

Chapter 3 – General Institution

AP 3434 Responding to Harassment Based on Sex Under Title IX

References:

20 U.S. Code Sections 1681, et seq.; 34 Code of Federal Regulations Parts 106.1 et seq; California Penal Code 261.5; and California Education Code 67386

Introduction

Regulations implementing Title IX of the Education Amendments of 1972 (Title IX) specify how colleges must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination.¹ The regulations require colleges to respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair Title IX grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims.² The following hearing procedures have been adopted by Mt. San Antonio College in compliance with the aforementioned Title IX regulations. The College's intention for these procedures is to comply with the Title IX regulations that came into effect in August 2020. In the case of any future conflicts between the Title IX regulations and these procedures, the most current Title IX regulations will supersede these procedures and be applied.

The College encourages members of the College community to report sexual harassment. These Title IX grievance procedures only apply to conduct defined as sexual harassment under Title IX and applicable federal regulations and that meet Title IX jurisdictional requirements.³ The College will respond to sexual harassment and sexual misconduct that falls outside that definition and outside the jurisdiction of the Title IX federal regulations using California law and applicable College policies and procedures.⁴ In implementing these procedures discussed below, the College will also provide supportive measures, training and resources in compliance with California law, unless they are preempted by the Title IX regulations.⁵

Title IX Coordinator

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The Title IX Coordinator is required to respond to reports of sexual harassment or misconduct.⁶ The Title IX Coordinator will handle information received with the utmost discretion and will

¹ 34 CFR 106 - (Pg. 30026)

² 34 CFR 106 - (Pg. 30026)

³ 34 CFR 106.44(a) - (Pg. 30574)

⁴ 34 CFR 106.45(b)(3)(i) - (Pg. 30576); see also (Pg. 30288)

⁵ 34 CFR 106.6(h) - (pg. 30573)

⁶ 34 CFR 106.8(a) - (pg. 30573)

share information with others on a need-to-know basis. For example, the Title IX Coordinator may need to address public safety concerns on campus, comply with state and federal legal requirements, or share information to implement supportive measures.⁷

A report of sexual harassment to the Title IX Coordinator does not necessarily lead to a full investigation.⁸ The Complainant must choose to file a formal complaint as defined below to initiate an investigation under these procedures.⁹ However, the Coordinator will make an assessment to determine if there is a safety risk to the campus. If the Title IX Coordinator finds there is a continued risk, the Title IX Coordinator will file the formal complaint without the Complainant's consent or cooperation.¹⁰

Title IX Harassment Complaints, Investigations, and Hearings

These Title IX sexual harassment procedures protect current students, current employees, applicants for employment, and applicants for admission.¹¹

Jurisdictional Requirements – Application of Procedures

These procedures apply if the conduct meets the following three jurisdictional requirements¹²:

- The conduct took place in the United States;
- The conduct took place in a College “education program or activity.” This includes locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the harassment occurred, including on-campus and off-campus property and buildings the College owns or controls or student organizations officially recognized by the College own or control; and
- The conduct meets the definition of Title IX “sexual harassment.”

Definitions

Complainant: A Complainant is an individual who alleges they are the victim of conduct that could constitute sexual harassment.¹³

Consent: Consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. Both parties must give affirmative consent to sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not indicate consent. Affirmative consent must be ongoing throughout a sexual activity and one can revoke consent at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, is not an

⁷ 34 CFR 106.30(a) – (pg. 30574) (see also, pgs. 30285, 30403, 30297)

⁸ 34 CFR 106.44(a) – (pg. 30574) (see also, pg. 30127)

⁹ 34 CFR 106.30(a) – (pg. 30574) (see also, pg. 30129)

¹⁰ 34 CFR 106.30(a) – (pg. 30574) (see also, pg. 30127)

¹¹ 34 CFR 106.8(b) – (pg. 30573)

¹² 34 CFR 106.45(3)(i) – (pg. 30576)

¹³ 34 CFR 106.30(a) – (pg. 30574)

indicator of consent. Adult sexual activity with a minor is never consensual because a minor is considered incapable of giving legal consent due to age.¹⁴

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable, based on the facts and circumstances the Respondent knew, or reasonably should have known, at the time of the incident.

A Respondent's belief is not a valid defense where:

- The Respondent's belief arose from the Respondent's own intoxication or recklessness;
- The Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented; or
- The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
 - asleep or unconscious;
 - unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
 - unable to communicate due to a mental or physical condition.

Formal Complaint: A written complaint signed by the Complainant or Title IX Coordinator, alleging sexual harassment and requesting an investigation.¹⁵

Respondent: A Respondent is an individual reported to be the perpetrator of conduct that could constitute sexual harassment.¹⁶

Sexual Harassment under Title IX: Conduct that satisfies one or more of the following¹⁷:

- A College employee conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct (*quid pro quo* harassment);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity;
- Sexual assault¹⁸, including the following:

¹⁴ 34 CFR 106.30(a) – (pg. 30574) (see also pg. 30124); California Education Code § 67386 (A)(1); California Penal Code 261.5

¹⁵ 34 CFR 106.30(a) – (pg. 30574)

¹⁶ 34 CFR 106.30(a) – (pg. 30574)

¹⁷ 34 CFR 106.30(a) – (pg. 30574)

¹⁸ 34 CFR 106.30(a) – (pg. 30574); 20 U.S.C. 1092(f)(6)(A)(v)

- Sex Offenses: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
- Rape (except Statutory Rape): The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the genital or anal opening of the body of another person.
- Sodomy: Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
- Sexual Assault with an Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything the offender uses other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.
- Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
- Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse:
 - Incest. Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape – Non-Forcible. Sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
- Dating violence¹⁹: Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- Domestic Violence: Violence committed:
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;

¹⁹ 34 CFR 106.30(a) – (pg. 30574); 34 U.S.C. 12291(a)(10)

- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; or
- By any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws of California.
- Stalking²⁰: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

Reporting

Any individual may report sexual harassment to the College's Title IX Coordinator through any of these options²¹:

Online:

<http://www.mtsac.edu/hr/titleix>

Phone:

(909) 274-5249

Email:

eeo.titleix@mtsac.edu

Mail or in person:

1100 N. Grand Avenue

Building 4, Human Resources

Walnut, CA 91789

The College strongly encourages prompt reporting of sexual harassment. Prompt reporting allows for the collection and preservation of evidence, including physical evidence, digital media, and witness statements. A delay may limit the College's ability to effectively respond.

Individuals have the opportunity to decide whether they want to pursue a formal Title IX complaint. Reporting prohibited conduct to the Title IX Coordinator does not automatically initiate an investigation under these procedures. A report allows the College to provide a wide variety of support and resources to impacted individuals and to prevent the reoccurrence of the conduct. A Complainant or the Title IX Coordinator filing a formal complaint will initiate an investigation.²²

If there are parallel criminal and Title IX investigations, the College will cooperate with the external law enforcement agency, and will coordinate to ensure that the Title IX process does not hinder the legal process or proceedings.²³

²⁰ 34 CFR 106.30(a) – (pg. 30574); 34 U.S.C. 12291(a)(30)

²¹ 34 CFR 106.8(a) – (pg. 30573); 34 CFR 106.30(a) – (pg. 30574)

²² 34 CFR 106.44(a) – (pg. 30574) (see also, pg. 30127)

²³ 34 CFR 106 - (Pg. 30271)

The College will document reports of prohibited conduct in compliance with the Clery Act, a federal law requiring data collection of crime within the campus geography. Under the Clery Act, the College does not document personal information; the College reports the type of conduct, and the time, date, and location.²⁴

College Employees and Officials with Authority

All College employees, except employees who do not have a duty to report under AP 3540, are required to report allegations of sexual harassment to the Title IX Coordinator promptly. Reports of sexual harassment must include the following information: the name of the Respondent, the Complainant, any other witnesses, and the date, time, and location of the alleged incident, if known.

The College has designated the following employees as officials with authority to institute corrective measures²⁵:

1. Educational Administrators,
2. Classified Managers,
3. Department Chairpersons,
4. Police and Campus Safety employees,
5. Lead employees,
6. Advisors and coaches to student organizations, athletic teams, and/or clubs, and
7. Any employee traveling with students for educational or extracurricular purposes.

Officials with authority shall to consult with the Title IX Coordinator prior, or as soon as practically possible, to instituting corrective measures to address sexual harassment.

Intake and Processing of Report

Receipt of Report

After receiving a report of prohibited conduct, the Title IX Coordinator or designee shall contact the Complainant and reporting party to explain rights under this policy and procedure and invite the Complainant to an in-person meeting. The Title IX Coordinator or designee will discuss supportive measures with the parties.²⁶

Timeframe for Reporting

The College does not limit the timeframe for reporting prohibited conduct.²⁷ However, to promote timely and effective review, the College strongly encourages individuals to report prohibited conduct as soon possible as a delay in reporting may affect the ability to collect relevant evidence.

²⁴ 34 CFR 106 - (Pg. 30511)

²⁵ 34 CFR 106.30(a) – (pg. 30574)

²⁶ 34 CFR 106.44(a) – (pg. 30574)

²⁷ 34 CFR 106 - (Pg. 30086)

Supportive Measures

The College will provide the Complainant and Respondent with supportive measures as appropriate and as reasonably available to restore or preserve equal access to the College's education program or activity, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment. Supportive measures are non-disciplinary, non-punitive, individualized services offered free of charge to the Complainant or the Respondent regardless of whether a formal complaint has been filed. The College will provide supportive measures on a confidential basis and will only make disclosures to those with a need to know to enable the College to provide the service. Supportive measures may include, but are not limited to: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.²⁸

Removal of Respondent Pending Final Determination

Upon receiving a report regarding prohibited conduct, Police and Campus Safety management will make an immediate assessment concerning the health and safety of the Complainant and campus community as a whole. The College has the right to order emergency removal of a Respondent, or if the Respondent is an employee, place the employee on administrative leave.²⁹

Emergency Removal

The College may remove a non-employee Respondent from the College's education program or activity on an emergency basis after it conducts an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.³⁰

Emergency removal is not appropriate to address a Respondent's threat of obstructing the sexual harassment investigation or destroying relevant evidence. Emergency removal is only available to address health or safety risks against individuals arising out of sexual harassment allegations, not to address other forms of misconduct that a Respondent might commit pending the processing of a complaint.³¹ The College reserves the right to use other emergency removal procedures to the extent the procedures are not preempted by Title IX procedures.

The College's Police and Campus Safety management will conduct the individualized safety and risk analysis.

The Title IX Coordinator or designee shall then provide the person sought to be removed from campus on an emergency basis with a notice, opportunity to meet in person or via electronic platform at the College's discretion, within 10 business days, and challenge the basis of their removal.³² The Title IX Coordinator, or designee, will determine whether the emergency

²⁸ 34 CFR 106.30(a) – (pg. 30574)

²⁹ 34 CFR 106.44(c) – (pg. 30575)

³⁰ 34 CFR 106.44(c) – (pg. 30575)

³¹ 34 CFR 106.44(c) – (pg. 30575)

³² 34 CFR 106.44(c) – (pg. 30575)

removal from campus order is warranted, after considering information provided by both the College, and the Respondent challenging the emergency removal.

Administrative Leave

The College may place a non-student employee Respondent on administrative leave during the pendency of a Title IX grievance process described in the formal complaint process below. The College shall follow any relevant policies, procedures, collective bargaining agreements, or state law in placing an employee on administrative leave.³³

Formal Complaint

Notice to Parties

Upon receipt of a formal complaint, the Title IX Coordinator shall provide the following written notice to the known parties³⁴:

- Notice of the College's Title IX grievance process;
- Notice of the sexual harassment allegations with sufficient detail to prepare a response before any initial interview:
 - Sufficient details include the identities of the parties involved in the incident, if known;
 - The conduct allegedly constituting sexual harassment; and
 - The date and location of the alleged incident, if known;
- Statement that the Respondent is presumed not responsible for the alleged conduct;
- Statement that the determination of responsibility will not be made until the conclusion of the Title IX grievance process;
- Notice that the parties have a right to an advisor of their choice, who may be, but is not required to be, an attorney;
- Notice that the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from a party or other source; and
- Notice of the any provision in the College's Board Policies and Administrative Procedures that prohibits knowingly making false statements or knowingly submitting false information during the Title IX grievance process.

³³ 34 CFR 106.44(d) – (pg. 30575)

³⁴ 34 CFR 106.45(b)(2)(i)(B) – (pg. 30576)

If in the course of an investigation the College determines it must amend the scope of the investigation, the Title IX Coordinator shall provide notice of the additional allegations to the parties.³⁵

Dismissal of Formal Complaint

The College must investigate the allegations in a formal complaint. However, the College must dismiss the formal complaint and will not process the complaint under these procedures if any of the following three circumstances exist³⁶:

- If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in this procedure;
- If the conduct alleged did not occur in the College's education program or activity; or
- If the conduct alleged did not occur against a person in the United States.

The College has discretion to dismiss a formal complaint or any allegation under the following circumstances³⁷:

- If at any time during the investigation or hearing: a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations;
- If the Respondent is no longer enrolled or employed by the College; or
- If there are specific circumstances that prevent the College from gathering evidence sufficient to reach a determination regarding responsibility as to the formal complaint or allegations.

If the College dismissed the formal complaint or any allegations, the Title IX Coordinator shall simultaneously provide the parties with written notice of the dismissal and reason(s). The College will also provide the parties with their right to appeal.³⁸

The College may commence proceedings under other Board Policies and Administrative Procedures after dismissing a formal complaint.³⁹

Consolidation of Formal Complaints

The College may, but is not required to, consolidate formal complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant, against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.⁴⁰

³⁵ 34 CFR 106.45(b)(2)(ii) – (pg. 30576)

³⁶ 34 CFR 106.45(b)(3)(i) – (pg. 30576)

³⁷ 34 CFR 106.45(b)(3)(ii) – (pg. 30576)

³⁸ 34 CFR 106.45(b)(3)(iii) – (pg. 30576)

³⁹ 34 CFR 106.45(b)(3)(i) – (pg. 30576)

⁴⁰ 34 CFR 106.45(b)(4) – (pg. 30576)

Equitable Treatment of the Parties

The College's determination of responsibility is a neutral, fact-finding process. The College will treat Complainants and Respondents equitably such that the procedures will apply equally to both parties.⁴¹ The College will not discipline a Respondent for sexual harassment until it reaches a determination of responsibility for sexual harassment against the Respondent at the conclusion of the Title IX grievance process.⁴²

Bias or Conflict of Interest

The College's Title IX Coordinator, investigator(s), decision-maker(s), or any person designated by the College to facilitate an informal resolution process, shall not have actual bias or conflict of interest in the investigatory, hearing, sanctioning, or appeal process or bias for or against Complainants or Respondents generally.⁴³ Actual bias is an articulated prejudice in favor of or against one party or position; it is not generalized concern about the personal or professional backgrounds, positions, beliefs, or interests of the Title IX Coordinator, investigator(s), decision maker(s) or individuals facilitating an informal resolution process.

Timeline for Completion

The College will undertake its Title IX grievance process promptly and swiftly as possible.⁴⁴ To that end, the College shall complete the investigation and its determination regarding responsibility within 180 calendar days.

In some cases, the Title IX Coordinator may determine that good cause exists to extend the 180 calendar day period to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the availability of witnesses or delays by the parties, to account for College breaks or vacations, or due to the complexity of the investigation.⁴⁵

A party may request an extension from the Title IX Coordinator in writing by explaining the reason for the delay and the length of the continuance requested. The Title IX Coordinator will notify the parties and document the grant or denial of a request for extension or delay as part of the case recordkeeping.

Role of Advisor

Both the Complainant and Respondent have a right to an advisor of their choice.⁴⁶

The advisor may not obstruct an interview or disrupt the process. A party does not have a right to self-representation at the hearing; all cross-examination must be conducted by an advisor.⁴⁷

⁴¹ 34 CFR 106.45(b)(1)(i) – (pg. 30575)

⁴² 34 CFR 106.45(b)(1)(iv) – (pg. 30575)

⁴³ 34 CFR 106.45(b)(1)(iii) – (pg. 30575)

⁴⁴ 34 CFR 106.45(b)(1)(v) – (pg. 30575)

⁴⁵ 34 CFR 106.45(b)(1)(v) – (pg. 30575)

⁴⁶ 34 CFR 106.45(b)(5)(iv) – (pg. 30576)

⁴⁷ 34 CFR 106.45(b)(6)(i) – (pg. 30577)

The College must provide an advisor of the College's choice free of charge to any party without an advisor in order to conduct cross-examination. If a party or their advisor fails to appear at the hearing, the College will provide an advisor to appear on behalf of the non-appearing party or advisor.⁴⁸

The College has the right to establish rules of decorum for advisors and to take reasonable steps to ensure compliance with these procedures.⁴⁹

Confidentiality Agreements

To protect the privacy of those involved, the parties and advisors are required to sign a confidentiality agreement prior to attending an interview or otherwise participating in the College's Title IX grievance process, that restricts dissemination of any of the evidence subject to inspection and review or use of such evidence for any purpose unrelated to the Title IX grievance process.⁵⁰ The confidentiality agreement will not in any way restrict the ability of either party to discuss the allegations under investigation.⁵¹

Use of Privileged Information

The College's Title IX grievance procedure does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek, disclosure of information protected under a legally recognized privilege (e.g., attorney-client privilege, doctor-patient privilege, spousal privilege), unless the person holding such privilege provides voluntary, written consent to waive the privilege.

Investigations

The Title IX Coordinator is responsible for overseeing investigations to ensure timely resolution and compliance with Title IX and these procedures.⁵²

Trained Investigators

The College will fairly and objectively investigate Title IX formal complaints.⁵³ Individuals designated to serve as investigators under this procedure shall have adequate training on what constitutes sexual harassment and understanding of how the College's Title IX grievance procedures operate. The College will also provide investigators training on issues of relevance to create an investigative report that fairly summarizes relevant evidence and complies with this procedure.⁵⁴

⁴⁸ 34 CFR 106.45(b)(6)(i) – (pg. 30577)

⁴⁹ 34 CFR 106.45(b)(5)(iv) – (pg. 30576)

⁵⁰ 34 CFR 106 (pg. 30298)

⁵¹ 34 CFR 106.45(b)(5)(iii) – (pg. 30576)

⁵² 34 CFR 106.45(b)(1)(x) – (pg. 30576)

⁵³ 34 CFR 106.45(b)(1)(ii) – (pg. 30575)

⁵⁴ 34 CFR 106.45(b)(1)(iii) – (pg. 30575)

Burden of Gathering Evidence

The College, not the parties, has the responsibility to gather information and interview witnesses.⁵⁵ As part of the College's burden of gathering evidence, the College's the investigator will create an investigative report that fairly summarizes relevant evidence, whether it is inculpatory or exculpatory.⁵⁶ The investigator shall not make findings or determinations of responsibility or fact.⁵⁷

Notice of Investigative Interview

The College shall provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all investigative interviews with sufficient time for the party to prepare to participate.⁵⁸

Evidence Review

Both parties have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.⁵⁹

Prior to the investigator preparing an investigative report, the College shall send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The parties shall have at least ten (10) business days to submit a written response, which the investigator shall consider prior to completion of the investigative report.⁶⁰

Investigative Report

The results of the investigation of a formal complaint shall be set forth in a written report that will include at least all of the following information:

- A summary of the allegations;
- A summary of the procedural steps taken during the investigation, including individuals contacted; and
- A summary of relevant evidence, including witness statements, gathered during the course of the investigation.

The investigator may redact information that is not directly related to the allegations or that is privileged.⁶¹ However, the investigator will keep a log of information that is not produced to the

⁵⁵ 34 CFR 106.45(b)(5)(i) – (pg. 30575)

⁵⁶ 34 CFR 106.45(b)(5)(vii) – (pg. 30576)

⁵⁷ 34 CFR 106.45(b)(1)(iv) – (pg. 30575)

⁵⁸ 34 CFR 106.45(b)(5)(v) – (pg. 30576)

⁵⁹ 34 CFR 106.45(b)(5)(vi) – (pg. 30576)

⁶⁰ 34 CFR 106.45(b)(5)(vi) – (pg. 30576)

⁶¹ 34 CFR 106 – (pg. 30304)

parties. The log will be provided only to the Title IX Coordinator and will not be disclosed to the parties pending the Title IX grievance process.

At least ten (10) business days prior to a hearing or other time of determination regarding responsibility, the College shall send to the parties and their advisors the investigative report in an electronic format or a hard copy for their review and written response. The parties shall have at least ten (10) business days to submit a written response.⁶²

Hearing

After completing an investigation and prior to completing a determination regarding responsibility, the College will hold a live hearing. Neither party may choose to waive the right to a live hearing, but the parties can choose whether to participate in the hearing or answer some or all cross-examination questions.⁶³

Notice of Hearing

If the College proceeds to a hearing, the College will provide each party with written notice of the date, time, location, participants, and purpose of the hearing with ten (10) business days for the party to prepare to participate.

Hearing Format

The College may provide a live hearing with all parties physically present in the same geographic location or, at the College's discretion or at the request of either party, the College may provide any or all parties, witnesses, and other participants the ability to appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other in real time.⁶⁴

The College shall make available the information reviewed during the Evidence Review for reference and consultation at the live hearing. The College shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.⁶⁵

The College will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.⁶⁶

The hearings shall be closed to the public and confidential.⁶⁷ Witnesses, except for the parties, shall be present during the live hearing only when testifying. All witnesses must testify under oath as administered by the Hearing Officer.

The parties shall have the right to be assisted by a translator or qualified interpreter to ensure their full participation in the proceedings. Any notification of bringing an interpreter shall be made in writing to the Hearing Officer no later than three (3) business days before the hearing.

⁶² 34 CFR 106.45(b)(5)(vii) – (pg. 30576)

⁶³ 34 CFR 106.45(b)(6)(i) – (pg. 30577)

⁶⁴ 34 CFR 106.45(b)(6)(i) – (pg. 30577)

⁶⁵ 34 CFR 106.45(b)(6)(i) – (pg. 30577)

⁶⁶ 34 CFR 106.45(b)(6)(i) – (pg. 30577)

⁶⁷ 34 CFR 106.45(b)(6)(i) – (pg. 30577)

Decision-Makers' Panel

Hearing Officer

The Hearing Officer shall be one of three (3) members of the Decision-Makers' panel. The Hearing Officer shall serve as the chairperson and a voting member of the of the Decision-Makers' panel. The Hearing Officer will be responsible for assuring that the hearing process is carried out in accordance with these procedures.

Decision-Makers

The Title IX Coordinator shall maintain a pool of fifteen (15) Decision-Makers to serve on the panel. The Vice Presidents in Instruction, Student Services, and Administrative Services shall submit a list of five (5) managers by June 30 each year to serve in the pool as Decision-Makers during the academic calendar year beginning in the Fall semester through the Summer session of the following academic year as needed. The Decision-Makers will be trained on impartial service, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing.⁶⁸

The Title IX Coordinator will assign a panel of three (3) Decision-Makers without actual bias and conflicts of interest from the pool based on availability for the hearing. The Title IX Coordinator will verify that no decision maker has been found responsible for violating the College's policies against harassment, discrimination, sexual misconduct, dating violence, domestic violence, or stalking. Any administrator or manager with a record of such violation(s) will be considered ineligible to serve as a Decision-Maker.

The Decision-Makers will be free from conflict of interest or bias, including bias for or against Complainants or Respondents.⁶⁹ In cases where the Complainant or Respondent object as to the Decision-Makers asserting a conflict of interest, the Complainant or Respondent may request that the Title IX Coordinator select a different Decision-Maker. Such a request must be received by the Title IX Coordinator in writing at least five (5) business days prior to the hearing.

The Decision-Makers may ask the parties and the witnesses questions during the hearing. The Decision-Makers must objectively evaluate all relevant evidence both inculpatory and exculpatory and must independently reach a determination regarding responsibility without giving deference to the investigative report.⁷⁰

Continuation of the Hearing

The Hearing Officer may continue the hearing for good cause shown by one of the parties. The parties must request the continuance in writing, and the parties will receive notice of any continuance granted in writing.⁷¹

⁶⁸ 34 CFR 106.45(b)(1)(iii) – (pg. 30575)

⁶⁹ 34 CFR 106.45(b)(1)(iii) – (pg. 30575)

⁷⁰ 34 CFR 106 – (pg. 30314)

⁷¹ 34 CFR 106.45(b)(1)(v) – (pg. 30575)

Order of the Hearing Proceedings

The Hearing Officer, at their discretion, may modify this chronology in the interests of conducting an efficient and expedient hearing, unless such modification prevents due process from being afforded to all parties to the hearing:

1. The Hearing Officer will introduce the allegations, relevant policies, and will ask the parties and advisors to identify themselves.
2. The parties' advisors may make an opening statement. If the Complainant's advisor and Respondent's advisor both wish to make an opening statement, the Complainant's advisor will proceed first.
3. The investigator shall provide a summary of the investigative report and responds to questions from the decision makers and the parties' advisors.
4. Complainant is called to present relevant evidence, testify, respond to questions from the decision makers, and questions from their own advisor.
 - a. Complainant is cross examined by Respondent's advisor.
5. Witnesses are called to testify in the order determined by the Hearing Officer and respond to questions from the decision makers.
 - a. Complainant and Respondent's advisors cross-examine each witness. The Hearing Officer determines whether Complainant's advisor or Respondent's advisor will proceed to cross examine first for each witness.
6. Respondent is called to present relevant evidence, testify, respond to questions from the decision makers, and questions from their own advisor.
 - a. Respondent is cross-examined by Complainant's advisor.
7. Each parties' advisor may make a closing statement. The Complainant's advisor proceeds first. The Respondent's advisor proceeds to make a closing statement and rebuttal after the Complainant's advisor's closing statement. The Complainant's advisor may conclude the closing statements with a rebuttal.

Evidence

1. Witness testimony must only be taken only under oath. The oath or affirmation may be administered by the Hearing Officer.
2. Presenting Witnesses and Evidence
 - The College will provide the Complainant and Respondent an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.⁷²

⁷² 34 CFR 106.45(b)(5)(ii) – (pg. 30576)

- Parties shall have ten (10) business days prior to the hearing to review the investigation report.⁷³ Parties may identify lists of witnesses and evidence from the investigation report that they would like the decision makers to consider during the hearing.⁷⁴ The parties must submit witness lists and evidence lists to the Title IX Coordinator or designee no later than five (5) business days prior to the hearing. The Title IX Coordinator, or designee, shall distribute these documents to the decision makers and other party prior to the hearing.
 - The decision makers may call witnesses and accept or reject evidence for consideration independent of the Complainant and Respondent.⁷⁵
 - The Title IX Coordinator, or designee, shall invite the identified witnesses' presence at the hearing. However, witnesses, like parties, are not required to participate in the live hearing process.⁷⁶
3. The hearing need not be conducted according to the formal rules of evidence.⁷⁷
 4. Only relevant evidence will be admissible during the hearing. Relevant evidence means evidence, including evidence relevant to the credibility of a party or witness, having any tendency in reason to prove or disprove any disputed fact material to the allegations under investigation.⁷⁸
 5. The College shall permit each party's advisor to ask the other party and any witness relevant questions, including questions challenging credibility. Cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party.⁷⁹
 - If a party or witness does not submit to cross-examination at the live hearing, the Decision-Makers shall not rely on any statement of that party or witness in reaching a determination regarding responsibility.⁸⁰
 - Before a Complainant, Respondent, or witness answers an advisor's question, the Hearing Officer will determine whether the question is relevant and explain any decision to exclude a question as not relevant.⁸¹ The Hearing Officer need not provide a lengthy or complicated explanation in support of a relevance determination.⁸²
 - If a party or witness disagrees with a relevance determination, that individual has the choice of either (1) abiding by the Decision-Makers' determination and answering the question or (2) refusing to answer the question and having all their testimony and any statements they made disregarded.⁸³

⁷³ 34 CFR 106.45(b)(5)(vii) – (pg. 30576)

⁷⁴ 34 CFR 106 – (pg. 30331)

⁷⁵ 34 CRR 106 – (pg. 30332)

⁷⁶ 34 CFR 106.71(a) – (pg. 30578)

⁷⁷ 34 CFR 106 – (pg. 30097)

⁷⁸ 34 CFR 106 – (pg. 30337)

⁷⁹ 34 CFR 106.45(b)(6)(i) – (pg. 30577)

⁸⁰ 34 CFR 106.45(b)(6)(i) – (pg. 30577)

⁸¹ 34 CFR 106.45(b)(6)(i) – (pg. 30577)

⁸² 34 CFP 106 – (pg. 30343)

⁸³ 34 CFP 106 – (pg. 30349)

- The Decision-Makers cannot rely on the statements and/or testimony of a party or witness who has refused to answer a question the Decision-Makers had found relevant unless the Decision-Makers reconsiders and changes the ruling before reaching the determination of responsibility. If the Decision-Makers' changes the determination of relevance of an unanswered question, the Decision-Makers must explain the decision to reconsider the ruling in the written determination of responsibility.⁸⁴
 - The Decision-Makers cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to submit to cross-examination or to answer any questions.⁸⁵
6. The Decision-Makers may also ask any party or witness questions. If a party or witness refuses to respond to a Decision-Makers' questions, the Decision-Makers are not precluded from relying on that party or witness's statements.⁸⁶

Determinations of Responsibility

The Decision-Makers shall deliberate after the live hearing has concluded in a closed meeting. The discussion of the Decision-Makers shall be confidential and shall take place outside of the presence of the parties, advisors and witnesses. These deliberations shall not be recorded. The Decision-Makers shall reach a decision of responsibility or non-responsibility by the preponderance of the evidence standard, and will issue a written determination regarding responsibility⁸⁷, no later than ten (10) business days after the date that the hearing ends.

In making a determination regarding responsibility, the Decision-Makers shall objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. The Decision-Makers may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness.⁸⁸ In evaluating the evidence, the Decision-Makers will use a preponderance of the evidence standard.⁸⁹ Thus, after considering all the evidence, they will determine whether it is more likely than not that prohibited conduct occurred.

The written determination shall include the following⁹⁰:

- Identification of the allegations potentially constituting Title IX sexual harassment as defined in these procedures;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including who conducted the investigation and notifications to the parties. The determination will also state when and where the investigator interviewed parties and witnesses, site visits, and methods used to gather other evidence. Procedural section should also discuss the dates and how the parties were provided the opportunity to review

⁸⁴ 34 CFP 106 – (pg. 30343)

⁸⁵ 34 CFR 106.45(b)(6)(i) – (pg. 30577) (see also 34 CFR 106 – pg. 30349)

⁸⁶ 34 CFR 106 – pg. 30349

⁸⁷ 34 CFR 106.45(b)(7)(i) – (pg. 30577)

⁸⁸ 34 CFR 106.45(b)(1)(ii) – (pg. 30575)

⁸⁹ 34 CFR 106.45(b)(1)(vii) – (pg. 30575); California Education Code § 67386 (a)(3).

⁹⁰ 34 CFR 106.45(b)(7)(ii) – (pg. 30577)

and inspect evidence and the date(s) of the hearing. The procedural section should also identify who attended the hearing.

- Findings of fact supporting the determination. In doing so, the Decision-Makers will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility;
- Conclusions regarding the application of the College's Policies and Procedures or relevant rules establishing cause for discipline to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the Decision-Makers impose on the Respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant. The College need not disclose to the Respondent remedies that do not impact the Respondent as part of the written determination; the College can inform the Respondent that it will provide remedies to the Complainant. However, the College will inform the Complainant of the sanctions against the Respondent; and
- The procedures and grounds for the Complainant and/or Respondent to appeal.

The College shall provide the Decision Makers' written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.⁹¹

Disciplinary Sanctions and Remedies

The College must have completed the Title IX grievance procedures (investigation, hearing, and any appeal, if applicable) before the imposing disciplinary sanctions or any other actions that are not supportive measures against a Respondent.⁹² If the Decision-Makers determines the Respondent was responsible for conduct that constitutes sexual harassment, the College shall take disciplinary action against the Respondent and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense.

Remedies for the Complainant might include, but are not limited to⁹³:

- Providing an escort to ensure that the Complainant can move safely between classes and activities;
- Ensuring that the Complainant and Respondent do not attend the same classes or work in the same work area;
- Providing counseling services or a referral to counseling services;

⁹¹ 34 CFR 106.45(b)(7)(iii) – (pg. 30577)

⁹² 34 CFR 106.44(a) – (pg. 30574)

⁹³ 34 CFR 106.45(b)(1)(vi) – (pg. 30575);

- Providing medical services or a referral to medical services;
- Providing academic support services, such as tutoring;
- Arranging for a student Complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and
- Reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant being disciplined.

Possible disciplinary sanctions for students include, but are not limited to, written or verbal reprimand, training or counseling, non-academic probation, suspension, and expulsion. Possible disciplinary sanctions for employee Respondents include, but are not limited to, written or verbal reprimand, required training or counseling, reduction in pay, demotion, suspension, or discharge.⁹⁴

Appeal of Dismissal of a Formal Complaint or of the Determination of Responsibility

A Complainant or Respondent may appeal (1) the College's determination regarding responsibility, or (2) the dismissal of a formal complaint or any allegations.⁹⁵ A Complainant or Respondent must submit a written appeal⁹⁶ within fifteen (15) calendar days from the date of the notice of outcome of determination of responsibility or from the date of the College's notice of dismissal of a formal complaint or any allegations.

Grounds for Appeal

The Vice President, Human Resources, will serve as the Appeal Decision-Maker. In filing an appeal of the College's determination regarding responsibility or the College's dismissal of a formal complaint, the party must state the grounds for appeal and a statement of facts supporting those grounds. The grounds for appeal are as follows:

- A procedural irregularity affected the outcome⁹⁷;
- New evidence was not reasonably available at the time the College's determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome⁹⁸; or
- The College's Title IX Coordinator, investigators, or Decision-Makers had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.⁹⁹

⁹⁴ 34 CFR 106.45(b)(1)(vi) – (pg. 30575);

⁹⁵ 34 CFR 106.45(b)(8)(i) – (pg. 30577)

⁹⁶ 34 CFR 106.45(b)(8)(iii)(D) – (pg. 30578)

⁹⁷ 34 CFR 106.45(b)(8)(i)(A) – (pg. 30577)

⁹⁸ 34 CFR 106.45(b)(8)(i)(B) – (pg. 30577)

⁹⁹ 34 CFR 106.45(b)(8)(i)(C) – (pg. 30577)

Appeal Procedure

After receiving a written request for an appeal from either the Complainant or Respondent, the College will:

- Notify the other party in writing¹⁰⁰ within five (5) business days of receiving a party's appeal and include a copy of the written appeal, and
- Allow the non-appealing/responding party fifteen (15) calendar days from the date of the College's notice of the appeal to submit a written response.¹⁰¹

The Appeal Decision-Maker will issue a written decision on whether to grant or deny the appeal and the rationale for the decision within ten (10) business days after the response to the appeal.¹⁰² The College will provide notice of the written decision simultaneously to both parties.¹⁰³

The Appeal Decision-Maker may extend or otherwise modify the deadlines provided above.¹⁰⁴ Either party may seek an extension by submitting a written request to the Appeal Decision-Maker explaining the need for the extension and the proposed length of the extension. The Appeal Decision-Maker will respond to the request within five (5) business days in writing and will inform the parties simultaneously whether the extension is granted.

Informal Resolution

The College may provide the parties with the opportunity to participate in an informal resolution process, including mediation, at any time prior to reaching a determination regarding responsibility.

The College shall provide the Complainant and Respondent written disclosure of the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The College must obtain the parties' voluntary, written consent to the informal resolution process. If the parties reach an agreement, the College does not have to complete a full investigation and adjudication of a report of sexual harassment. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX grievance process with respect to the formal complaint.

The informal resolution process is not available to resolve allegations that an employee sexually harassed a student.

¹⁰⁰ 34 CFR 106.45(b)(8)(iii)(A) – (pg. 30578)

¹⁰¹ 34 CFR 106.45(b)(8)(iii)(D) – (pg. 30578)

¹⁰² 34 CFR 106.45(b)(8)(iii)(E) – (pg. 30578)

¹⁰³ 34 CFR 106.45(b)(8)(iii)(F) – (pg. 30578)

¹⁰⁴ 34 CFR 106.45(b)(1)(v) – (pg. 30575)

Retaliation Prohibited

The College prohibits any intimidation, threats, coercion, or discrimination against any individual who made a report or complaint of prohibited conduct, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Individuals who experience retaliation may file a complaint using the formal complaint process described above.

Dissemination of Policy and Procedures

The College shall provide its policy and procedures related to Title IX on its website and in each handbook or catalog provided to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining with the College.¹⁰⁵

Training

The College shall provide training to Title IX Coordinators, investigators, Decision-Makers, and any individual who facilitates an informal resolution process on the definition of sexual harassment, the scope of the College's education program or activity, how to conduct an investigation and the Title IX grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.¹⁰⁶ Any materials used to train the College's Title IX Coordinator, investigators, Decision-Makers, and any person who facilitates an informal resolution process, shall not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.¹⁰⁷

Training shall be provided as follows:

- At least nine (9) hours of training selected by the Title IX Coordinator for the Title IX Coordinator, investigators, Decision-Makers, and any individual who facilitates an informal resolution process;
- At least nine (9) hours of training to Decision-Makers prior to serving on a hearing panel and at least two (2) hours of refresher training to Decision-Makers who return to the pool in consecutive years.

File Retention

The College will retain on file for a period of at least seven years after closing the case copies of¹⁰⁸:

- The original report or complaint;
- Any actions taken in response to the complaint, including supportive measures;

¹⁰⁵ 34 CFR 106.8(b)(2)(i) – (pg. 30573)

¹⁰⁶ 34 CFR 106.45(b)(1)(iii) – (pg. 30575)

¹⁰⁷ 34 CFR 106.45(b)(10)(i)(D) – (pg. 30578)

¹⁰⁸ 34 CFR 106.45(b)(10)(ii) – (pg. 30578)

- The investigative report including all evidence gathered and any responses from the parties;
- The College's determination regarding responsibility;
- Audio or audiovisual recording or transcript from a hearing;
- Records of any disciplinary sanctions imposed on the Respondent;
- Records of any remedies provided to the Complainant;
- Any appeal and the result;
- Any informal resolution and the result; and
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The College will make these training materials publicly available on its website.

The College will make such documents available to the U.S. Department of Education Office for Civil Rights upon request.

The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.¹⁰⁹

Approved: November 25, 2020 (sunsets June 30, 2021, for reconsideration) (approval extended by PAC on May 12, 2021, for new sunset date of May 2022)
 Reviewed: October 15, 2021

¹⁰⁹ 34 CFR 106.71(a) – (pg. 30578)