

5020. ADMINISTRATIVE REGULATIONS ON SEXUAL MISCONDUCT

5020.1 The Title IX Coordinator will administer these administrative regulations.

5020.2 Definitions:

- A. Complainant: A person(s) alleging that they are 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 the District elects to investigate reports of potential violation(s) of the District’s policy on sexual misconduct. Any person(s), other than the alleged victim (complainant), who reports possible violation(s) of the District’s policy on sexual misconduct, shall be identified as a reporter, as defined herein.

- B. College Disciplinary Officer: The District official(s) designated by the District Superintendent-President, or designee, to administer the sanctions under this Administrative Procedure by incorporation of the sanctions under District Administrative Regulation 5012.

- C. Consent: An expressed, affirmative, conscious, and voluntary agreement to engage in sexual activity. Consensual sexual activity requires an ongoing, affirmative consent, for the act in which the participants are involved. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other, or others, to engage the sexual activity. Lack of protest, or resistance, or silence does not mean consent. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used to obtain consent. Affirmative consent must be ongoing throughout a sexual activity, and can be revoked at any time. 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.

- D. Dating Violence: The use of physical violence, coercion, threats, intimidation, isolation, or stalking of 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.

- E. Day: Calendar day.
- F. District: Refers to the Long Beach Community College District.
- G. District Community: 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, or in the process of applying for enrollment, in a course offered through the District.
- H. District Human Resources Representative: The District's Associate Vice President of Human Resources, or designee, assigned to work with the Title IX Coordinator in the investigation of sexual misconduct cases involving employee to student, or student to employee, to ensure conformance with applicable District Human Resources/personnel policies and regulations.
- I. 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 respondent's acts under the domestic or family violence laws of California, including Family Code Section 6250 et seq., and any applicable federal law, including the Violence Against Women Act of 1994 (VAWA), as amended. This can include behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Domestic violence can be a single act or a pattern of behavior in relationships.
- J. Gender-Based Harassment: Unwelcome conduct of a nonsexual nature based on a student's actual or perceived gender, including conduct based on gender identity, gender expression, or nonconformity with gender stereotypes.
- K. Hearing Appeal Committee: An optional panel that can be formed by the Superintendent-President to review a written appeal of a sexual misconduct determination when there is a need to hear from witnesses

providing new evidence, and consisting of the Vice President of Student Support Services and the Vice President of Human Resources.

- L. Hostile Environment: Exists when unwelcome conduct of a sexual or gender-based type is sufficiently serious and/or pervasive to deny or limit a person's ability to fully participate in or benefit from the District's programs or activities. A hostile environment can be created by anyone involved in a District program or activity (e.g., administrators, faculty members, staff, students, or campus visitors). In determining whether conduct has created a hostile environment, the District considers the conduct in question from both objective and subjective perspectives. The District will base findings on a variety of factors, including the severity, persistence, or pervasiveness of the conduct. The more severe the conduct, the less need there is to show a repetitive series of incidents to find a hostile environment. Likewise, a series of incidents may be sufficient even if the conduct is not particularly severe.
- M. Not Responsible: The determination that, based on the applicable evidence collected during the investigation, that it is *not* "more likely than not" that the student committed a violation of this policy or regulation.
- N. Party/Parties: Either the complainant or the respondent, involved in the alleged violation of this policy or regulation. The term parties means both the complainant and the respondent collectively.
- O. Reporter: Any person(s), other than the complainant, who reports potential violation(s) of the District's policy on sexual misconduct.
- P. Respondent: A person(s) who is alleged to have violated the District's policy on sexual misconduct.
- Q. Responsible: The determination that, based on the applicable evidence collected during the investigation, that it is "more likely than not" that the student committed one or more violation(s) of this policy and/or regulation.
- R. Retaliation: Any act of reprisal against a person who is involved in an allegation of sexual misconduct including but not limited to the complainant, the respondent, witnesses, investigators, and hearing appeal committee. Examples of actions that might be retaliation against a complainant, witness, or other participant in the complaint 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, and/or discharge; and d) providing negative information about the person in order to interfere with his or her prospects for employment, admission, or academic program.

- S. Sanctions: Those disciplinary measures available to the College Disciplinary Officer or designee to impose upon a student upon the finding of the student's responsibility for violation(s) of the Student Code of Conduct or of this administrative regulation.
- T. Sex: Refers to gender designation as male or female gender or based on a perceived association with a particular gender/s; or to a physical act of a sexual nature, depending upon the context in which the term is used in this regulation.
- U. Sexual Assault: Actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to:
1. Intentional touching of another person's body in a sexual nature without that person's consent;
 2. Other intentional sexual contact with another person without that person's consent;
 3. Coercing, forcing, or attempting to coerce or force a person to touch another person's body in a sexual nature without that person's consent; or
 4. Rape, which is penetration, no matter how slight, of the vagina, or anus of a person by any body part of another person, or by an object, or the mouth of a person, or by a sex organ of another person, without the other person's consent.
- V. Sexual Exploitation: Occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without the other person's consent. Examples of behavior that could rise to the level of sexual exploitation include:
1. Prostituting another person;
 2. Recording images (e.g. video, photograph) or audio of another person's sexual activity, body (when recorded for a sexual reason), or nakedness without that person's consent;

3. Disturbing images (e.g. video, photograph) or audio of another person's sexual activity, images of another's body for sexual purposes, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and
 4. 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.
- W. Sexual Harassment: Unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances; requests for sexual favors; or other verbal or nonverbal conduct of a sexual nature, including rape, sexual assault, and sexual exploitation. In addition, depending on the facts, dating violence, domestic violence, and stalking may also be forms of sexual harassment.
- X. Sexual Misconduct: Comprises 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 misconduct under this policy and regulation. Sexual misconduct encompasses sexual harassment, sexual assault, sexual exploitation, or gender-based harassment, which is a form of harassment based on gender identity, gender expression, or non-conformity with gender stereotypes. Sexual 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 misconduct has occurred. Sexual misconduct can occur between strangers or acquaintances, or people who know each other well, including between people involved in an intimate or sexual relationship, can be committed by anyone regardless of gender identity, and can occur between people of the same or different sex or gender.
- Y. Stalking: Stalking behavior in which a student repeatedly engages in a course of conduct directed at another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her family; where the threat is reasonably determined by the College Disciplinary Officer to create substantial emotional distress, torment, create fear, or to terrorize the person.

- Z. Sexual Stalking: Course of conduct directed at a specific person that would cause a reasonable person to feel fear or suffer substantial emotional distress due to another's sexual interest or gender interest. Sexual stalking involves repeated and continued harassment of a sexual or gender-based nature, against the expressed consent of another individual, which causes the targeted individual to feel emotional distress, including fear or apprehension. Such sexual stalking behaviors may include: pursuing or following; unwanted communication or contact- including face-to-face encounters, telephone calls, voice messages, electronic messages, web-based messages, text messages, unwanted gifts, etc.; trespassing; and surveillance or other types of observation.
- AA. Students(s): Any person(s) who has applied for admission, who is or has been enrolled, or who has expressed their intent to enroll for any program within the District for the period in which the misconduct occurred.
- BB. Title IX Coordinator: The designated person(s) responsible for oversight and implementation of Title IX compliance for the effective oversight of the District's sexual misconduct policy and regulations, and for the responsibilities outlined in this administrative regulation.
- CC. Title IX Deputy: The Title IX Coordinator's designated person(s) responsible for assisting in the oversight and implementation of Title IX compliance for the effective oversight of the District's sexual misconduct policy and regulations.
- DD. Title IX Investigators: The Title IX Coordinator's designated person(s) responsible for the investigation of complaints of sexual misconduct.
- EE. 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 cell phones or the Internet), hazing, bullying, offensive, or other conduct that may be physically or psychologically threatening, harmful, or humiliating. Unwelcome conduct does not have to include intent to harm, or directed at a specific target, or involve repeated incidents. Unwelcome conduct can involve persons of the same or opposite sex. Participation in the conduct or the other party's failure to complain does not mean that the conduct was welcome.

5020.3 Jurisdiction

- A. 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 includes, but is not limited to, its main and satellite campuses, and to any other property used by the District. 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), when the college administrator, or designee, determines that the off-campus conduct affects, disrupts, or interferes with the educational mission of the campus.

5020.4 District Communications Relating to Gender-Based Discrimination/Sexual Misconduct Notice and Investigations

The District’s primary correspondence and notification mechanism with students shall be through the primary email account provided by the student. At the District’s discretion, students 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.

5020.5 Standard of Proof

A student will be found either responsible or not responsible based on a preponderance of the evidence, meaning that it is more likely than not that the student has violated this policy. 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 his or her designee.

5020.6 Reporting Sexual Misconduct

- A. Responsible Employee Reporters: All employees of the District, except the excluded employees as noted below, are designated as responsible employee reporters for the purpose of this administrative regulation.
- B. Employees Exempted from Responsible Employee Reporting: The following employees are exempted from responsible employee reporting for the purpose of this administrative regulation:
1. Student workers;
 2. Those employees whose primary assignment is at one of the Student Health Centers to render medical or counseling care to Students. The

exclusion of these employees rendering medical or counseling care in the Student Health Centers is intended to provide students with a mechanism to confidentially report incidents of sexual misconduct.

- C. This section, though, 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.
- D. **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 District's ability to effectively investigate and respond to such complaints.
- E. **Methods for Reporting Sexual Misconduct:** Employees are required, under this section, to report known or reasonably suspected incidents of sexual misconduct to the Title IX Coordinator. Employees may submit reports via email, telephone, or in person to the Title IX Coordinator, Title IX Deputy, or to the Human Resources Office. Students may report incidents of sexual misconduct directly to the Title IX Coordinator, Title IX Deputy, or to the local law enforcement where the incident occurred. Students may also report incidents of sexual misconduct to the Student Health Center if they wish to remain confidential (see Confidentiality section below).

The District has an optional form for students to use in the reporting of sexual misconduct complaints, which is available online and in the Office of Student Affairs. Students may also file an Unlawful Discrimination Form directly to the California Community College State Chancellor's Office or the Vice President of Human Resources.

- F. **Confidentiality in Connection with a Report of Sexual Misconduct:** When the District becomes aware of sexual misconduct, the District 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; however, this may limit the District's ability to effectively 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 Administrative Regulations.

5020.7 Investigations of Sexual Misconduct

- A. Timeline for Investigating Sexual Misconduct Complaints: The District will investigate and communicate its findings within 60 days of the date in which the complaint was filed unless there are extenuating circumstances that prohibit the timeliness of the completion of the investigation. If an extenuating circumstance exists that prohibits the completion of an investigation within 60 days, the District will inform the complainant and the respondent in writing of such delay.

The Title IX Coordinator, or designee, shall use reasonable, diligent efforts to resolve sexual misconduct reports within 60 days of an initial report, not including appeals. The District's intended timeline, barring unexpected delay or complex investigations, is as follows:

1. Review and investigation begins within 7 days after the date of the initial report
2. Investigation is completed within 25 days after the investigation begins
3. Determination of the investigation is issued within 7 days after the completion of the investigation
4. Notice of sanction(s) issued within 7 days after the completion of the investigation
5. Notice of appeals filed by either or both complainant and respondent to the College Disciplinary Officer within 7 days after the notice of determination and sanction(s)
6. Appeal hearing, if deemed appropriate, is held within 20 days after complainant and/or respondent's notice of appeal was received
7. Determination of appeal hearing, if conducted, or determination by the Superintendent-President, or designee, is issued within 7 days

after the completion of the appeal hearing or receipt of the appeal if no appeal hearing was conducted.

- B. Alcohol and Drug Use Identified in Investigations: 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 educationally, rather than punitively, to the use of drugs and/or alcohol so as to promote the reporting of sexual misconduct. However, the District reserves the right to other remedies dependent upon the severity of the alcohol or drug use.
- C. Reports Involving Unknown/Non-College Offenders: The District will investigate reports of sexual misconduct incidents allegedly committed by students against other students, committed by a District employee against a student, or by a non-student against a student. The District will also investigate reports of sexual misconduct incidents allegedly committed by students against District employees, or students against non-students. The District will investigate reports of sexual misconduct where the identity of the victim is not known to the extent it is able, and take appropriate actions designed to protect affected students and members of the District community. 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 misconduct investigations are subject to the jurisdictional limitations of the District as set forth herein.
- D. Anti-Retaliation/Anti-Intimidation: Any form of retaliation or intimidation against anyone who has complained of or formally reported discrimination, harassment, or sexual 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 Policy, this regulation, and applicable law.
- E. Parallel Student Conduct Proceedings: Title IX investigations and/or student conduct proceedings are independent from court or other administrative proceedings. Discipline may be instituted against a respondent who is 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 misconduct. In sexual misconduct cases, the District shall proceed with investigation without undue delay, typically within

14 days, in accordance with federal and state law requirements, and District Policies and Regulations.

5020.8 Administrative Process Steps

- A. Step One-Notice: Once a complaint of sexual misconduct has been received by the Title IX Coordinator or designee, the Title IX Coordinator or designee will provide a notice in writing to involved parties with the following information:
1. A description of the alleged violation(s);
 2. A description of the applicable policies;
 3. A statement of the potential sanctions/responsive actions that could result; and
 4. A required date, time, and location for a review, an interview, or hearing.
 - (a) If any party does not appear at the scheduled review, investigation, or hearing, the meeting will be held in his/her absence. For compelling reasons, the Title IX Coordinator, or designee, may reschedule the meeting.
 - (b) Time frames for reviews, investigations, and hearings may vary depending on the details of a case and at certain times of the academic year for possible violations that occur near, during, or after District holidays, breaks, or the end of an academic terms, in which meetings will be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by this policy and regulation.
- B. Step Two-Interim Accommodations and Sanctions: Once the Title IX Coordinator or designee has received a complaint of sexual misconduct, the District will make an interim assessment to determine if any immediate remedies are warranted, pending investigation. The District will work with the student(s) 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 immediate aftermath of an incident and while an investigation or disciplinary action is pending.

The Title IX Coordinator, or designee, may assign a victim's advisor to the person who reported the complaint or the complainant may choose his/her own. Likewise, the Title IX Coordinator may determine other remedies, such as, but not limited to, accommodations relating to changing academic schedules, Public Safety escort services, restrictions on the alleged perpetrator pending investigation, and other remedies to promote the well-being, safety, and restoration of the alleged victim.

1. As set forth in the District's Student Code of Conduct (BP/AR 5012), a student may be subject to interim actions pending investigation of a complaint. The College Disciplinary Officer, Title IX Coordinator, or designee, may impose interim sanctions deemed reasonably necessary to protect the student, or the campus community. The student shall be notified of any interim action in accordance with the Student Code of Conduct. Upon notice of an interim suspension by the College Disciplinary Officer, Title IX Coordinator, or designee, the Student has 3 calendar days (from the date of the notice) to submit reason(s) for a Request to Stay to the Dean of Student Affairs or their designee. The Dean of Student Affairs or their designee will render a decision on providing a stay, with or without modifications to the student's request. The Dean of Student Affairs or their designee will provide the Student with a decision within 1 business day of the received Request for Stay. The interim suspension remains in effect until a decision from the Dean of Student Affairs or designee is rendered.
- C. Step Three-Investigation: The District, through a trained Title IX Investigator or Coordinator, will investigate all reports of alleged violations of sexual misconduct. The investigators will interview the Complainant, Respondent, and any witnesses (if appropriate). The investigator will also gather information, documents, and materials (if any) that are relevant to the case. Once sufficient evidence has been collected, the Title IX Coordinator makes a determination of responsible or not responsible based on the preponderance of the evidence that there has been a violation of this policy and/or regulation.
1. If appropriate, the District's Title IX Officer may seek to resolve certain sexual misconduct cases through an informal process involving both the complainant and respondent, subject to the complainant's agreement to do so.
 2. A complainant and/or respondent 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 complainant's and/or respondent's input. As a complainant/victim of an incident of sexual misconduct, students may inform the College that they are unwilling to participate further in any investigation and/or disciplinary action against the student(s) who has been accused (respondent). The District has an obligation to investigate to the extent of the information that is available and known. If during the investigation the investigator finds corroborating information, it may be determined that it is necessary to move forward with the student conduct process without the involvement of the complainant or to implement other appropriate remedies. If a complainant does not wish to participate in the student conduct 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 and/or student conduct process.

- D. Step Four-Determination of Findings: Once the Title IX Coordinator, Deputy, or Investigator(s) have concluded their investigation, they will make a determination based on the preponderance of the evidence that the respondent is responsible or not responsible for the alleged violation of sexual misconduct.
1. 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 this policy or regulation, the respondent will be found responsible for the violation. Both the complainant and the respondent will be informed of the outcome and the investigatory report will be forwarded to the College Discipline Officer for applicable sanctions. The Title IX Coordinator, the Deputy, or Investigator(s) may make a recommendation to the College Discipline Officer as to the sanctions that should be imposed based on the severity of the violations. Both the complainant and the respondent will be advised of their right to appeal (see Appeal Process).
 2. 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. Both the complainant and the respondent will be informed of the outcome, and advised of their right to appeal (see Appeal Process).

3. The investigation will not consider the romantic or sexual history of either the complainant or the respondent in cases involving allegations of sexual misconduct, except for testimony offered by one or the other about the complainant's and respondent's shared sexual history that the Title IX Investigator(s) deems relevant. The existence of a sexual relationship between the complainant and respondent may not support the inference of consent to alleged sexual misconduct.
 4. The Title IX Investigator(s) will not consider the respondent's prior conduct violations, unless 1) the respondent was previously found to be responsible, and 2) the previous incident was substantially similar to the present allegation(s) and/or 3) the information indicates a pattern of behavior by the respondent.
 5. To minimize victim reticence, to encourage the reporting of sexual misconduct offenses, and to encourage participation in investigations, the use of audio or video recording devices, including, but not limited to cell phones and other devices is discouraged during investigations or appeals.
- E. Step Five-Sanctions: If the College Disciplinary Officer receives an investigation report finding that a respondent is responsible for violating the District Sexual Misconduct Policy, the College Disciplinary Officer will follow the District's Student Code of Conduct, or other applicable Board Policy, to impose sanctions and to notify the respondent of the imposed sanctions and their right to appeal. Once the sanctions have been imposed, the Title IX Coordinator will notify the complainant of the imposed sanctions and their right to appeal. Sanctions issued shall be:
1. Fair and appropriate given the facts of the particular case;
 2. Consistent with the individual College'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.
 5. The relevant factors that are considered, as applicable to the specifics of each type of sexual misconduct, when imposing sanctions are:
 - (a) the specific sexual misconduct at issue (such as penetration, touching, unauthorized recording, etc.);

- (b) the circumstances accompanying the lack of consent (such as force, threat, coercion, incapacitation, etc.);
 - (c) the respondent's state of mind (intentional, knowing, bias-motivated, reckless, etc.);
 - (d) the impact of the offense on the complainant;
 - (e) the respondent's disciplinary history;
 - (f) the safety of the District community; and
 - (g) the respondent's conduct during the disciplinary process.
- F. Step Six-Appeals of the Investigation Process of Imposed Sanctions: Both the respondent and the complainant have the right to submit an appeal for review of the investigation process and/or the imposed Sanctions (refer to Appeal Process). Appeals must be submitted in writing to the Title IX Coordinator or the College Disciplinary Officer within 7 days of the notice of findings. If one party chooses to file an appeal, the other parties will be notified at that time and allowed to appeal simultaneously.
- G. Step Seven-Ongoing Accommodations for Complainants: Whatever the outcome of the informal resolution or investigation, a complainant may request ongoing or additional accommodations. In consultation with other campus departments, a determination will be made on whether such measures are appropriate. Potential ongoing accommodations include:
1. Providing an escort by Public Safety;
 2. Changing the complainant's academic schedule;
 3. Adjusting the complainant's on campus job work schedule;
 4. Allowing the complainant to withdraw from or retake a class without penalty;
 5. Providing access to tutoring or other academic support, such as extra time to complete or re-take a class.

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:

6. Revision of the District's policies and regulations regarding sexual misconduct;
7. Additional training and education materials for students, faculty, and staff;
8. Increased monitoring, supervision, or security at locations or events where the sexual misconduct occurred;
9. Ensuring relevant climate surveys that focus on safety, security, and inclusion are gathered to improve on developing a culture that is intolerant of sexual misconduct.

5020.9 Appeal Process

Within 7 days of the notice of the findings either the complainant or the respondent or both may appeal the determination of findings and/or sanctions. The request for an appeal must be submitted to the Title IX Coordinator or College Disciplinary Officer within 7 days of receipt of Notice of Findings. The parties are entitled to only one appeal of findings or sanctions arising from a single investigation of a complaint or series of related complaints. Both parties will be notified if an appeal is requested and both parties will be provided the opportunity to appeal at the same time.

Disagreeing with the finding or the sanction is not, by itself, grounds for appeals. Students are allowed one appeal. The decision made after review of an appeal is final.

A. Specific Grounds for Appeal

1. A substantive procedural error or omission occurred, which materially and significantly affected the weighing of evidence by the Title IX Coordinator (or designee), Title IX Deputy, or the Title IX Investigators which substantively affected the outcome of the investigation (i.e., substantiated bias, material deviation from established procedures, etc.).
2. To consider new evidence, unavailable or not considered during the original hearing or investigation, that could subsequently impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
3. Excessive or insufficient sanctions in relation to the violation(s) the respondent was found responsible for committing.

4. Evidence of unlawful discrimination by an Investigator, Title IX Coordinator, or the College Disciplinary Officer towards a party.
- B. Appeal Process: The written appeal will be reviewed by the Vice President, Student Support Services within 10 days of receipt of the request for appeal. If the request for appeal includes a potential need to hear from witnesses, the Vice President, Student Support Services may convene an appeal hearing. The appeal committee will consist of the Vice President of Student Support Services, the Vice President of Human Resources, and an additional administrative designee. If an appeal hearing is determined to be needed, the appeal hearing will be scheduled within 20 days of the receipt of the request for appeal and the Vice President, Student Support Services will make a determination within 7 days after the completion of the appeal hearing.

The appeal hearing is closed to all persons except the:

1. Appeal Committee;
 2. College Disciplinary Officer;
 3. Complainant;
 4. Respondent;
 5. Advisors: an attorney or other professional expert, or consultant, retained by the District, respondent, or complainant;
 6. Witness(es) while testifying;
 7. A court-certified interpreter; and
 8. Any person requested by the Vice President, Student Support Services to assist the Appeal Committee. In some cases, a Campus Safety Officer may be present to ensure safety and security during the hearing. Likewise, the Title IX Coordinator, or designee, may be present to ensure a fundamentally fair process and compliance. In cases where the student is a dependent minor, the student's parent or legal guardian must be present at the hearing.
- C. Hearing Procedures for Appeals
1. The Vice President, Student Support Services will call the appeal hearing to order, explain the procedures of the hearing, and have all parties introduce themselves.

2. The Vice President, Student Support Services will define the expectations of behavior during the hearing to maintain the orderly progress of the hearing, make certain that all parties respect the right of others to make statements, and to ensure confidentiality.
3. The College Disciplinary Officer (when applicable), Title IX Coordinator or his/her designee, the District's Human Resources Representative (when applicable) and any of his/her witness(es), shall have up to 30 minutes in total to present relevant evidence conducted by the investigator and witnesses (if applicable) to support the determination of a sanction by the College Disciplinary Officer or the investigation process.
4. The Respondent may question any witnesses presented by the College Disciplinary Officer, Title IX Coordinator or his/her designee, or the District's Human Resources Representative. Members of the Appeal Committee may also question any witness(es) presented by the College Disciplinary Officer. Questioning of the student by the committee shall not be considered part of the time allotted for presentation of the College Disciplinary Officer's evidence. It is within the discretion of the Vice President, Student Support Services to impose a timeline on questioning.
5. The requester of the appeal (complainant or respondent), and if applicable his/her witness(es), shall have up to 30 minutes in total, if necessary, to present relevant evidence bearing on the accusation. The College Disciplinary Officer may question any witnesses represented by the student. Members of the Appeal Committee may also question witnesses. Questioning by any member of the Appeal Committee shall not be considered part of the time allotted for presentation of the student's evidence.
6. The College Disciplinary Officer, Title IX Coordinator or his/her designee, and/or the District's Human Resources Representative may make a closing statement to the Appeal Committee. The closing statements shall be limited to a maximum of 5 minutes each. The Vice President, Student Support Services shall have the authority to extend the time limits, but must ensure equal time.

5020.10 Complainant and Respondent Rights

- A. Parties' Rights: Students are entitled to a fundamentally fair process, including reasonable notice of allegations of violations of sexual misconduct, the opportunity for the person to be heard and to afford the person the opportunity to present evidence prior to the administrative

determination of the alleged violations, except when immediate interim suspensions or restrictions are deemed necessary pending an investigation and determination of the matter. All sanctions set forth within *AR 5012: Student Conduct* are applicable to parties found responsible for sexual misconduct. Throughout this process, both the complainant and respondent have the following rights:

1. To be treated with respect by District officials;
2. To take advantage of campus support resources, such as mental health services, Health Services, etc. to help remedy and restore;
3. To experience a safe education and work environment;
4. To have an advisor during an adjudication process;
5. To be free of retaliation;
6. To have complaints heard in accordance with policy and regulations;
7. To fully participate in any process whether the injured party is serving as the complainant, or where the institution is serving as complainant;
8. To be informed in writing of the progress of the investigation.
9. To be notified concurrently, and in writing, of the outcome/resolution of the complaint, of any sanctions imposed, and the basis for the determination, and the right of appeal (when applicable).

- B. 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 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. California Education Code Section 76200 et seq. also provides additional guidance concerning the privacy of student records.

Parents or eligible students have the right to inspect and review the student's education records maintained by the College. Colleges are 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. The District may charge a fee for copies.

- C. Special Requests/Accommodations: Any party may have an interpreter attend the investigation meeting or Appeal Hearing. An interpreter accompanying a student must provide evidence of his/her certification as a certified interpreter to the Investigator and/or College Disciplinary Officer at least 5 days prior to the interview 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 Investigator and/or College Disciplinary Officer at least 5 days prior to the commencement of the hearing.
- D. Advisors: Sexual Misconduct proceedings are not formal court hearings, but instead are administrative actions imposed by the District. Although District-related sanctions may be imposed, the process is intended to provide an opportunity for learning. Both the complainant and the respondent may elect to be accompanied by an Advisor, including a collective bargaining representative, as permitted by existing bargaining agreements, to any meeting(s) or interview(s). 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 investigation and hearing processes on the student's/complainant's behalf. The Advisor should also maintain confidentiality.
- E. Victim Advocates: Information about victim advocate resources will be made available to assist victims of crime, sexual assault, and domestic violence.
- F. Legal Counsel: An attorney duly licensed to practice in the State of California may accompany a party to any interview or appeal. The attorney shall not make any statements or presentations at the interview or appeal, examine or cross-examine any witnesses, or present evidence or any written material to the investigator(s) or Appeal Committee. An attorney may not in any way disrupt or interfere with the hearing process. Any violation of this section shall result in the immediate removal of the attorney. An attorney shall provide the College Disciplinary Officer with a retention letter confirming that he/she has been retained by the student at least 5 days before the hearing so that the necessary arrangements can be made for an attorney for the District

to be present at the hearing. The attorney's retention letter shall include the attorney's State Bar number and telephone number.

5020.11 Education and Training Programs

- A. Prevention and Education: The District is committed to educating the District Community of the impact that sexual misconduct has on an individual and the District Community. Therefore, the District will:
1. Provide campus-wide awareness programs and initiatives (fall and spring) on sexual misconduct, bystander intervention, and affirmative consent.
 2. Provide online tools on sexual misconduct, bystander intervention, and affirmative consent for all new students entering our college campus.
 3. Communicate effectively with faculty, staff, and students regarding sexual misconduct policies, protocols, and any federal/state legislation changes through an interactive campus website.
 4. In collaboration with the Office of Institutional Effectiveness, collect, assess, and devise campus-wide strategies to improve campus climate among faculty, staff, and students relating to sexual misconduct.
 5. Develop sustainable partnerships with outside agencies to promote awareness and increase services for faculty, staff, and students, and/or provide victim advocacy to students impacted by gender-based discrimination and any other forms of sexual misconduct.
 6. Provide Title IX Investigator and Appeal Committee training for staff participating in sexual misconduct adjudication processes.
 7. In collaboration with District Human Resources, provide gender-based discrimination and other forms of sexual misconduct awareness and reporting training for all District employees.
- B. Title IX Coordinator Responsibilities: The Title IX Coordinator will be responsible for the following:
1. Providing information to students during orientations regarding the District's Sexual Misconduct Policies and Regulations;

2. Updating information on the college website;
3. Providing updates for the college catalog;
4. Publishing brochures and other related publications regarding the District's Sexual Misconduct Policy and Regulations;
5. Scheduling campus events to promote awareness and safety (including information about by-standers);
6. Conducting a bi-annual climate survey;
7. Ensuring that Deputy Investigators and Title IX Coordinators are properly trained in Title IX Regulations and understand how to conduct investigations of sexual misconduct;
8. Conducting an annual evaluation and report to the Superintendent-President as follows:
 - (a) Verification that the District's Sexual Misconduct Policy and Regulations are accurately published on the college website and college catalog;
 - (b) Verification that the name, title, and contact information for the campus Title IX Coordinator are published on the college website, catalog, and other related materials;
 - (c) A report of the various trainings provided during the academic year;
 - (d) A report on the awareness events provided to students, faculty, and staff;
 - (e) A list of the District's trained Deputy Investigators;
 - (f) The number of Title IX cases reported during the academic year.

Adopted: October 18, 2016