

Administrative Procedure 5540**Title IX: Sexual Misconduct and Gender-Based Discrimination**

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AP 5540 Title IX: Sexual Misconduct and Gender-Based Discrimination

Reference: California Education Code Sections 67385 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 99.31 (a)(13)-(14), Section 99.39, and Section 668.46(b)(11); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. and implementing regulations, 34 C.F.R. § 106.1 et seq.; Violence Against Women Act, 42 U.S.C. § 13925 et seq.

I. INTRODUCTION**A. Statement of Underlying Policy**

The San Joaquin Delta Community College District is committed to providing a learning, working, and living environment that promotes personal integrity, civility, and mutual respect that is free of discrimination on the basis of sex and gender as well, which includes all forms of sexual misconduct. Sex discrimination violates an individual's fundamental rights and personal dignity; therefore, in accordance with its strict prohibition against such misconduct and discrimination, the District will respond promptly to all reports of sexual harassment and sexual violence and take appropriate action to prevent, correct, and if necessary, impose discipline for behavior that violates the District's Board Policy (BP) and Administrative Procedure (AP) 5540, Sexual Misconduct and Gender-Based Discrimination (BP/AP 5540).

The District seeks to foster an environment in which all students feel free to report incidents of sexual harassment and sexual violence without fear of retaliation or reprisal. Accordingly, the District also strictly prohibits retaliation against any individual for filing a complaint of sexual misconduct or for participating in an investigation of such a complaint. Retaliation is illegal and constitutes a violation of the District's sexual misconduct policy and procedure. All allegations of retaliation will be swiftly and thoroughly investigated.

This procedure shall be followed to assess a concern and investigate allegations of sexual misconduct, as appropriate, in cases in which the complainant is a student (or was a student at the time of the incident). In all student-related instances in which sexual misconduct is found to have occurred under this policy, the District's Title IX Coordinator will take appropriate steps to end such conduct, prevent its recurrence and redress its effects. This procedure applies regardless of a person's gender, gender

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identity, gender expression, sexual orientation, age, race, nationality, class status, disability, religion, or other protected status.

Federal civil rights laws other than Title IX may also be relevant to the District's responsibility to investigate and address incidents of sexual misconduct involving students with disabilities. Students with intellectual disabilities may need additional support in learning about sexual misconduct, including the District's sexual misconduct education and prevention programs, what constitutes sexual misconduct, and how students can report incidents of sexual misconduct. The District recognizes and is committed to providing students with disabilities who experience sexual misconduct with additional services and support, including psychological and counseling services, as required and appropriate.

B. Scope and Application of Procedure

The District's sexual misconduct procedure defines the types of behavior that constitute sexual misconduct and the process for reporting, investigating, and resolving complaints of sexual misconduct when the complainant and respondent(s) are District students, an employee of the District, or is a third party. The District will also investigate reports of sexual misconduct allegedly committed by students against District employees, or students against non-students, according to applicable policies and procedures.

This procedure shall apply to all conduct in any academic, educational, extracurricular, athletic, or other District program and/or District-sponsored activity, whether those programs and activities occur on District property or at an off-campus location. Accordingly, the District shall investigate all complaints regardless of where or how the alleged misconduct occurs, including electronic activity, such as e-mail, texting, telephone contact, social media, when the District determines that the conduct affects, disrupts, or interferes with the educational mission of the College. Should the

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District become aware that any contractor, vendor, partner, or other affiliate or third party engages in sexual misconduct, it will take appropriate action up to, and including, termination of the business relationship or partnership.

The following District personnel have been designated to handle inquiries regarding the Title IX Sexual Misconduct policy and procedure:

Title IX Coordinator

Director of Human Resources and Risk Manager

Title IX Co-Coordinators

Assistant Superintendent/Vice President of Student Services

Athletic Director

Director of Police Services & Public Safety Programs

II. DEFINITIONS AND RELATED CONCEPTS

A. Definitions of Sexual Misconduct

Dating Violence: The use of physical violence, coercion, threats, intimidation, isolation, or stalking while in a dating relationship, or a social relationship of a romantic or intimate nature including sexual. 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 intimate nature including sexual 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.

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Domestic Violence: 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 perpetrator'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.

Gender-Based Harassment: Unwelcome conduct based on a person's actual or perceived gender, including conduct based on gender identity, gender expression, or nonconformity with gender stereotypes.

Sexual Assault: Any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Includes such sexual activities as forced sexual intercourse, forcible sodomy, fondling, and attempted rape.

Sexual Exploitation: Non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. Examples of sexual exploitation include: observing another individual's nudity or sexual activity or allowing another to observe nudity or sexual activity without the knowledge and consent of all participants; non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all participants; exposing one's genitals in non-consensual circumstances; and inducing incapacitation for the purpose of making another person

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vulnerable to non-consensual sexual activity.

Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct affects a student's education, unreasonably interferes with his or her educational performance, or creates an intimidating, hostile, or offensive learning environment. Sexual harassment includes sexual violence may occur in the following situations:

1. Incidents between any members of the District community, including academic personnel, staff, student employees, coaches, interns, students, or non-student or non-employee participants in District programs such as vendors, contractors, or visitors.
2. Hierarchical relationships or between peers.
3. Between persons of the same sex or different sex.
4. Relationships that begin as consensual may evolve into situations that lead to charges of sexual harassment that are subject to the actions set forth in the District's BP/AP 5540.
5. Behavior that creates a hostile or intimidating environment for individuals who are not the direct target of the behavior may also constitute sexual harassment.

In determining whether conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and the totality of circumstances, including the context in which the conduct occurred.

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Sexual Violence: A form of sexual harassment that includes unwelcome sexual touching, sexual assault, sexual battery, domestic violence, stalking, and rape.

Stalking: A course of conduct directed at a specific person that would cause a reasonable person to feel fear or suffer substantial emotional distress. Stalking involves repeated and continued harassment against the expressed wishes of another individual, which causes the targeted individual to feel emotional distress, including fear or apprehension. Stalking behaviors may include: pursuing or following; unwanted communication or contact, including face-to-face interaction, telephone calls, voice messages, electronic messages, web-based messages, text messages; unwanted gifts; trespassing; and, surveillance or other types of observation.

B. Important Related Concepts

Consent to sexual activity is:

1. Informed

Each participant must make an affirmative, unambiguous and conscious decision to engage in mutually agreed-upon sexual activity. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

2. Voluntary

- a. There must be positive cooperation in the act, or expression of intent to engage in the act, pursuant to an exercise of free will. Silence or an absence of resistance does not imply consent.
- b. There must be no coercion, force, violence, threats or intimidation.

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3. Revocable

- a. Consent to some form of sexual activity does not imply consent to other forms of sexual activity, nor does consent on one occasion imply consent for other occasions.
- b. A current or previous dating relationship is not sufficient to constitute consent.
- c. Consent must be ongoing throughout a sexual encounter and can be revoked at any time.

4. Not Possible When a Person is Incapacitated

- a. Incapacitation is the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, but are not limited to, unconsciousness, sleep and blackouts.
 - (1) Where alcohol or drugs are involved, incapacitation is defined with respect to how the alcohol or other drugs consumed affects a person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments.
 - (2) Being intoxicated by alcohol or drugs does not diminish one's responsibility to obtain consent for sexual activity.
- b. A person cannot consent if his or her understanding of the act is affected by a physical or mental impairment.
- c. The factors to be considered include whether the respondent knew, or a reasonable person should have known, that the complainant was incapacitated.

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Hostile Environment: May arise when unwelcome conduct of a sexual or gender-based nature affects a student's ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening or abusive educational and/or living environment.

A single, isolated incident of sexual or gender-based harassment may, based on the facts and circumstances, create a hostile environment.

Intimidation: Any threat of violence or other threatening behavior directed toward another person or group that reasonably leads the targeted individual(s) to fear for their physical well-being or to engage in sexual conduct for self-protection.

Retaliation: Means adverse action taken against a person because he or she has or is believed to have: (a) exercised rights under District's BP/AP 5540; (b) reported or opposed conduct which he or she reasonably and in good faith believes is discrimination, harassment, or retaliation; (c) participated in a discrimination, harassment, or retaliation investigation/proceeding; or (d) assisted someone in reporting or opposing discrimination, harassment, or retaliation. Retaliation can take many forms, including sustained abuse or violence, threats, and intimidation.

Unwelcome Conduct: Conduct of a sexual, gender-based, or harassing nature is deemed unwelcome if the person receiving it did not request, solicit, invite, or consent to it, and considered the conduct to be unwanted or offensive. Such conduct may take various forms, including name-calling, graphic or written statements (including the use of 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 involve repeated incidents. Unwelcome conduct can involve persons of the same or opposite

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sex. Participation in the conduct or the failure to complain does not mean that the other party's conduct was welcome.

C. General Definitions

Complaint: A written communication that alleges discrimination, harassment, or retaliation against San Joaquin Community College District, one of its employees, another student, or a third party.

Complainant: A person alleging that he or she is the victim of sexual misconduct by another person subject to the District's policy on sexual misconduct. The District shall also be considered a complainant if it elects to investigate reports of potential violation of its sexual misconduct policy and procedure. Any person, other than the alleged victim (complainant), who reports possible violations of the District's BP/AP 5540, shall be identified as a Reporter, as defined herein.

District: Refers to San Joaquin Delta College Community College District.

District Community: Means any employee, contractor, student, member of the public, or invitee 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, enrollment as a student at any of the District campus.

Investigation: In the context of this procedure, means the entire investigative process, excluding any appeals, to resolve a complaint of sexual misconduct. "Investigation" includes: (1) the fact-finding investigation to determine whether the alleged sexual misconduct occurred and created a hostile environment; (2) the determination of what actions the District will take to eliminate the hostile

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environment and prevent its recurrence, including the imposition of sanctions against the perpetrator; and, (3) providing remedies for the complainant and school community as appropriate.

Investigator: The Title IX Coordinator’s designated person(s) responsible for the investigation of complaints of sexual misconduct under Title IX and other applicable laws and regulations.

Party/Parties: Means either the complainant or the respondent, involved in the alleged violation of District’s BP/AP 5540. The term “parties” means both the complainant and the respondent collectively.

Preponderance of The Evidence: Means the greater weight of the evidence, such that the evidence on one side outweighs, preponderates over, or is more than the evidence on the other side. The preponderance of the evidence is the applicable standard for demonstrating facts in an investigation conducted pursuant to this procedure.

Reporter: Any person, other than the complainant, who reports a potential violation of the District’s BP/AP 5540.

Respondent: A District employee, another student, or a third party against whom an allegation of discrimination, harassment or retaliation has been made pursuant to the District’s BP/AP 5540.

Student: Applicants, enrolled students, students between academic terms, graduates awaiting degrees, and students who withdraw from school while a disciplinary matter is pending. (See AP 5520, Student Discipline and Disciplinary Appeals)

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Title IX Coordinator: The person(s) responsible for oversight and implementation of Title IX compliance at the San Joaquin Delta Community College District, for the effective oversight of the District's BP/AP 5540, and for the responsibilities outlined herein. As used in this procedure, Title IX Coordinator also includes his or her designee.

Third Party: An individual or entity other than San Joaquin Delta Community College District, a District student, or a District employee. Examples include auxiliary organizations (as defined by Section 42406, Title 5 of the California Code of Regulations), independent contractors at the campus, campus vendors and their employees, and campus visitors.

III. TITLE IX COORDINATOR DUTIES AND RESPONSIBILITIES

The Title IX Coordinator oversees the District's compliance with Title IX's administrative requirements. The responsibilities of the Title IX Coordinator(s) include, but are not limited to, the duties following:

A. General Duties

1. Develop grievance procedures for resolving Title IX complaints and ensure that the procedures are widely disseminated to the District Community.
2. Coordinate and provide prompt and effective response to, and investigation of, reports of sexual harassment, sexual violence, unlawful discrimination, harassment, or retaliation for exercising any rights under the District's BP/AP 5540.
3. Ensure that proper policies and procedures are in place for working with law enforcement and coordinating with local victim advocacy organizations, service

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providers, including rape crisis centers.

4. Coordinate appropriate education and prevention measures, including (a) training on Title IX and related laws and regulations as part of orientation programs for new students, faculty, and staff; (b) regular training for faculty and staff outlining their rights and obligations under Title IX, related laws, and regulations; (c) regular training for District employees responsible for reporting or responding to reports of sexual misconduct; (d) regular training for students to promote awareness of their rights and responsibilities under the District's BP/AP 5540 and familiarity with its reporting procedures.
5. Maintain records relating to complaints and investigations of sexual misconduct, and resolution of such complaints. Records shall be maintained in accordance with District records retention policies. All records pertaining to pending litigation or requests for records shall be maintained in accordance with instructions from legal counsel.
6. Identify and address any patterns or systemic problems that arise during the review of sexual harassment and sexual violence complaints.

B. Specific Duties During and After Investigation

1. Maintain consistent contact with the assigned investigators to ensure they are complying with applicable District policies and procedures; review the investigators' reports and findings.
2. Maintain consistent contact with the complainant to ensure that his or her needs are being met, that the complainant is being kept informed of the progress of the investigation, and that the District has made any necessary accommodations to

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eliminate, as much as possible, contact between the complainant and the respondent while the matter is being investigated.

3. Maintain consistent contact with the respondent to ensure that he or she is being kept informed of the progress of the investigation.
4. Ensure that at the conclusion of the fact-finding investigation, the complainant and the respondent are simultaneously informed in writing of the outcome. (See Outcome Letter, Section VI.C.3.b.)
5. Ensure that the District pursues disciplinary action when the respondent has been found, at the conclusion of the fact-finding investigation, to have violated the District's BP/AP 5540.
6. Ensure that the complainant and the respondent are simultaneously informed in writing of the imposition of sanctions, if any. (See Sections VI.C.1.b and VI.C.4)

IV. COMPLAINANT AND RESPONDENT RIGHTS**A. General Statement of Rights**

In order to provide accessible, prompt, and fair methods of investigation and resolution of student complaints of sexual misconduct, the District has developed a process for investigation and adjudication of misconduct reports. Throughout this process, both the complainant and respondent have the following rights:

- To respect, dignity, and sensitivity.
- To notification of the outcome of the complaint and availability of appeal process.
- To present witnesses and other evidence.

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- To appropriate support from the District.
- To privacy to the extent possible consistent with applicable law and District policy.
- To information about the District's BP/AP 5540.
- To the presence of an advisor throughout the process.
- To participate, or to decline to participate, in the investigation or appeal process. However, a decision to refrain from participating in the process either wholly or in part will not prevent the District from proceeding with the information available.
- To a prompt and thorough investigation of the allegations.
- To adequate time to review documents in the Title IX Coordinator's office following the fact-finding investigation.

B. Right to Review Student 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 he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are eligible students.

Parents or eligible students have the right to inspect and review the student's education records maintained by the District. The District is not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records in person. The District may charge a fee for copies.

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C. Special Requests/Accommodations

In accordance with applicable District policies and/or procedures, any party may have an interpreter during the investigative, discipline, and appeal process, and may request the use of assistive technology during the investigative, discipline, and appeal process.

D. Advisors

The complainant and respondent, respectively, may be accompanied to any meeting or hearing related to an incident of misconduct by the advisor of their choice. Advisors may support the student and provide advice about the investigation and disciplinary process. During meetings and hearings, the advisor may talk quietly with the student or pass notes in a non-disruptive manner. The advisor may not intervene in a meeting or proceeding or address the investigator or hearing panel, including by questioning witnesses or making objections.

E. Victim Advocates

The Title IX Coordinator will ensure that information about victim advocate resources will be made available to assist victims of crime, including sexual assault and domestic violence.

V. REPORTING SEXUAL MISCONDUCT**A. Mandatory Reporters**

All employees of the District, except the excluded employees noted below, are designated as mandatory reporters for the purpose of this procedure and obligated to report known or reasonably suspected incidents of sexual misconduct to the Title IX Coordinator. This includes the reporting of conduct by other employees, students, and third parties.

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Employees excluded from the mandatory reporting requirement:

(1) Student Workers

(2) Those employees whose primary assignment is to render counseling services to students. This exclusion is intended to provide students with a mechanism confidentially to report incidents of sexual misconduct. This section, however, is not intended to negate any other mandatory reporting responsibilities required under the law, such as in California Welfare and Institutions Code Sections 15630 et seq. and California Penal Code Sections 11164 et seq.

B. Timeframe for Reporting a Complaint

The District does not limit the time for filing a complaint of sexual misconduct. However, incidents that are not reported while evidence is still available may reduce the ability to investigate and respond effectively to such complaints.

C. Methods for Reporting Sexual Misconduct

Students who experience or observe behavior that may constitute sexual misconduct may report incidents directly to the Title IX Coordinator, or to any manager, supervisor, or other designated employee responsible for responding to reports of sexual misconduct, or to the local law enforcement agency where the incident occurred. Managers, supervisors, and designated employees are required to notify the Title IX Coordinator. Students may also report incidents of sexual misconduct to the College's Counseling Center if they wish to maintain confidentiality. (See Section IV.D. Confidentiality)

In accordance with the mandatory reporting requirements specified herein, employees may submit reports of known sexual misconduct or sexual misconduct they reasonably suspect occurred to the District's designated Title IX Coordinator.

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Students may also file an Unlawful Discrimination Form directly with the California Community College State Chancellor's Office or the District's Director of Human Resources and Risk Management in accordance with the District's, procedure on unlawful discrimination and harassment procedure. (See AP 3435, Unlawful Discrimination and Harassment Procedure)

D. Confidentiality in Connection With a Report of Sexual Misconduct

The District values the privacy of its students, employees, and other community members. Federal and state laws, however, impose reporting obligations on the District, which in some circumstances require certain staff to share information from a report of sexual misconduct with government authorities, the District's Title IX Coordinator(s), or the District's Police Department. If a person requests that his or her name or other identifying information not be used in an investigation, the District will weigh the request for confidentiality against its duty to provide a safe and non-discriminatory 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. Even when District employees have an obligation to report to others, they will protect and respect students' privacy to the greatest extent possible and share information only on a need-to-know basis. The District may publicly disclose final results of disciplinary proceedings if a student is found to have committed a crime of violence, or a non-forcible sex offense, as determined under this procedure.

The District's Counseling Center provides confidential counseling for all registered students. Consultation with College counselors will not lead to a report of sexual misconduct unless additional action is taken by the individual seeking advice.

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- E. Alcohol and Drug Use are Not Barriers to Reporting Sexual Misconduct**
The District understands that students may be reluctant to file complaints of sexual misconduct when alcohol and/or drugs were used. Whenever possible, the District will respond with the intent to educate, rather than punish, when alleged sexual misconduct is related to the use of drugs and/or alcohol so as to promote the reporting of such incidents. However, the District reserves the right to other remedies depending on the circumstances of the particular case.
- F. Reports Involving Unknown/Non-District Offenders**
In addition to investigating reports of sexual misconduct committed by students against other students or by a District employee against a student, the District will also investigate sexual misconduct of third parties against a student or District employee. The District will also investigate, to the extent possible, reports of sexual misconduct where the identity of the victim is not known and take appropriate actions designed to protect affected students and members of the District community. Sexual misconduct investigations are subject to the jurisdictional limitations of the District as noted in Section I.B.
- G. Required Notifications for Reports of Sexual Violence/Clery Act Requirements**
The District will provide a written explanation of available rights and options to a student, including procedures to follow, when it receives a report that he or she has been the victim of domestic violence, dating violence, sexual assault, or stalking, whether the offense occurred on District property or at an off-campus location or in connection with any District sponsored -program or -activity. The written information will include:
1. To whom the alleged offense should be reported.

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2. Options for reporting the incident to law enforcement and campus authorities, including the option to notify the local or District law enforcement authorities; the right to be assisted by campus authorities in notifying law enforcement authorities if the complainant so chooses; and, the right to decline to notify such authorities.
3. The rights of complainants regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal or civil courts and the District's responsibilities regarding such orders.
4. The importance of preserving evidence as may be necessary, to prove domestic violence, dating violence, sexual assault, or stalking, or to obtain a protection order.
5. Existing College and community services available for victims including counseling, mental health, victim advocacy, legal assistance, and other services including established ongoing partnerships the District has with the following organizations available to assist victims:
 - San Joaquin County District Attorney's Office
 - San Joaquin County Sheriff's Department
 - Stockton Police Department
 - The Women's Center Youth and Family Services
 - San Joaquin Pride Center
6. Options and available assistance to modify academic, transportation, and work schedules, if requested by the complainant and if reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

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7. Any applicable District procedures for disciplinary action.

H. Clery Act Requirements

Under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), the District must record and report certain information about campus safety, including the number of incidents of particular crimes on or near campus, some of which constitute sexual misconduct under the District's BP/AP 5540. Certain District employees who receive reports of sexual misconduct must notify the District's Police Services Department about such incidents for statistical reporting purposes. The Clery Act also requires the District to issue a "timely warning" when it receives a report of certain crimes that pose a serious or continuing threat. Additionally, as a matter of policy, the District will annually release aggregate information concerning reported incidents of sexual misconduct and the results of student disciplinary proceedings. Such reports do not contain information identifying individual students. (See AP 3540 Sexual and Other Assaults on Campus)

I. Prohibition Against Retaliation

The District strictly prohibits retaliation against anyone who reports an incident of sexual misconduct, participates in an investigation of such a complaint, or their involvement in the District's response to a complaint. The District will take strong disciplinary action in response to any retaliation or intimidation, in accordance with applicable disciplinary policies and procedures.

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VI. INVESTIGATIONS OF SEXUAL MISCONDUCT**A. Timeframe to Complete Investigation of Sexual Misconduct Complaints**

The District will use reasonable, diligent efforts to resolve every report of sexual misconduct within approximately sixty (60) calendar days of receiving the initial report, excluding any appeals. The time frames may vary depending on the complexity of the investigation and details of the alleged misconduct. Generally, timeline will be as follows:

- Investigative process begins within five (5) calendar days after the date of the initial report.
- Fact-finding investigation is completed within thirty (30) calendar days after the investigative process begins.
- Notice of sanction(s), if applicable, and remedies issued within twenty-five (25) calendar days after the completion of fact-finding investigation.
- Notice of appeals filed by either or both complainant and respondent shall be in accordance with the District's procedures for employee and student complainants/respondents. (See AP 3435, Unlawful Discrimination and Harassment Complaint Procedure and Investigative Process; AP 5520, Student Discipline and Disciplinary Appeals Procedure)

When alleged violations occur near, during, or after District holidays, breaks, or the end of an academic term, time frames may vary. The District may extend any time frame for good cause, with a written explanation to the complainant and respondent.

B. Parallel Proceedings

Sexual misconduct proceedings under this procedure and student discipline proceedings 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 District

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Board Policies (BP) and Administrative Procedures (AP) (BP/AP3410, Nondiscrimination Policy; BP/AP 3430, Prohibition of Harassment; AP 3435 Unlawful Discrimination and Harassment; BP/AP 5500, Standards of Student Conduct, BP/AP 5520, Student Discipline and Disciplinary Appeals), or other applicable District policy and procedures, or collective bargaining agreements.

If the alleged conduct is also the subject of a criminal investigation, the District will not wait for the conclusion of the criminal investigation to begin its own investigation pursuant to this procedure. However, the District may need to coordinate its fact-finding efforts with the police investigation. Once notified that the law enforcement agency has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any criminal charges), the District must promptly resume and complete its fact-finding for the sexual misconduct investigation.

C. Steps in the Administrative Process**Step One - Notice/Interim Measures****a. Notice**

As soon as possible after an incident is reported, the Title IX Coordinator will give the complainant and respondent, respectively, a written explanation of their rights and obligations. Specifically, the notice will provide, at a minimum the following:

- A description of the alleged violation(s);
- A description of the applicable policies;

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- A statement of the potential sanctions/responsive actions that could result; and,
- A required date, time, and location for a review, an interview, or proceeding.

b. Interim Accommodations and Sanctions

Once the Title IX Coordinator has received a complaint of sexual misconduct, the District will make an interim assessment to determine if any immediate remedies are warranted, while an investigation or discipline action is pending. The District will work with students affected by the sexual misconduct report to ensure their safety and promote their well-being. Sometimes this assistance will take the form of immediate interim actions or accommodations to support and protect the involved students in the aftermath of an incident and while awaiting final resolution of a complaint.

The Title IX Coordinator may assign a victim's advisor to the complainant or the complainant may choose his or her own. In addition, the Title IX Coordinator or District Discipline Officer may institute other remedies, such as, but not limited to, accommodations related to modified academic schedules, use of Public Safety escort services, placing restrictions on the alleged respondent, and other remedies to promote the well-being, safety, and restoration of the complainant.

When the respondent is a student, he or she may be subject to interim disciplinary actions, in accordance with the District's student discipline policy and procedure pending investigation of a complaint. The Title IX Coordinator may impose interim sanctions deemed reasonably necessary to protect the student, or the District community. The student will be notified of any interim

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action in accordance with the District's student discipline and appeals policy and procedure. (See BP/AP 5520, Student Discipline and Disciplinary Appeals)

Upon notice of an interim suspension by the Title IX Coordinator or District Discipline Officer, the student has three (3) calendar days, from the date of the notice, to submit reasons for a Request to Stay to the Assistant Superintendent/Vice President of Student Services, or his or her designee. The Assistant Superintendent/Vice President of Student Services will render a decision on providing a stay, with or without modifications to the student's request. The Vice President of Student Services will provide the student with a decision within one (1) business day of the received Request for Stay. The interim suspension remains in effect until the Assistant Superintendent/Vice President of Student Services renders a decision.

When the respondent is a District employee, interim disciplinary actions shall be in accordance with applicable provisions of the Education Code, District policies and procedures, collective bargaining agreements, and other governing authority.

The Title IX Coordinator will ensure that the parties are notified simultaneously of the imposition of interim sanctions.

c. Declining to Participate

A complainant and/or respondent may decline to participate in the investigative or disciplinary process. Nonetheless, the District has an obligation to investigate a complaint to the extent of the information then available and known. If during the investigation the investigator finds corroborating information, the District may continue the process without the complainant's or respondent's participation. The complainant will be notified of any actions by the District,

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together with a letter noting the complainant's choice not to participate in the investigation and/or disciplinary process.

Step 2 - Investigation**a. Title IX Investigator Qualifications**

The District, through the Title IX Coordinator or trained investigator, will investigate all reports of alleged sexual misconduct. The individuals conducting the investigation must be trained and experienced in conducting investigations, and have received a certificate verifying completion of a Title IX training course that provides foundational knowledge and skills to conduct campus investigations. The investigator must also be familiar with District's BP/AP 5540 specific to students, staff, faculty, academic appointees, and visitors.

Each person assigned to conduct investigations of sexual misconduct must show proof that he or she is participating in annual Title IX training updates regarding sexual assault and sexual harassment, and best practices for conducting investigations. For cases involving allegations of sexual violence, the individuals conducting the investigation must receive annual training on issues related to sexual violence. Such training must include methods for conducting an investigation that protect the safety of complainants and promote accountability of parties found responsible for sexual misconduct.

b. General Investigative Guidelines

The investigation generally will include interviews with the parties if available, interviews with other witnesses, as needed, and a review of relevant documents, as appropriate. Disclosure of facts to parties and witnesses shall be limited to what is reasonably necessary to conduct a fair and thorough investigation. The

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investigator must admonish participants in an investigation that confidentiality is essential to the integrity of the process.

Upon request, the complainant and the respondent may each have a representative present when he or she is interviewed, and at any subsequent proceeding or related meeting. Other witnesses may have a representative present at the discretion of the investigator or as required by applicable District policy and procedure or collective bargaining agreements.

At any time during the investigation, the investigator may recommend that interim protections or remedies for the parties or witnesses be provided by appropriate District officials. These protections or remedies may include, for example, separating the parties, placing limitations on contact between the parties, or making alternative class schedules. Failure to comply with the terms of interim protections may be considered a separate violation of this procedure. Additionally, in conducting the investigation, the investigator will follow current best practices and adhere to the following protocols:

- **Preserving Evidence.** The investigator will direct the complainant, respondent, witnesses, and other interested individuals to preserve any relevant evidence.
- **Character Witnesses.** The investigator will not interview witnesses whose sole purpose is to provide character information.
- **Romantic or Sexual History in Sexual Assault Cases.** The investigator will not consider information concerning the romantic or sexual history of either the complainant or the respondent, except from either the complainant or respondent regarding their shared sexual history. If either offers such information, the other will have the right to respond.

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- **Prior Conduct Violations.** The investigator 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 allegations and/or the information indicates a pattern of behavior by the respondent.
- **Use of Recording Devices.** To minimize victim reticence, to encourage the reporting of sexual misconduct offenses, and to encourage participation in investigations, the investigator will not use during the fact-finding investigation audio or video recording devices including, but not limited to, cell phones and other devices.

c. Informal Resolution Options

A complainant and respondent may agree to resolve certain gender-based misconduct cases through an informal process. (For example, a complainant and respondent may agree with the Title IX Coordinator that education and training for the respondent are an appropriate and sufficient response in a particular case). This type of informal resolution can take place during the fact-finding investigation or after its conclusion. Under no circumstance will a complainant be required to use an informal resolution process to address prohibited behaviors. It is not appropriate for a complainant to be required to "work out the problem" directly or mediate with the respondent. Informal resolution, including mediation cannot be used, even on a voluntary basis, to resolve complaints of sexual assault/sexual violence, dating or domestic violence, or stalking. In other matters, where voluntary mediation is requested, no meeting between the complainant and the respondent should occur without involvement by appropriate District administrators, including the Title IX Coordinator.

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If both the complainant and respondent are satisfied with a proposed resolution and the Title IX Coordinator believes the resolution satisfies the District's obligation to provide a safe and non-discriminatory environment for all students, the resolution will be implemented, the disciplinary process will be concluded and the matter will be closed. If these efforts are unsuccessful, the disciplinary process will continue. Before starting these discussions, the Title IX Coordinator must notify the complainant and respondent that each has the right to end the informal process at any time.

STEP 3 - Determination of Findings**a. Investigative Report**

Once the fact-finding investigation is completed, the Title IX Coordinator and/or investigator(s) will make a determination based on the preponderance of the evidence whether the respondent is or is not responsible for the alleged sexual misconduct.

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 the District's sexual misconduct policy and/or procedure, the respondent will be found responsible for the violation.

Not Responsible. If after the conclusion of an investigation, the preponderance of the evidence does not support that it is more likely than not that the respondent violated the District's BP/AP 5540, the respondent will be found not responsible for the violation.

The investigator(s) shall prepare a written report that includes, at a minimum, a statement of the allegations and issues, the positions of the parties, a summary

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of the evidence, findings of fact, and a determination by the investigator whether the District's BP/AP 5540, has been violated. The report shall detail relevant content from the interviews and the documentation gathered and the investigator's assessment of individual credibility. The report may also contain a recommendation for actions to resolve the complaint, including preventive educational programs, remedies for the complainant, and a referral to disciplinary procedures, as appropriate. (See BP/AP Sexual Misconduct and Gender-Based)

b. Outcome Letter

The Title IX Coordinator will issue concurrently to each party an Outcome Letter that includes a summary of the investigative findings, and notice of the right to appeal. (See Section VII, Appeal of the Investigative Process and Sanctions) If applicable, the letter to the complainant will specify any individual remedies offered or provided to the complainant and other measures taken to eliminate the hostile environment, if found to exist, and to prevent its recurrence. The respondent should not be notified of the individual remedies offered or provided to the complainant. The Outcome Letter will also describe whether any systemic remedies are being considered or implemented for the benefit or safety of the District community. The Outcome Letter provided to each of the parties may be modified subject to the limitations of the Family Educational Rights and Privacy Act (FERPA) and other relevant federal or state privacy laws.

c. Parties' Right to Review of Investigative Report

The respondent and complainant will each have the opportunity to review a copy of the investigative report and any other information that will be used during the disciplinary proceedings, if any. The names and other identifying information of other students will be redacted from such materials in accordance

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with the Family Educational Rights and Privacy Act (FERPA), except to the extent that doing so would interfere with the purpose of Title IX to eliminate sex-based discrimination. The Title IX Coordinator will supervise this review and ensure that reasonable time is afforded for review prior to any subsequent proceedings.

STEP 4 - Sanctions

If the respondent is a student, in accordance with student disciplinary procedures, the District may impose sanctions such as verbal reprimands, voluntary enrollment in seminars pertaining to unlawful discrimination and sexual harassment issues, written reprimands, dismissal from class and/or other District activities, or expulsion from the District. In addition, cases involving serious misconduct may be referred to the local Office of the District Attorney for possible criminal prosecution. (See BP/AP 5520, Student Discipline Procedure and Appeal Procedure)

If the respondent is a District employee, in accordance with District policies and procedures, including those prohibiting unlawful discrimination and harassment, applicable bargained agreements, and the Education Code, the District may impose sanctions such as verbal reprimands, voluntary enrollment in seminars pertaining to unlawful discrimination and sexual harassment issues, written reprimands, demotions, suspensions without pay, and dismissal from employment. In addition, cases involving serious misconduct may be referred to the local Office of the District Attorney for possible criminal prosecution. (See BP/AP 3430 Prohibition of Harassment and AP 3435, Unlawful Discrimination and Harassment Complaint Procedure and Investigative Process)

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The Title IX Coordinator will ensure that the complainant is notified simultaneously with the respondent of the imposed sanctions, to the extent that the sanctions relate directly to the complainant, subject to the requirements of any other applicable law. The notification must also inform the complainant of his or her right to appeal.

Sanctions issued shall be: (1) fair and appropriate given the facts of the particular case; (2) consistent with the District's handling of similar cases; (3) adequate to protect the safety of the District community; and (4) reflective of the seriousness of the sexual misconduct.

The relevant factors that are considered, as applicable to the specifics of each type of sexual misconduct, when imposing sanctions are the:

- (1) specific sexual misconduct at issue (such as penetration, touching, unauthorized recording);
- (2) circumstances accompanying the lack of consent (such as force, threat, coercion, incapacitation);
- (3) respondent's state of mind (intentional, knowing, bias-motivated, reckless);
- (4) impact of the offense on the complainant;
- (5) respondent's disciplinary history;
- (6) safety of the District community; and,
- (7) respondent's conduct during the disciplinary process.

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STEP 5 - Ongoing Accommodations for Complainants and Safety Measures

Whatever the outcome of the informal resolution or investigation, a complainant may request ongoing or additional accommodations. In consultation with other campus departments, the Title IX Coordinator will determine whether such measures are appropriate. Potential ongoing accommodations include:

- (1) providing an escort by District Public Safety;
- (2) implementing no contact directives;
- (3) modifying the complainant's academic schedule;
- (4) adjusting the complainant's on campus job/work schedule;
- (5) allowing the complainant to withdraw from or retake a class without penalty;
- (6) providing access to tutoring or other academic support, such as extra time to complete or re-take a class; and,
- (7) providing counseling and medical support.

The District may also determine that additional measures are appropriate to respond to the effects of the incident. Additional responses for the benefit of the District Community may include:

- (1) revision of the District's policies and procedures regarding sexual misconduct;
- (2) additional training and education materials for students, faculty, and staff;
- (3) increased monitoring, supervision, and security at locations or events where the sexual misconduct occurred;
- (4) bystander intervention programs; and,
- (5) ensuring relevant climate surveys are gathered that focus on safety, security, and inclusion to promote a culture that is intolerant of sexual misconduct.

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AP 5540 Title IX: Sexual Misconduct and Gender-Based Discrimination

Reference: California Education Code Sections 67385 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 99.31 (a)(13)-(14), Section 99.39, and Section 668.46(b)(11); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. and implementing regulations, 34 C.F.R. § 106.1 et seq.; Violence Against Women Act, 42 U.S.C. § 13925 et seq.

VII. APPEALS OF THE INVESTIGATION PROCESS AND SANCTIONS

After receiving the Outcome Letter, either the respondent or complainant, or both, have the right to submit an appeal for review of the investigative process and determination of findings. The respondent and complainant each have the right, as well, to appeal the imposed sanctions.

Grounds for Appeal. The appeal shall be based on one or more of the following:

1. A procedural error affecting the determination or sanction;
2. New information that was not available at the time of the investigation or hearing and that may change the determination or sanction; or
3. Excessiveness or insufficiency of the sanction

Disagreement with the determination of findings or sanctions is not, by itself, a ground for appeals. Moreover, the purpose of an appeal is not to initiate a review of substantive issues of fact.

Submission of Appeal. Either the complainant or respondent, or both, may appeal the determination of findings and/or sanctions in accordance with the appropriate District procedures: (1) Appeals by student complainants or respondents: AP 5520, Student Discipline and Disciplinary Appeals Procedure; (2) Appeals by employee respondents: AP 3435, Unlawful Discrimination and Harassment Complaint Procedure and Investigative Process.

Issues and Evidence on Appeal. The issues and evidence raised on appeal shall be limited to those raised and identified during the investigation, unless new evidence becomes available after completion of the fact-finding investigation and is made part of the appeal by the appealing party.

AP 5540 Title IX: Sexual Misconduct and Gender-Based Discrimination

Reference: California Education Code Sections 67385 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 99.31 (a)(13)-(14), Section 99.39, and Section 668.46(b)(11); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. and implementing regulations, 34 C.F.R. § 106.1 et seq.; Violence Against Women Act, 42 U.S.C. § 13925 et seq.

**APPENDIX A
EXAMPLES OF SEXUAL MISCONDUCT**

While sexual harassment encompasses a wide range of conduct, some examples of specifically prohibited conduct include, but are not limited to:

- Promising, directly or indirectly, a student or employee a reward, if the student or employee complies with a sexually oriented request.
- Threatening, directly or indirectly, retaliation against a student or an employee, if the student or employee refuses to comply with a sexually oriented request.
- Coercion for a date or a romantic or intimate relationship.
- Unwelcome touching, kissing, hugging, or massaging.
- Use of unwanted force in connection with sexual activity or attempted sexual activity.
- Non-consensual video or audiotaping of sexual activity.
- Denying, directly or indirectly, a student or employee an employment or education related opportunity, if the student or employee refuses to comply with a sexually oriented request.
- Engaging in sexually suggestive conversation or physical contact or touching another student or employee.
- Displaying pornographic or sexually oriented materials.
- Engaging in indecent exposure.
- Making sexual or romantic advances toward a student or employee and persisting despite the student or employee's rejection of the advances.
- Physical conduct such as assault, touching, or blocking normal movement.
- Retaliation for making harassment reports or threatening to report harassment.
- Sexual harassment can involve males or females being harassed by members of either sex.

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AP 5540 Title IX: Sexual Misconduct and Gender-Based Discrimination

Reference: California Education Code Sections 67385 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 99.31 (a)(13)-(14), Section 99.39, and Section 668.46(b)(11); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. and implementing regulations, 34 C.F.R. § 106.1 et seq.; Violence Against Women Act, 42 U.S.C. § 13925 et seq.

- Although sexual harassment sometimes involves a person in a greater position of authority than the harasser, individuals in positions of lesser or equal authority also can be found responsible for engaging in prohibited harassment.
- Sexual contact with a person who has not clearly consented.
- Unwelcome remarks about the private parts of a person's body.
- Belittling remarks about a person's gender or sexual orientation based on gender-stereotyping.
- Obscene gestures of a sexual or gender-based nature.
- Graffiti concerning the sexual activity of another person.
- Use of email, the Internet, or other forms of digital media to facilitate any of the behaviors listed above.

See BP 5540, Title IX Policy: Sexual Misconduct and Gender-Based Discrimination; BP/AP3410 Nondiscrimination Policy; BP/AP 3430, Prohibition of Harassment; AP 3435, Unlawful Discrimination and Harassment Complaint Procedure and Investigative Process; BP/AP 5500, Standards of Student Conduct; and, BP/AP 5520, Student Discipline; and, Disciplinary Appeals Procedure.