

**El Camino Community College District
Office of Staff and 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 Violence Against Women Act of 1994.)

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 8.8 (Guidelines Used in the Appeals 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 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. 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; or (b) a person with whom one shares a child. 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 they do not want Sex, that they want to stop, or that they do 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.

Hearing Officer: A designated District administrator who determines whether or not Respondent has violated District policy for complaints of Sexual and 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.

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 resulting 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 are 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 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 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 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.

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. Sexual and Gender-Based Misconduct 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 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 their 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 their 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 the Office of Staff and 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 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 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.¹ (*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, 2017; El Camino College Federation of Teachers Agreement effective January 1, 2017; El Camino College Police Officers Association Agreement effective January 1, 2015*)

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.

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 they have violated the District's BP/AP 3540, BP/AP 5500 and any other applicable policies and procedures. The determination of 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 their 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 one hundred and eighty (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 and Student Diversity (Communications Building, Room 201-D). 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 and Student Diversity or directly to the California Community Colleges State Chancellor's Office. Unlawful Discrimination complaint forms are available at the Office of Staff and Student Diversity (Communications Building, Room 201-D) or online at <http://www.elcamino.edu/about/depts/diversity/complaint.aspx>.

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 ninety (90) 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 ninety (90) 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

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 Use of Cell Phones and Recording Devices.

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

8.6 Parallel Student Conduct, Police and Court 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. Complainants may seek outside remedies including orders of protection or similar lawful orders issued by a criminal, civil, or tribal court. 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.

8.7 Investigation & Appeals Process for General Complaints of Sexual and Gender-Based Misconduct

Preliminary Assessment

If the Office of Staff and Student Diversity 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 Staff and Student Diversity may suggest the Parties consider Informal Resolution. Interim Actions and Accommodations (see Step 2, below) applied during the Formal Investigation process may be implemented in Informal Resolution as well.

Informal Resolution, if Applicable

The informal process has no disciplinary implications. The purpose is not to investigate the matter or determine fault, but to 1) share with the person at issue feedback from the aggrieved Party to prevent further potential issues and/or miscommunications, and 2) notify them of the type of behavior that can be construed as being in violation of our school board policies. There is no timeline associated with the informal process, and it can be changed to a formal investigation if the circumstances warrant it. The protections against Retaliation still apply.

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, the relevant instructors may be notified of the issue as well, to assist in monitoring the situation.

Once the Office of Staff and Student Diversity 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 & Investigation process may be used if the matter escalates or Complainant brings forth new information.

Where Informal Resolution is not applicable or elected, a formal investigation will be conducted (See Steps 1-5 below). The Formal Complaint & Investigation process has disciplinary implications and is governed by the CA Code of Regulations. Its purpose is to determine whether or not there has been a violation of District policies.

Steps in the Investigation Process Where Credibility is at Issue where Sanctions may Result in Suspension or Expulsion

The investigation process differs for cases (i) alleging Sexual and Gender-Based misconduct by a Student that, (ii) if substantiated, could result in a severe Sanction (suspension or expulsion), and

(iii) where credibility of any Party or witness is central to the finding. Under these circumstances, please refer to the Investigation and Hearing Process for Student Complaints Where Credibility is at Issues and Where Sanctions may result in Suspension or Expulsion (Addendum A).

Step 1 – Notice of Formal Investigation

Once a formal 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 (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 – 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 their 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.

Examples of interim measures that may be implemented are subject to the discretion of the Office of Staff and Student Diversity 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 Letter;”
- 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 College 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 College-imposed leave;
- Any other remedy that can be tailored to the involved individuals to reasonably achieve the goals of this Policy.

Step 3 – Standard of Evidence & Scope of the Formal 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 9.3, 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).

As set forth in these provisional procedures, the Scope of Formal Investigations conducted by the Office of Staff and Student Diversity are limited to allegations of Sexual and Gender-based Misconduct.

Information Regarding Romantic or Sexual History. The Investigator will not consider the Parties’ prior conduct or romantic/sexual history, except for the following circumstances:

1. The previous incident(s) were substantially similar to the present allegation(s);
2. The evidence is used to prove motive or pattern of conduct;

3. Such evidence about Complainant's sexual behavior is offered to prove that someone other than Respondent committed the alleged misconduct; or
4. The evidence concerns specific incidents of Complainant's sexual behavior with respect to Respondent and is offered to prove Consent.

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.

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.

Declining/Reluctance to Participate in an Investigation

Complainants

A Complainant may request that their 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 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, they 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 Investigative Findings (see Step 5, Appeals of the Investigative Findings & Administrative Determination).

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 & Administrative Determination

Appeals of any subsequent Sanctions imposed shall be submitted to the District Disciplinary Officer directly using the procedure for appealing a disciplinary decision.

Appeals of the Investigative Findings & Administrative Determination are handled outside of the Office of Staff and Student Diversity, pursuant to 5 CCR § 59338. When Complainant is not

satisfied with the results of the administrative determination, they may, within fifteen (15) days, submit a written appeal to the Board of Trustees. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within forty-five (45) days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the Complainant and to the State Chancellor's Office. The Complainant shall also be notified of their right to appeal this decision.

If the board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final decision of the District in this matter.

Complainant shall have the right to file a written appeal with the State Chancellor's Office within thirty (30) days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Section 59350 of Title 5 of the California Code of Regulations.

In any case involving employment discrimination, including workplace harassment, Complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the Department of Fair Employment and Housing. In such cases, Complainant may also file a petition for review with the State Chancellor's Office within thirty (30) days after the governing board issues the final decision or permits the administrative decision to become final.

Within one hundred fifty (150) days of receiving a formal complaint which does not involve employment discrimination, the District shall forward to the State Chancellor's Office the original complaint, the investigative report, a copy of the written notice to the Complainant setting forth the results of the investigation, a copy of the final administrative decision rendered by the Board of Trustees or indicating the date upon which the decision became final, and a copy of the notification to the Complainant of their appeal rights. If, due to circumstances beyond its control, the District is unable to comply with the one hundred fifty (150) day deadline for submission of materials, it may file a written request for an extension of time no later than ten (10) days prior to the expiration of the deadline.

8.8 Guidelines Used in the Appeals Process

Specific Grounds for Appeal:

An Appellant 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.

Information Regarding Romantic or Sexual History. The Appeals body will not consider the Parties' prior conduct or romantic/sexual history, except for the following circumstances:

1. The previous incident(s) were substantially similar to the present allegation(s);
2. The evidence is used to prove motive or pattern of conduct;
3. Such evidence about Complainant's sexual behavior is offered to prove that someone other than Respondent committed the alleged misconduct; or
4. The evidence concerns specific incidents of Complainant's sexual behavior with respect to Respondent and is offered to prove Consent.

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.

8.9 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.

Sanctions

Sanctions issued by the appropriate District Disciplinary Officer 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.

Sanctions are solely determined by the appropriate District Disciplinary Officer. Possible Sanctions for Students include, but are not limited to:

- Written or Verbal Reprimand - An admonition to the Student to cease and desist from conduct determined to violate the Standards of Student Conduct.
- Educational Sanctions - An educational Sanction may include additional work assignments, essays, community service, behavioral contract, administrative referral, or other related educational assignment.
- Probation - A reprimand for violation of specified regulations. Probation shall not be imposed for a period longer than one (1) academic year.
- Restitution - A payment to compensate an injured Party for financial harm in cases involving misconduct including, but not limited to, theft, destruction of property, or deception.
- Removal from Class/Facility/College District Entity - Any instructor or Division administrator or designee may remove a Student from the class, activity, office, department, or other educational forum for the day of the incident and one additional instructional day.
- Withdrawal of Consent to Remain On-Campus - The District's Campus Police Department, may notify any person for whom there is a reasonable belief that the person has willfully disrupted the orderly operation of the campus, that consent to remain on-campus has been withdrawn.
 - The person from whom consent has been withdrawn may submit a written request for a hearing on the withdrawal within the period of the withdrawal. The request shall be granted not later than ten (10) business days from the date of the receipt of the request. The hearing will be conducted in accordance with the provisions of this administrative procedure relating to interim suspensions.
 - Any person as to whom consent to remain on-campus has been withdrawn who knowingly reenters the campus during the period in which consent has been withdrawn, except to come for a meeting or hearing, is subject to arrest. (Penal Code Section 626.4)

- No Contact Order - An issuance that there should be no personal or interpersonal contact or communication between involved Parties. This includes verbal and non-verbal communication.
- Short-Term Suspension - Exclusion of the Student by the Director of Student Development or designee for good cause from one or more classes and/or from all activities of the District for a period of up to ten (10) consecutive days of instruction.
 - Within five (5) business days after the Student meets with the Director of Student Development or designee, the Director of Student Development or designee shall decide whether to impose a short-term suspension, whether to impose some lesser Sanction, or whether to end the matter. Written notice of the Director or designee's decision shall be provided to the Student. The notice will include the length of time of the suspension or the nature of the lesser Sanction. The Director of Student Development or designee's decision on a short-term suspension shall be final.
- Long-Term Suspension - Exclusion of the Student by the Director of Student Development or designee for good cause from one or more classes for the remainder of the school term and/or from all classes and activities of the District for the remainder of the current term with a maximum of two (2) academic years.
 - Within five (5) business days after the Student meets with the Superintendent/President or designee, the Director of Student Development or designee shall, pursuant to a recommendation from the Director of Student Development or designee, decide whether to impose a long-term suspension. Written notice of the Superintendent/President or designee's decision shall be provided to the Student. The notice will include the right of the Student to request a formal hearing before a long-term suspension is imposed, and a copy of this policy describing the procedures for a hearing.
 - Students who receive long-term suspensions are permitted on-campus to conduct student business, but must receive permission from the Director of Student Development or designee prior to coming to campus and must check-in with the District's Campus Police Department to obtain a police escort while on-campus.
- Intermediate Interim Suspension (Education Code Section 66017) - The Director of Student Development or designee may order immediate interim suspension of a Student where they conclude the following:
 - To ensure the safety and well-being of members of the District Community or preservation of District property;
 - To ensure the Student's own physical or emotional safety and well-being;
 - That the Student poses an immediate threat or disruption of or interference with the normal operations of the District; and/or
 - That the Student has been accused of a severe violation and cannot be located and/or does not participate in the conduct process.
 - In cases where an interim suspension has been ordered, the time limits contained in this administrative procedure shall not apply, and all hearing rights, including the right to a formal hearing where a long-term suspension or expulsion is recommended, will be afforded to the Student within ten (10) business days of the decision to impose an interim suspension.
- Expulsion - Expulsion is the permanent separation of a Student from El Camino College and by action of the Board of Trustees for good cause when other means of correction fail to

bring about appropriate conduct, or when the presence of the Student causes a continuing danger to the safety of others. The Student is prohibited from District property, functions, events, and activities. Permanent notification will appear on Student's College official transcript.

- Within ten (10) business days after the Student meets with the Director of Student Development or designee, the Director of Student Development or designee shall decide whether to recommend expulsion to the Board of Trustees. Written notice of the Director or designee's decision shall be provided to the Student. The notice will include the right of the Student to request a formal hearing before expulsion is imposed, and a copy of this policy describing the procedures for a disciplinary hearing.

Sanctions for Employees would be administrated consistent with applicable collective bargaining agreements, College board or administrative policies and legal requirements.

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—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 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 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.

9.1 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 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.

9.2 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.

9.3 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 X—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.**

Investigation and Hearing Process for Student Complaints Where Credibility is at Issue and Where Sanctions may result in Suspension or Expulsion

A distinct investigation process applies for cases alleging Sexual and Gender-Based Misconduct:

1. by a Student that,
2. if substantiated, could result in a severe Sanction (suspension or expulsion), and
3. where credibility of any Party or witness is central to the finding.

Under these specific circumstances, the following Investigation and Hearing process applies.

Preliminary Assessment

If the Office of Staff and Student Diversity 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 Staff and Student Diversity may suggest the Parties consider Informal Resolution. Interim Actions and Accommodations (see Step 2, below) applied during the Formal Investigation process may be implemented in Informal Resolution as well.

Informal Resolution, if Applicable

The informal process has no disciplinary implications. The purpose is not to investigate the matter or determine fault, but to 1) share with the person at issue feedback from the aggrieved Party to prevent further potential issues and/or miscommunications, and 2) notify them of the type of behavior that can be construed as being in violation of our District board policies. There is no timeline associated with the informal process, and it can be changed to a formal investigation if the circumstances warrant it. The protections against Retaliation still apply.

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, the relevant instructors may be notified of the issue as well, to assist in monitoring the situation.

Once the Office of Staff and Student Diversity 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 if the matter escalates or Complainant brings forth new information.

Where Informal Resolution is not applicable or elected, a formal investigation will be conducted (see Steps 1-9). The Formal Complaint and Investigation process has disciplinary implications and is governed by the CA Code of Regulations. Its purpose is to determine whether or not there has been a violation of District policies.

Step 1—Notice of Formal Investigation

Once a formal 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 (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—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 Complainant(s) 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 their 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.

Examples of interim measures that may be implemented are subject to the discretion of the Office of Staff and Student Diversity 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 Letter;”
- 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 College 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 College-imposed leave;
- Any other remedy that can be tailored to the involved individuals to reasonably achieve the goals of this Policy.

Step 3—Standard of Evidence & Scope of the Formal 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 Provisional Title IX Procedures Section 9.3, 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).

As set forth in these provisional procedures, the Scope of Formal Investigations conducted by the Office of Staff and Student Diversity are limited to allegations of Sexual and Gender-based Misconduct.

Information Regarding Romantic or Sexual History. The Investigator will not consider the Parties’ prior conduct or romantic/sexual history, except for the following circumstances:

1. The previous incident(s) were substantially similar to the present allegation(s);
2. The evidence is used to prove motive or pattern of conduct;
3. Such evidence about Complainant’s sexual behavior is offered to prove that someone other than Respondent committed the alleged misconduct; or
4. The evidence concerns specific incidents of Complainant’s sexual behavior with respect to Respondent and is offered to prove Consent.

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.

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.

Declining/Reluctance to Participate in an Investigation

Complainants

A Complainant may request that their 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 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, they 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 Investigator will complete an investigatory report. This report will include all relevant evidence received during the investigation, but will *not* include a determination based on the preponderance of the evidence that the Respondent is Responsible or Not Responsible for a violation of BP 3540. Any relevant documentary or other tangible evidence provided by the Parties or witnesses, or otherwise gathered by the Investigator will be attached to the investigatory report as exhibits or otherwise made available for reasonable review by the Parties and at the hearing. Evidence offered by the Parties or any other witnesses that the Investigator concluded is not relevant to a material disputed fact will also be accessible to the Hearing Officer during the hearing.

Step 5—Pre-Hearing Process

The District Disciplinary Officer (Director of Student Development), Title IX Coordinator, or other appropriate Administrator (Hearing Coordinator) will be responsible for coordinating the hearing process. The Hearing Coordinator's duties will include: scheduling the hearing; notifying witnesses of the hearing; ensuring that the Hearing Officer is provided with appropriate materials including a copy of the report and any exhibits; coordinating videoconferencing (if necessary); and securing a location for the hearing. The Hearing Coordinator will also act as liaison between the Parties and the Hearing Officer on procedural matters.

Notice and Date of Hearing: The Parties will be given written notice of the date, time, and location of the hearing as well as the identity of the Hearing Officer. Notification of the hearing will be sent by e-mail. Communications will be deemed received on the date sent. The hearing will not be set sooner than thirty (30) calendar days after the date of notice of hearing.

The Hearing Coordinator will make reasonable attempts to accommodate Parties' schedules within this timeline. If either Party fails to appear at the hearing without good cause the hearing will nevertheless proceed. Whether good cause exists is determined by the Hearing Officer.

The Respondent will not be found to have violated District policy solely because the Respondent failed to appear at the hearing. Nor will the Respondent be found not to have violated District policy solely because a Complainant or other witness failed to appear at the hearing.

Pre-Hearing Information Provided to the Parties: The Hearing Coordinator will provide the following information to the Parties within ten (10) working days of notice of the scheduled hearing:

- The identity of the Hearing Officer;
- A copy of the investigatory report; and
- A tentative list of anticipated witnesses.

Pre-Hearing Information Parties are required to provide:

Within twenty (20) working days of notice of hearing, each Party will submit to the Hearing Coordinator:

- A. the name of, and contact information for, the Party's advisor (if any); and
- B. a proposed witness list that includes the names of, and current contact information for, that Party's proposed witnesses as well as an explanation of the relevance of each proposed witness's testimony and the disputed issue to which the witness's testimony relates;ⁱ
- C. a list of proposed questions to be asked during the hearing;
- D. any objections to an appointed Hearing Officer will be made in writing to the Hearing Coordinator within five (5) working days after notice of the identity of the Hearing Officer has been provided. The objection must be based on an actual conflict of interest. A conflict of interest exists if the Hearing Officer has a personal relationship with one of the Parties or witnesses or has demonstrated actual bias towards a Party or witness.

The fact that a Hearing Officer has previously served as a Hearing Officer in District proceedings will not constitute a conflict of interest. The Hearing Coordinator will determine if a conflict of interest exists. In that event, the Parties will be notified in writing of the name of the new Hearing Officer. The date for the hearing may need to be rescheduled. Any objection to the new Hearing Officer will be made in accordance with this section.

Hearing Information:

Five (5) working days prior to the scheduled hearing, the Hearing Coordinator will share with both Parties:

- A. a final witness list;
- B. the proposed hearing questions and follow-up questions; and
- C. the date, time and location of the hearing.

Three (3) working days prior to the scheduled hearing, the Parties will submit in writing to the Hearing Coordinator any:

- A. objections to, or questions about, the witness list, or
- B. requests for permission to participate in the hearing remotely or out of the physical presence of the other Party.

The Hearing Officer shall review any explanations of or objections to proposed questions and has sole discretion to determine whether they are included in the hearing. The Hearing Officer and Coordinator will make reasonable attempts to resolve all pending requests no later than one

(1) working day before the hearing. The Hearing Coordinator will give prompt notice to the Parties (and witnesses) as appropriate.

The hearing is closed to all persons except the Parties, the Parties' respective advisors, appropriate witnesses while they are testifying, the District Disciplinary Officer, Title IX Coordinator, and Hearing Officer. Campus police or a security officer may also be present if deemed appropriate or necessary by the Vice President for Student Affairs, Hearing Coordinator or Hearing Officer. The District will take reasonable steps to accommodate all Parties, including arranging for them to be excused from work or class attendance, if necessary.

Step 6 – Hearing Process

The hearing will begin with an overview of the hearing process given by the Hearing Officer, after which the Parties will be given an opportunity to ask questions about the hearing process. The hearing is not a courtroom proceeding and does not follow formal rules of evidence. Generally, the Investigator or the Title IX Coordinator (if not the Investigator) will be the first witness and will describe the complaint, investigation process, and summarize the evidence. Each Party will be given an opportunity to make an opening statement that will last no longer than five (5) minutes. The advisor and any support person are not permitted to make the opening statement or speak during the hearing.

1. The Hearing Officer may ask questions of the Complainant, Respondent, Investigator, any College official (e.g., Title IX Coordinator or Student Conduct Administrator), and any witness.
2. The Hearing Officer will ask the questions proposed by the Parties except for questions that:
 1. seek information about the Complainant's sexual history with anyone other than the Respondent (unless such evidence about the Complainant's sexual behavior is offered to prove that someone other than the Respondent committed the alleged misconduct);
 2. seek information about the Respondent's sexual history with anyone other than the Complainant, unless such information is used to prove motive or pattern of conduct;
 3. seek information that is unreasonably duplicative of evidence in the Hearing Officer's possession; or
 4. the Hearing Officer determines are not relevant to material disputed issues, are argumentative or harassing or unduly intrude on a witness's privacy.
3. As long as the substance of the question is preserved, the Hearing Officer has discretion to modify or change the wording of a question proposed by a Party; particularly, in circumstances when a question is unclear or inappropriate in tone).
4. The Complainant and Respondent may be present at all times during the hearing unless the Hearing Officer determines that a Party may be excused for extraordinary circumstances. The Parties will address any questions, concerns or objections about a question (or line of

questioning) to the Hearing Officer who will use their discretion to resolve any issues in compliance with District policies and procedures.

5. Hearsay may be considered, but will only be given the weight appropriate under all of the circumstances, with due consideration given to the importance of credibility assessment. Absent extenuating circumstances, the Hearing Officer will not rely on prior statements made by the Parties or witnesses during the investigation whose credibility is central to the determination unless those Parties or witnesses make themselves available for examination by the Hearing Officer.
6. New evidence not reasonably available at the time of the investigation to the Party seeking to introduce the evidence may be considered in the Hearing Officer's discretion.
7. The Hearing Officer will make an official audio recording of the hearing. The recording is District property. No other recording of the hearing is permitted. The audio recording will be retained by the Hearing Coordinator or designee in accordance with the College records/information retention and disposition schedule.
8. Abusive or otherwise disorderly behavior that causes a material disruption is not tolerated. The Hearing Officer may eject or exclude anyone (including either Party, their advisors, and support persons) whose behavior causes a material disruption.
9. The Hearing Officer controls the hearing, is responsible for maintaining order during the hearing, and makes whatever rulings are necessary to ensure a fair hearing. The Hearing Officer's decisions in this regard are final.

Step 7 - Hearing Officer's Report/Notice of Final Decision

After the hearing, the Hearing Officer will make findings of fact and conclusions about whether the Respondent violated District policy (Hearing Officer's Report). The standard of proof the Hearing Officer will use is whether each allegation is substantiated by a preponderance of the evidence.

The Hearing Officer's report will attach the investigatory report and will include:

1. the factual allegations and alleged policy violations;
2. the preponderance of the evidence standard;
3. the evidence considered including an analysis of the credibility of the Parties and witnesses, when credibility assessments are required to resolve factual disputes;
4. any material evidence identified by the Parties or witnesses that the Hearing Officer determined was not relevant (or duplicative) and the reason why the evidence was not considered to be relevant;
5. a list of all questions proposed by the Parties at the hearing, and if any questions were not asked, why;

6. a summary of the procedural issues raised by the Parties before or during the hearing;
7. the factual findings and the evidence on which the factual findings are based;
8. to the extent that the factual findings required a determination concerning of the relative credibility or lack of credibility of the Parties or witnesses, an explanation as to how that determination was reached;
9. a determination of whether District Board Policy 3540 was violated and an analysis of the basis for that determination; and
10. Parties' appeal rights pursuant to 5 CCR § 59338.

The Hearing Coordinator will email the Hearing Officer's report promptly to the Parties, the Title IX Coordinator, and the Student Conduct Administrator, usually within twenty (20) working days of the close of the hearing.

Step 8 – Appeals Process

Please refer to the appeals process set forth in the Provisional Title IX Procedures (Section 8.8 and 8.9).

Step 9 - Subsequent Sanctions, if applicable

Where the Hearing Officer has found a violation of District policy, the investigatory report and the Hearing Officer's report will be submitted to the District Disciplinary Officer who will issue a decision concerning the appropriate Sanction within ten (10) working days of receipt of the Hearing Officer's report.

Any discipline stemming from the Hearing Officer's findings will be governed by the applicable District disciplinary policies and procedures.

ⁱ Absent extenuating circumstances, such witnesses should have been identified to the investigator during the investigation process, and referenced in the investigation report. The Hearing Officer will make all determinations regarding pre-hearing matters, including witness participation and questions, and will promptly notify the Hearing Coordinator who, in turn, will promptly notify the Parties.