

AP 3433 Responding to Sex Discrimination under Title IX (Effective August 1, 2024) (NEW)

References:

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

Introduction

The College prohibits sex discrimination, including sex-based harassment.

Regulations implementing Title IX of the Education Amendments of 1972 (Title IX) specify how colleges must respond to allegations of sex discrimination, including sex based harassment.¹ The regulations require colleges to respond promptly and equitably to persons alleging sex discrimination, including sex-based harassment.² The College has adopted the following procedures in compliance with the aforementioned Title IX regulations. These procedures comply with the Title IX regulations that came into effect on August 1, 2024, and only apply to sex discrimination, including sex-based harassment, that allegedly occurred on or after that date.³

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

Title IX Coordinator

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When notified of conduct that reasonably may constitute sex discrimination under Title IX, the Title IX Coordinator, or designee, is required to take the following actions to

¹ 34 CFR 106

² 34 CFR 106

³ 89 FR 33841, 34 CFR 106

⁴ 34 CFR 106.6(b)

promptly and effectively end any sex discrimination in the College's education program or activity, prevent its recurrence, and remedy its effects:⁵

- 1) Treat the complainant and respondent equitably;
- 2) Offer and coordinate supportive measures, as appropriate, for the complainant.
- 3) Notify the complainant or, if the complainant is unknown, the individual who reported the conduct, of the complaint procedures and the informal resolution process, if available and appropriate.
- 4) If a complaint has been filed or an informal resolution is offered, offer and coordinate supportive measures as appropriate for the respondent, and notify the respondent of the complaint procedures and the informal resolution process, if available and appropriate.
- 5) In response to a complaint, initiate the complaint procedures, or the informal resolution process, if available and appropriate, and requested by all parties.
- 6) In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process, determine whether to initiate a complaint of sex discrimination that complies with the complaint procedures.
 - a) To make this fact-specific determination, the Title IX Coordinator must consider the following factors:
 - i) The complainant's request not to proceed with the initiation of a complaint;
 - ii) The complainant's reasonable safety concerns regarding the initiation of a complaint;
 - iii) The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
 - iv) The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
 - v) The age and relationship of the parties, including whether the respondent is an employee of the College;
 - vi) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
 - vii) The availability of evidence to assist a decision-maker in determining whether sex discrimination occurred;
 - viii) Whether the College could end the alleged sex discrimination and prevent its recurrence without initiating its complaint procedures; and
 - ix) Where the complainant is a student and the allegations pertain to sex-based harassment, the District will also conduct the relevant analysis under California law.

⁵ 34 CFR 106.44(f)

- b) If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or another person, or that the conduct as alleged prevents the College from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint.
- c) If the Title IX Coordinator initiates a complaint in the absence of a complaint or after the withdrawal of any or all of the allegations in a complaint, or in the absence or termination of an informal resolution process, the College must notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures; and regardless of whether a complaint is initiated, the College must take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual complainant, if any, to ensure that sex discrimination does not continue or recur within the College's education program or activity.

The Title IX Coordinator shall not take the actions described above if the Title IX Coordinator reasonably determines that the conduct as alleged could not constitute sex discrimination under Title IX. When the alleged conduct does not constitute sex discrimination under Title IX, the matter may be addressed through other board policies or administrative procedures, if applicable⁶.

The Title IX Coordinator may delegate specific duties to one or more designees.⁷

Title IX Sex Discrimination and Harassment Complaints

These procedures provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in the College's education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX.⁸

Jurisdictional Requirements – Application of Procedures

These procedures apply to all sex discrimination occurring under a College's education program or activity in the United States. Conduct that occurs under the College's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the College, and conduct that is subject to the College's disciplinary authority. The College must address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the College's education program or activity or outside the United States.⁹

⁶ 34 CFR 106.44(f)(2)

⁷ 34 CFR 106.8 (a)(2)

⁸ 34 CFR 106.8(b)(2)

⁹ 34 CFR 106.11

Definitions

Complainant means:

1. A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination including sex-based harassment; or
2. A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part and who was participating or attempting to participate in the College's education program or activity at the time of the alleged sex discrimination;¹⁰

Complaint means an oral or written complaint request to the College that objectively can be understood as a request for the College to investigate and make a determination about alleged sex discrimination including sex-based harassment.¹¹ A person may only file a complaint of sex-based harassment if they allege to have been subjected to the sex-based harassment or if they have a legal right to act on such person's behalf. The Title IX Coordinator may also initiate the complaint.¹²

Confidential employee means:

1. An employee of the College whose communications are privileged or confidential under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
2. An employee of the College whom the College has designated as confidential for purpose of providing services to persons related to sex discrimination and sex-based harassment. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination including sex-based harassment in connection with providing those services; or
3. An employee of the College who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination including sex-based harassment—but the employee's confidential status is only with respect to information received while conducting the study.

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

¹⁰ 34 CFR 106.2

¹¹ 34 CFR 106.2

¹² 34 CFR 106.44(f)(1)(v).

relations between them, is not an indicator of consent. Adult sexual activity with a minor is not consensual as a matter of law except in situations where California law provides an exception based on the age difference between the minor and the respondent.¹³

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.

Disciplinary sanctions mean consequences imposed on a respondent following a determination that the respondent violated the College's prohibition on sex discrimination and/or sex-based harassment.¹⁴

Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.¹⁵

Parental status means the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is a biological parent; an adoptive parent; a foster parent; a stepparent; a legal custodian or guardian; In loco parentis with respect to such a person; or actively seeking legal custody, guardianship, visitation, or adoption of such a person.

Party means a complainant or respondent.

¹³ California Education Code § 67386 (A)(1); California Penal Code 261.5

¹⁴ 34 CFR 106.2

¹⁵ 34 CFR 106.10

Peer retaliation means retaliation by a student against another student.

Pregnancy or related conditions means:

- (1) Pregnancy, childbirth, termination of pregnancy, or lactation;
- (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

Program or Activity means all of the operations of the College.

Remedies means measures provided, as appropriate, to a complainant or any other person the College identifies as having had their equal access to the College's education program or activity limited or denied by sex discrimination including sex-based harassment. These measures are provided to restore or preserve that person's access to the College's education program or activity after the College determines that sex discrimination including sex-based harassment occurred.

Respondent means a person who is alleged to have violated the College's prohibition on sex discrimination.¹⁶

Retaliation means intimidation, threats, coercion, or discrimination against any person by the College, a student, or an employee or other person authorized by the College to provide aid, benefit, or service under the College's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this administrative procedure, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this administrative procedure, including in an informal resolution process and in any other actions taken by the College under this administrative procedure. Nothing in this definition or this part precludes the College from requiring an employee or other person authorized by the College to provide aid, benefit, or service under the College's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, that is:

1. *Quid pro quo harassment*. An employee, agent, or other person authorized by the College to provide an aid, benefit, or service under the College's education program or activity explicitly or implicitly conditioning the provision of such aid, benefit, or service on a person's participation in unwelcome sexual conduct;

¹⁶ 34 CFR 106.30(a) – (pg. 30574)

2. *Hostile environment harassment.* Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the College's education program or activity (*i.e.*, creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the complainant's ability to access the College's education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the College's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the College's education program or activity; or

3. *Specific offenses.*

- Sexual assault¹⁷, 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 his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the genital or anal opening of the body of another person.
 - Sodomy: Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
 - Sexual Assault with an Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything the offender uses other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.

¹⁷ 34 CFR 106.2; 20 U.S.C. 1092(f)(6)(A)(v)

- Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
- Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse:
 - Incest. Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape – Non-Forcible. Sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
- Dating violence¹⁸: Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- Domestic Violence: Violence committed:
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California;
 - 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.
- Stalking¹⁹: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

¹⁸ 34 CFR 106.2

¹⁹ 34 CFR 106.2

- *Supportive Measures* mean individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:
 1. Restore or preserve that party's access to the College's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or
 2. Provide support during the Grievance Procedures or during an informal resolution process.

Reporting

Any individual may report or file a complaint of sex discrimination and/or sex-based harassment to the College's Title IX Coordinator through any of these options²⁰:

Online:

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

Phone:

(909) 274-5249

Email:

eeo.titleix@mtsac.edu

Mail or in person:

1100 N. Grand Avenue
Building 4, Human Resources
Walnut, CA 91789

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

Individuals have the opportunity to decide whether they want to pursue a formal Title IX complaint. Reporting prohibited conduct to the Title IX Coordinator does not automatically initiate an investigation under these procedures. A report allows the College to provide a wide variety of support and resources to impacted individuals and to prevent the reoccurrence of the conduct. A complainant or the Title IX Coordinator filing a complaint will initiate an investigation.²¹

²⁰ 34 CFR 106.8(c)(1)(E)

²¹ 34 CFR 106.44

If there are parallel criminal and Title IX investigations, the College will cooperate with the external law enforcement agency, and will coordinate to ensure that the Title IX process does not hinder legal process or proceedings.²²

The College will document reports of prohibited conduct in compliance with the Clery Act, a federal law requiring data collection of crime within the campus geography. Under the Clery Act, the College does not document personal information; the College reports the type of conduct, and the time, date, and location.²³

College Employees' Reporting Requirements²⁴

All College employees except *confidential employees*, as defined in this administrative procedure, are required to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute discrimination on the basis of sex or sex-based harassment.

Students who are also employees of the College, must notify the Title IX Coordinator when they learn of conduct that reasonably may constitute discrimination on the basis of sex or sex-based harassment while actively working in their role as an employee.

Notification to the Title IX Coordinator must include the following information: the name of the Respondent, the Complainant, any other witnesses, and the date, time, and location of the alleged incident, if known.

Confidential employees shall explain to any person who informs the confidential employee of conduct that reasonably may constitute sex discrimination including sex-based harassment of the following:

1. the employee's status as confidential, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination including sex-based harassment;
2. how to contact the College's Title IX Coordinator and how to make a complaint of sex discrimination including sex-based harassment; and
3. the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation.

When the Title IX Coordinator is notified of information about conduct that reasonably may constitute sex-based harassment under Title IX that was provided by a person during a public event to raise awareness about sex-based harassment that was held on the College's campus or through an online platform sponsored by the College, the College is not obligated to act in response to the information, unless it indicates an imminent and serious threat to the health or safety of a complainant, any students, employees, or other persons. However, in all cases the College must use this information to inform its efforts

²² 34 CFR 106

²³ 34 CFR 106

²⁴ 34 CFR 106.44(c)

to prevent sex-based harassment, including by providing tailored training to address alleged sex-based harassment in a particular part of its education program or activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment.²⁵

Pregnancy-Related Notification Requirements

When a student, or a person who has a legal right to act on behalf of the student, informs any employee of the student's pregnancy or related conditions, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee must promptly provide that person with the Title IX Coordinator's contact information and inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the College's education program or activity.²⁶

Following notice of a student's pregnancy, the College must inform the student, and if applicable, the person who notified the Title IX Coordinator of the student's pregnancy or related conditions and has a legal right to act on behalf of the student, of the College's notice of nondiscrimination and that:²⁷

- The College must make reasonable modifications to the College's policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the College's education program or activity. Each reasonable modification must be based on the student's individualized needs. In determining what modifications are required, the College must consult with the student. A modification that would fundamentally alter the nature of its education program or activity is not a reasonable modification.
 - The student has discretion to accept or decline each reasonable modification offered by the College. If a student accepts an offered reasonable modification, the College must implement it.
 - Reasonable modifications may include, but are not limited to, breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other changes to policies, practices, or procedures.
- The College must allow the student to voluntarily access any separate and comparable portion of the College's education program or activity provided the

²⁵ 34 CFR 106.44(e)

²⁶ 34 CFR 106.40(b)

²⁷ 34 CFR 106.40(b)(3)

College ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.

- The College must allow the student to voluntarily take a leave of absence from the College's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. When the student returns to the College's education program or activity, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.
- The College must ensure that the student can access a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.
- The College shall not require supporting documentation for modifications listed above unless the documentation is necessary and reasonable for the College to determine the reasonable modifications to make or whether to take additional specific actions. Examples of situations when requiring supporting documentation is not necessary and reasonable include, but are not limited to, when the student's need for a specific action is obvious, such as when a student who is pregnant needs a bigger uniform; when the student has previously provided the College with sufficient supporting documentation; when the reasonable modification because of pregnancy or related conditions at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when the student has lactation needs; or when the specific action is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.

The College must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy the College administers, operates, offers, or participates in with respect to students admitted to the College's education program or activity.²⁸

The College shall not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the College's class, program, or extracurricular activity unless:²⁹

- The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
- The College requires such certification of all students participating in the class, program, or extracurricular activity; and

²⁸ 34 CFR 106.40(b)(4)

²⁹ 34 CFR 106.40(b)(5)

- The information obtained is not used as a basis for discrimination prohibited by Title IX.

Intake and Processing of Report

Receipt of Report

After receiving a report of prohibited conduct, the Title IX Coordinator or designee shall contact the complainant and reporting party to explain rights under this policy and procedure, invite the complainant to a meeting. The Title IX Coordinator or designee will discuss supportive measures with the parties.³⁰

Timeframe for Reporting

The College does not limit the timeframe for reporting prohibited conduct.³¹ However, to promote timely and effective review, the College strongly encourages individuals to report prohibited conduct as soon possible, as a delay in reporting may affect the ability to collect relevant evidence.

Supportive Measures³²

The College will provide supportive measures on a confidential basis and will only make disclosures to those with a need to know to enable the College to provide the service. Supportive measures may include, but are not limited to: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact applied to one or more parties, changes in work locations, changes in extracurricular or any other activity regardless of whether there is or is not a comparable alternative, leaves of absence, increased security and monitoring of certain areas of the campus, training and education programs related to sex-based harassment, and other similar measures.

The Parties are provided with a timely opportunity to seek modification or reversal of the College's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator, if the Title IX Coordinator initially implemented the supportive measures, a request can be made to the College Compliance Officer. The Title IX Coordinator or the College Compliance Officer will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the definition of supportive measures. The College typically renders decisions on supportive measures within ten (10) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator.

³⁰ 34 CFR 106.44(a)

³¹ 34 CFR 106

³² 34 CFR 106.44(g)

When requested by a complainant or otherwise determined to be appropriate, the College will issue an interim no-contact directive prohibiting the respondent from contacting the complainant during the pendency of the investigation. The College will not issue an interim mutual no-contact directive automatically, but instead will consider the specific circumstances of each situation to determine whether a mutual no-contact directive is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to respond to interference with an investigation. A no-contact directive issued after a decision of responsibility has been made as a remedy will be unilateral and only apply against the party found responsible.³³

Upon the issuance of a mutual no-contact directive, the College will provide the parties with a written justification for the directive and an explanation of the terms of the directive. Upon the issuance of any no-contact directive, the College will provide the parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action.³⁴

Removal of Respondent Pending Final Determination

The College has the right to order the emergency removal of a respondent or, if the respondent is an employee, place the employee on administrative leave, pending further investigation and a final determination.

Emergency Removal³⁵

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

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

The Title IX Coordinator or designee shall then provide the person sought to be removed from campus on an emergency basis with a notice, opportunity to meet in person or via electronic platform at the College's discretion, within five (5) business days, and challenge the basis of their removal. The Title IX Coordinator, or designee, will determine whether the emergency removal from campus order is warranted, after considering information provided by the Complainant (if applicable), the College, and the Respondent challenging the emergency removal.

³³ California Education Code 66281.8(b)(4)(A)(III)(ia)

³⁴ California Education Code 66281.8(b)(4)(A)(III)(ib)

³⁵ 34 CFR 106.44(h)

Administrative Leave

The College may place a non-student employee respondent on administrative leave during the pendency of a Title IX grievance process described in the formal complaint process below. The College shall follow any relevant policies, procedures, collective bargaining agreements or state law in placing an employee on administrative leave.³⁶

Initiation of Grievance Procedures

Notice of Allegations to Parties

Upon initiation of the Title IX grievance procedures, the Title IX Coordinator shall provide the following written notice to the known parties³⁷:

- Notice of the College's Title IX grievance procedures and informal resolution process;
- Notice of the sex discrimination including sex-based harassment allegations, if any, with sufficient detail to prepare a response to the allegations before an initial interview:
 - Sufficient details include the identities of the parties involved in the incident(s), if known,
 - The conduct allegedly to constitute sexual discrimination or sex-based harassment, and
 - The date(s) and location(s) of the alleged incident(s), if known;
- A statement that retaliation is prohibited;
- A statement that the respondent is presumed not responsible for the alleged conduct;
- A statement that the determination of responsibility will not be made until the conclusion of the Title IX grievance process;
- Notice that the parties have a right to an advisor of their choice, who may be, but is not required to be, an attorney;
- Notice that the parties will have an opportunity to present relevant and not otherwise impermissible evidence to trained, impartial decision-makers.
- Notice that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately

³⁶ 34 CFR 106.44(i)

³⁷ 34 CFR 106.45(c)(1) and 34 CFR 106.46(c)(1)

summarizes this evidence; and if the College provides access to an investigative report, the parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any party; and

- Notice of any provision in the College's board policies and administrative procedures that prohibit knowingly making false statements or knowingly submitting false information during the Title IX grievance process.

If, in the course of an investigation, the College determines it must amend the scope of the investigation, the Title IX Coordinator shall provide notice of the additional allegations to the parties.³⁸

To the extent the College has reasonable concerns for the safety of any person as a result of providing this notice, the College may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.³⁹

Dismissal of Formal Complaint

The College may dismiss a complaint for any of the following reasons:⁴⁰

1. The College is unable to identify the respondent after taking reasonable steps to do so;
2. The respondent is not participating in the College's education program or activity and is not employed by the College;
3. The complainant voluntarily withdraws in writing any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the College determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX; or
4. The College determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Prior to dismissing the complaint under this paragraph, the College must make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the College must promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the College must simultaneously also provide written notice to the respondent of the dismissal. The written notice of dismissal must include the basis for the dismissal and the parties' right to appeal.⁴¹

³⁸ 34 CFR 106.46(c)(2)

³⁹ 34 CFR 106.46(c)(3)

⁴⁰ 34 CFR 106.45(d)(1)

⁴¹ 34 CFR 106.45(d)(2-3)

The decision-maker for the appeal cannot have taken part in an investigation of the allegations or dismissal of the complaint.⁴²

When a complaint is dismissed, the College must offer supportive measures to the complainant, and to a respondent who has been notified of the allegations.⁴³ The college must take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within College's education program or activity.⁴⁴

The College may commence proceedings under other board policies and administrative procedures after dismissing a complaint.

Consolidation of Complaints

The College may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances (except where such consolidation would violate FERPA).⁴⁵

Equitable Treatment of the Parties

The College's determination of whether sex discrimination occurred is a neutral, fact-finding process. The College will treat complainants and respondents equitably.⁴⁶ The College will not discipline a respondent for sex discrimination including sex-based harassment until it reaches a determination at the conclusion of the Title IX grievance process that the respondent has engaged in prohibited sex discrimination.⁴⁷

Bias or Conflict of Interest

The College's Title IX Coordinator, investigator(s), decision-maker(s), or any person designated by the College to facilitate an informal resolution process, shall not have actual bias or conflict of interest in the investigatory, hearing, sanctioning, or appeal process or bias for or against complainants or respondents generally.⁴⁸ Actual bias is an articulated prejudice in favor of or against one party or position; it is not generalized concern about the personal or professional backgrounds, positions, beliefs, or interests of the Title IX Coordinator, investigator(s), decision maker(s) or individuals facilitating an

⁴² 34 CFR 106.45(d)(3)(iii)

⁴³ 34 CFR 106.45(d)(4)

⁴⁴ 34 CFR 106.45(d)(4)

⁴⁵ 34 CFR 106.45(e)

⁴⁶ 34 CFR 106.45(b)(1)

⁴⁷ 34 CFR 106.45(h)(3)

⁴⁸ 34 CFR 106.45(b)(2)

informal resolution process. The decision-maker may be the same person as the Title IX Coordinator or investigator.⁴⁹

Presumption of Non-Responsibility

The College presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its Grievance Procedures.⁵⁰

Timeline for Completion

The College will undertake its Title IX grievance process promptly and swiftly as possible.⁵¹ To that end, the College shall complete the evaluation, investigation, and its determination regarding responsibility within 150 calendar days. Once the College receives a complaint, it shall evaluate the complaint and notify the complainant in writing within 14 calendar days of receiving the complaint of the College's determination to dismiss or investigate the complaint. The College's investigation of a complaint must be completed within 150 calendar days with the option to extend the timeline.

In some cases, the Title IX Coordinator may determine that good cause exists to extend the timeframes to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the availability of witnesses or delays by the parties, to account for College breaks or vacations, or due to the complexity of the investigation.⁵²

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

Role of Advisor

Both the complainant and respondent have a right to an advisor of their choice accompany them to any meeting or proceeding. The advisor may be, but is not required to be, an attorney.⁵³

The advisor may not obstruct an interview or disrupt any meeting or proceeding. Advisors may not provide testimony or speak on behalf of their advisee.

Although the advisor may not speak on behalf of their advisee, the advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during

⁴⁹ 34 CFR 106.45(b)(2)

⁵⁰ 34 CFR 106.45(b)(3)

⁵¹ 34 CFR 106.45(b)(4)

⁵² 34 CFR 106.45(b)(4)

⁵³ 34 CFR 106.45(c)(1)(ii)

any meeting or proceeding. For longer or more involved discussions, the parties and their advisors should ask for breaks to allow for private consultation.

The College has the right to establish additional rules of decorum for advisors and to take reasonable steps to ensure compliance with these procedures, provided that the rules apply equally to the parties.⁵⁴

The College will provide the parties in sex-based harassment complaints involving a student party with the same opportunities, if any, to have people other than the advisor of the party's choice present during any meeting or proceeding involving the party.⁵⁵

Privacy

The College will take reasonable steps to protect the privacy of the parties and witnesses during these grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consulting with their family members, confidential resources, or advisors; or otherwise preparing for or participating in the Grievance Procedures.⁵⁶ The parties cannot engage in retaliation, including against witnesses.

The College will not share the identity of any individual who has made a complaint; any Complainant; any individual who has been reported to be the perpetrator; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures. This means that the College will protect the party's privacy consistent with this policy but may disclose information to those who have a legitimate need to know and in order to process Complaints under this policy.

Evidence

The College will objectively evaluate all evidence that is relevant and otherwise permissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the College to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether the evidence or question is relevant:

⁵⁴ 34 CFR 106.45(e)(2)

⁵⁵ 34 CFR 106.46(e)(3)

⁵⁶ 34 CFR 106.45(b)(5)

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality in writing;⁵⁷
- A Party's or Witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or Witness, unless the College obtains that Party's or Witness's voluntary, written consent for use in these Grievance Procedures;⁵⁸ and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.⁵⁹

Investigations

The College will provide for adequate, reliable, and impartial investigation of Complaints. The Title IX Coordinator is responsible for overseeing investigations to ensure timely resolution and compliance with Title IX and these procedures.

Notice of Investigative Interview

The College shall provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews with sufficient time for the party to prepare to participate.⁶⁰

Investigation and Determination Procedures for Complaints of Sex Discrimination

These Investigation and Determination Procedures for Complaints of Sex Discrimination, in this section do not apply to allegations of sex-based harassment involving a student complainant or respondent. The Investigation Procedures for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents are located below. When a party is both a student and an employee of the College, the Title IX Coordinator will make a fact-specific inquiry to determine whether the College will process the complaint using the Investigation and Determination Procedures for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents located in below. In making the determination, the Title IX Coordinator will, at a minimum, consider

⁵⁷ 34 CFR 106.45 (b)(7)(i)

⁵⁸ 34 CFR 106.45 (b)(7)(ii)

⁵⁹ 34 CFR 106.45 (b)(7)(iii)

⁶⁰ 34 CFR 106.46(e)(1)

whether the Party's primary relationship with the College is to receive an education and whether the alleged sex-based harassment occurred while the Party was performing College employment-related work.⁶¹

Burden of Gathering Evidence The burden is on the College -not on the Parties-to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.⁶²

Opportunity to Present Witnesses and Evidence The College will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and otherwise permissible.⁶³

Evidence Review The College will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.⁶⁴ The College will provide each Party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and otherwise permissible, in the following manner:

- The College will provide an equal opportunity to access the written investigative report that accurately summarizes the evidence and the relevant and otherwise permissible evidence. Prior to completion of the report, the College will provide the parties a hard copy or an electronic copy of the draft report along with the relevant and permissible evidence, and the parties will have ten (10) days to submit a written response. The investigator will consider the parties' written response, if any, prior to completing the investigative report; and
- The College will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the Grievance Procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint of sex discrimination are authorized.⁶⁵

Investigative Report The investigator will finalize the report after considering the parties' response to the evidence, and conducting any follow up the investigator determines should be taken, at the investigator's discretion. The results of the investigation of a complaint will be set forth in a written report that will include at least all of the following information:

- A summary of the allegations;
- A summary of the procedural steps taken during the investigation, including all individuals contacted and interviewed;

⁶¹ 34 CFR 106.46(b)

⁶² 34 CFR 106.45(f)(1)

⁶³ 34 CFR 106.45(f)(2)

⁶⁴ 34 CFR 106.45(f)(3)

⁶⁵ 34 CFR 106.45(f)(4)

- An exhibit list that includes a description of relevant documents and other evidence relevant to the allegations gathered through the investigation;
- An accurate summary of the relevant and not impermissible evidence;
- A summary and analysis of the investigator's findings regarding each allegation;
- A determination as to whether a respondent violated the College's policies prohibiting sex discrimination; and
- If the investigator/determines that a respondent violated the College's policies, the investigation report shall include a recommendation for disciplinary sanctions.

The investigator may redact information that is not directly related to the allegations, or that is privileged. The investigator shall exclude the following types of evidence, and questions seeking that evidence, as impermissible, regardless of whether they are relevant: ⁶⁶

- Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the College obtains that party's or witness's voluntary, written consent for use in the College's grievance procedures;
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

The investigator may be the decision-maker. ⁶⁷

The investigator/decision-maker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The investigator/decision-maker must not draw an inference about whether sex discrimination occurred based solely on a party's or witness's refusal to respond to such questions. ⁶⁸

⁶⁶ 34 CFR 106.45(f)(4)

⁶⁷ 34 CFR 106.45 (b)(2)

⁶⁸ 34 CFR 106.46(f)(4)

Investigator/Decision-Maker Questioning of the Parties and Witnesses Where Credibility is in Dispute. The College will provide a process that enables the decision-maker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. The College will use the following process:⁶⁹

- The investigator/decision-maker will request the parties' participation in meetings to question the parties and/or witnesses and invite the parties to submit questions for the investigator/decision-maker's consideration.
- The investigator/decision-maker will schedule and conduct separate meetings with the parties and/or witnesses. The meetings will be in-person or with technology enabling the party and investigator/decision-maker to see and hear each other in real time. During each meeting, the investigator/decision-maker will ask questions of the party and allow the party to comment on the evidence collected during the investigation.
- The investigator/decision-maker may meet with a party more than once, based on the investigator/decision-maker's judgment.
- The investigator/decision-maker will meet with other witnesses, if needed based on the investigator/decision-maker's judgment.

Determinations Whether Sex Discrimination Occurred. Following an investigation and evaluation of all relevant and otherwise permissible evidence, the College will:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred under the College's policy. The standard of proof requires the decision-maker to evaluate relevant and otherwise permissible evidence for its persuasiveness. If the investigator/decision-maker is not persuaded by a preponderance of the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the investigator/decision-maker will not determine that sex discrimination occurred;⁷⁰
- Notify the parties simultaneously in writing of the determination whether sex discrimination occurred under the College's policy including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal; and⁷¹
- Not impose discipline on a Respondent for sex discrimination prohibited by the College's policy unless there is a determination that the Respondent engaged in prohibited sex discrimination under this policy.⁷²
- If there is a determination that sex discrimination occurred in violation of this policy, the Title IX Coordinator will, as appropriate:

⁶⁹ 34 CFR 106.45(g)

⁷⁰ 34 CFR 106.45(h)(1)

⁷¹ 34 CFR 106.45(h)(2)

⁷² 34 CFR 106.45(h)(3)

- Coordinate the provision and implementation of remedies to the complainant and other people the College identifies as having had equal access to the College's education program or activity limited or denied by sex discrimination;
 - Coordinate the imposition of any disciplinary sanctions on the respondent, including notification to the complainant of any such disciplinary sanctions; and
 - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the College's education program or activity.⁷³
- Not discipline a party, witness, or others participating in these procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination concerning whether sex discrimination occurred.⁷⁴
 - The District shall use the procedures in the section below entitled Appeals of Dismissal of a Complaint or of the Determination of Sex Discrimination and/or Sex-Based Harassment for determination appeals.

Investigation and Determination Procedures for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents

The College has adopted the following procedures that provide for the prompt and equitable resolution of complaints of sex-based harassment involving a student Complainant(s) or a student Respondent(s) who are participating or attempting to participate in its education programs or activities. The procedures in this section will apply to allegations of conduct involving a student party that would constitute unlawful sex-based harassment. Complaints of sex-based harassment that do not involve a student party, are processed under the Investigation and Determination Procedures for Complaints of Sex Discrimination located in the section above. When a party is both a student and an employee of the College, the Title IX Coordinator will make a fact-specific inquiry to determine whether the College will process the complaint using the Investigation and Determination Procedures for Complaints of Sex Discrimination located in above or using the Investigation and Determination Procedures for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents in this section. In making the determination, the Title IX Coordinator will, at a minimum, consider whether the party's primary relationship with the College is to receive an education and whether the alleged sex-based harassment occurred while the party was performing College employment-related work.⁷⁵

⁷³ 34 CFR 106.45(h)(3)

⁷⁴ 34 CFR 106.45(h)(5)

⁷⁵ 34 CFR 106.46(b)

Burden of Gathering Evidence The burden is on the College—not on the Parties—to conduct an investigation that gathers sufficient evidence to determine whether sex-based harassment occurred.

Opportunity to Present Witnesses and Evidence The College will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and otherwise permissible. The College has discretion to determine whether the Parties may present expert witnesses as long as the determination applies equally to the Parties.

Investigatory Process The College's investigatory process enables the decision-maker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination, including sex-based harassment.⁷⁶

The investigator may be the decision-maker.⁷⁷

The process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses, including questions challenging credibility, must:

1. Allow the investigator/decision-maker to ask such questions during individual meetings with a party or witness;⁷⁸
2. Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the investigator/decision-maker during one or more individual meetings, including follow-up meetings, with a party or witness;⁷⁹ and
3. Provide each party with an audio or audiovisual recording or transcript with five (5) business days to propose follow-up questions. The investigator shall determine the format of the audio or audiovisual recording or transcript to provide to the parties. The parties may request an extension of up to five (5) additional business days to propose follow-up questions. Requests for such an extension must be made to the investigator within the initial five (5) business day period. Requests made after the initial five (5) business day period shall not be granted. If one party is granted additional time to propose questions, the other party shall be granted the same amount of additional time to propose follow-up questions in response to the same audio or audiovisual recording or transcript.⁸⁰

⁷⁶ 34 CFR 106.45(f)(1)

⁷⁷ 34 CFR 106.45 (b)(2)

⁷⁸ 34 CFR 106.45(f)(1)(i)(A)

⁷⁹ 34 CFR 106.45(f)(1)(i)(B)

⁸⁰ 34 CFR 106.45(f)(1)(i)(C)

- a. The investigator/decision-maker must determine whether a proposed question is relevant and not otherwise impermissible prior to the question being asked and must explain any decision to exclude a question as not relevant or otherwise impermissible.
- b. If the investigator/decision-maker determines that a party's question is relevant and not otherwise impermissible, then the question must be asked; however, the investigator/decision-maker shall not permit questions that are unclear or harassing of the party or witness being questioned. The investigator/decision-maker must give a party an opportunity to clarify or revise a question that the investigator/decision-maker determined is unclear or harassing and, if the party sufficiently clarifies or revises a question, the question must be asked.⁸¹

Evidence Review

Each party and their advisor shall have an equal opportunity to access the relevant and not otherwise impermissible evidence.⁸² The College will provide an equal opportunity to access the written investigative report that accurately summarizes the evidence and the relevant and otherwise permissible evidence. Prior to completion of the report, the College will provide the parties a hard copy or an electronic copy of the draft report along with the relevant and permissible evidence. Each party shall have five (5) business days to review and respond to the evidence prior to the determination of whether sex discrimination occurred. The parties may request an extension of up to five (5) additional business days to review and respond to the evidence. Requests for such an extension must be made to the investigator within the initial five (5) business day review and response period. Requests made after the initial five (5) business day review and response period shall not be granted. If one party is granted additional time to review and respond to evidence, the other party shall be granted the same amount of additional time to review and respond to the same evidence.⁸³

Parties and their advisors are prohibited from distributing or otherwise disclosing information and evidence obtained solely through an investigation or hearing except as required by law or as expressly permitted in writing by the College. Parties who make unauthorized disclosures of information and evidence obtained solely through an investigation or related proceeding shall be subject to discipline up to and including but not limited to expulsion or termination.⁸⁴

⁸¹ 34 CFR 106.46(f)(3)

⁸² 34 CFR 106.46(e)(6)(i)

⁸³ 34 CFR 106.46(e)(6)(ii)

⁸⁴ 34 CFR 106.46(e)(6)(iii)

Investigative Report

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

- A summary of the allegations;
- A summary of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- An exhibit list that includes a description of relevant documents and other evidence relevant to the allegations gathered through the investigation;
- An accurate summary of the relevant and not impermissible evidence;
- A summary and analysis of the investigator's findings regarding each allegation;
- A determination as to whether a respondent violated the College's policies prohibiting sex discrimination; and
- If the investigator/determines that a respondent violated the College's policies, the investigation report shall include a recommendation for disciplinary sanctions.

The investigator may redact information that is not directly related to the allegations, or that is privileged. The investigator shall exclude the following types of evidence, and questions seeking that evidence, as impermissible, regardless of whether they are relevant:⁸⁵

- Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the College obtains that party's or witness's voluntary, written consent for use in the College's grievance procedures;
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

⁸⁵ 34 CFR 106.45(f)(4)

The investigator/decision-maker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The investigator/decision-maker must not draw an inference about whether sex discrimination occurred based solely on a party's or witness's refusal to respond to such questions.⁸⁶

If the investigator/decision-maker determines that a respondent violated the College's policies prohibiting sex discrimination, the investigator/decision-maker shall submit the investigation report to the College Compliance Officer, who shall review the investigation report solely for the purpose of determining disciplinary sanctions. The College Compliance Officer may adopt the investigator/decision-maker's recommended disciplinary sanction(s), adopt different disciplinary sanction(s), or reject the recommended disciplinary sanctions altogether. If the College Compliance Officer rejects or adopts a disciplinary sanction other than what was recommended by the investigator/decision-maker, the College Compliance Officer must set forth the reasons in writing to the investigator/decision-maker and the investigator/decision-maker shall include those reasons in their written determination.

Determinations of Whether Sex Based Harassment Occurred

The investigator/decision-maker shall reach a decision of responsibility or non-responsibility by the preponderance of the evidence standard and will issue a written determination regarding responsibility⁸⁷ within 150 calendar days of receiving the complaint or by the date of an extension approved by the Title IX Coordinator.

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

The written determination shall include the following⁹⁰:

- A description of the alleged sex discrimination;
- Information about the policies and procedures that the College used to evaluate the allegations.

⁸⁶ 34 CFR 106.46(f)(4)

⁸⁷ 34 CFR 106.46(h)(6)

⁸⁸ 34 CFR 106.45(b)(6)

⁸⁹ 34 CFR 106.45(h)(1); California Education Code § 67386 (a)(3).

⁹⁰ 34 CFR 106.46(h)

- The investigator's/decision-maker's evaluation of the relevant and not otherwise impermissible evidence, rationale, and determination of whether sex discrimination occurred.
- If the investigator/decision-maker finds that sex discrimination occurred, any disciplinary sanctions the College will impose on the respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by the College to the complainant, and, to the extent appropriate, other students identified by the College to be experiencing the effects of the sex discrimination; and
- The procedures and grounds for the complainant and respondent to appeal.

The College shall provide the decision-maker's written determination to the parties simultaneously. The determination regarding whether sex-based harassment occurred becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.⁹¹

Disciplinary Sanctions and Remedies

The College must have completed the Title IX grievance procedures (investigation and any appeal, if applicable) before the imposing disciplinary sanctions or any other actions that are not supportive measures against a respondent. If there is a determination that sex discrimination occurred, as appropriate, the Title IX Coordinator or designee shall coordinate the provision and implementation of remedies to a complainant and other persons the College identifies as having had equal access to the College's education program or activity limited or denied by sex discrimination, coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions. The Title IX Coordinator or designee shall take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the College's education program or activity, when applicable.⁹²

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

- Providing an escort to ensure that the complainant can move safely between classes and activities;
- Ensuring that the complainant and respondent do not attend the same classes or work in the same work area;

⁹¹ 34 CFR 106.46(h)

⁹² 34 CFR 106.45(h)(3)

⁹³ 34 CFR 106.45(l)

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

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

Appeals of Dismissal of a Complaint or of the Determination of Sex Discrimination and/or Sex-Based Harassment

A complainant or respondent may appeal (1) the College's determination regarding whether sex discrimination or sex-based harassment occurred, or (2) the dismissal of a formal complaint or any allegations.⁹⁵ A complainant or respondent must submit a written appeal within thirty (30) calendar days from the date of the notice of outcome of determination of responsibility or from the date of the College's notice of dismissal of a formal complaint or any allegations.

Grounds for Appeal

The Vice President, Human Resources, will serve as the appeal decision-maker. In filing an appeal of the College's determination regarding responsibility or the College's dismissal of a formal complaint, the party must state the grounds for appeal and a statement of facts supporting those grounds. The grounds for appeal are as follows:⁹⁶

- A procedural irregularity that would change the outcome;

⁹⁴ 34 CFR 106.45(l)

⁹⁵ 34 CFR 106.45(i)(1)

⁹⁶ 34 CFR 106.45(i)(1)(i-iii)

- New evidence that would change the outcome and that was not reasonably available when the determination whether sex discrimination occurred or dismissal was made; or
- The College's Title IX Coordinator, investigators, or decision-makers had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

Appeal Procedure⁹⁷

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

- Notify the other parties in writing within 5 business days of receiving a party's appeal and include a copy of the written appeal, and
- Allow the non-appealing/responding party thirty (30) calendar days from the date of the College's notice of the appeal to submit a written response in support of, or challenging, the appeal.

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

The appeal decision-maker 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 five (5) business days in writing and will inform the parties simultaneously whether the extension is granted.

Informal Resolution

The College may provide the parties with the opportunity to participate in an informal resolution process at any time prior to reaching a determination regarding responsibility. The College has the discretion to determine whether it is appropriate to offer an informal resolution process when it receives information about conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, or when a complaint is made, and may decline to offer informal resolution despite one or more of the parties' wishes.⁹⁸

⁹⁷ 34 CFR 106.46(i)(3)

⁹⁸ 34 CFR 106.44(k)

Mediation may be available as a form of informal resolution with the following exceptions:⁹⁹

- The College shall not mandate mediation to resolve allegations of sex-based harassment.
- The College shall not allow mediation, even on a voluntary basis, to resolve allegations of sexual assault.

The College must obtain the parties' voluntary, written consent to the informal resolution process and must not require a waiver of the right to an investigation and determination of a complaint as a condition of enrollment or continuing enrollment, employment or continuing employment, or exercise of any other right.¹⁰⁰

Before initiation of an informal resolution process, the College shall provide the complainant and respondent written disclosure that explains:¹⁰¹

- the allegations,
- the requirements of the informal resolution process,
- that, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the College's grievance procedures,
- That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming investigation procedures arising from the same allegations shared.
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- What information the College will maintain and whether and how the College could disclose such information for use in an investigation, if an investigation is initiated or resumed.

Potential terms that may be included in an informal resolution agreement include but are not limited to: restrictions on contact; and restrictions on the respondent's participation in one or more of the College's programs or activities or attendance at specific events, including restrictions the College could have imposed as remedies or disciplinary sanctions had the College determined at the conclusion of the College's investigation and hearing (if applicable) that sex discrimination occurred.¹⁰²

The facilitator for the informal resolution process must not be the same person as the investigator or a decision-maker. Any person designated to facilitate an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.¹⁰³

⁹⁹ 34 CFR 106.44(k) & California Education Code 66281.8

¹⁰⁰ 34 CFR 106.44(k)(2)

¹⁰¹ 34 CFR 106.44(k)(3)

¹⁰² 34 CFR 106.44(k)(5)

¹⁰³ 34 CFR 106.44(k)(4)

Retaliation Prohibited¹⁰⁴

The College prohibits retaliation, including peer retaliation, in its education programs or activities. No one may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right established by this policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

The College has the right to require an employee or other person authorized by the College to provide aid, benefit, or service under its education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this policy.

When the College has information about conduct that reasonably may constitute retaliation under Title IX, the College is obligated to address it under this administrative procedure. Individuals who experience retaliation may file a complaint using the complaint process described above.

Dissemination of Policy and Procedures

The College shall provide a notice of nondiscrimination on its website, in each handbook or catalog provided to applicants for admission and employment, to students, employees, and all unions or professional organizations holding collective bargaining with the College.¹⁰⁵

If necessary, due to the format or size of any publication, the College may instead include in those publications a statement that the College prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the Title IX Coordinator, and provide the location of the notice on the College's website.¹⁰⁶

The notice of nondiscrimination must include the following elements:¹⁰⁷

- A statement that the College does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission and employment;
- A statement that inquiries about the application of Title IX to the College may be referred to the College's Title IX Coordinator, the Office for Civil Rights, or both;
- The name or title, office address, email address, and telephone number of the College's Title IX Coordinator;

¹⁰⁴ 34 CFR 106.71

¹⁰⁵ 34 CFR 106.8(c)

¹⁰⁶ 34 CFR 106.8(c)(2)(ii)

¹⁰⁷ 34 CFR 106.8(c)(1)(A-E)

- How to locate the College's board policies prohibiting discrimination; and the College's administrative procedures related to complaints or alleging any action that would be prohibited by Title IX; and
- How to report information about conduct that may constitute sex discrimination under Title IX; and how to make a complaint of sex discrimination.

Training

The College shall provide training to all employees upon hire or change of position that alters their duties under Title IX and annually thereafter. Training for all employees shall include:¹⁰⁸

- The College's obligation to address sex discrimination in its education program or activity;
- The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment; and
- All applicable notification and information requirements to students and employees.

The College shall provide training to Title IX Coordinators, investigators, decision-makers, and any individual who facilitates an informal resolution process, on the definition of sex-based harassment, the scope of the College's education program or activity, how to conduct an investigation and Title IX grievance process including appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Any materials used to train the College's Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process, shall not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sex-based harassment.¹⁰⁹

Training shall be provided as follows:

- At least nine (9) hours of training selected by the Title IX Coordinator for the Title IX Coordinator, investigators, decision-makers, and any individual who facilitates an informal resolution process;

File retention

The College will retain on file for a period of at least seven years after closing the case copies of¹¹⁰:

¹⁰⁸ 34 CFR 106.8(d)

¹⁰⁹ 34 CFR 106.8(d)(3)

¹¹⁰ 34 CFR 106.8 (f)

- For each notification to the Title IX Coordinator that reasonably may constitute sex discrimination under Title IX, records documenting the actions the College took to meet its obligations under Title IX
- For each complaint, record documenting any actions taken in response to the complaint, including informal resolution or the investigation procedures;
- The investigative report including all evidence gathered and any responses from the parties;
- The College's determination whether sex discrimination or sex-based harassment occurred;
- Audio or audiovisual recording or transcript from an investigation;
- Records of any disciplinary sanctions imposed on the respondent;
- Records of any remedies provided to the complainant;
- Any appeal and the result;
- Any informal resolution and the result; and
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The College will make these training materials available upon request for inspection by members of the public.

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

The College shall purge the records identified above after a period of at least seven (7) years.

The College shall not disclose personally identifiable information obtained in the course of complying with this administrative procedure, except in the following circumstances:

1. When the College has obtained prior written consent from a person with the legal right to consent to the disclosure;
2. When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
3. To carry out the purposes of this administrative procedure, including action taken to address conduct that reasonably may constitute sex discrimination under Title IX in the College's education program or activity;

4. As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
5. To the extent such disclosures are not otherwise in conflict with Title IX or its implementing regulations, when required by State or local law or when permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.¹¹¹

¹¹¹ 34 CFR 106.44(j)