El Camino Community College District  
Office of Staff & Student Diversity  
Provisional Title IX Procedures*

References:  
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);

*Disclaimer: These provisional procedures are subject to change and without prior notice to keep the District in compliance with Board Policies and/or State and Federal laws.

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SECTION I—INTRODUCTION

Any sexual and gender-based misconduct, including, but not limited to, rape, domestic violence, dating violence, sexual assault, sexual exploitation or stalking, as defined by California law and/or set forth below, whether committed by an employee, student, or member of the public, occurring 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, is a violation of District policies and regulations, and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. (See BP 3540 - Sexual and 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,)

Members of the District community, guests and visitors have the right to be free from all forms of sexual and gender-based misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. 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, and a Respondent is found to have violated this policy, serious Sanctions will be used to reasonably ensure that such actions are never repeated.

The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this procedure. 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.

SECTION II—DEFINITIONS

Appellant: A Complainant or Respondent who appeals the District’s Investigative Findings, pursuant to Section IX (Appeals Hearing Process).

College: El Camino Community College District

Complainant: A person alleging that they are the victim of Sexual and Gender-Based Misconduct by another person subject to Board Policy 3540. The District shall also be considered a Complainant if the District elects to investigate reports of potential violation(s) of Board Policy 3540. Any person, other than the Complainant, who reports possible violation(s) of the District’s policy on Sexual and 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 s/he has 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. 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. In order to give effective Consent, one must be of legal age.

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

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

**District Community:** Means any employee, contractor, Student, member of the public, 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 College.

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

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

**Force:** The use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce Consent. Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get Consent from another. When someone makes it clear to you that s/he does not want sex, that s/he wants to stop, or that s/he does not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. There is no requirement that a party resists the sexual advance or request, however resistance is a clear demonstration of non-consent. The presence of Force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**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.

**Hostile Environment:** Any situation in which there is harassing conduct that is sufficiently severe, persistent or pervasive; that it alters the conditions of employment or limits, interferes with or denies educational benefits or opportunities, from both a subjective (the alleged victim’s) and an objective (reasonable person’s) viewpoint. The determination of whether an environment is “hostile” must be based on all of the circumstances. These circumstances may include:

1. The frequency of the conduct;
2. The nature and severity of the conduct;
3. Whether the conduct was physically threatening;
4. Whether the conduct was humiliating;
5. The effect of the conduct on the alleged victim’s mental or emotional state;
6. Whether the conduct was directed at more than one person;
7. Whether the conduct arose in the context of other discriminatory conduct;
8. Whether the conduct unreasonably interfered with the alleged victim’s educational or work performance;
9. Whether the statement is a mere utterance of an epithet which engenders offense in an Employee or Student, or offends by mere discourtesy or rudeness;
10. Whether the speech or conduct deserves the protections of academic freedom or the First Amendment of the U.S. Constitution.
**Incapacitation:** A state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing Consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).

**Investigative Findings:** A Title IX Investigator’s determination, based on the available evidence and made at the conclusion of the Investigative Process, that Respondent is Responsible or Not Responsible for violating Board Policy 3540. The Investigative Findings may form the basis of any applicable Sanctions.

**Not Responsible:** Means, based on the applicable evidence collected during the investigation, it is not more likely than not that the Respondent did not commit a violation of BP/AP 3540 – Sexual and Gender-Based Misconduct.

**Party/Parties:** Means either the Complainant or the Respondent, involved in the alleged violation of Board Policy 3540. The term Parties means both the Complainant and the Respondent collectively.

**Quid pro quo sexual harassment:** Unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and submission to or rejection of such conduct results in adverse educational or employment action.

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

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

**Responsible:** Means, based on the applicable evidence collected during the investigation, that it is more likely than not that the Respondent committed one or more violation(s) of the District’s Board Policy 3540 – Sexual and Gender-Based Misconduct, or Administrative Procedure 3540 – Sexual and Gender-Based Misconduct.

**Responsible Employees:** District Employees designated by the District to mandatorily report all known or suspected incidents of Sexual and 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 and gender-based misconduct. Victims of Retaliation may include, but not limited to the Complainant, the Respondent, witnesses, Title IX Investigator, and Appeals Committee. 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 his or her 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 finding of the Respondent’s responsibility for violation(s) of Board Policy 3540 – Sexual and Gender-Based Misconduct.

Sex: For purposes of this procedure, sex may refer to gender designation as male or female or based on a perceived association with a particular gender; or to a physical act of a sexual nature, depending upon the context in which the term is used in this procedure.

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

Sexual Contact: Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

Sexual Exploitation: When one takes non-consensual or abusive sexual advantage of another for the benefit of anyone other than the one being exploited without his/her 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.

Sexually-based Stalking and/or bullying may also be forms of sexual exploitation.

Sexual Harassment: Unwelcome, gender or sex-based verbal or physical conduct that is sufficiently severe, persistent or pervasive that it unreasonably interferes with, denies or limits someone’s ability to participate in or benefit from the District’s employment and/or educational programs/activities, and is based on power differentials (quid pro quo), the creation of a Hostile Environment, or Retaliation. Sexual harassment may include Sexual Assault, and Sexual Exploitation. In addition, depending on the facts, Dating Violence, Domestic Violence, and Stalking may also be forms of Sexual Harassment.

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

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

**Stalking:** A course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or to suffer substantial emotional distress. Stalking includes, but is not limited to, repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community and/or any of his/her immediate family members.

**Student:** Any person who is or was enrolled at the College during the period in which the misconduct occurred.

**Title IX Coordinator:** The Director of Staff & Student Diversity, 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 and 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 and 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 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 III—JURISDICTION

Pursuant to District Board Policy BP 5500 and Administrative Procedure AP 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. This jurisdiction may also apply to Student-to-Student or Student-to-employee off-campus conduct and/or actions, including electronic activity (such as e-mail, texting, telephone contact, social media and other technology), when a District Administrator, or designee, determines that the off-campus conduct affects, disrupts, or interferes with the educational mission of the campus.

SECTION IV—VIOLATIONS OF BP 3540

Any Student found responsible for violating Board Policy 3540 on Sexual and Gender-Based Misconduct, and/or Board Policy 5500 on Student Conduct may receive a Sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account the severity of the incident and any previous campus conduct code violations. (See AP 5500 Standards of Student Conduct)

Any employee found responsible for violating Board Policy 3540 on Sexual and 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. (See El Camino Classified Employees Agreement effective January 1, 2014; El Camino College Federation of Teachers Agreement effective August 18, 2014; El Camino College Police Officers Association Agreement effective January 1, 2012)

SECTION V—DISTRICT COMMUNICATIONS RELATING TO SEXUAL AND GENDER-BASED MISCONDUCT NOTICE AND INVESTIGATIONS

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 U.S. certified mail, delivery in person, or by an alternate email on record as shown on record from the Student.

SECTION VI—STANDARD OF PROOF

A Respondent will be found either Responsible or Not Responsible based on a preponderance of the evidence meaning that it is more likely than not that s/he has violated the District’s BP/AP 3540, BP/AP 5500 and any other applicable policies and procedures. The determination of

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1 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.
Responsible or Not Responsible shall be based upon the thorough investigation of allegations, and the weighing of evidence in totality by the Title IX Coordinator, or his or her designee.

SECTION VII—REPORTING SEXUAL AND GENDER-BASED MISCONDUCT

The following employees of the District are designated as Responsible Employees, who are required to report incidents and relevant details of Sexual and Gender-Based Misconduct to the District Title IX Coordinator and law enforcement, if necessary:

A. Managers/Administrators
B. All Faculty

District employees (such as psychologists) who work at the Student Health Center 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. The exclusion of these employees rendering medical or counseling care in the Student Health Center is intended to provide Students with a mechanism to confidentially report incidents of Sexual and Gender-Based Misconduct. This section is not intended to negate the mandatory reporting responsibilities required under California Welfare and Institutions Code Section 15630.

7.1 Timeframe for Reporting a Complaint
Complaints should generally be submitted within 180 days, and failure to timely report will impede the District’s ability to investigate and remediate. The District does not limit the time for filing a complaint of Sexual and Gender-Based Misconduct. However, incidents that are not reported while evidence is still available may reduce the District’s ability to effectively investigate and respond to such complaints.

7.2 Methods for Reporting Sexual and Gender-Based Misconduct
Members of the District Community may report known or reasonably suspected incidents of Sexual and Gender-Based Misconduct to Campus Police (310-660-3100) or to the Title IX Coordinator via email to titleixcoordinator@elcamino.edu, via phone (310-660-3813), or in person at the Office of Staff & Student Diversity (Administration Building, Room 210). 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 and Gender-Based Misconduct to the Student Health Center if they wish to remain confidential (see Confidentiality section below).

Students and Employees may also file a Complaint of Unlawful Discrimination with the Office of Staff & Student Diversity or directly to the California Community Colleges State Chancellor’s Office. Unlawful Discrimination complaint forms are available at the Office of Staff & Student Diversity (Administration Building, Room 210) or online at www.elcamino.edu/administration/hr/ssdiversity.asp.
7.3 Confidentiality in Connection with a Report of Sexual and Gender-Based Misconduct

When the District becomes aware of Sexual and Gender-Based Misconduct, it may have an obligation to proceed with an investigation, regardless of a Complainant’s wishes to the contrary, in order to ensure the safety of the District Community. Complainants are not required to participate in the District’s investigation. However, this may significantly limit the District’s ability to effectively and efficiently respond to the incident. If a person requests that their name or other identifying information not be used in an investigation, the District will weigh requests for confidentiality against its duty to provide a safe and nondiscriminatory environment for all members of the District Community.

In most cases, information including the person’s name may be shared with the Respondent, witnesses and with District officials who have a legitimate need to know or law enforcement as applicable. Beyond that, the District will take steps to reasonably protect the person’s identity and the identity of all individuals involved.

The District may publicly disclose results of disciplinary proceedings if a Student is found to have committed a crime of violence, or non-forcible Sex offense, as determined under these procedures.

The Student Health Center provides confidential counseling and health services on campus for all registered District Students.

**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. Reports to Employees of the Student Health Center, such as District psychologists, who are acting within their primary job duties to render medical or counseling care and are licensed to do so, will remain confidential. Counseling services are available to Students free of charge on an appointment and drop-in basis. In addition, reports to members of the clergy and chaplains off-campus are also confidential resources.

**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
- Counseling Staff (excluding Psychologists)

Members of the District community have the right and can expect to have incidents of Sexual and 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.

**Federal Statistical Reporting Obligations**
The Jeanne Clery Act is a landmark federal law that requires colleges 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 VIII—INVESTIGATIONS OF SEXUAL AND GENDER-BASED MISCONDUCT**

8.1 Timeframe for Investigating Sexual and Gender-Based Misconduct Complaints
The District shall use reasonable, diligent efforts to investigate reported incidents of Sexual and Gender-Based Misconduct to the Complainant and Respondent within sixty (60) calendar days or the date in which the complaint was filed unless there are extenuating circumstances that prohibit the timeliness of the completion of the investigation. 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.

If an extenuating circumstance exists that prohibits the completion of an investigation within 60 calendar days, the District will inform the Complainant and the Respondent in writing of such delay.

8.2 Alcohol and Drug Use Are Not Barriers to Reporting Sexual and Gender-Based Misconduct
The District understands that Students may be reluctant to file complaints of Sexual and 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 and Gender-Based Misconduct. However, the District reserves the right to other remedies dependent upon the severity of the alcohol or drug use.

8.3 Reports Involving Unknown/Non-District Offenders
The District will investigate reports of Sexual and Gender-Based Misconduct incidents allegedly committed by Students against other Students, committed by a District employee against a Student, or by a non-Student against a Student. The District will also investigate reports of
Sexual and Gender-Based Misconduct incidents allegedly committed by Students against District employees, or Students against non-Students. However, when the Respondent is not a District Employee or Student, it may reduce the District’s ability to effectively investigate the complaint and take appropriate action. When appropriate, the District will offer reasonable supportive remedies, such as class scheduling alternatives, escort services, and medical and counseling care to the Complainant.

Sexual and Gender-Based Misconduct investigations are subject to the jurisdictional limitations of the District as set forth herein.

8.4 Anti-Retaliation/Anti-Intimidation
Any form of Retaliation or intimidation against anyone who has complained of or formally reported discrimination, harassment, or Sexual and Gender-Based Misconduct, or has participated in an investigation of such a complaint, regardless of whether the complaint relates to the complaining person or someone else, will not be tolerated, and violates Board Policies 3430 and 3540, this procedure, and applicable law.

8.5 Parallel Student Conduct Proceedings
Complainants are strongly encouraged to report all incidents of Sexual and Gender-Based Misconduct to law enforcement. Title IX investigations are independent from court or other administrative proceedings. Discipline may be instituted against a Respondent also charged in civil or criminal courts based on the same facts that constitutes the alleged violation of the Student Code of Conduct or other applicable Board Policy or collective bargaining agreement. The District may proceed before, concurrently with, or after any judicial, criminal, or administrative proceedings, except in cases involving Sexual and Gender-Based Misconduct. In Sexual and 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.

8.6 Steps in the Investigative Process

Step 1—Notice
Once a complaint of Sexual and Gender-Based Misconduct has been received by the Title IX Coordinator, or designee, an email will be sent to Complainant and Respondent, separately, with the following information:

- A description of the alleged violation(s);
- A description of the applicable policies;
- A statement of the potential Sanctions/responsive actions that could result; and
- A request for an investigative interview.

Step 2—Interim Action and Accommodations
Once the Title IX Coordinator or designee has received a complaint and/or report of Sexual and Gender-Based Misconduct, the District will make an interim assessment to determine if any immediate remedies are warranted, pending an investigation. The District will work with Complainants affected by the Sexual and Gender-Based Misconduct report to ensure their safety.
and promote their well-being. The Title IX Coordinator may determine immediate or long-term remedies, such as, but not limited to, accommodations relating to changing academic schedules, police escort services, restrictions on the alleged perpetrator pending investigation, and other remedies to promote the well-being, safety, and restoration of the alleged victim.

Upon notice of any concern regarding sexual and gender-based misconduct, the Title IX Coordinator or her designee will assess whether a formal Title IX investigation will be conducted under these procedures; and, if so, whether a formal investigation is appropriate under the circumstances. In circumstances in which the Title IX Coordinator determines that there is no ongoing risk of harm to the community and that interim measures, such as a No Contact letter, have redressed the concerns, the Title IX Coordinator may forego a formal investigation.

**Step 3—Investigation**

The District is committed to using a balanced and fair investigative process for both Complainant and Respondent. In reaching an Investigative Finding, the District shall use a “preponderance-of-the-evidence” standard, that it is “more likely than not” that a violation of Board Policy 3540 has occurred.

The District will investigate all reports of alleged violations of Sexual and Gender-Based Misconduct. The Title IX Investigator will make good faith and reasonable efforts to interview the Complainant, Respondent, and any witnesses (if appropriate). Both Complainant and Respondent may have an Advisor present during their own investigative interview (See Section X, 10.3 Advisors).

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. Cell phones and other video or audio recording devices may not be used in any investigation meetings or interviews.

Once sufficient evidence has been collected, the Title IX Investigator will make a determination of Responsible or Not Responsible based on the preponderance of the evidence (more likely than not) that there has been a violation of District BP/AP 3540 (see Step 4 – Investigative Findings).

**Informal Resolution Options**

If appropriate, the District’s Title IX Coordinator may seek to resolve certain Sexual and Gender-Based Misconduct cases through an informal process involving both the Complainant and Respondent, subject the Complainant’s agreement to do so.

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

**Complainants**

A Complainant may request that his or her name not be disclosed to the alleged perpetrator or 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 a Complainant declines to participate in an investigation, the investigation will continue and a determination of Responsible or Not Responsible will be made without the benefit of the Complainant’s input.

If during the investigation the Title IX Investigator finds corroborating information, it may be determined that it is necessary to move forward with the investigative process without the involvement to the Complainant or to implement other appropriate remedies. If a Complainant does not wish to participate in the investigative process, the District is obligated to record the incident for Clery Act reporting compliance. When a report is being recorded into a document, there will be no personally identifying information about the Complainant within the document. The Complainant will be notified of any actions by the District, coupled with a letter stating the choice to participate in the investigation.

Respondents
Where Respondent is a Student, s/he may decline to participate in the investigation and hearing. In these cases, the investigation and adjudication process will continue and a determination of Responsible or Not Responsible will be made without the benefit of the Respondent’s input.

Where Respondent is an Employee, all employees of the District have a duty to prevent unlawful harassment and discrimination, including all forms of Sexual and Gender-Based Misconduct. Accordingly, all employees are expected to cooperate fully in such corresponding investigations. Failure to follow these directives will constitute insubordination and may subject the Employee to further disciplinary action, up to and including dismissal from employment.

Step 4—Investigative Findings
Once the investigation has been concluded, the Title IX Investigator will make a determination based on the preponderance of the evidence that the Respondent is Responsible or Not Responsible for a violation of BP 3540.

Not Responsible—If after the conclusion of an investigation, the preponderance of the evidence indicates that it is NOT more likely than not that the Respondent violated the District policy, the Respondent will be found Not Responsible for the violation.

Responsible—If after the conclusion of an investigation, the preponderance of the evidence indicates that it is more likely than not that the Respondent violated District BP/AP 3540, the Respondent will be found Responsible for the violation. Where a Respondent is found Responsible for violation of BP 3540, an investigatory report will be submitted to the District Disciplinary Officer to serve as the basis of any applicable Sanctions.

Whether or not a Respondent is found to be Responsible, both Complainant and Respondent will be notified of the outcome of the Investigative Findings in writing. The notification shall include a brief summary of the investigative process and findings, the outcome of the investigation, and an advisement of their right to appeal the Investigatory Findings (see Section VII Appeal Process).
Neither Party shall receive a copy of the investigatory report. A copy of the report shall be retained by the Title IX Coordinator. The investigatory report will be forwarded to the appropriate District Disciplinary Officer for their records and Sanctions, if applicable. Any applicable Sanctions are administered through the District Disciplinary Officer.

**Step 5—Appeals of the Investigative Findings**
Both the Respondent and Complainant have the right to submit an appeal of the Investigative Findings (refer to Section VII Appeal Hearing Process). Appeals must be submitted in writing to the Title IX Coordinator within seven (7) calendar days of the notice of findings. Appeals of any subsequent Sanctions imposed shall be submitted to the District Disciplinary Officer directly.

**Step 6—Sanctions**
Sanctions issued shall be imposed in accordance with existing District policy, Board policy, applicable collective agreements and the law. Additionally, sanctions shall be:

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

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

1) the specific Sexual and 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) the Respondent’s state of mind (intentional, knowing, bias-motivated, reckless, etc.);

4) the impact of the unwelcome conduct of the Complainant; and

5) the safety of the District Community;

**Step 7—Ongoing Accommodations for Complainants**
The District shall take reasonable and necessary steps to prevent the recurrence of any Sexual and Gender-Based Misconduct and to remedy discriminatory effects on both the Complainant and Respondent, if appropriate.

**SECTION IX—APPEAL HEARING PROCESS**

Within seven (7) calendar days, not including school holidays, of receipt of the Notice of the Findings, either the Complainant or the Respondent or both may appeal the determination of Investigative Findings. The request for an appeal must be submitted in writing to the Title IX Coordinator within seven (7) calendar days of receipt of Notice of Findings. The Parties are
entitled to only one appeal of findings arising from a single investigation of a complaint or series of related complaints.

Disagreeing with the finding of the Sanction is not, by itself, grounds for appeals. Parties are allowed one appeal. The decision of an Appeal Committee is final.

9.1 Specific Grounds for Appeal:
In an Appellant’s Request for Appeal, s/he must specify a) which of the following grounds, the appeal is based; and b) 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 unlawful discrimination by an Investigator or Title IX Coordinator towards a Party.

9.2 Timeframe for Conducting an Appeal Hearing
The District shall use reasonable, diligent efforts to schedule and agree upon a date within 14 calendar days, or, make a diligent effort to hold the Appeal Hearing within 30 calendar days from receipt of a Party’s Request for Appeal. Parties shall receive notice of the composition of the Appeals Committee and date of the Appeal Hearing seven (7) calendar days prior to the Hearing date. Time frames related to the Appeals process may vary depending on the details of a case or if the availability of all parties involved.

9.3 Appeal Hearing
The Appeal Hearing is closed to all persons except the: 1) Complainant; 2) Respondent; 3) Advisors, if any (See Section 10.3); 4) Witness(es) (while testifying); 5) interpreter, if necessary; 6) members of the Appeal Committee; and 7) any person requested by the Appeal Committee Chair to assist in the Appeal Hearing.

In some cases, a District Police Officer may be present to ensure safety and security during the hearing. Likewise, the Title IX Coordinator, or designee, may be present to ensure a fundamentally fair process and compliance. Hearing Panel members for an appeal hearing will consist of trained District employees only. Students will not serve on any Appeal Committee due to the sensitive nature of the subject matter.

In cases where the Student is a dependent minor, the Student’s parent or legal guardian must be present at the hearing.
9.4 Selection of the Appeal Committee
The following process determines possible members of an Appeal Committee. Members must be employees of the District who have been trained to adjudicate cases of Sexual and Gender-Based Misconduct. The Appeal Committee will consist of three (3) members.

A Committee member who is chosen must disclose any potential or actual conflict of interest. The Appeal Committee shall not include any person who was a participant in the event out of which investigation arose, nor shall it include any person who has had a past association with the Parties or participants of the hearing which could impede the Appeal Committee’s ability to act in a fair and impartial manner.

At the time of disclosure of the members of the Appeal Committee, if the Complainant or Respondent believes that any member of the Appeal Committee has a potential or actual conflict of interest, s/he can make a request in writing of the reason(s) believed to be a conflict. This request must be submitted to the Title IX Coordinator within five (5) calendar days after the date of notification of the Appeal Committee’s membership. Prior to starting the hearing, the Appeal Committee will select a Chair to run the appeal process.

9.5 Hearing Procedures for Appeal
The Appeal Hearing shall be conducted in three parts: the Appeal Hearing, Deliberation, and Notification of Outcome.

9.6 The Appeal Hearing
1. The Chair will call the appeal hearing to order, explain the procedures of the hearing, and have all Parties introduce themselves.

2. The Chair will define the expectations of behavior during the hearing to maintain the orderly progress of the hearing, make certain that all Parties respect the right of others to make statements, and to ensure confidentiality.

3. The Title IX Investigator or designee shall have up to 60 minutes in total to address Appellant’s grounds for appeal, which may include a presentation of the relevant evidence (including witness statements) considered by the Title IX Investigator to support the Investigative Findings.

4. The Appellant and Appeal Committee may question the Title IX Investigator or designee. Questioning by the Appellant or Appeal Committee shall not be considered part of the time allotted for presentation of the Title IX Investigator’s evidence. It is within the discretion of the Chair to impose a timeline on questioning.

5. The Appellant, and if applicable her/his witness(es), shall have up to 60 minutes in total, if necessary, to present evidence supporting his/her grounds for appeal. The Title IX Investigator or designee and Appeal Committee may question any witnesses represented by the Appellant. Questioning by the Title IX Investigator or designee and the Appeal Committee shall not be considered part of the time allotted for presentation of the Student's evidence.
6. Both sides may make a closing statement to the Appeal Committee. These closing statements shall be limited to a maximum of 5 minutes each. The Chair shall have the authority to extend the time limits, but must ensure equal time.

9.7 Guidelines Used by Appeal Committee during an Appeal Hearing

- **Information Regarding Romantic or Sexual History.** The Appeal Committee will not consider the romantic or sexual history of the either the Complainant or the Respondent in cases involving allegations of Sexual and Gender-Based Misconduct, except for testimony offered by or the other about the Complainant’s and Respondent’s shared sexual history that the Appeal Committee deems relevant. The existence of a sexual relationship between the Complainant and Respondent does not support the inference of Consent to alleged Sexual and Gender-Based Misconduct.

- **Prior Conduct Violation.** The Appeal Committee will not consider the Respondent’s prior conduct violations, unless 1) the Respondent was previously found to be Responsible, and 2) the previous incident was substantially similar to the present allegation(s) and/or the information indicates a pattern of behavior by the Respondent.

- **Use of Cell Phones and Recording Devices.** Cell phones and other video or audio recording devices may not be used in appeal meetings and hearings.

9.8 Deliberation

Once all information has been collected, the Appeal Committee will excuse all parties to the Appeal Hearing to deliberate in private. A decision will be issued in writing at a later time.

9.9 Notification of Outcome

Once all parties to the Appeal Hearing have been called back to reconvene, the Chair, or designee, will:

1. Reiterate the alleged policy and procedure violation(s);

2. Remind all Parties involved of the Standard of Proof (Preponderance of Evidence);

3. Remind 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;

4. Remind 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;

5. Notify the Respondent and the Complainant of the Appeal Committee’s decision. The decision of an Appeal Committee is final.

**SECTION X—COMPLAINANT AND RESPONDENT RIGHTS**

Parties are entitled to a fundamentally fair process, including reasonable notice of allegations of violations of Sexual and 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 the Complainant and Respondent have the following 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 the Complainant, or where the institution is serving as Complainant;
- To be notified concurrently, and in writing, of the outcome/resolution of the complaint, the basis for the determination, and the right of appeal.

10.1 Student Right to Review Records
The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of Student education records. 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 s/he enrolls 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.

10.2 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 his/her 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.

10.3 Advisors
Sexual and 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. The advisor’s role is limited to observing and consulting with and providing support to the Complainant or Respondent. An Advisor may not participate (speak) in the 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.

SECTION XI—PREVENTION AND EDUCATION

Through the Title IX Coordinator, the District is committed to educating the District Community of the impact that Sexual and 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 and 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 and Gender-Based misconduct, including Domestic Violence, Dating Violence, Sexual Assault and Stalking.
- Offer all reported victims of Sexual and Gender-Based Misconduct sources of counseling, advocacy, support, and legal options.

*Disclaimer: These provisional procedures are subject to change and without prior notice to keep the District in compliance with Board Policies and/or State and Federal laws.*