CCR). Its purpose is to determine whether or not there has been a violation of District policies.

#### **8.4 Formal Complaint and Investigation Process**

Where a Complainant notifies the Title IX Coordinator of allegations of Sexual or Gender-Based Misconduct and wishes to pursue a Formal Complaint, or where the Title IX Coordinator determines it is warranted based on a safety concern, an investigation into the allegations will be conducted by the Title IX Coordinator or their designee. The District is committed to using a balanced and fair investigative process for both Complainant and Respondent.

As set forth in these provisional procedures, the scope of Formal Investigations conducted by the Office of Title IX, Diversity, and Inclusion are limited to allegations of Sexual or Gender-based Misconduct. This Formal Complaint and Investigation Process only applies in cases where Complainant has filed a complaint, the Title IX Coordinator has determined it is within the District's jurisdiction, and the parties have opted not to pursue or agree to Informal Resolution. The investigation and adjudication of alleged Sexual or Gender-Based Misconduct is not an adversarial process between the Complainant, Respondent, and Witnesses, but rather a process for the District to review and address the alleged violation of policy. The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the allegations of misconduct.

#### **8.5 Timeframe for Investigations**

The District shall use reasonable, diligent efforts to investigate reported incidents of Sexual or Gender-Based Misconduct to Complainant and Respondent within ninety (90) working days of the date in which the complaint was filed unless there are extenuating circumstances that prohibit the timeliness of the completion of the investigation. Time frames for investigations may vary depending on the details of a case or if possible, violations occur near, during, or after District holidays, breaks, or the end of an academic term. Parties may request an extension of the deadline related to a complaint due to examination periods or school closures. The District will provide periodic updates to the parties during the investigation period.

If an extenuating circumstance exists that prohibits the completion of an investigation within ninety (90) working days, the District will inform Complainant and Respondent in writing of such delay.

### **8.6 Video and Audio Recording**

Per 2020 guidance from the Department of Education, the Title IX Coordinator and/or Designee(s) are required to audio record all interviews and hearing procedures conducted for an investigation into a complaint of Sexual or Gender Based Misconduct. An official recording of interviews and hearing procedures will be taken and maintained by the District and will be made available to the interviewees and relevant parties upon request. No outside, secondary, or duplicate recording of any interview or hearing procedure will be permitted.

### **8.7 Participation in an Investigation**

#### **Complainants**

A Complainant may request that no investigation or disciplinary action be pursued to address the alleged Sexual or Gender-Based Misconduct. The District shall make all reasonable attempts to maintain discretion and confidentiality to the extent possible. However, there are situations where the District must override these requests. The District maintains the discretion whether it shall honor such requests if doing so would compromise its ability to provide a safe and nondiscriminatory environment for its Students. In cases where the Title IX Coordinator determines an investigation is warranted despite Complainant's wishes, the Complainant will be notified and may decline to participate in the investigation, the investigation will continue and a determination will be made without the benefit of Complainant's input. Where a Complainant pursues a formal investigation but declines to submit to questioning during the hearing, the hearing will continue without the benefit of the Complainant's participation.

#### **Respondents**

Respondents may decline to participate in the investigation and hearing. In these cases, the investigation and adjudication process will continue and a determination will be made without the benefit of Respondent's input. Pursuant to Administrative Policy 3050 Institutional Code of Ethics, it is strongly recommended that District Employees participate in these procedures.

### **8.8 Standard of Evidence**

An allegation will be determined as Substantiated or Not Substantiated based on a preponderance of the evidence, meaning that it is more likely than not that allegation occurred and constitutes a violation of the District's BP/AP 3540, BP/AP 5500 and any other applicable policies and procedures. The outcome of a Formal Complaint shall be based upon the thorough investigation of allegations and the weighing of evidence in totality by the Title IX Coordinator, or their designee, the Hearing Officer, and the Appeals Body, if applicable.

## **8.9 Investigation Process**

### **Step 1 – Notice of Formal Investigation**

Once a Formal Complaint of Sexual or Gender-Based Misconduct has been received by the Title IX Coordinator, or designee, an email will be sent to Complainant and Respondent, separately but concurrently, with the following information:

- A description of the alleged violation(s), including the Parties' names, summary of the allegation(s), location of the incident(s), and date and time of the incident(s);
- A description of the applicable policies (including a description of the District's policy against Retaliation);
- A statement of the potential Sanctions/responsive actions that could result;
- Information about the Parties' right to an Advisor;
- A request for an investigative interview; and
- The estimated timeline for completion of the investigation.

### **Step 2 – Investigation Process**

The Title IX Investigator will make good faith and reasonable efforts to interview Complainant, Respondent, and any witnesses (if appropriate). Both Complainant and Respondent may have an Advisor<sup>8</sup> present during District investigation meetings, including their own investigative interview, Hearings, as well as other related administrative meetings.

The Title IX Investigator will also make good faith and reasonable efforts to gather all available information, documents, and materials (if any) that are relevant to the case. The Investigator may decline a Party's request to gather information if:

- The request seeks information that is unreasonably duplicative of evidence in the Investigator's possession; or
- The Investigator determines that the information is not relevant to disputed issues; or
- The Request seeks information that can be reasonably and adequately obtained by the requesting Party from other independent or publicly available sources; or
- The burden of obtaining the information is likely to substantially outweigh the benefit that the evidence bears on a disputed issue; or
- The requested information can be reasonably obtained through other means less likely to intrude on a person's privacy.

### **Information Regarding Romantic or Sexual History**

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<sup>8</sup> See Section 11.3, Advisors

The Investigator, as well as the hearing officer and appeals officer, will not consider the Parties' prior or subsequent sexual conduct, romantic/sexual history, or dating relationship except for the following circumstances:

1. Such evidence about Complainant's sexual behavior is offered to prove physical injuries alleged to have been inflicted by the respondent were inflicted by another individual; or
2. The evidence demonstrates how the parties communicated consent in prior or subsequent consensual sexual relations.

The existence of a sexual relationship between Complainant and Respondent does not support the inference of Consent to alleged Sexual or Gender-Based Misconduct.

### **Step 3 – Investigation Report and Review Periods**

Preliminary Investigation Report: Once the investigation has been completed, the Title IX Investigator will write a Preliminary Investigation Report, including a compilation of the information and evidence relevant to the complaint and investigation.

Review Periods: The Title IX Investigator will provide the parties with two (2) consecutive ten (10) working day review periods.

The **Initial Review Period** allows all parties ten (10) working days to review and respond to the Preliminary Investigation Report and evidence files, to propose questions to be posed to the other party, provide new and relevant evidence or information, or identify new and relevant witnesses.

During the Initial Review Period, either party is welcome to provide a written response to any of the evidence gathered. Responses are limited to corrections, explanations, or newly available evidence that could impact the outcome of the investigation. Responses may not be opinions of, or disagreements with, the evidence.

In order to maintain the integrity of the investigation and hearing process, and to protect the privacy of all parties involved, the parties are instructed not to share the contents of any investigative document with anyone other than their Advisor, as any unauthorized sharing of this information could severely compromise the hearing process.

If the parties have new evidence (that was not previously available) that they would like considered, it should be provided to the Title IX Investigator within the Initial Review Period. Should the Title IX Investigator determine that the evidence is new, relevant, previously unavailable, and has a potential impact on the outcome of the investigation, it will be accepted for consideration and an extension of the investigatory phase may be implemented. All other responses to this review of evidence will be reviewed and addressed during the Hearing.

Once all parties have provided their feedback during the Initial Review Period, the Title IX Investigator shall make any necessary revisions and submit the Final Investigation Report and Evidence Files to all parties and the Hearing Officer during the Final Review Period.

The **Final Review Period** allows all parties and the Hearing Officer ten (10) working days to review the Final Investigation Report, which incorporates any responses or feedback provided by the parties accepted by the Title IX Investigator during the Initial Review Period. The purpose of the Final Review Period is to review and confirm all accepted and incorporated feedback submitted to the Title IX Investigator.

Upon completion of the two review periods, the Investigation Process will be deemed completed.

#### **Step 4 – Hearing Procedures**

Once the investigation process has concluded, the Title IX Coordinator will assign a Hearing Officer and provide the parties with reasonable advance notice of the date and time of the hearing. The hearing will consist of the Hearing Officer, the Title IX Coordinator and/or Investigator, the Parties, the Parties' respective Advisors, relevant witnesses, and relevant administrative staff for the purposes of hearing coordination including an advisor to the Hearing Officer. The Title IX Coordinator or designee will present the details of the allegations, a summary of the investigative process, a summary of evidence or information not included in the Investigation Report, and a recommendation for the outcome based on the Investigation Report. The Title IX Investigator will be available for questions regarding the investigative process.

Both Parties will be given the opportunity to provide an opening statement regarding the allegations and may present an argument regarding sanctions and/or remedies. Parties will be provided the opportunity to pose questions to the other party and/or witnesses; all cross-examination will be conducted through the advisors and the Hearing officer may pose their own questions to parties and witnesses. The Hearing Officer retains the right to dismiss any questions that are determined irrelevant or inappropriate per these procedures and will do so during the hearing with an explanation of why it is deemed irrelevant. Cross-examination may be conducted with the parties physically in separate rooms; however, the parties must be available for audio and visual observation while being questioned.

Parties may opt out of being present for portions of the hearing, including cross-examination. However, should a party opt not to subject themselves to cross-examination, it may limit the ability of the Decision-Maker to gain full and complete information regarding the allegations. No inferences may be made based on a party's or witness' decision to not submit to questioning.

Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the

investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

### **Inappropriate or Disruptive Behavior**

All parties are expected to remain professional and respectful throughout the hearing, including Advisors and Witnesses. The Hearing Officer has the authority to remove any individual from the Hearing should their conduct become inappropriate or disruptive to the proceedings. If an individual is removed from the hearing for disruptive or inappropriate behavior, the hearing will proceed without their participation to the extent it does not impact parties' due process rights. In the case where the removal of a party disrupts or impacts due process, the hearing may be paused or rescheduled. Where a hearing is rescheduled due to a disruption, the District will still be required to adhere the timelines within these procedures.

Any disruptive or inappropriate behavior may be considered by the Hearing Officer and/or the District Disciplinary Officer in the sanction recommendation and decision.

### **Step 5 – Hearing Determination**

Within ten (10) working days of the hearing concluding, the Hearing Officer will 1) make an Administrative Determination based on the preponderance of the evidence determining whether a violation of relevant District Board Policies (including BP 3540) has been Substantiated or Not Substantiated; 2) if applicable, make a recommendation for applicable Sanctions to be provided to the District Disciplinary Officer; and 3) issue a Hearing Outcome Notice to all Parties, and the appropriate District Disciplinary Officer, if applicable.

The Hearing Outcome Notice shall include a summary of the Final Investigation Report, the outcome of the Hearing, and an advisement of their right to appeal the outcome (see Section 9.1, Appeals of the Investigative Findings and Administrative Determination).

### **Not Substantiated**

If, at the conclusion of the Hearing, the preponderance of the evidence indicates that it is NOT more likely than not that Respondent violated relevant District Board Policies (including BP 3540), the alleged violation of District Board Policies will be determined to be Not Substantiated. Accordingly, the Hearing Officer will not make a recommendation for Sanctions.

### **Substantiated**

If, at the conclusion of the Hearing, the preponderance of the evidence indicates that it is more likely than not that Respondent violated relevant District Board Policies, the alleged violation of District Board Policies will be determined to be Substantiated. Where a Respondent is found Responsible for violation of relevant Board Policies (including BP 3540), the Hearing Officer will make a recommendation for applicable Sanctions to be provided to the District Disciplinary



Officer, and the Final Investigation Report and the Hearing Outcome Notice will be submitted to the District Disciplinary Officer to serve as the basis of any applicable Sanctions.

The Hearing Officer will issue the Hearing Outcome Notice to the parties and relevant administrative offices within ten (10) working days of the hearing. The parties will have ten (10) working days to appeal the Administrative Determination to the District Appeals Body.

The Appeals process (Section 9) and any applicable Sanctions (Section 10) are handled outside of the Office of Title IX, Diversity, and Inclusion. The Appeals process is facilitated through the President's Office. Any applicable Sanctions are determined and administered through the appropriate District Disciplinary Officer.

## **SECTION 9 - APPEALS PROCESS**

### **9.1 Appeals of the Investigative Findings and Administrative Determination**

Appeals of the Investigative Findings and Administrative Determination are handled outside of the Office of Title IX, Diversity, and Inclusion, pursuant to 5 CCR § 59338. When either party is not satisfied with the results of the Administrative Determination, they may, within ten (10) working days from the date of issuance of the Hearing Outcome Notice, submit a written appeal to the Board of Trustees.

The Board shall review the original complaint, the Final Investigation Report, the Administrative Determination, and the appeal. The Board shall issue a final District decision in the matter within forty-five (45) working days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the Parties and to the State Chancellor's Office. If the Board does not overturn the Hearing outcome within forty-five (45) working days the Administrative Determination shall be deemed approved and shall become the final decision of the District on this matter.

The Parties shall also be notified of their right to file a complaint with outside entities, such as the State Chancellor's Office or appropriate external, state, or federal agencies.

Appeals of any subsequent Sanctions imposed shall be submitted to the District Disciplinary Officer directly using the procedure for appealing a disciplinary decision found in Administrative Procedure 5520, Student Discipline Procedures. Where Respondent is an employee, appeals are subject to the applicable rules and regulations regarding employee Sanctions.

### **9.2 Grounds for Appeal**

Parties may file an appeal of the outcome of their case based on the specified grounds outlined herein. An Appellant must specify a) which of the following grounds the appeal is based, and b) provide a summary of any new information to be considered in support of the appeal.

1. A substantive procedural error or omission occurred, which materially and significantly

affected the weighing of evidence by the Title IX Coordinator, Title IX Investigator or designee, which substantively affected the outcome of the hearing (e.g., substantiated bias, material deviation from established procedures, etc.).

2. To consider new evidence, previously unavailable during the original investigation, that could subsequently impact the original finding. Evidence intentionally withheld by a Party will not be considered unavailable. A summary of this new evidence and its potential impact must be included in the request for appeal.
3. Evidence of bias or conflict of interest demonstrated by an Investigator, Title IX Coordinator, or Hearing Officer towards a Party.

Pursuant to Board Policy 5500 and Administrative Procedure 5520, parties may file an appeal of the sanctions only which will be reviewed through the procedures under the Student Code of Conduct.

### **9.3 Submitting an Appeal**

Appeals should be submitted to the President's Office via [rmahowald@elcamino.edu](mailto:rmahowald@elcamino.edu) or in hard copy to Administration Building suite 250. The written appeal must include the specific grounds on which it is based along with explanation and evidence as to why the party feels the grounds to appeal apply.

### **9.4 Notification of Outcome**

Once the Board has rendered its decision on an appeal, it will send to Complainant and Respondent, separately, written communication with the following information:

1. Notification of the Board's decision to uphold or overturn the Administrative Determination;
2. A reiteration the alleged policy and procedure violation(s);
3. A reminder to all Parties involved of the Standard of Proof (Preponderance of Evidence);
4. A reminder to all Parties of the District's commitment to protecting against Retaliation, safeguarding confidentiality, and of all imposed interim Sanctions that are active and must be adhered to; and
5. A reminder to all Parties to review District Board Policy and Administrative Procedure 3540, and any other applicable Board Policy, and to understand each Party's rights and responsibilities.

## **SECTION 10 - SANCTIONS**

Any Sanctions resulting from a Title IX complaint are handled outside of the Office of Title IX, Diversity, and Inclusion. The appropriate District Disciplinary Officer shall issue Sanctions in accordance with existing District policy, Board Policy, applicable collective agreements and the law. Additionally, Sanctions shall be:

1. Fair and appropriate given the facts of the particular case;
2. Consistent with the individual District's handling of similar cases;
3. Adequate to protect the safety of the District Community; and
4. Reflective of the seriousness of the Sexual or Gender-Based Misconduct.

The relevant factors that may be considered, as applicable to the specifics of each type of Sexual or Gender-Based Misconduct, when imposing Sanctions include:

1. The specific Sexual or Gender-Based Misconduct at issue (such as penetration, touching, unauthorized recording, etc.);
2. The circumstances accompanying the lack of Consent (such as force, threat, coercion, incapacitation, etc.);
3. Respondent's state of mind (intentional, knowing, bias-motivated, reckless, etc.);
4. The impact of the Unwelcome Conduct of Complainant; and
5. The safety of the District Community.

Sanctions are solely determined by the appropriate District Disciplinary Officer.

Pursuant to Administrative Policy 5520, possible Sanctions for Students include, but are not limited to:

- Written or Verbal Reprimand;
- Educational Sanctions;
- Probation;
- Restitution;
- Removal from Class/Facility/College District Entity;
- Withdrawal of Consent to Remain On-Campus;
- No Contact Order;
- Short-Term Suspension;
- Long-Term Suspension;
- Intermediate Interim Suspension; and or
- Expulsion.

Possible Sanctions for Employees include, but are not limited to:

- Dismissal;
- Suspension with or without pay;
- Involuntary transfer; and or
- Demotion.

## **SECTION 11 - COMPLAINANT AND RESPONDENT RIGHTS**

Parties are entitled to a fundamentally fair process, including reasonable notice of allegations of violations of Sexual or Gender-Based Misconduct, the opportunity for the person to be heard

and to afford the person the opportunity to present evidence prior to the issuance of any Investigative Findings and Sanctions, except when immediate interim suspensions or restrictions are deemed necessary pending an investigation and determination of the matter.

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

- To be treated with respect by District officials;
- To take advantage of campus support resources, such as mental health services, Health Services, etc. to help remedy and restore;
- To experience a safe education and work environment;
- To have an Advisor present during the investigative interview and appeals hearing;
- To be free of Retaliation;
- To have complaints investigated adequately, impartially, and reliably;
- To fully participate in any process whether the injured Party is serving as Complainant, or where the institution is serving as Complainant.

Where an investigation is conducted, Complainant and Respondent have a right to a grievance process that:

- Is prompt and equitable;
- Includes an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence;
- Precludes conflicts of interest or bias on the part of coordinators, investigators, and decision makers;
- Ensures training for coordinators, investigators, and decision-makers;
- Relies on training materials that promote objective investigations and disciplinary procedures and that do not rely on sex stereotypes;
- Includes a presumption that Respondent is not responsible;
- Allows delays in investigations for good cause, including absence of parties or witnesses, law enforcement activity, or disability accommodations;
- Describes the sanctions and remedies that are available;
- Specifies the standard of evidence to be used;
- Specifies the Supportive Measures that are available;
- Precludes the use of questions that would violate a legally recognized privilege, unless waived.
- Provides concurrent notification in writing, of the outcome/resolution of the complaint and the basis for the determination; and
- Details the procedures available for appeals.

### **11.1 Right to Review Records**

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a federal law that protects the privacy of Student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the Student when they enroll in school beyond the high school level. Students to whom the rights have transferred are eligible Students. California Education Code Section 76200 et seq. also provides additional guidance concerning the privacy of Student records. Individuals are considered Students upon the submission of an admissions application.

Students have the right to inspect and review their education records maintained by the District. The District may charge a fee for copies.

Employees right to inspect and review their personnel file are subject to the restrictions contained in all applicable bargaining unit agreements and pursuant to District policies and procedures.

### **11.2 Special Requests/Accommodations**

Any Party may have an interpreter attend the investigative interview or appeal hearing. An interpreter accompanying a Party must provide evidence of their certification as a certified interpreter to the Title IX Investigator at least five (5) calendar days prior to the interview, hearing, or appeal. The interpreter may only interpret for the Party who requested them, and shall not expand or enhance the Party's testimony. Likewise, the use of assistive technology must be reviewed and approved by the Title IX Investigator at least five (5) calendar days prior to the commencement of the investigative interview and appeal hearing.

### **11.3 Advisors**

Sexual or Gender-Based Misconduct investigations and appeal hearings are not formal court proceedings, but instead are administrative actions imposed by the District. In cases where a Party is a dependent minor, the Party's parent or legal guardian must be present at the hearing. In addition, each Party may elect to be accompanied by a single Advisor, including but not limited to a collective bargaining representative (if applicable), attorney, family member or friend, to any investigative meeting, investigative interview, or appeal hearing. Both Complainant and Respondent may have one (1) individual Advisor present during District investigation meetings, including their own investigative interview, Hearings, as well as other related administrative meetings.

The advisor's role during interviews and meetings regarding the complaint is limited to observing, consulting with and providing support to Complainant or Respondent. An Advisor may not participate (speak) in the interview or appeal hearing on the Party's behalf; and may

not in any way disrupt or interfere with the investigative or appeal hearing process. The advisor should also maintain confidentiality. The Advisor's role during the hearing process will also include conducting appropriate and relevant cross-examination of the other party; Advisors are expected to remain calm, professional, and sensitive during the cross-examination and any inappropriate questions or behavior may result in notice from the Hearing Officer and/or removal from the hearing.

The District will provide an advisor to any Party, in the event that the Party does not have an advisor, their advisor is unavailable to attend the hearing, or the advisor is removed from the hearing due to inappropriate or disruptive behavior. The District provided advisors will serve in the same capacity as a Party-selected advisor. Parties may opt out of having an advisor for the investigative interview or other related meetings, but may not opt to self-represent for the cross-examination portion of the hearing.

## **SECTION 12 - PREVENTION AND EDUCATION**

Through the Title IX Coordinator, the District is committed to educating the District Community of the impact that Sexual or Gender-Based Misconduct has on an individual and the District Community. Therefore, the District will:

- Provide the District Community with education and prevention information about Sexual or Gender-Based Misconduct, including Domestic Violence, Dating Violence, Sexual Assault, or Stalking. The information shall be developed in collaboration with campus-based and community-based victim advocacy organizations.
- Post prevention and education resources and information on the District's website regarding Sexual or Gender-Based Misconduct, including Domestic Violence, Dating Violence, Sexual Assault and Stalking.
- Offer all reported victims of Sexual or Gender-Based Misconduct sources of counseling, advocacy, support, and legal options.

*\*Disclaimer: These provisional procedures are subject to change, including without prior notice, to keep the District in compliance with Board Policies and/or state and federal laws.*