

GENERAL INSTITUTION**BP 3000 ANTIRACISM****References:**

Education Code Sections 200 and 201(b)
Government Code Section 50260 - 50265
Title V (BOG)
Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000e
CCCCO document

The Palomar Community College District (PCCD) is committed to taking action against all forms of racism and white supremacy. The District has a responsibility to implement an action-oriented, systemic, antiracist approach to all practices designed to serve our diverse community. This approach should align, at a minimum, with the goals of the Chancellor's Office, mission of the institution, the college's strategic plan, and other institutional planning. We are committed to work towards racial equity and eliminating structural and systemic racism and dismantling any practices or policies that perpetuate inequity. Antiracism includes an action-oriented approach to reducing bias, racism, and discrimination; supporting diversity; representing historically under-represented staff, faculty, and students in all areas of campus life; identifying and eliminating barriers that oppress people, and redesigning policies and systems to enable equity.

The District recognizes that bias, whether conscious or unconscious, and micro-aggressions have a detrimental impact on recruiting, retaining, and supporting Black, Indigenous, and People of Color (BIPOC) including faculty, staff and students. We recognize that language can also be a source of bias, and we commit to interrogating within ourselves, our uses of language, discourse, and representation to create an environment that fosters equity and social justice. The District is committed to identifying and eradicating all such forms of bias, racism, and discrimination.

The District will support Diversity, Equity and Inclusion (DEI). DEI positively impacts student achievement, aids in retention, reduces implicit bias, and positively affects a multicultural pedagogy. The District recognizes that policy and practices should support the intersectionality amongst diverse elements of our community members. To that end, the District commits to producing recognizable improvements and ensuring transparency across all of these efforts.

The District also acknowledges the historic under-representation of BIPOC in Higher Education and specifically at PCCD and will be accountable and committed to redesign obsolete policies and procedures that oppress historically underrepresented groups. The District recognizes the importance of representing the specific racial and ethnic diversity in staff, faculty and administration that parallels the students and communities the institution serves.

This policy applies to all activities and practices of the District. We commit to continued individual and collective antiracist work in ourselves, our classrooms, our campus, and our larger communities. The District is committed to regularly reviewing this policy to understand and adapt to the continuing evolution of DEI.

To this end, the Superintendent/President, in collaboration with all campus groups, shall ensure that procedures are developed that promote DEI by recognizing the existence of institutional and systemic racism and working to dismantle systems of oppression within district programs and activities.

GENERAL INSTITUTION

AP 3000 ANTIRACISM

References: Education Code section 87100
Title 5 Sections 53000 et seq. and 59300 et seq.

The Palomar Community College District (“District”) is committed to standing against all forms of racism and the perpetuation of white supremacy. The District has a responsibility to implement an action-oriented and antiracist approach to all practices designed to serve our diverse community. We are committed to working towards racial equity by ending structural and systemic racism. We shall implement practices and strategies that support racial equity, cultural inclusivity, and dismantle institutional racism.

1. The District recognizes that policy and practices should support the intersectionality amongst diverse elements of our students, staff, and faculty. District is committed to producing recognizable improvements and ensuring transparency across all these efforts' campus wide. The District is committed for all employees to attend antiracist and equity professional development (PD) training and/or activities each academic year, which will further enhance their knowledge, teaching, and praxis to dismantling systemic and structural racism. Therefore, all members (staff, faculty, and board members) shall attend racial equity trainings or engage in racial equity activities each year. There is a comprehensive and researched-based list of various professional development trainings and activities for staff, faculty, and board members to select from. Faculty will continuously be supported with antiracism and equity PD and resources for the use of instruction and praxis. Professional Development will work with the Vice President of Human Resources to ensure compliance and tracking.
2. The District will work in conjunction with employee groups and in accordance with AP/BP 2510 - Participation in Local Decision Making to align antiracism practices with the District's Equal Employment Opportunity (EEO) Plan designed to recruit, hire, and retain employees to meet objectives as defined in BP 3000 - Antiracism. The District also acknowledges the historic under-representation of Indigenous-American Indian, Black, African American, Mexican, Latino/a/x, Chicano/a/x, Asian American, Native Hawaiian, Pacific Islanders, and all historically oppressed people of color* in higher education, and we will increase the diverse representation of staff and faculty who are equity-minded and mirror the students and communities we

**Palomar College recognizes the effects of white privilege on our Indigenous nations and the diverse cultural communities of our current students, staff, and faculty. The impact of American racism on these communities has had a profound impact on them. We also recognize that race and ethnicity are bound up in multiple intersectional identities that contribute to the uniqueness of each individual and their communities in their quest for equity and racial justice.*

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serve. The District will provide the Board with the disaggregated hiring data annually to ensure progress.

3. The District is committed to Diversity, Equity, and Inclusion (DEI). The Superintendent/ President, in collaboration with the governance groups responsible for the District's policies and procedures, along with staff and faculty affinity groups shall, as part of the annual review cycle, review policies and procedures to ensure they comply with BP 3000 - Antiracism.
4. The District will ensure student success data is completely disaggregated to represent all racial and ethnic identities by specific categories. District will routinely assess student needs based on disaggregated data with a focus on meaningful sub-groups, race, ethnicity, and socio-economic status of Palomar College students to enable equity-focused policy, planning, and resource development decisions. The District will review quantitative and qualitative data to identify and dismantle barriers for students to increase completion for all students with an emphasis on Indigenous-American Indian, Black, African American, Mexican, Latino/a/x, Chicano/a/x, Asian American, Native Hawaiian, Pacific Islanders, and all historically oppressed people of color.*
5. The District will ensure welcoming and safe meeting spaces exist for Indigenous-American Indian, Black, African American, Mexican, Latino/a/x, Chicano/a/x, Asian American, Native Hawaiian, Pacific Islanders, and all historically oppressed people of color* students, staff, and faculty that will build a positive campus climate that promotes student engagement, inclusion, safety, and academic support for students.
6. The District will also ensure academic programs are prioritizing the needs of the diverse students on campus through implementing practices that include racial-equity and antiracism throughout. Academic program evaluations will focus on equity and antiracism and address the academic outcomes and performance of all students. Academic program evaluations will be conducted by a diverse group of stakeholders and presented to the Board along with recommendations for next steps.
7. The District will allocate financial and human resources in a manner that emphasizes racial equity. The District will ensure students have the resources they need to achieve academic, career, and personal success.
8. The District will provide regular updates, developments, and improvements regarding the college's calls to action to the Board and campus.

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9. Any concerns related to the lack of adherence to antiracist procedures should be reported to Human Resources.

Members charged in leading the planning of these antiracist procedural actions include the President/Superintendent, Faculty Senate President, Palomar Faculty Federation Co-Presidents, Professional Development Coordinator, Palomar College Affinity Groups, Council for Classified Employees President, Administrative Association representative, CAST representative, Vice President for Student Services, Vice President for Instruction, Vice President for Finance, and Vice President for Human Resources.

The Palomar Community College District Governing Board shall regularly audit the intent and impact of District policies, procedures, and decisions related to antiracism. The Board will annually review a dashboard which will present updated data on set outcomes for annual antiracist goals.

In addition, they shall publicly review the District's compliance with applicable sections of Title 5 of the California Code of Regulations, the California Education Code Equal Employment Opportunity standards, the California Community Colleges Chancellor's Office recommended use of multiple methods, focused outreach and publications; and all procedures for addressing diversity throughout all hiring steps and levels. The Board may request to review additional data or increase the requests for reports as needed to support ongoing antiracist work at the institution.

Also see: BP 3000 - Antiracism, BP 3410 - Nondiscrimination, BP 3420 - Equal Employment Opportunity, BP & AP 3430 - Prohibition of Harassment, BP 3433 - Prohibition of Sexual Harassment Under Title IX, AP 3433 - Prohibition of Sexual Harassment Under Title IX, AP 3434 - Responding to Harassment Based on Sex Under Title IX, and BP & AP 3540 - Sexual Assaults on Campus.

Office of Primary Responsibility: Office of the President

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GENERAL INSTITUTION**BP 3410 NONDISCRIMINATION****References:**

Education Code Sections 66250 et seq., 72010 et seq., and 87100 et seq.;
Penal Code Sections 422.55 et seq.;
Government Code Sections 11135-11139.5, 12926.1, and 12940 et seq.;
Title 5 Sections 53000 et seq. and 59300 et seq.;
Accreditation Standard II.B.2.c

The District is committed to equal opportunity in educational programs, employment, and all access to institutional programs and activities. In addition, all students have the right to participate fully in the educational process, free from discrimination and harassment.

The District, and each individual who represents the District, shall provide equal access to its services, classes, and programs without regard to national origin, religion, age, gender, gender identity, gender expression, race, ethnicity, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, pregnancy, or because he/she is perceived to have one or more of the foregoing characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics.

No District funds shall ever be used for membership, or for any participation involving financial payment or contribution on behalf of the District or any individual employed by or associated with it, to any private organization whose membership practices are discriminatory on the basis of national origin, religion, age, gender, gender identity, gender expression, race, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, or because he/she is perceived to have one or more of the foregoing characteristics, or because of his/her association with a person or group with one or more of these actual or perceived characteristics.

All courses, including noncredit classes, shall be conducted without regard to the gender of the student enrolled in the classes. As defined in the Penal Code, "gender" means sex, and includes a person's gender identity and gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth. The District shall not prohibit any student from enrolling in any class or course on the basis of gender. Academic staff, including but not limited to counselors, instructors, and administrators shall not offer program guidance to students which differs on the basis of gender. Insofar as practicable, the District shall offer opportunities for participation in athletics equally to male and female students.

The District shall from time to time as necessary provide professional and staff development activities and training to promote understanding of diversity. The

Superintendent/President shall establish administrative procedures that ensure all members of the District community can present complaints regarding alleged violations of this policy and have their complaints heard in accordance with the Title 5 regulations and those of other agencies that administer state and federal laws regarding nondiscrimination.

Also see BP/AP 3420 titled Equal Employment Opportunity, BP/AP 3430 titled Prohibition of Harassment, AP 3435 titled Discrimination and Harassment Investigations and Training, and BP/AP 7120 titled Recruitment and Hiring.

GENERAL INSTITUTION**BP 3420 EQUAL EMPLOYMENT OPPORTUNITY****References:**

Education Code Sections 87100 et seq.;
Title 5 Sections 53000 et seq.

The Governing Board supports the intent set forth by the California Legislature to assure that effort is made to build a community in which opportunity is equalized and community colleges foster a climate of acceptance with the inclusion of faculty and staff from a wide variety of backgrounds. It agrees that diversity in the academic environment fosters cultural awareness, mutual understanding, respect, harmony, and suitable role models for all students. The Board therefore commits itself to promote the total realization of equal employment through a continuing equal employment opportunity program.

In all phases of recruitment and hiring, equal opportunity is afforded to all employees and qualified applicants for employment without discrimination on the basis of characteristics including, but not limited to: ethnic group identification, race, color, national origin, religion, socio-economic status, age, sex, gender, gender identity, physical or mental disability, sexual orientation, political affiliation, transgender, marital status, veteran status, medical conditions, union membership or on the basis of these perceived characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics.

The Superintendent/President shall develop, for review and adoption by the Board, a plan for equal employment opportunity that complies with the Education Code and Title 5 requirements as from time to time modified or clarified by judicial interpretation. The Vice President, Human Resource Services is the responsible District officer charged with receiving formal complaints of equal employment opportunity violations and coordinating the investigation.

Also see BP 3410 titled Nondiscrimination, AP 3420 titled Equal Employment Opportunity, AP 3435 titled Discrimination and Harassment Investigations and Training, BP 7100 titled Commitment to Diversity, BP/AP 7120 titled Recruitment and Hiring, and the District's Equal Employment Opportunity (EEO) Plan

GENERAL INSTITUTION**AP 3420 EQUAL EMPLOYMENT OPPORTUNITY****References:**

20 U.S. Code Sections 1681 et seq.;
Education Code Sections 87100 et seq.;
Title 5 Sections 53000 et seq. and 59300 et seq.;
ACCJC Accreditation Standard III.A.12

Equal Employment Opportunity Plan

The Equal Employment Opportunity (EEO) Plan is a District-wide, written plan that implements the District's EEO Program, includes the definitions contained in Title 5 Section 53001, and addresses the following requirements of EEO plans pursuant to Title 5 Sections 53000 et seq.:

- Submission of the District's EEO plans and revisions to the California Community Colleges Chancellor's Office for review and in adherence to the submission timelines as required.
- The designation of the responsible District officer as defined in BP 3430 and designee(s) who have been delegated responsibility and authority for implementing the Plan and assuring compliance with the requirements of this Procedure;
- The procedure for filing unlawful discrimination, sexual harassment, and sexual violence complaints and the person with whom such complaints are to be filed as indicated in AP 3434 and AP 3435;
- A process for notifying all District employees of the provisions of the Plan and the required District EEO policy statement, which is BP 3420;
- A process for ensuring that District employees who participate on selection committees receive, prior to their participation, training on the requirements of the applicable Title 5 regulations and of state and federal nondiscrimination laws and relevant District regulations; the educational benefits of workforce diversity; student and employee demographics; the elimination of bias, including implicit bias, in selection committee decisions; and best practices in serving on a selection committee;
- A process for providing annual written notice to appropriate community-based and professional organizations, including those that serve and/or represent diverse communities or populations, concerning the District's Plan and the need for assistance from such organizations in identifying qualified applicants for openings within the District;
- A process for gathering information and periodic, longitudinal analysis of the

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District's employees and employment applicants, broken down by number of persons from "monitored groups", as defined by Title 5 Section 53001(i), who are employed in the District's workforce and those who have applied for employment in each of the job categories as listed in the Annual Evaluation section below;

- To the extent that data is provided to the District by the Chancellor of the California Community Colleges, an analysis of the degree to which monitored groups of the District's job applicants are underrepresented in comparison to their representation in the field or job category in numbers of persons from such groups whom the California Community Colleges Chancellor's Office determines to be available and qualified to perform the work required for each such job category; and an analysis of whether or not the underrepresentation is significant;
- The steps the District will take to promote diversity in its workforce;
- Methods for addressing any unlawful discrimination that is detected in the District's hiring practices, and;
- The Plan shall be a public record.

The District shall make a continuous good faith effort to comply with the requirements of the Plan.

Annual Evaluation

- The District shall annually collect the demographic data of its employees and applicants for employment in order to evaluate progress in implementing the EEO Plan and to provide data needed for required analyses. The demographic categories in which individuals may report are defined by the California Community Colleges Chancellor's Office.
- The District shall provide an annual report to the California Community Colleges Chancellor's Office of this demographic data. The report shall identify each employee as belonging to one of the following seven job categories:
 - executive/administrative/managerial
 - faculty and other instructional staff
 - professional non-faculty
 - secretarial/clerical
 - technical and paraprofessional
 - skilled crafts, and
 - service and maintenance.
- The opportunity for each employee to identify their gender, ethnicity and, if applicable, disability. This opportunity must allow for a person to designate multiple ethnic groups with which they identify. However, the person may only be counted in one ethnic group for reporting purposes.
- Districts shall review the annually collected demographic data to determine if

significant underrepresentation of a monitored group may be the result of non-job-related factors in the employment process. For the purposes of this subdivision, the phases of the employment process include, but are not limited, to recruitment, hiring, and retention. The information to be reviewed shall include, but need not be limited to:

- Longitudinal analysis of data regarding job applicants to identify whether over multiple recruitments, a monitored group is disproportionately failing to move from the initial applicant pool to the qualified applicant pool;
- Analysis of data regarding potential job applicants, to the extent provided by the Chancellor of the California Community Colleges, which may indicate significant underrepresentation of a monitored group.

EEO Advisory Committee

- The District shall establish an EEO Advisory Committee.
- The Committee shall include a diverse membership whenever possible.
- The Committee shall receive training annually in all the following areas:
 - Applicable Title 5 regulations and of state and federal nondiscrimination laws;
 - The educational benefits of workforce diversity;
 - The identification and elimination of bias in hiring decisions;
 - The role of the Committee in carrying out the District's EEO Plan.
- The responsibilities of the Committee shall include, but not be limited, to the following activities:
 - Assisting in developing the District's Plan in compliance with state and federal regulations, statutes, and guidelines;
 - Monitoring the implementation and progress of the Plan and recommending corrective action when necessary;
 - Advising the District's Equal Employment Opportunity Officer in the development and presentation of annual reports to the Governing Board and Superintendent/President and responding to equal employment inquiries and concerns of all employees;
 - Assisting the District's Equal Employment Opportunity Officer in developing and coordinating equal employment opportunity information programs for District employees;
 - Reviewing and suggesting revisions in services; employment policies, procedures, and practices, including the District's selection procedures that impact the District's ability to hire and retain a diverse workforce; and other written and unwritten rules, policies, practices, and procedures relevant to equal employment opportunity.

- Monitoring the implementation of and compliance with the Americans with Disabilities Act in District policies, procedures, and practices; and fostering communications with internal and external groups and/or organizations for people with disabilities.

Employment Procedures

Job Analysis and Validation: The Vice President for Human Resource Services or designee shall assure that a proper job analysis is performed for jobs filled by the District to determine and validate the knowledge, skills, abilities, and characteristics an employee must possess to perform the job satisfactorily. A statement of bona fide essential and marginal functions and minimum qualifications shall be developed for each position.

Job Description: Every job description shall provide a general statement of job duties and responsibilities. Job descriptions shall include essential and marginal functions; the knowledge and skills necessary to perform the essential and marginal functions; and sensitivity to and respectful treatment of individuals from a wide range of ethnic, racial, age, national origin, religious, gender, sexual orientation, disability, and socioeconomic backgrounds found in a community college.

Recruitment: Recruitments must be conducted actively within and outside of the District workforce. In accordance with Title 5 Section 53021, open recruitments are mandated for all new permanent and part-time faculty positions, except under limited circumstances involving interim hires.

The District must utilize outreach strategies designed to ensure that all qualified individuals, including individuals of diverse backgrounds, are provided the opportunity to seek employment with the District. The District will use outreach techniques to seek both qualified internal and external applicants. External applicants will be afforded the same equal employment opportunities as applicants from within the District.

Recruitments may publish advertisements in appropriate professional journals; publications and websites of general circulation and/or that are specific to the position; distribution of job announcements to the California Community Colleges Registry, educational institutions where potential candidates might be enrolled or employed; conferences, job fairs, professional meetings, and other relevant events; notices to professional organizations and other groups applicable to the position; and other outreach strategies. The District shall ensure that the outreach strategies used for each position include methods designed to attract diverse applicants.

Applicant Pools: The application for employment shall afford each applicant an opportunity to identify themselves voluntarily as to gender, ethnicity and, if applicable, their disability. This information shall be maintained in confidence by Human Resource Services and shall be used only for research, validation, monitoring, evaluation of the effectiveness of the Plan, or as authorized by law.

After the application deadline has passed, the initial applicant pool shall be recorded and reviewed by the Vice President for Human Resource Services or designee. All initial applications shall be screened to determine which applicants possess the minimum qualifications and complete all application requirements as set forth in the job announcement. The group of who meet these requirements shall constitute the “qualified applicant pool.”

The Vice President for Human Resource Services or designee must analyze the qualified applicant pool to determine whether the demographic composition of the pool may have been influenced by factors which are not job related. When it appears that factors other than job related qualifications have influenced the composition of the pool, the District will take appropriate action prior to continuing the selection process.

Selection Process: BP/AP 7120 describe the District’s specific selection procedures, and BP 2510 defines the role of the Faculty Senate in faculty hiring processes. Screening employment applications, interviewing, and selecting candidates for hire for all positions shall include thorough and fair procedures that are sensitive to and respectful of the diverse backgrounds of the candidates. The selection process shall be consistent with the following practices:

- The District’s selection procedures will be provided to the California Community Colleges Chancellor’s Office on request.
- All materials used by selection committees to screen applications, interview candidates, conduct reference checks, and tests candidates shall conform to generally applicable legal standards for uniformity.
- A reasonable number of candidates shall be identified for interview for each position.
- Selection committees shall be developed that are representative of the District’s workforce and include appropriate membership pursuant to AP 7120. In addition, selection committees will include a diverse membership when possible. Selection committee members shall not include applicants or persons who have written letters of recommendation or where other actual or perceived conflicts of interest are present.
- The District shall appoint a District Compliance Officer (DCO) to every selection committee. DCOs are individuals who have been trained to monitor conformance with EEO laws, regulations, and District selection process requirements, including AP 7120. The DCO’s role and specific responsibilities are specified in AP 7120.
- The selection of all qualified candidates shall be based solely on job related

qualifications as stated in the job description and/or job announcement for each position.

- For all District positions, candidates shall be required to demonstrate sensitivity to diversity in ways relevant to the specific position.

If the District determines that a particular monitored group is significantly underrepresented with respect to one or more job categories indicated above, the District shall take the following additional steps in accordance with Title 5 Section 53006:

- Review its recruitment procedures;
- Determine whether there are other, additional measures that may be undertaken to resolve the underrepresentation that are required or permitted by law or regulation;
- Consider other means of reducing the underrepresentation which do not involve taking monitored group status into account and implement any such techniques that are feasible.

If significant underrepresentation persists, the District will take the following actions as required by Title 5 Section 53006:

- Review each locally established job qualification, including preferred qualifications stated on the job announcement, to determine whether they are job related and consistent with business necessity;
- Discontinue the use of any non-job-related local qualification;
- Continue using job-related local qualifications only if no alternative standard is reasonably available; and
- Consider the implementation of additional measures designed to promote diversity.

Job Announcements

All job announcements shall contain a statement in substantially the following form regarding the District's commitment to equal employment opportunity:

The District is an equal opportunity employer. The District encourages applications from ethnic and racial minorities, women, persons with disabilities, and Vietnam-era veterans. No person shall be denied employment because of ethnicity or race, color, sex or gender, gender identity, age, religion, marital status, disability, sexual orientation, national origin, medical conditions, status as a Vietnam-era veteran, ancestry, or political or organizational affiliation.

Delegation of Authority

- The District has designated the Vice President for Human Resource Services as the EEO Officer charged with overseeing the day-to-day implementation of the EEO Plan and programs.
- Processes and responsibilities when the EEO Officer is named in a complaint or implicated by the allegations in a complaint are described in AP 3435.

Complaint Procedures

The District's unlawful discrimination, sexual harassment, and sexual violence complaint handling procedures are delineated in the following Board policies and administrative procedures:

- BP/AP 3430 Prohibition of Harassment
- BP/AP 3433 Prohibition of Sexual Harassment Under Title IX
- AP 3434 Responding to Harassment Based on Sex Under Title IX
- AP 3435 Discrimination and Harassment Complaints and Investigations

Dissemination and Revision of the Plan

The District's EEO Plan shall be posted on the District's website. The Plan shall be disseminated electronically to all District employees annually.

The District's Equal Employment Opportunity Advisory Committee shall review the Plan at least every three years and, if necessary, shall revise the Plan. The District shall submit any revisions to the California Community Colleges Chancellor's Office within 90 days of the effective date of the revision or amendment(s).

If the California Community Colleges Chancellor's Office determines that the District's equal employment opportunity related policies, procedures, and/or practices are not in compliance with Title 5 Sections 53000 et seq. and 59300 et seq., the California Community Colleges Chancellor's Office may require the District to make modifications.

Accountability and Corrective Action

The District shall annually provide to the California Community Colleges Chancellor's Office the following required reports regarding EEO compliance and activities:

- District EEO expenditure report and District EEO performance report;
- EEO multiple methods certification;
- Data regarding unlawful discrimination complaints received by the District pursuant to Title 5 Section 59340(b);
- Any other required reports or data relevant to the District's EEO programs as requested or required by the California Community Colleges Chancellor's Office.

GENERAL INSTITUTION**BP 3430 PROHIBITION OF HARASSMENT****References:**

Education Code Sections 212.5, 44100, 66252, and 66281.5;
Government Code Sections 12923, 12940 and 12950.1;
Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000e
Age Discrimination in Employment Act of 1967 (ADEA)
Americans with Disabilities Act of 1990 (ADA)

All forms of harassment are contrary to basic standards of conduct between individuals and are prohibited by state and federal law, as well as this policy, and will not be tolerated. The District is committed to providing an academic and work environment that respects the dignity of individuals and groups. The District shall be free of unlawful harassment, including that which is based on any of the following statuses: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military or veteran status, or because they are perceived to have one or more of the foregoing characteristics.

The District seeks to foster an environment in which all employees, students, and volunteers feel free to report incidents of harassment without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against any individual for filing a complaint of harassment or for participating in a harassment investigation. Such conduct is illegal and constitutes a violation of this policy. All allegations of retaliation will be swiftly and thoroughly investigated. If the District determines that retaliation has occurred, it will take all reasonable steps within its power to stop such conduct. Individuals who engage in retaliatory conduct are subject to disciplinary action, up to and including termination or expulsion.

Any student, employee, or volunteer who believes they have been harassed or retaliated against in violation of this policy should immediately report such incidents by following the procedures described in AP 3435 Discrimination and Harassment Complaints and Investigations. The District requires supervisors to report all incidents of harassment and retaliation that come to their attention.

This policy applies to all aspects of the academic environment, including but not limited to classroom conditions, grades, academic standing, employment opportunities, scholarships, recommendations, disciplinary actions, and participation in any community college activity. In addition, this policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary

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(Replaces former Palomar College Policy 102 and all previous versions of BP 3430.)

action, layoff, recall, transfer, leave of absence, training opportunities, and compensation.

To this end, the Superintendent/President shall ensure that the District undertakes education and training activities to counter harassment and to prevent, minimize, and/or eliminate any hostile environment that impairs access to equal education opportunity or impacts the terms and conditions of employment.

The Superintendent/President shall establish procedures pursuant to federal and state law and regulations that define harassment on campus. The Superintendent/President shall further establish procedures for employees, students, volunteers, and other members of the campus community that provide for the investigation and resolution of complaints regarding harassment and discrimination and procedures. The Vice President for Human Resource Services is the responsible District Officer charged with receiving complaints of harassment and coordinating the investigation.

This policy and related written procedures (including the procedure for making complaints) shall be widely published and publicized to students, employees, and volunteers. New employees and volunteers shall receive a copy of these documents at time of hire. These documents shall be available on the District website and in all District administrative offices.

Employees who violate the policy and procedures may be subject to disciplinary action up to and including termination. Students who violate this policy and related procedures may be subject to disciplinary measures up to and including expulsion.

Also see BP 3410 titled Nondiscrimination, BP/AP 3420 titled Equal Employment Opportunity, AP 3435 titled Discrimination and Harassment Investigations and Training, BP 4030 titled Academic Freedom, and appropriate provisions of applicable collective bargaining agreements/employee handbooks.

Academic Freedom

This policy works with BP 4030 titled Academic Freedom and is not intended to inhibit or interfere with freedom of expression and freedom of inquiry within the framework of responsibility. It is understood that staff members exercising their rights under Academic Freedom will accept responsibility for both the substance and the manner of their messages.

GENERAL INSTITUTION**AP 3430 PROHIBITION OF HARASSMENT****References:**

Education Code Sections 212.5, 44100, and 66281.5;
Government Code Sections 12940 and 12923;
Civil Code Section 51.9;
Title 2 Sections 10500 et seq.;
Title 5 Sections 59320 et seq.;
Title IX, Education Amendments of 1972;
Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000e

The District is committed to providing an academic and work environment free of unlawful harassment. This procedure defines sexual harassment and other forms of harassment on campus, and in conjunction with associated administrative procedure AP 3435 titled Discrimination and Harassment Complaints and Investigations, sets forth a procedure for the investigation and resolution of complaints of harassment by or against any student, employee, or volunteer within the District.

This procedure and the related policy protect students and employees in connection with all academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, a District vehicle or at a class or training program sponsored by the District at another location.

Definitions

- **General Harassment** -- Harassment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, sex, age, or sexual orientation of any person, military or veteran status, or the perception that a person has one or more of these characteristics is illegal and violates District policy. Harassment shall be found where a reasonable person with the same characteristics as the victim of the harassing conduct would be adversely affected to a degree that interferes with their ability to participate in or to realize the intended benefits of an institutional activity, employment, or resource.

For sexual harassment under Title IX, Complainants must proceed under BP 3433 Prohibition of Sexual Harassment under Title IX, AP 3433 Prohibition of Sexual Harassment under Title IX, and AP 3434 Responding to Harassment Based on Sex under Title IX. For other forms of sexual harassment or gender-based harassment, Complainants should use this procedure.

Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment if it meets the definition above. For example, repeated derisive comments about a person's competency to do the job, when based on that person's gender, could constitute gender-based harassment.

Harassment comes in many forms, including but not limited to the following conduct that could, depending on the circumstances, meet the definition above, or could contribute to a set of circumstances that meets the definition:

- *Verbal:* Inappropriate or offensive remarks, slurs, jokes, or innuendoes based on a person's race gender, sexual orientation, or other protected status. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status, or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats, or intimidation; or sexist, patronizing, or ridiculing statements that convey derogatory attitudes based on gender, race, nationality, sexual orientation, or other protected status.
- *Physical:* Inappropriate or offensive touching, assault, or physical interference with free movement. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, pinching, leering, staring, unnecessarily brushing against, or blocking another person, whistling, or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's gender, race, national origin, sexual orientation, or other protected status. Physical sexual harassment includes acts of sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability.
- *Visual or Written:* The display or circulation of visual or written material that degrades an individual or group based on gender, race, nationality, sexual orientation, or other protected status. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions. This section does not apply to library holdings or classroom materials used for instructional purposes and in accordance with BP 4030, titled Academic Freedom.
- *Environmental:* A hostile educational or work environment caused by sexual harassment occurs when unwelcome comments or conduct based on sex, gender, and/or sexual orientation unreasonably interferes with an individual's educational experience or work performance or create an intimidating, hostile, or offensive work environment. The harassment must be severe or pervasive

such that it alters the conditions of the victim's education or employment and creates an abusive working environment. A single, unwelcome act of harassment may be sufficiently severe so as to create an unlawful hostile work environment. To be unlawful, the harassment must be both subjectively and objectively offensive.

- **Sexual Harassment:** In addition to the above, sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature made by someone from, or in, the work or educational setting when:
 - submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, progress, internship, or volunteer activity;
 - submission to, or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual;
 - the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment (as more fully described below); or
 - submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the District.

This definition encompasses two kinds of sexual harassment:

"Quid pro quo" sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.

"Hostile environment" sexual harassment occurs when unwelcome conduct based on a person's gender alters the conditions of an individual's learning or work environment, unreasonably interfere with an individual's academic or work performance, or create an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it unreasonably interfered with the person's academic or work performance or created an intimidating, hostile, or offensive learning or working environment.

Sexually harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the victim would perceive the conduct as harassment based on sex.

- **Consensual Relationships**

Romantic or sexual relationships between supervisors and employees, or between administrators, faculty members, or staff members and students are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the employee must evaluate the student's or employee's work or make decisions affecting the employee or student. The relationship may create an appearance of impropriety and lead to charges of favoritism by other students or employees. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing. In the event that such relationships do occur, the District has the authority to transfer any involved employee, to eliminate or attenuate the supervisory authority of one over the other, or of a teacher over a student. Such action by the District is a proactive and preventive measure to avoid possible charges of harassment and does not constitute discipline against any affected employee.

Also see BP 3410 titled Nondiscrimination, BP 3420 titled Equal Employment Opportunity, BP 3430 titled Prohibition of Harassment, AP 3435 titled Discrimination and Harassment Complaints and Investigations BP 4030 Academic Freedom, and relevant provisions of applicable collective bargaining agreements/employee handbooks.

Academic Freedom

This policy works with BP 4030 titled Academic Freedom and is not intended to inhibit or interfere with freedom of expression and freedom of inquiry within the framework of rights and responsibilities, as enumerated in BP 4030.

Office of Primary Responsibility: Human Resource Services

GENERAL INSTITUTION**BP 3433 PROHIBITION OF SEXUAL HARASSMENT UNDER TITLE IX****References:**

Title IX of the Education Amendments Act of 1972;
34 Code of Federal Regulations Part 106

All forms of sexual harassment are contrary to basic standards of conduct between individuals. State and federal law and this policy prohibit sexual harassment and the District will not tolerate sexual harassment. The District is committed to providing an academic and work environment that respects the dignity of individuals and groups. The District shall be free of sexual harassment and all forms of sexual intimidation and exploitation including acts of sexual violence.

The District seeks to foster an environment in which all students, employees, applicants for employment, and applicants for admission feel free to report incidents of sexual harassment and sexual violence in violation of this policy and Title IX, without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against any individual for filing a complaint of sexual harassment in violation of this policy and Title IX or for participating, or refusing to participate, in a sexual harassment investigation. The District will investigate all allegations of Title IX retaliation swiftly and thoroughly. If the District determines that someone has retaliated, it will take reasonable steps within its power to stop such conduct. Individuals who engage in retaliatory conduct under Title IX are subject to disciplinary action, up to and including termination or expulsion.

Any student, employee, applicant for employment, or applicant for admission who believes they have been harassed or retaliated against in violation of this policy should immediately report any such incident to the District's Title IX Coordinator in the Human Resource Services Department who will be following the procedures described in AP 3434. The District requires supervisors to report all incidents of harassment and retaliation that come to their attention.

This policy applies to all aspects of the academic environment, including, but not limited to, classroom conditions, grades, academic standing, employment opportunities, scholarships, recommendations, disciplinary actions, and participation in any community college activity. In addition, this policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities, and compensation.

To this end the Superintendent/President shall ensure that the institution undertakes education and training activities to counter sexual harassment and to prevent, minimize,

or eliminate any hostile environment that impairs access to equal education opportunity or impacts the terms and conditions of employment.

The Superintendent/President shall establish procedures that define sexual harassment, including sexual violence, on campus. The Superintendent/President shall further establish procedures for students, employees, and other members of the campus community that provide for the investigation and resolution of complaints regarding sexual harassment in violation of this policy, and procedures to resolve complaints of sexual harassment in violation of this policy. State and federal law and this policy prohibit retaliatory acts against all participants by the District, its employees, students, and agents.

The District will publish and publicize this policy and related written procedures (including the procedure for making complaints) to administrators, faculty, staff, students, applicants for employment, and applicants for admission, particularly when they are new to the institution. The District will make this policy and related written procedures (including the procedures for making complaints) available to all employees and each District department and will post them on the District's website.

Employees who violate the policy and procedures may be subject to disciplinary action up to and including termination. Students who violate this policy and related procedures may be subject to disciplinary measures up to and including expulsion. Volunteers or unpaid interns who violate this policy and related procedures may be subject to disciplinary measures up to and including termination from the volunteer assignment, internship, or other unpaid work experience program.

GENERAL INSTITUTION

AP 3433 PROHIBITION OF SEXUAL HARASSMENT UNDER TITLE IX**References:**

Title IX, Education Amendments of 1972; Title 5 Sections 59320 et seq.;
Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e

The District is committed to providing an academic and work environment free of unlawful sexual harassment and sexual violence under Title IX. This procedure defines sexual harassment on campus.

This procedure and the related policy protects students, employees, in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, a District bus, or at a class or training program sponsored by the District at another location.

Definitions

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

- A District employee conditions the provision of an aid, benefit, or service of the District 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 District's education program or activity;
- Sexual assault, including the following:
 - **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 their age or because of 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 their age or because of 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 their age or because of 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 their age or because of their temporary or permanent mental or physical incapacity.
- **Non-Forcible Unlawful 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 Violence.** 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 a relationship will 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; or
 - By a person with whom the victim shares a child in common; or
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; or
 - 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.
- **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

Office of Primary Responsibility: Human Resource Services

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.

Introduction

The District encourages members of the District community to report sexual harassment, including sexual violence. This procedure only applies to conduct defined as sexual harassment under Title IX and applicable federal regulations and that meet Title IX jurisdictional requirements. The District 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 District policies and procedures. In implementing these procedures discussed below, the District will also provide supportive measures, training, and resources in compliance with California law, unless they are preempted by the Title IX regulations.

Title IX Coordinator

Questions concerning Title IX may be referred to the District's Title IX Coordinator in the Human Resource Services Department. The Title IX Coordinator's contact information is published on the District website and other District publications, including the catalog and class schedule.

The Title IX Coordinator is required to respond to reports of sexual harassment or misconduct. The Title IX Coordinator will handle information received with the utmost discretion and will share information with others on a need-to-know basis in accordance with Title IX. 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.

A report of sexual harassment to the Title IX Coordinator does not necessarily lead to a full investigation, as discussed more fully below. However, the Title IX 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.

Title IX Harassment Complaints, Investigations, and Hearings

These Title IX sexual harassment procedures and the related policy (BP 3434) protect students, employees, applicants for employment, and applicants for admission.

Jurisdictional Requirements – Application of Procedures

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

- The conduct took place in the United States;
- The conduct took place in a District “education program or activity.” This includes locations, events, or circumstances over which the District 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 District owns or controls or student organizations officially recognized by the District own or control.
- The conduct meets the definition of Title IX “sexual harassment.”

Definitions

Advisor: Throughout the grievance process, both the Complainant and Respondent have the right to an Advisor of their choice. If a Party does not have an Advisor at the time of the hearing, the District must provide the Party an Advisor of its choice, free of charge. The District may establish restrictions regarding the extent to which the Advisor may participate in the proceedings as long as the restrictions apply equally to both Parties.

(Note: The regulations only require the District to provide an Advisor to conduct cross-examination. It is strongly recommended that an Advisor is provided for the entire hearing; so, the Advisor is able to observe the direct examination of all witnesses and thus better able to conduct cross-examination.)

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

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 does not indicate consent. Affirmative consent must be ongoing throughout a sexual activity and one can revoke his/her/their 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 indicator of consent.

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.

Decision-Maker: The person(s) who will oversee the live hearing and make a determination of responsibility. The District may have one Decision-Maker determine whether the Respondent is responsible, and another Decision-Maker determine the appropriate level of penalty for the conduct. The Decision-Maker cannot be the Title IX Coordinator or the investigator.

Formal Complaint: A written complaint signed by the Complainant or Title IX Coordinator, alleging sexual harassment and requesting an investigation. If the Title IX Coordinator signs the formal complaint they will not become a Party to the complaint.

Parties: As used in this procedure, this means the Complainant and Respondent.

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

Sexual Harassment under Title IX: Refer to A.P. 3433 Prohibition of Sexual Harassment Under Title IX for definitions.

Reporting Options

Any individual may report sexual harassment, including sexual violence, to the District's Title IX Coordinator.

The District 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 District's ability to effectively investigate and respond.

Individuals have the opportunity to decide whether they want to pursue a formal Title IX complaint. Reporting sexual harassment to the Title IX Coordinator does not automatically initiate an investigation under these procedures. A report allows the

District 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.

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

The District will document reports of sexual harassment in compliance with the Clery Act, a federal law requiring data collection of crime within the campus geography. Under the Clery Act, the District does not document personal information; the District reports the type of conduct, and the time, date, and location. (Also see BP/AP 3540 Sexual and Other Assaults on Campus

District Employees and Officials with Authority

District Officials with Authority, inclusive of all District administrators and supervisors, are not confidential resources and are required to report allegations of sexual harassment to the Title IX Coordinator promptly. All other employees are encouraged to report allegations to the Title IX Coordinator but are not required to do so.

Officials with Authority are required to report to the Title IX Coordinator all relevant information they know about sexual harassment including the name of the Respondent, the Complainant, any other witnesses, and the date, time, and location of the alleged incident.

Intake and Processing of Report

Receipt of Report. After receiving a report of sexual harassment, the Title IX Coordinator will contact the Complainant and, if applicable, the reporting party to explain rights under this policy and procedure and invite the Complainant to an in-person meeting. The Title IX Coordinator will discuss supportive measures with the Parties.

Timeframe for Reporting. To promote timely and effective review, the District strongly encourages individuals to report sexual harassment as soon possible because a delay in reporting may affect the ability to collect relevant evidence and may affect remedies the District can offer.

Supportive Measures. 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 District will provide the Complainant and Respondent with supportive measures as appropriate and as reasonably available to restore or preserve equal access to the District's education program or activities. These measures are designed to protect the safety of all Parties, protect the District's educational environment, and/or deter sexual harassment. The

District will provide supportive measures on a confidential basis and will only make disclosures to those with a need to know to enable the District to provide the service. Supportive measures may include counseling, extensions of deadlines, other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Removal of Respondent Pending Final Determination. Upon receiving a report regarding sexual harassment, the Title IX Coordinator will make an immediate assessment concerning the health and safety of the Complainant and campus community as a whole. The District has the right to order emergency removal of a Respondent, or if the Respondent is an employee, place the employee on administrative leave.

Emergency Removal. The District may remove a non-employee Respondent from the District's education program or activity on an emergency basis after it conducts an individualized safety and risk analysis and 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.

The District may not use emergency removal 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.

The District's Environmental Health and Safety personnel, Human Resource Services personnel, Police Department personnel, or other appropriate designee determined by the Title IX Coordinator will conduct the individualized safety and risk analysis.

If the designated health and safety official determines emergency removal is appropriate, they or designee will provide the person the District is removing from campus on an emergency basis with a notice and opportunity to attend a meeting and challenge the basis of their removal. The Vice President for Student Services or designee will determine whether the emergency removal from campus order is warranted for student Parties and the Vice President for Human Resource Services will determine whether the emergency removal from campus order is warranted for employee Parties after considering information provided by the Respondent challenging the emergency removal.

Administrative Leave

The District may place a non-student employee Respondent on administrative leave during the pendency of a grievance process described in the formal complaint process

below. The District will follow any relevant policies, procedures, collective bargaining agreements, or state law in placing an employee on administrative leave.

Formal Complaint Grievance Process

Notice to Parties. Upon receipt of a formal complaint, the Title IX Coordinator will provide the following notice in writing, to the Parties:

Notice of the District's Title IX grievance process;

Notice of the allegations of alleged sexual harassment with sufficient details known at the time and with sufficient time to prepare a response before any initial interview;

Statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;

Notice that the Parties may have Advisor of their choice, who may be, but is not required to be, an attorney;

Notice that the Parties may 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 District 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

Inform the Parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the District decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided above, the Title IX Coordinator will provide notice in writing of the additional allegations to the Parties.

Dismissal of Formal Complaint

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

- If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in AP 3433;
- If the conduct alleged did not occur in the District's education program or activity;
- If the conduct alleged did not occur against a person in the United States.

The District has discretion to dismiss a formal complaint or any allegation under the following circumstances:

- 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 District; or
- If there are specific circumstances that prevent the District from gathering evidence sufficient to reach a determination regarding responsibility as to the formal complaint or allegations.

If the District dismissed the formal complaint or any allegations, the Title IX Coordinator shall simultaneously provide the Parties with written notice of the dismissal and reason. The District will also notify the Parties of their right to appeal.

The District may commence proceedings under other policies and procedures after dismissing a formal complaint.

Consolidation of Formal Complaints

The District 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.

Equitable Treatment of the Parties

The District's determination of responsibility is a neutral, fact-finding process. The District will treat Complainants and Respondents equitably. The procedures will apply equally to both Parties. The District will not discipline a Respondent unless it determines the Respondent was responsible for sexual harassment at the conclusion of the grievance process.

Statement of Presumption of Non-Responsibility

The investigation is a neutral, fact-finding process. The District presumes all reports are in good faith. Further, the District presumes the Respondent is not responsible for the alleged conduct. The District makes its determination regarding responsibility at the conclusion of the grievance process.

Bias or Conflict of Interest

The District's Title IX Coordinator, investigator, Decision-Maker, or any person designated by the District to facilitate a formal or informal resolution process, will not have potential actual bias or conflict of interest in the investigatory, hearing, sanctioning, or appeal process or bias for or against Complainants or Respondents generally. 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 Decision-Maker in the process. The District will ensure that the Title IX Coordinator, investigator, Decision-Maker, and facilitator receive training on:

- The definition of sexual harassment in this procedure;
- The scope of the District's education program or activity;
- How to conduct an investigation;
- The grievance process including conducting hearings, appeals, and informal resolution processes; and
- How to serve impartially, including avoiding: prejudice of the facts at issue; conflicts of interest; and bias.

Timeline for Completion

The District will undertake its grievance process promptly and as swiftly as possible. The District will complete the investigation and its determination regarding responsibility or the informal resolution process within 180 calendar days.

When appropriate, 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 unavailability of witnesses or delays by the Parties, to account for District breaks or vacations due to the complexity of the investigation, District emergency, or other applicable reason determined by the District. The District will provide notice of this extension to the Complainant and Respondent in writing and include the reason for the delay and anticipated timing of completion.

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

The role of the Advisor is to provide support and assistance in understanding and navigating the investigation process.

The Advisor may not testify in or obstruct an interview or disrupt the process. The Title IX Coordinator has the right to determine what constitutes appropriate behavior of an Advisor and take reasonable steps to ensure compliance with this procedure.

A Party does not have a right to self-representation at the hearing; an Advisor must conduct any cross-examination. The District must provide an Advisor of its choice, free of charge to any Party without an Advisor in order to conduct cross-examination. If an

Advisor fails to appear at the hearing, the District will provide an Advisor to appear on behalf of the non-appearing Advisor. To limit the number of individuals with confidential information about the issues, each Party may identify only one Advisor.

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 District's grievance process. The confidentiality agreement restricts dissemination of any of the evidence subject to inspection and review or use of this evidence for any purpose unrelated to the Title IX grievance process. The confidentiality agreement will not restrict the ability of either Party to discuss the allegations under investigation.

Use of Privileged Information

The District's formal complaint 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, etc.), unless the person holding the privilege provides voluntary, written consent to waive the privilege.

Investigations

The Title IX Coordinator is responsible to oversee investigations to ensure timely resolution and compliance with Title IX and this procedure.

Both Parties have the right to have an Advisor present at every meeting described in this section.

Trained Investigators

The District will investigate Title IX formal complaints fairly and objectively. Individuals serving as investigators under this procedure will have adequate training on what constitutes sexual harassment pursuant to Title IX and how the District's grievance procedures operate. The District will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence and complies with this procedure.

Gathering Evidence and Burden of Proof

The District, not the Parties, has the responsibility to gather information and interview witnesses. When the investigator evaluates the evidence, they will do so using the preponderance of the evidence standard. After considering all the evidence gathered, the investigator will decide whether it is more likely than not that reported conduct occurred.

Notice of Investigative Interview

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

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 District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a Party or other source.

Prior to the investigator preparing an investigative report, the District will 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 will have at least ten days to submit a written response. The investigator must consider this written response prior to completing the investigative report.

Investigative Report

Title IX regulations require that the report fairly summarizes relevant evidence. The following language is suggested as good practice.

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

- A description of the circumstances giving rise to the formal complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony of each witness the investigator interviewed;
- An analysis of relevant evidence collected during the investigation, including a list of relevant documents;
- A specific finding as to whether the allegations occurred using a preponderance of the evidence standard;
- A table of contents if the report exceeds ten pages; and
- Any other information deemed appropriate by the District.

The investigator will not make a determination regarding responsibility.

The investigator may redact information not directly related to the allegations or privileged information. However, the investigator will keep a log of information they do not produce to the Parties. The investigator will provide this log only to the Title IX Coordinator. The Title IX Coordinator will not disclose the log to the Parties, but will maintain the log in the Title IX Coordinator's file, in the event it later becomes relevant.

At least ten days prior to a hearing or other time of determination regarding responsibility, the District will send the investigative report to each Party and their Advisors, if any, the investigative report in an electronic format or a hard copy, for review and written response. The Parties will have at least ten days to submit a written response.

Hearing

After completing an investigation and prior to completing a determination regarding responsibility, the District will hold a live hearing to provide the Complainant and Respondent an opportunity to respond to the evidence gathered before a Decision-Maker. 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.

Notice

If the District proceeds to a hearing, the District will provide all Parties written notice of the date, time, location, participants, and purpose of the hearing with sufficient time for the Party to prepare to participate.

Hearing Format

The District may provide a live hearing with all Parties physically present in the same geographic location or, at the District's discretion if either Party requests, the District 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.

The District will make the information reviewed during the Evidence Review available at the hearing for reference and consultation. The District will not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence.

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

Decision-Maker

The Decision-Maker will be free from conflict of interest or bias, including bias for or against Complainants or Respondents. In cases where the Complainant or Respondent objects to the Decision-Maker based on a conflict of interest, the Complainant or Respondent may request the Title IX Coordinator select a different Decision-Maker at the District's discretion based upon the information provided by the requesting Party. The Complainant or Respondent must make this request to the Title IX Coordinator in writing at least five business days prior to the hearing.

The Decision-Maker may ask the Parties and the witnesses' questions during the hearing. The Decision-Maker 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. The Decision-Maker must receive training on issues of relevance, how to apply the rape-shield protections for Complainants, and any technology to be used at the hearing.

Presenting Witnesses

The District will provide the Complainant and Respondent an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Witnesses, like Parties, are not required to participate in the live hearing process.

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.

Cross-Examination

The District will permit each Party's Advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those questions challenging credibility. The Party's Advisor must conduct cross-examination directly, orally, and in real time. A Party may never personally conduct cross-examination.

Advisors may only ask relevant cross-examination and other questions of a Party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-Maker need not provide a lengthy or complicated explanation in support of a relevance determination. If a Party or witness disagrees with a relevance determination, that individual has the choice of either (1) abiding by the Decision-Maker's determination and answering the question or (2) refusing to answer the question.

If a Party or witness does not submit to cross-examination at the live hearing, the Decision-Maker will not rely on any statement of that Party or witness in reaching a determination regarding responsibility. A Party or witness may also decline to answer a question, and the Decision-Maker cannot rely on any statement on which that Party or witness has declined to answer cross-examination questions. A Decision-Maker 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 answer cross-examination or other questions.

Determinations of Responsibility

When the Decision-Maker makes a determination of responsibility or non-responsibility, the Decision-Maker will issue a written determination regarding responsibility, no later than 30 days after the date that the hearing ends.

When making a determination regarding responsibility, a Decision-Maker will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. A Decision-Maker may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness. In evaluating the evidence, the Decision-Maker will use the preponderance of the evidence standard. Thus, after considering all

the evidence it has gathered, the District will decide whether it is more likely than not that sexual harassment occurred.

The written determination will include:

- Identification of the allegations potentially constituting Title IX sexual harassment, including sexual violence, 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 gave notifications to the Parties. The determination will also state when, where, and the date the investigator interviewed the Parties and witnesses, conducted site visits, the methods used to gather other evidence. The procedural section should also discuss the dates and how the Parties were provided the opportunity to review and inspect evidence and the date of any hearings held and who attended the hearing;
- Findings of fact supporting the determination. In making these findings, the Decision-Maker will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility;
- Conclusions regarding the application of the District's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- A statement of, and rationale for, any disciplinary sanctions the District imposes on the Respondent;
- A statement of whether the District will provide the Complainant with remedies designed to restore or preserve equal access to the District's education program or activity;
- The District need not disclose to the Respondent remedies that do not affect him/her/them as part of the written determination. The District can inform the Respondent that it will provide remedies to the Complainant. However, the District will inform the Complainant of the sanctions against the Respondent;
- The District's procedures and permissible bases for the Complainant and Respondent to appeal.

The District will provide the written determination to the Parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the Parties with the written determination of the result of the appeal, if the Parties file an appeal, or if the Parties do not file an appeal, the date on which an appeal would no longer be timely.

Disciplinary Sanctions and Remedies

The District must have completed the 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. If the Decision-Maker determines the Respondent was responsible for conduct that constitutes sexual harassment, including sexual violence, the District will 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 to:

- 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;
- Providing medical services or a referral to medical services;
- Providing academic support services, such as tutoring;
- Arranging for a Complainant, if a student, 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's discipline.

Possible disciplinary sanctions for student Respondents include written or verbal reprimand, required training or counseling, non-academic probation, suspension, and expulsion. Possible disciplinary sanctions for employee Respondents, up to and including termination, will be based upon the appropriate collective bargaining agreement or employee handbook. Sanctions may also include training relevant to the area(s) of violation.

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

A Complainant or Respondent may appeal the District's determination regarding responsibility or the dismissal of a formal complaint or any allegations. A Complainant or Respondent must submit a written appeal within 15 days from the date of the notice of determination regarding responsibility or from the date of the District's notice of dismissal of a formal complaint or any allegations.

Grounds for Appeal

The Vice President for Student Services will serve as the Decision-Maker on Appeal for student Respondents. The Vice President for Human Resource Services will serve as the Decision-Maker on Appeal for non-student employee Respondents. In filing an appeal of the District's determination regarding responsibility or the District'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 outcome;
- New evidence was not reasonably available at the time the District's determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome; or
- The District's Title IX Coordinator, investigator, or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

Appeal Procedure

If the Complainant or Respondent submit an appeal to the District, the District will:

- Notify the other Party in writing within five business days of receiving a Party's appeal;
- Allow the non-appealing Parties 10 business days from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome;

The Decision-Maker On Appeal will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 45 business days after the Decision-Maker on appeal receives the response to the appeal or the last day to provide a response. The District will provide the written decision simultaneously to both Parties.

The Decision-Maker On Appeal may extend or otherwise modify the deadlines provided above. 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 Decision-Maker will respond to the request within 48 hours in writing and will inform the Parties simultaneously whether the extension is granted.

Informal Resolution

If the District determines that a formal complaint is appropriate for informal resolution, it 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 District will 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 District must obtain the Parties' voluntary, written consent to the informal resolution process. If the Parties reach an agreement, the District 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 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.

Retaliation Prohibited

The District prohibits any intimidation, threats, coercion, or discrimination against any individual who made a report or complaint of sexual harassment, 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 District will provide its policy and procedures related to Title IX on its website and links to these documents 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 District.

When hired, employees are required to sign acknowledging that they have received the policy and procedures. The District will place the signed acknowledgment of receipt in each employee's personnel file.

Training

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

File Retention

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

- The original report or complaint;
- Any actions taken in response to the complaint, including supportive measures;
- The investigative report including all evidence gathered and any responses from the Parties;
- The District'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 District will make these training materials publicly available on its website.

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

Office of Primary Responsibility: Human Resource Services

GENERAL INSTITUTION**AP 3435 DISCRIMINATION AND HARASSMENT COMPLAINTS AND INVESTIGATIONS****References:**

Education Code Sections 212.5, 231.5, 66281.5, and 67386;
Government Code Section 12950.1;
Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et seq.;
Title 2 Sections 11023 and 11024

NOTE: For sexual harassment under Title IX, Complainants must proceed under BP 3433 - Prohibition of Sexual Harassment under Title IX, AP 3433 - Prohibition of Sexual Harassment under Title IX, and AP 3434 - Responding to Harassment Based on Sex under Title IX. For other forms of sexual harassment or gender-based harassment, Complainants should use this procedure.

Reporting and Filing Complaints

The law prohibits, employees, supervisors, administrators, and third parties with whom an employee comes into contact from engaging in harassment, discrimination, or retaliation. Any person who has suffered harassment, discrimination, or retaliation, or who has learned of harassment, discrimination, or retaliation, may report harassment, discrimination, or retaliation. Complainants may have the option of filing an informal complaint or formal complaint.

Informal Complaints

An informal complaint is any of the following:

1. a written or verbal complaint alleging harassment, discrimination, or retaliation filed by an individual who expressly indicates that they do not want to file a formal complaint, or
2. a written or verbal allegation of harassment, discrimination, or retaliation that falls outside the timelines for a formal complaint.

Any person may submit an informal complaint to the Vice President for Human Resource Services or designee, or any other District administrator or supervisor. Administrators or supervisors receiving an informal complaint shall immediately notify the Vice President for Human Resource Services or designee in writing of all pertinent information and facts alleged in the informal complaint.

Upon receipt of an informal complaint, the Vice President for Human Resource Services or designee will notify the person bringing the informal complaint of their right to file a formal complaint, whether the incident falls within the timeline for a formal complaint, and the procedures for filing a formal complaint. The Complainant may later decide to

file a formal complaint, if within the timelines to do so. If the Complainant chooses not to file a formal complaint, or if the alleged conduct falls outside the timeline to file a formal complaint, the Vice President for Human Resource Services or designee shall consider the allegations contained in the informal complaint and determine the appropriate course of action. These efforts may include an attempt to informally resolve the matter, or a fact-finding investigation.

Investigation of an informal complaint will be appropriate if the Vice President for Human Resource Services or designee determines that the allegation(s), if proven true, would constitute a violation of BP 3430 Prohibition of Harassment. The Vice President for Human Resource Services or designee will explain to any individual bringing forth an informal complaint that the Vice President for Human Resource Services or designee may decide to initiate an investigation, even if the individual does not wish the Vice President for Human Resource Services or designee to do so. The Vice President for Human Resource Services or designee shall not disregard any allegations of harassment, discrimination, or retaliation solely on the basis that the alleged conduct falls outside the deadline to file a formal complaint.

Formal Complaints

A formal complaint is a written or verbal statement filed with the District that alleges harassment, discrimination, or retaliation in violation of the District's Board Policies or Administrative Procedures, or in violation of state or federal law. Formal complaints must be filed with the Vice President for Human Resource Services or designee unless the party submitting the formal complaint alleges discrimination, harassment, or retaliation against the responsible District officer (the Vice President for Human Resource Services or designee) in which case it should be submitted directly to the District's Superintendent/President.

The District may request, but shall not require, the Complainant to submit a formal complaint on the form prescribed by the Chancellor of the California Community Colleges. A copy of the form will be available on the District's website, or may be requested in person or by mail from the Human Resource Services Department. A Complainant shall report verbal complaints to the Vice President for Human Resource Services or designee. The Vice President for Human Resource Services or designee shall record the verbal complaint in writing and will take steps to ensure the writing accurately reflects the facts alleged by the Complainant.

A formal complaint must meet each of the following criteria:

- The formal complaint must allege facts with enough specificity to show that the allegations, if true, would constitute a violation of District policies or procedures prohibiting discrimination, harassment, or retaliation;

- The Complainant must file any formal complaint not involving employment within one (1) year of the date of the alleged discriminatory, harassing, or retaliatory conduct, or within one (1) year of the date on which the Complainant knew or should have known of the facts underlying the allegation(s) of discrimination, harassment, or retaliation.
- The Complainant must file any formal complaint alleging discrimination, harassment, or retaliation in employment within 180 days of the date of the alleged discriminatory, harassing, or retaliatory conduct, except that this period shall be extended by no more than 90 days following the expiration of the 180 days if the Complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

If the formal complaint does not meet the requirements set forth above, the Vice President for Human Resource Services or designee will promptly contact the Complainant and specify the defect. If the sole defect is that the formal complaint was filed outside the applicable proscribed timeline, the Vice President for Human Resource Services or designee will handle the matter as an informal complaint.

Oversight of Complaint Procedure: The Vice President for Human Resource Services or designee is the "responsible District officer" charged with receiving complaints of discrimination or harassment and coordinating their investigation.

The actual investigation of complaints may be assigned by the Vice President for Human Resource Services or designee to other staff, or to outside persons or organizations under contract with the District. This shall occur whenever the Vice President for Human Resource Services or designee is named in the complaint or implicated by the allegations in the complaint.

Who May File a Formal Complaint: Any student, employee, parent of a minor, or an individual with legal authority on behalf of a student or employee who believes the student or employee has been discriminated against, harassed, and/or experienced retaliation by a student, employee, or third party in violation of this procedure and the related policy.

Where to File a Formal Complaint: A student, employee, parent of a minor, or an individual with legal authority on behalf of a student or employee who believes the student or employee has been discriminated against, harassed, and/or experienced retaliation in violation of these policy and procedures may make a complaint orally or in writing directed to the Vice President, Human Resource Services or designee. Complainants may, but are not required to, use the form prescribed by the Chancellor of the California Community Colleges. This form is available from the Vice President for Human Resource Services or designee and at the California Community Colleges Chancellor's Office website.

Employment-Related Complaints: Complainants filing employment-related complaints shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH).

Any District employee who receives a harassment, discrimination, or retaliation complaint shall notify the Vice President for Human Resource Services or designee immediately.

Filing a Timely Complaint: Failure to report harassment and discrimination impedes the District's ability to stop the behavior. The District strongly encourages anyone who believes they are being harassed, discriminated, or retaliated against to file a complaint. The District also strongly encourages the filing of such complaints within 30 days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the District's ability to investigate and remediate.

All administrators and supervisors have a mandatory duty to report incidents of harassment and discrimination, the existence of a hostile, offensive, or intimidating work environment, and acts of retaliation.

The District will investigate complaints involving acts that occur at non-District locations if they are related to an academic or work activity or if the harassing, discriminatory, or retaliatory conduct interferes with or limits a student's or employee's ability to participate in or benefit from the District's programs or activities.

When Conduct is Unwelcome: The District encourages students and employees to tell the offending person immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste, or inappropriate. Alternatively, if an individual is uncomfortable addressing the offending person, they are encouraged to communicate the incident to a supervisor, administrator, faculty member, or Human Resources.

Intake and Processing of the Complaint: Upon receiving notification of a harassment, discrimination, or retaliation complaint, the Vice President for Human Resource Services or designee shall:

- Consider whether the District can undertake efforts to informally resolve the charges, including, but not limited, to mediation, rearrangement of work/academic schedules, obtaining apologies, providing informal counseling, training, and/or other appropriate measures.
- Advise all parties that they need not participate in an informal resolution of the complaint, as described above, and that they have the right to end the informal resolution process at any time.

- Advise a student Complainant that they may file a complaint with the Office for Civil Rights of the U.S. Department of Education.
- Advise employee Complainants that they may file a complaint with the DFEH and/or the EEOC.
- All Complainants should be advised that they have a right to file a complaint with local law enforcement, if the act complained of is also a criminal act. The District must investigate the complaint pursuant to this procedure even if the Complainant files a complaint with local law enforcement.
- In addition, the District will provide resources to Complainants, such as counseling, health, and mental health services. The Vice President for Human Resource Services or designee shall also notify the California Community Colleges Chancellor's Office of the complaint pursuant to Title 5, Sections 59300 et seq.
- Take interim steps to protect a Complainant from coming into contact with an accused individual, especially if the Complainant is a victim of sexual violence. The Vice President for Human Resource Services or designee shall notify the Complainant of their options to avoid contact with the accused individual and allow students to change academic situations as appropriate. For instance, the District may prohibit the accused individual from having any contact with the Complainant pending the results of the investigation. When taking steps to separate the Complainant and accused individual, the District shall minimize the burden on the Complainant. For example, it is not appropriate to remove Complainants from classes while allowing accused individuals to remain.

Investigation

The Vice President for Human Resource Services or designee shall:

- Authorize the investigation of the complaint, and supervise or conduct a thorough, prompt, and impartial investigation of the complaint, as set forth below. Where the Complainant opts for informal resolution, the Vice President for Human Resource Services or designee will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. In the case of a formal complaint, the investigation will include interviews with the Complainant, the Respondent, and any other persons who may have relevant knowledge concerning the complaint. This may include victims/survivors of similar conduct.
- Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, retaliation, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality

of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.

Investigation of the Complaint: The District shall promptly investigate every complaint and claim of harassment, discrimination, or retaliation. No claim shall remain unexamined. This includes complaints involving activities that occur in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, on a District vehicle or at a non-District location. The District shall promptly investigate complaints of harassment or discrimination that occur at non-District locations if the alleged conduct creates a hostile environment at a District location. The District shall notify the Complainant that the District will commence an impartial fact-finding investigation of the allegations contained in the complaint.

As set forth above, where the parties opt for an informal resolution, the Vice President for Human Resource Services or designee may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged; incident(s); the Complainant's age; whether there have been other discrimination, harassment, or retaliation complaints about the same individual; and the Respondent's rights to receive information about the allegations if the information is maintained by the District as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. The District will inform the Complainant if it cannot maintain confidentiality.

Investigation Steps: The District will fairly and objectively investigate harassment, discrimination, and retaliation complaints. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes sexual harassment and unlawful discrimination, including sexual violence, and that they understand how the District's grievance procedures operate. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigators will use the following steps to investigate complaints:

- 1) Interviewing the Complainant(s); interviewing the Respondents; identifying and interviewing witnesses identified by each party; and identifying and interviewing any other witnesses not identified by the parties if needed.
- 2) Reminding all individuals interviewed of the District's no-retaliation policy.
- 3) Considering whether any involved person should be removed from the District pending completion of the investigation.

- 4) Reviewing all evidence presented by the parties and all other evidence relevant to the investigation.
- 5) Reviewing the personnel and/or academic files of all involved parties.
- 6) Reaching a conclusion as to the allegations and whether disciplinary and remedial action is appropriate. The Office of Student Affairs shall be responsible for determining appropriate disciplinary and remedial action against students, and the Vice President for Human Resource Services or designee shall be responsible for determining appropriate disciplinary and remedial action against employees.
- 7) Ensuring that all recommended action is carried out in a timely fashion.
- 8) When the District evaluates the complaint, it shall do so using the standard of a preponderance of the evidence. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that discrimination or harassment has occurred.

Timeline for Completion: The District will undertake its investigation as promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report within 90 days of the District receiving the complaint.

Cooperation Expected: All employees are expected to cooperate with District investigations into allegations of harassment, discrimination, or retaliation. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. Lack of cooperation by a Complainant or witnesses, however, does not relieve the District of its obligation to investigate. The District will conduct an investigation if it is discovered that harassment, discrimination, or retaliation is, or may be occurring, with or without the cooperation of the alleged victim(s)/survivor(s) and regardless of whether a complaint is filed. The District will not allow any employee to experience retaliation as a result of lodging a complaint or participating in any workplace investigation.

Written 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 description of the circumstances giving rise to the formal complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony provided by each interviewee, including the Complainant, Respondent, and any available witnesses interviewed;
- An analysis of relevant evidence collected during the course of the investigation, including a list of relevant documents;

- A specific finding as to whether each factual allegation in the complaint occurred based on the preponderance of the evidence standard;
- A table of contents if the report exceeds ten pages, and
- Any other information deemed appropriate by the District.

Confidentiality of the Process: Investigations are best conducted within a confidential climate. Therefore, the District does not reveal information about ongoing investigations except as necessary to fulfill its legal obligations. The District will keep the investigation confidential to the extent possible, but it cannot guarantee absolute confidentiality because release of some information on a “need-to-know-basis” is essential to a thorough investigation. Confidentiality is also necessary to protect the rights of student and employee Complainants and Respondents during the investigation process and any ensuing discipline.

Administrative Determination: In any case not involving employment discrimination, within 90 days of receiving a formal complaint, the District shall complete its investigation and forward a summary of the investigation report and written notice to the Complainant setting forth all of the following:

- The Superintendent/President’s or designee’s determination as to whether unlawful discrimination occurred with respect to each allegation in the complaint based on the standard of a preponderance of the evidence;
- In the event that an allegation is substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future;
- The proposed resolution of the complaint;
- The Complainant’s right to appeal the determination to the District’s Governing Board and the California Community Colleges Chancellor’s Office, and
- In matters involving student sexual misconduct, the Respondent’s right to appeal to the District’s Governing Board any disciplinary sanction imposed upon the Respondent.

In any case involving employment discrimination, within 90 days of receiving a formal complaint, the District shall complete its investigation and forward a summary of the investigation report and written notice to the Complainant setting forth all the following:

- The Superintendent/President or designee’s determination as to whether unlawful discrimination occurred with respect to each allegation in the complaint based on the standard of preponderance of the evidence;
- If an allegation is substantiated, a description of actions taken, if any, to prevent similar acts from occurring in the future;
- The proposed resolution of the complaint; and

- The Complainant's right to appeal to the District's Governing Board and to file a complaint with the DFEH and/or EEOC.

In any case involving employment discrimination, the District shall also provide the Respondent with the following:

- The Superintendent/President or their designee's determination as to whether unlawful discrimination occurred with respect to each allegation in the complaint based on the standard of a preponderance of the evidence;
- The proposed resolution of the complaint, including any disciplinary action against the Respondent; and
- In matters involving student sexual misconduct not subject to Title IX, the Respondent's right to appeal to the District's Governing Board any disciplinary sanction(s) imposed upon the Respondent.

Discipline for Student Sexual Misconduct Not Subject to Title IX

In a complaint involving student sexual misconduct not subject to Title IX, if a student Respondent is subject to severe disciplinary sanctions, and the credibility of witnesses was central to the investigative findings, the District will provide an opportunity for the student Respondent to cross-examine witnesses indirectly at a live hearing, either in person or by videoconference. The live hearing will be conducted by a neutral decision-maker other than the investigator. Hearings for student Respondents will be conducted by the Assistant Superintendent/Vice President, Student Services or designee. Hearings for employee Respondents will be conducted by the Vice President for Human Resource Services or designee.

The District shall appoint a neutral third party to attend the hearing solely for the purpose of asking any questions to the interviewees, including the Complainant. The neutral third party shall not be the student Respondent, the student Respondent's representative, or any individual charged with making a final determination regarding discipline. The student Respondent may submit written questions before and during the cross-examination, including any follow-up questions. The neutral third party asking questions shall not exclude any questions unless there is an objection to the question by any individual present charged with making a final determination regarding discipline.

Discipline and Corrective Action

If harassment, discrimination, or retaliation occurred in violation of District policy or procedure, the District shall take disciplinary action against the Respondent and any other remedial action it determines to be appropriate consistent with state and federal law. The action will be prompt, effective, and commensurate with the severity of the offense. Remedies for the Complainant will be arranged to meet their needs, and might include, but are not limited to:

- 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;
- Preventing offending third parties from entering campus;
- Providing counseling services through the District or a referral to counseling services available outside of the District;
- Providing medical services through the District or a referral to medical services outside of the District;
- 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 determine if there is a causal connection between the alleged misconduct that may have resulted in the Complainant being disciplined.

If the District imposes discipline, the nature of the discipline will not be communicated to the Complainant. The District may disclose information about the sanction imposed on an individual who was found to have engaged in unlawful discrimination when the sanction directly relates to the Complainant; for example, the District may inform the Complainant that the Respondent must stay away from the Complainant.

Disciplinary actions will conform to all relevant statutes, regulations, personnel policies and procedures, and will include the provisions of any applicable collective bargaining agreement or employee handbook.

The District shall also take reasonable steps to protect the Complainant from further unlawful discrimination, and to protect the Complainant and witnesses from retaliation as a result of communicating the complaint or assisting in the investigation.

The District will ensure that Complainants and witnesses know how to report any subsequent issues, including retaliation, and will follow up with Complainants during and after the conclusion of an investigation to determine whether any retaliation or new incidents of unlawful discrimination have occurred.

If the District cannot take disciplinary action against the Respondent because the Complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

Appeals

If the District imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the appeals procedure.

If the Complainant is not satisfied with the results of the administrative determination, they may, within 30 days, submit a written appeal to the Governing Board.

In a complaint involving student sexual misconduct not subject to Title IX, a Respondent who is not satisfied with the results of the administrative determination may submit a written appeal to the District's Governing Board within 30 calendar days by submitting the appeal to the President's Office.

The Governing Board shall review the original complaint, the investigative report, the administrative determination, and the Respondent's appeal. The Governing Board shall issue a final District decision in the matter within 45 calendar days after receiving the Respondent's appeal. A copy of the decision rendered by the Governing Board shall be forwarded to the Complainant and the Respondent. The Complainant shall also be notified of their right to appeal this decision.

If the Governing Board does not act within 45 calendar days, the administrative determination shall be deemed approved on the forty-sixth day and shall become the final decision of the District in the matter. The District shall promptly notify the Complainant and the Respondent of the Governing Board's action, or if the Governing Board took no action, that the administrative determination is deemed approved.

In any case not involving, unlawful discrimination based on employment, the Complainant shall have the right to file a written appeal with the California Community Colleges Chancellor's Office within 30 calendar days after the Governing Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Title 5, Section 59350.

In any case involving unlawful discrimination based on employment, the Complainant may, at any time before or after the issuance of the District's final decision file a complaint with the and/or EEOC.

Remand

The California Community College Chancellor's Office may remand any matter of unlawful discrimination to the District for any of the following reasons:

- a. cure defects in the investigation or in procedural compliance;
- b. to consider new evidence not available during the investigation despite the Complainant's due diligence that would substantially impact the outcome of the investigation; or,
- c. to modify or reverse a decision of the District's Governing Board based upon misapplication of an applicable legal standard or an abuse of discretion.

If the California Community College Chancellor's Office remands a matter to the District, the District shall take necessary action and issue a decision after remand within 60 calendar days. In any case not involving employment discrimination, the Complainant may appeal the District's amended determination to the California Community College Chancellor's Office within 30 calendar days by following the appeal procedures above.

Extension of Time

If the District is unable to comply with the 90-day deadline for investigation of a complaint and issuing an administrative determination, the District may extend the time to respond by up to 45 additional days without notifying the California Community Colleges Chancellor's Office. An extension without notification may be taken only once without permission from the California Community Colleges Chancellor's Office. Such extension must be necessary for one of the following reasons:

- A need to interview a party or witness who has been unavailable;
- A need to review or analyze additional evidence, new allegations, or new complaints related to the matter; or
- To prepare and finalize an administrative determination.

The District shall send a written notice to the Complainant and to a Respondent who is aware of an investigation indicating the following: a) the necessity of an extension, b) the justification for the extension, and c) the number of days by which the deadline will be extended. The District shall send this notice no later than 10 calendar days prior to the 90-day deadline for completing the investigation and issuing the administrative determination.

The District may request additional extensions from the California Community Colleges Chancellor's Office after the initial 45-day extension. The District shall send a copy of the extension request to the Complainant and to a Respondent who is aware of an investigation. The Complainant and Respondent may each file a written objection with the California Community Colleges Chancellor's Office within five (5) calendar days of receipt.

Disclosures to the California Community Colleges Chancellor's Office

Upon request of the California Community Colleges Chancellor's Office, the District shall provide copies of all documents related to an unlawful discrimination complaint, including the following:

- The original complaint;
- Any investigative report, unless subject to attorney-client privilege;
- The written notice to the Complainant setting forth the results of the investigation and the District's administrative determination;

- The final decision rendered by the Governing Board following an appeal decision or a statement indicating the date upon which the Governing Board's decision became final;
- A copy of the notification to the Complainant of their appeal rights, the Complainant's appeal of the District's administrative determination, if one was filed; and
- Any other non-privileged documents or information the Chancellor requests.

The District shall provide to the California Community Colleges Chancellor's Office an annual report with the following information:

- The number of employment and non-employment unlawful discrimination, harassment, and retaliation complaints and informal charges received in the previous academic year;
- The number of complaints and informal charges resolved in the previous academic year;
- The number of unlawful discrimination complaints that were sustained in whole or in part; and
- Any other information requested by the Chancellor.

File Retention

The District will retain on file for a period of at least five (5) years after closing an unlawful discrimination matter copies of:

- The original complaint;
- The investigation report;
- The summary of the investigation report if one is prepared;
- The notice provided to the parties of the District's administrative determination and the right to appeal;
- Any appeal submitted; and
- The District's final decision rendered by the Governing Board for any appeal.

For any appeal submitted to the California Community Colleges Chancellor's Office, the District shall provide all relevant, non-privileged documents upon the request of the Chancellor.

Dissemination of Policy and Procedures

District policies and procedures related to unlawful discrimination will include information that specifically addresses sexual violence. All of these District policies and procedures will be provided to all students and employees and will be posted on the District's website and disseminated throughout the District.

When hired, employees will be required to sign an acknowledgement agreement that they have received the policies and procedures, and the signed agreement will be placed in each employee's personnel file. In addition, these policies and procedures will be incorporated into the District's course catalogs, class schedules, and orientation materials for new students.

Training

By January 1, 2021, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all non-supervisory employees. All new employees must be provided with the training and education within six (6) months of their assumption of his/her/their position. After January 1, 2021, the District shall provide sexual harassment training and education to each employee once every two (2) years. An employee who first received this training and education in 2019 is not required to take the training again until after two (2) years thereafter.

The training and education required by this procedure shall include information and practical guidance regarding the federal and state statutory provisions concerning the following topics:

- Prohibition against and the prevention and correction of sexual harassment, including sexual violence, and the remedies available to victims and survivors of sexual harassment in employment;
- A review of the concept of abusive conduct;
- Harassment and discrimination based on gender, gender identity, gender expression, and sexual orientation.
- The training and education for supervisory employees shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation.
- The supervisory training must also address potential exposure and liability for employers and individuals, supervisor's obligation to report sexual harassment, discrimination, and retaliation when they become aware of it, appropriate remedial measures to correct harassing behavior.

These trainings shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. The District will maintain appropriate records of the training provided, including the names of the supervisory employees trained, the date of training, sign-in sheets or training rosters, copies of all certificates of attendance or other proof of completion, the type of training provided (i.e., in person or online), a copy of all written or recorded training materials, and the name of the training provider. If the training is provided by webinar, the District

will maintain a copy of the webinar and all written materials used in conjunction with the training

The District will provide copies of the sexual harassment and sexual violence policies and procedures to all District employees in the Palomar College Police Department, to include the grievance procedures and any other procedures used for investigating reports of sexual violence.

In years in which a substantive policy or procedural change has occurred to any District policy and/or procedure regarding unlawful discrimination, sexual harassment, or sexual violence, all District employees will receive a copy of the revised policies and procedures.

Education and Prevention for Students

In order to take proactive measures to prevent sexual harassment and sexual violence toward students, the District will provide preventive education programs and make victim resources, including comprehensive victim services, available. The District will include such programs in their orientation programs for new students at a minimum, and may provide additional trainings to other academic or student programs deemed appropriate or necessary by the District. These programs will include discussion of what constitutes sexual harassment and sexual violence; the District's relevant policies and procedures; and the consequences of violating these policies, including discipline. A training program and/or informational services or campaigns will be made available to all students at least once annually during the academic year.

These programs will also include information aimed at encouraging students to report incidents of sexual harassment and sexual violence to the appropriate District and law enforcement authorities. Since victims/survivors or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of District policies, procedures, or rules were involved, the District will inform students that the primary concern is for student safety and that use of alcohol or drugs never makes the victim at fault for sexual harassment or sexual violence. If other policies, procedures, or rules of the District are violated, the District will address such violations separately from an allegation of sexual harassment or sexual violence.

GENERAL INSTITUTION**BP 3540 SEXUAL AND OTHER ASSAULTS ON CAMPUS****References:**

Education Code Sections 67385, and 67385.7, and 67386;
20 US. Code Section 1092(f);
34 Code of Federal Regulations Section 668.46(b)(11)

Any sexual assault or physical abuse, including but not limited to rape as defined by California law, whether committed by an employee, student, or member of the public, that occurs, is a violation of District policies and procedures and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. Students, faculty, and staff who may be victims of sexual and other assaults shall be treated with dignity and provided comprehensive assistance.

The Superintendent/President shall establish administrative procedures that ensure that students, faculty, and staff who are victims of sexual and other assaults receive appropriate information and treatment, and that educational information about preventing sexual violence is provided and publicized as required by law.

The procedures shall meet the criteria contained in Education Code Sections 67385, 67385.7, and 67386; as well as 34 Code of Federal Regulations Section 668.46.

Also see BP/AP 3430 titled Prohibition of Harassment and AP 3435 titled Discrimination & Harassment: Complaints, Investigations, and Awareness Training.

GENERAL INSTITUTION**AP 3540 SEXUAL AND OTHER ASSAULTS ON CAMPUS****References:**

Education Code Sections 67385 and 67386;
20 U.S. Code Section 1092(f);
34 Code of Federal Regulations Section 668.46(b)(11)

Any sexual assault or physical abuse, including, but not limited to, rape, domestic violence, dating violence, sexual assault, or stalking as defined by California law, whether committed by an employee, student, or member of the public, occurring on District property, in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities or at another location, or on an off-campus site or facility maintained by the District or on grounds or facilities maintained by a student organization is a violation of District policies and procedures and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. (Also see AP 5500 titled Standards of Student Conduct)

"Sexual assault" includes but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

"Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a romantic or intimate relationship will be determined based on the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

"Domestic violence" includes felony or misdemeanor crimes of violence committed by:

- a current or former spouse of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with or has cohabitated with the victim as a spouse;
- by a person similarly situated to a spouse of the victim under California law; or
- by any other person against an adult or youth victim who is protected from that person's acts California law.

"Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/ her safety or the safety of others, or to suffer substantial emotional distress.

It is the responsibility of each person involved in sexual activity to ensure that he/she has the affirmative consent of the other or others to engage in the sexual activity. Lack

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(Replaces all previous versions of AP 3540.)

of protest or resistance does not mean consent, nor does silence mean 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.

“Affirmative consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity.

These written procedures and protocols are designed to ensure victims of domestic violence, dating violence, sexual assault, or stalking receive treatment and information. (For physical assaults/violence, also see AP 3500 titled Campus Safety, AP 3510 titled Workplace Violence Plan, and AP 3515 titled Reporting of Crimes).

All students, faculty members, or staff members who allege they are the victims of domestic violence, dating violence, sexual assault, or stalking on District property shall be provided with information regarding options and assistance available to them. Information shall be available from the Palomar College Police Department, which shall maintain the identity and other information about alleged sexual assault victims as confidential unless and until the Palomar College Police Department is authorized to release such information.

The Palomar College Police Department shall provide all alleged victims of domestic violence, dating violence, sexual assault, or stalking with the following:

- A copy of the District's policy and procedure regarding domestic violence, dating violence, sexual assault, or stalking
- A list of personnel on campus who should be notified and procedures for such notification, if the alleged victim consents. The Chief of Police or designee shall notify the following individuals, as applicable:
 - Superintendent/President
 - Assistant Superintendent/Vice President of Student Services
 - Assistant Superintendent/Vice President, Human Resources Services
 - Director of Student Affairs
 - Director, Communications, Marketing & Public Affairs
- Information about the importance of preserving evidence and the identification and location of witnesses

Services:

- Facilitate transportation to a hospital, if necessary
 - Referral to a counseling center
 - Notification to appropriate police authorities, if desired
 - A list of other available campus resources or appropriate off-campus resources
- A description of available services and the persons on campus available to provide those services if requested. The departments responsible for providing or arranging them include:
 - Palomar College Police Department
 - Health Services
 - Office of Student Affairs
 - Counseling Department
 - Human Resource Services
- The victim's option to:
 - notify proper law enforcement authorities, including on-campus and local police;
 - be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
 - decline to notify such authorities;
- The rights of victims and the institution's responsibilities regarding orders of protection, no contact orders, or similar lawful orders issued by a court;
- Information about how the district will protect the confidentiality of victims; and
- Written notification to victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.
- A description of each of the following procedures:
 - Criminal prosecution
 - Civil prosecution (i.e., lawsuit)
 - District disciplinary procedures, both student and employee
 - Modification of class schedules
 - Tutoring, if necessary

The Vice President for Human Resource Services or designee is available to provide assistance to District Police regarding how to respond appropriately to reports of sexual violence.

The District will investigate all complaints alleging sexual assault under the procedures for sexual harassment investigations described in AP 3435 Discrimination &

Harassment: Complaints, Investigations, and Awareness Training, regardless of whether a complaint is filed with local law enforcement. All alleged victims of domestic violence, dating violence, sexual assault, or stalking on District property shall be kept informed, through the Palomar College Police Department of any ongoing investigation. Information shall include the status of any student or employee disciplinary proceedings or appeal. Alleged victims of domestic violence, dating violence, sexual assault, or stalking are required to maintain any such information in confidence, unless the alleged assailant has waived rights to confidentiality.

A complainant or witness who participates in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the District's student conduct policy at or near the time of the incident, unless the District determines that the violation was egregious, including but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic honesty.

In the evaluation of complaints in any disciplinary process, it shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:

- The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.
- The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.

In the evaluation of complaints in the disciplinary process, it shall not be a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity under any of the following circumstances:

- The complainant was asleep or unconscious.
- The complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity.
- The complainant was unable to communicate due to a mental or physical condition.

The District shall maintain the identity of any alleged victim, witness, or third-party reporter of domestic violence, dating violence, sexual assault, or stalking on District property, as defined above, in confidence unless the alleged victim, witness, or third-party reporter specifically waives that right to confidentiality. All inquiries from reporters

or other media representatives about alleged domestic violence, dating violence, sexual assaults, or stalking on District property shall be referred to the District's Communications, Marketing, & Public Affairs Office, which shall work with the Palomar College Police Department to assure that all confidentiality rights are maintained.

Additionally, the Annual Security Report will include a statement regarding the District's programs to prevent sexual assault, domestic violence, dating violence, and stalking and procedures that should be followed after an incident of domestic violence, dating violence, sexual assault, or stalking has been reported, including a statement of the standard of evidence that will be used during any in any district proceeding arising from such a report. The statement must include the following:

- A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses, domestic violence, dating violence, or stalking
- Procedures to follow if a domestic violence, dating violence, sex offense, or stalking occurs, including who should be contacted, the importance of preserving evidence to prove a criminal offense, and to whom the alleged offense should be reported
- Information on a student's right to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that campus personnel will assist the student in notifying these authorities, if the student so requests, and the right to decline to notify these authorities
- Information about how the District will protect the confidentiality of victims
- Information for students about existing on and off-campus counseling, mental health, victim advocacy, legal assistance, or other student services for victims
- Written notification to victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement
- Notice to students that the campus will change a victim's academic situation after an alleged domestic violence, dating violence, sexual assault, or stalking and of the options for those changes, if those changes are requested by the victim and are reasonably available
- Procedures for campus disciplinary action in cases of an alleged domestic violence, dating violence, sexual assault, or stalking, including a clear statement that:
 - Such proceedings shall provide a prompt, fair, and impartial resolution
 - Such proceedings shall be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual

- assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability
 - The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding and
 - Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding resulting from an alleged domestic violence, dating violence, sexual assault, or stalking, the procedures for the accused and victim to appeal the results of the disciplinary proceeding, of any chances to the results that occurs prior to the time that such results become final, and when such results become final. Compliance with this paragraph does not violate the Family Educational Rights and Privacy Act. For the purposes of this paragraph, the outcome of a disciplinary proceeding means the final determination with respect to the alleged domestic violence, dating violence, sex offense, or stalking and any sanction that is imposed against the accused
- A description of the sanctions the campus may impose following a final determination by a campus disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses, domestic violence, dating violence, or stalking

Education and Prevention Information

The Palomar College Police Department shall:

- Provide, as part of the District's established on-campus orientation program, education, and prevention information about domestic violence, dating violence, sexual assault, and stalking. The information shall be developed in collaboration with District-based and community-based victim advocacy organizations. and shall include the District's sexual assault policy and prevention strategies including empowerment programming for victim prevention, awareness raising
- campaigns, primary prevention, bystander intervention, and risk reduction.
- Post sexual violence prevention and education information on the campus internet website regarding domestic violence, dating violence, sexual assault and stalking.

For additional information and resources on sexual assault, domestic violence, dating violence, and stalking in the educational/campus environment, the Department of Justice has established a clearinghouse of resources geared towards colleges and universities, which can be accessed at the California Attorney General's website.

Also see BP/AP 3430 titled Prohibition of Harassment and AP 3435 titled Discrimination & Harassment: Complaints, Investigations, and Awareness Training.

Office of Primary Responsibility: Student Services

Date Approved: 12/15/09; Revised: 5/7/13; 10/21/14; 10/16/18; 9/17/19

(Replaces all previous versions of AP 3540.)



Last	First
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Street or P.O. Box	City	State	Zip
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Phone #	Email Address
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I am a: ☐ Student ☐ Employee ☐ Other: _____

Name(s):

District (if other than Palomar College): _____

☐ Student ☐ Employee ☐ Other:

Date of most recent incident or alleged discrimination:

Employment complaints must be filed within 180 days of the date of the alleged unlawful discrimination.

	Age		Military/Veteran Status
	Ancestry		National Origin
	Color		Physical/Mental Disability
	Ethnic Group		Race
	Gender Expression		Religion
	Gender Identification		Retaliation
	Immigration Status		Sex/Gender (<i>includes sexual harassment</i>)
	Marital Status		Sexual Orientation
	Medical Condition		Other Protected Class (Explain):

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Clearly state your complaint. Describe each incident of alleged discrimination separately. For each incident provide the following information:

1. The date(s) the discriminatory action occurred.
2. The name(s) of individual(s) who participated in discriminatory conduct.
3. The location of incident.
4. A description of the incident.
5. Any witnesses to the incident.
6. Why you believe the conduct was motivated by your protected classification.
7. If applicable, explain why you believe you were retaliated against for filing a complaint or asserting your right to be free from discrimination based on your protected classification.

Please attach additional pages as necessary.

I certify that this information is correct to the best of my knowledge.

Signature of Person Filing Complaint

Date

Return this completed form:

- By mail:
Palomar College
Human Resource Services
c/o EEO and Title IX Office
1140 W. Mission Rd.
San Marcos, CA 92069
- By email: eeotitle@palomar.edu