Agenda Item Details

Meeting: Feb 10, 2021 - Board of Trustees Regular Meeting

Category: 8. ACTION ITEMS DISCUSSION

Subject: 8.1 Board Policy - 2nd Reading

Type: Action, Discussion

Recommended Action: That the Board of Trustees conducts a 2nd Reading and approves the following YCCD Policies: 3430, 3433, 3434, 3435, 3540, 3-8020, 4260, and 7700, as attached to the February 10, 2021, Agenda.

The following YCCD Board Policies are being presented to the Board as a 2nd Reading. The policies have gone through the review process used by the Policy and Procedures Committee, which includes constituency group review and feedback, and has been presented to District Council and to the Board as a 1st Reading.

Proposed Policy Revisions:
3430 - Prohibition of Harassment
3433 - Prohibition of Sexual Harassment under Title IX
3434 - Responding to Harassment Based on Sex under Title IX
3435 - Discrimination and Harassment Complaints and Investigations
3540 - Sex/Gender Harassment, Discrimination and Sexual Misconduct
3-8020 - Due Process
4260 - Prerequisites and Co-requisites
7700 - Whistleblower Protection

In addition, as existing YCCD Board Policy 2410 states, "procedures may be revised as deemed necessary by the Chancellor" and do not require Board action. Accompanying the policies are procedure changes that are being provided to the Board as an informational item.

Administrative Procedure Revision:
3430 - Prohibition of Harassment
3433 - Prohibition of Sexual Harassment under Title IX
3434 - Responding to Harassment Based on Sex under Title IX
3435 - Discrimination and Harassment Complaints and Investigations
3540 - Sex/Gender Harassment, Discrimination and Sexual Misconduct
4260 - Prerequisites and Co-requisites
7700 - Whistleblower Protection

Motion & Voting

That the Board of Trustees conducts a 2nd Reading and approves the following YCCD Policies: 3430, 3433, 3434, 3435, 3540, 3-8020, 4260, and 7700, as attached to the February 10, 2021, Agenda.

Motion by Nancy Hinton, second by Leslie Beggs.
Final Resolution: Motion Carries
Yes: Darin Gharat, Leslie Beggs, Nancy Hinton, Antonio Aguilar, Milton Richards, Margie Bulkin
Prohibition of Harassment

All forms of harassment are contrary to basic standards of conduct between individuals, and unlawful harassment is prohibited by State and federal law, and as well as this policy prohibit harassment, and the District will not tolerate 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 all forms of unlawful harassment, including that which is based on any of the following statuses: race, religious creed, color, national origin, ethnicity, ancestry, immigration status, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation of any person, or military and veteran status, or because he/she/they is perceived to have one or more of the foregoing characteristics.

The District seeks to foster an environment in which all employees, students, unpaid interns, 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. The District will investigate all allegations of retaliation will be swiftly and thoroughly investigated. If the District determines that someone has retaliated, 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, unpaid intern, or volunteer who believes that he/she/they has been harassed or retaliated against in violation of this policy should immediately report such incidents by following the procedures described in AP 3435. The District requires supervisors are mandated to report all incidents of harassment and retaliation that come to their attention. All employees, other than those defined as
confidential, are responsible reporters when the incident involves sex/gender harassment, discrimination and sexual misconduct. For more information see YCCD Policy 3540.

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 Chancellor shall ensure that the institution undertakes education and training activities to counter harassment, discrimination and to prevent, minimize, or eliminate any hostile environment, as defined by administrative procedure 3430 below, that impairs access to equal education opportunity or impacts the terms and conditions of employment.

The Chancellor shall establish procedures that define harassment on campus. The Chancellor shall further establish procedures for employees, students, unpaid interns, volunteers, and other members of the campus community that provide for the investigation and resolution of complaints regarding harassment and discrimination with due regard for collective bargaining unit agreements, and procedures for students to resolve complaints of harassment and discrimination. **State and federal law and this policy prohibit** all participants are protected from retaliatory acts 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), BP 3-8020, and academic freedom policies BP 4030 and 5-8081 shall be widely published and publicized to administrators, faculty, staff, and students, unpaid interns, and volunteers particularly when they are new to the institution. They will make this policy and related written procedures (including the procedure for making complaints) shall be available for students, employees, unpaid interns, and volunteers in all administrative offices 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, per their respective bargaining unit agreement or handbook. Students who violate this policy and related procedures may be subject to disciplinary measures up to and including expulsion. Unpaid interns who violate this policy and related procedures may be subject to disciplinary measure up to and including termination from the internship or other unpaid work experience program.

Cross References (see also):
YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
YCCD Policy 3540 – Sex/Gender Harassment, Discrimination and Sexual Misconduct
YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX
YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX
YCCD Policy 3-8020 – Due Process
YCCD Policy 5500 – Standards of Student Conduct
YCCD Policy 5530 – Complaint Policy Student Rights and Grievances
YCCD Policy 7700 – Whistleblower Protection

References:
Education Code Sections 212.5, 44100, 66252, and 66281.5; Government Code Sections 12923, 12940 and 12950.1; Civil Code Section 51.9; Title 2 Sections 10500 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §; U.S. Code Annotated Section 2000e; Collective Bargaining Agreements and Leadership Team Handbook; Age Discrimination in Employment Act of 1967 (ADEA); Americans with Disabilities Act of 1990 (ADA)

Adopted: June 28, 2004
Revision Adopted: October 14, 2009, August 26, 2016
Last Reviewed: August 26, 2016
**Administrative Procedure**

**3430 Prohibition of Harassment**

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 occurring in any District education program or activity on campus, and sets forth a procedure for the investigation and resolution of complaints of harassment by or against any staff or faculty member or student within the District.

This procedure and the related policy protects students, employees, unpaid interns, and volunteers in connection with all the District education programs and activities, including those locations, events or circumstances over which the District exercises a substantial amount of control over both the respondent and the context in which the sexual harassment occurred, and includes any building owned or controlled by a student organization that is officially recognized by the institution (e.g. fraternity or sorority houses, if applicable) 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.

I. Definitions

A. General Harassment.

Harassment based on 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 of any person, military and 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, in aggregate, the incidents are sufficiently pervasive, persistent, or severe that a reasonable person with the same characteristics as the victim of the alleged harassing conduct would be adversely affected to a degree that interferes with his/her/their or her ability to participate in or to realize the intended benefits of an institutional activity, employment, or resource. Additional definitions and information about sex/gender harassment, discrimination and sexual misconduct can be found in BP 3540.

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 Harassment comes in many forms, including but not limited to the following conduct that could, depending on the circumstances, meet 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:
1. 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.

2. 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.

3. 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.

4. Environmental: A hostile academic or work environment may exist where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, race, nationality, sexual orientation, or other protected status; or gratuitous comments regarding gender, race, sexual orientation, or other protected status that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment. It can also be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, genders, or other protected statuses. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in his/her/their or her immediate surroundings, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual’s learning or work.

B. Sexual Harassment.

Sexual harassment is defined to include the following types of misconduct on the basis of sex:

- An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct (quid pro quo harassment);
• Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or

• Sexual assault, as defined in 34 Code of Federal Regulations Sections 668.46(a), dating violence, domestic violence or stalking as defined in the Violence Against Women Act.

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 of 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 community college.

"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 interferes with an individual’s academic or work performance, or creates 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 identified as the victim would perceive the conduct as harassment based on sex.

C. Consensual Relationships

Romantic or sexual relationships between supervisors and employees, or between administrators, faculty members, or staff members and students are strongly discouraged. When such relationships are formed, it is advised to notify their direct supervisor for the protection of all parties. There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the administrator, faculty member, or staff member 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.

II. Academic Freedom and Freedom of Speech

No provision of this Administrative Procedure shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. Freedom of speech and academic freedom are, however, not limitless and this procedure will not protect speech or expressive conduct that violates federal or California anti-discrimination laws.

Cross References (see also):
YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
YCCD Policy 3540 – Sex/Gender Harassment, Discrimination and Sexual Misconduct Sexual and Other Assaults on Campus
YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX
YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX
YCCD Policy 3-8020 – Due Process
YCCD Policy 5500 – Standards of Student Conduct
YCCD Policy 5530 – Complaint Policy Student Rights and Grievances
YCCD Policy 7700 – Whistleblower Protection

References:
Education Code Sections 212.5, 44100, and 66281.5; Government Code Sections 12923 and 12940; Civil Code Section 51.9; Title 2 Sections 10500 et seq.; 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; Collective Bargaining Agreements and Leadership Team Handbook

Procedure Last Revised: April 11, 2007, August 26, 2016
Last Reviewed: August 26, 2016
Policy

3433 Prohibition of Sexual Harassment under Title IX

Note: This policy is legally required.

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 employees, students, applicants for employment, and applicants for admission feel free to report incidents of sexual harassment 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 Title IX retaliatory conduct are subject to disciplinary action, up to and including termination or expulsion.

Any employee, student, applicant for employment, or applicant for admission who believes he/she/they has been harassed or retaliated against in violation of this policy should immediately report such incidents by 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 Chancellor shall ensure that the institution undertakes education and training activities to prevent sexual harassment.

The Chancellor shall establish procedures that define sexual harassment on campus. The Chancellor shall further establish procedures for employees, students, 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), BP 3-8020, and academic freedom policies BP 4030 and 5-8081 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 in all administrative offices 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 measure up to and including termination from the volunteer assignment, internship, or other unpaid work experience program.

Cross References (see also):
YCCD Policy 3430 – Prohibition of Harassment
YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX
YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
YCCD Policy 3540 - Sex/Gender Harassment, Discrimination and Sexual Misconduct Sexual and Other Assaults on Campus
YCCD Policy 3-8020 – Due Process
YCCD Policy 5500 – Standards of Student Conduct
YCCD Policy 5530 – Complaint Policy Student Rights and Grievances
YCCD Policy 7700 – Whistleblower Protection

References:
Title IX, Education Amendments of 1972; 34 Code of Federal Regulations Part 106
Administrative Procedure

3433 Prohibition of Sexual Harassment under Title IX

Note: This procedure is legally required.

The District is committed to providing an academic and work environment free of unlawful sexual harassment under Title IX. This procedure defines sexual harassment occurring in any District education program or activity.

I. Definitions

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

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct (quid pro quo harassment);

2. Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or

3. Sexual assault, as defined in 34 Code of Federal Regulations Sections 668.46(a), dating violence, domestic violence or stalking as defined in the Violence Against Women Act, including the following:
   a. 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.
   b. 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.
   c. 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.
   d. 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.
   e. 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.
   f. Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse.
      i. Incest. Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
ii. 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.

g. 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.

h. Domestic Violence. Violence committed:
   i. By a current or former spouse or intimate partner of the victim;
   ii. By a person with whom the victim shares a child in common;
   iii. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
   iv. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California.

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

j. Additional Definitions
   i. 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 he/she/they has 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.

   ii. Force. Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”). Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

   iii. Coercion. Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

   iv. Incapacitation. A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent. It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should
have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment. Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

v. Sexual Exploitation. Sexual exploitation is defined as taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of sexual exploitation include, but are not limited to:

• Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed).

• Invasion of sexual privacy.

• Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent), including the making or posting of revenge pornography.

vi. Discrimination. Discrimination is defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities.

vii. Intimidation. Intimidation is defined as implied threats or acts that cause an unreasonable fear of harm in another.

viii. Hazing. Hazing is defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Recipient community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity.

ix. Bullying. Bullying is defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally, that is not speech or conduct otherwise protected by the First Amendment. Violation of any other Recipient policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

II. Procedure Process for Investigation of Title IX Complaints
In order to prevent conflict of interest and possible contamination of the investigative processes, Title IX Investigations to be conducted in the following manner:

- Student vs. Student = Assigned to Campus Safety Title IX Officer to Investigate
- Student vs. Employee = Assigned for Investigation through Human Resources
- Employee vs. Employee = Assigned for Investigation through Human Resources

A. Step 1: Intake

1. Receive Formal Complaint/Incident reported through the District’s online reporting system.
2. Determination by the Director of District Public Safety, Compliance and Emergency Preparedness for appropriate assignment based on the status of the involved parties (student, employee, etc.) using above criteria.
   a. In conjunction with the appropriate College Title IX Coordinator or Human Resources administrator, consideration should be immediately given to whether any involved person should be removed from the campus pending completion of informal resolution or investigation.
   b. Required notifications:
      i. For students, provided by Student Services.
      ii. For employees, provided by Human Resources.
   c. Note: If the conduct as alleged by the Complainant would not constitute sexual harassment, as defined above, or did not occur within the District’s program or activity, the District must terminate its grievance process with regard to that conduct, however, every effort will be made to assist the Complainant to seek the appropriate resources and/or reporting entities.

B. Step 2: Attempt to Resolve

1. Undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling, training, etc.
   a. 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.

C. Step 3: Investigate (in accordance with BP 3-8020)

1. Initiate a fact-finding investigation (minimally to include the following):
   a. Interviewing the Complainant(s)
   b. Interviewing the accused individual
   c. Identifying and interviewing witnesses and evidence identified by each party
   d. Identifying and interviewing any other witnesses, if needed
   e. Reminding all individuals interviewed of the District’s no-retaliation policy
   f. Reviewing personnel/academic files of all involved parties
   g. Reach a conclusion as to the allegations

Title IX YCCD Investigation Report Format

I. Investigation Overview/Executive Summary
II. Summary of Findings
III. The Investigative Background
   A. Witnesses
   B. Documents
   C. The Policies
D. Scope of Findings
E. Evidentiary Standard
F. Independence
G. Timing

IV. Factual Background
A. Department and Parties
B. Interim Measures
C. Notice To

V. Overview of Allegations and Response
A. (Name)'s Complaint
   i. Overview of (Name)'s Perspective
   ii. Requested Resolution
   iii. Timing of Complaint
B. (Name)'s Response
   i. Overview of (Name)'s Perspective
   ii. Requested Resolution
   iii. Timing of Complaint

VI. Chronology of Undisputed Facts and Key Events
A. Chart and Description or Other Evidence
B. Factual Findings Based on Undisputed Facts

VII. Summary of Disputed Allegations

VIII. Evidence, Analysis and Findings Related to the Disputed Allegations
A. Issue 1
B. Issue 2
C. Issue 3
D. Credibility Assessment

IX. Policy Analysis and Determination

D. Step 4: Report Findings
   1. Draft report completed, turned in to Senior Director of Human Resources for review.
   2. A review of the completed report will be conducted and corrections made as needed.
   3. Report corrections completed, etc.

E. Step 5: Final Report Distribution
   1. Student vs. Student – Student Conduct Officer
   2. Employee vs. Student – Student Conduct Officer and/or Human Resources Administrator
   3. Employee vs. Employee – Human Resources Administrator

F. Step 6: Corrective Action Taken
   1. Student Action – Student Conduct Officer
   2. Employee Action – As deemed appropriate by Human Resources Administrator or Manager/Dean as determined through disciplinary processes

G. Step 7: Notifications
   1. All notification letters regarding employees sent by Human Resources.
   2. All notification letters for investigations regarding students will be sent by Title IX Coordinator.

Cross References (see also):
Yosemite Community College District • Policies and Administrative Procedures

3433 Prohibition of Sexual Harassment under Title IX

YCCD Policy 3430 – Prohibition of Harassment
YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX
YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
YCCD Policy 3540 - Sex/Gender Harassment, Discrimination and Sexual Misconduct Sexual and Other Assaults on Campus
YCCD Policy 3-8020 – Due Process
YCCD Policy 5500 – Standards of Student Conduct
YCCD Policy 5530 – Complaint Policy Student Rights and Grievances
YCCD Policy 7700 – Whistleblower Protection

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

Procedure Last Revised:
Last Reviewed:
Policy

3434 Responding to Harassment Based on Sex under Title IX

The text below is YCCD language as CCLC does not have a policy.

The Chancellor shall ensure procedures are enacted, as appropriate and permitted by law, regarding responding to harassment based on sex under Title IX.

Cross References (see also):
YCCD Policy 3430 – Prohibition of Harassment
YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX
YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
YCCD Policy 3540 - Sex/Gender Harassment, Discrimination and Sexual Misconduct Sexual and Other Assaults on Campus
YCCD Policy 3-8020 – Due Process
YCCD Policy 5500 – Standards of Student Conduct
YCCD Policy 5530 – Compliant Policy Student Rights and Grievances
YCCD Policy 7700 – Whistleblower Protection

References:
20 U.S. Code Sections 1681 et seq.; 34 Code of Federal Regulations Part 106.1 et seq.

Adopted:
Last Reviewed:
Administrative Procedure

3434 Responding to Harassment Based on Sex under Title IX

Note: This procedure is legally required. Local practice may be inserted. The following is an illustrative example.

I. Introduction

The District encourages members of the District community to report sexual harassment. 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. The District will ensure that this administrative procedure conforms to the due process requirements of state and federal laws and regulations, and to the requirements of YCCD Board Policy 3-8020 Due Process.

II. Title IX Coordinator

Questions concerning Title IX may be referred to the District Title IX Coordinator whose contact information is below.

The District's Title IX Coordinator: Director of District Public Safety, Compliance and Emergency Preparedness
Address and office location: YCCD District Office, 2201 Blue Gum Avenue Modesto, CA 95358
Phone number: (209) 575-7906
Email: (this information shall be updated with a general Title IX email address)

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. 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.

III. Title IX Harassment Complaints, Investigations, and Hearings

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

IV. Jurisdictional Requirements – Application of Procedures
These procedures apply if the conduct meets the following three jurisdictional requirements:

A. The conduct took place in the United States;
B. 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.
C. The conduct meets the definition of Title IX “sexual harassment.”

V. Definitions

A. Advisor: Throughout the grievance process, both the Complainant and Respondent have a 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 the District’s choice, free of charge.

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.

B. Complainant: A Complainant is an individual who alleges he/she/they is the victim of conduct that could constitute sexual harassment.

C. 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 he/she/they has 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:

1. The Respondent’s belief arose from the Respondent’s own intoxication or recklessness;
2. The Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented; or
3. 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:
   a. asleep or unconscious;
   b. unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
   c. unable to communicate due to a mental or physical condition.

D. Decision-Maker: The District or College assigned administrator 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.

E. 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, he/she/they will not become a Party to the complaint.

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

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

H. Sexual Harassment under Title IX: Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity. Sexual harassment includes one or more of the following types of conduct:

1. 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);

2. 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;

3. Sexual assault, including the following:
   a. 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.
   b. 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.
   c. 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.
   d. 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.
   e. 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.
   f. Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse.
      i. Incest. Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
ii. 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.

g. 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.

h. Domestic Violence. Violence committed:
   i. By a current or former spouse or intimate partner of the victim;
   ii. By a person with whom the victim shares a child in common;
   iii. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
   iv. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; or
   v. 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.

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

j. Supportive Measures to include individualized services reasonably available that are non-punitive, non-disciplinary, and not reasonably burdensome to the other party while designated to ensure equal educational access, protect safety, or deter sexual harassment.

VI. Reporting Options

Any individual may report sexual harassment 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.

Because individuals may be deterred from reporting incidents of sexual harassment if alcohol, drugs, or other violations of District or campus rules were involved, the District will inform individuals that the primary concern is for student and employee safety and that use of alcohol or drugs never makes a Complainant at fault for sexual harassment. If other rules are violated, the District will address such violations separately from an allegation of sexual violence.

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.)

VII. District Employees and Officials with Authority

District Officials with Authority 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.

The District has designated the following employees as Officials with Authority:

Officials with Authority are required to report 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.

VIII. Intake and Processing of Report

A. Receipt of Report

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

B. Timeframe for Reporting

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

C. 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, 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 or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

D. 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.

E. 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 Title IX Coordinator or designee will conduct the individualized safety and risk analysis.

If the Title IX Coordinator determines emergency removal is appropriate, he/she/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 his/her/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 Respondent challenging the emergency removal.

F. 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.

IX. Procedure Process for Investigation of Title IX Complaints

In order to prevent conflict of interest and possible contamination of the investigative processes, Title IX Investigations to be conducted in the following manner:

- Student vs. Student = Assigned to Campus Safety Title IX Officer to Investigate
- Student vs. Employee = Assigned for Investigation through Human Resources
- Employee vs. Employee = Assigned for Investigation through Human Resources

A. Step 1: Intake

1. Receive Formal Complaint/Incident reported through the District’s online reporting system.
2. Determination by the Director of District Public Safety, Compliance and Emergency Preparedness for appropriate assignment based on the status of the involved parties (student, employee, etc.) using above criteria.
   a. In conjunction with the appropriate College Title IX Coordinator or Human Resources, consideration should be immediately given to whether any involved person should be removed from the campus pending completion of informal resolution or investigation.
   b. Required notifications:
      i. For students, provided by Student Services.
      ii. For employees, provided by Human Resources.
c. Note: If the conduct as alleged by the Complainant would not constitute sexual
harassment, as defined above, or did not occur within the District’s program or activity,
the District must terminate its grievance process with regard to that conduct.

B. Step 2: Attempt to Resolve
   1. Undertake efforts to informally resolve the charges, including but not limited to mediation,
      rearrangement of work/academic schedules; obtaining apologies; providing informal
      counseling, training, etc.
      a. 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.

C. Step 3: Investigate
   1. Initiate a fact-finding investigation (minimally to include the following):
      a. Interviewing the Complainant(s)
      b. Interviewing the accused individual
      c. Identifying and interviewing witnesses and evidence identified by each party
      d. Identifying and interviewing any other witnesses, if needed
      e. Reminding all individuals interviewed of the District’s no-retaliation policy
      f. Reviewing personnel/academic files of all involved parties
      g. Reach a conclusion as to the allegations

Title IX YCCD Investigation Report Format
I. Investigation Overview/Executive Summary
II. Summary of Findings
III. The Investigative Background
   A. Witnesses
   B. Documents
   C. The Policies
   D. Scope of Findings
   E. Evidentiary Standard
   F. Independence
   G. Timing

IV. Factual Background
   A. Department and Parties
   B. Interim Measures
   C. Notice To

V. Overview of Allegations and Response
   A. (Name)’s Complaint
      i. Overview of (Name)’s Perspective
      ii. Requested Resolution
      iii. Timing of Complaint
   B. (Name)’s Response
      i. Overview of (Name)’s Perspective
      ii. Requested Resolution
      iii. Timing of Complaint

VI. Chronology of Undisputed Facts and Key Events
   A. Chart and Description or Other Evidence
   B. Factual Findings Based on Undisputed Facts

VII. Summary of Disputed Allegations
VIII. Evidence, Analysis and Findings Related to the Disputed Allegations
A. Issue 1
B. Issue 2
C. Issue 3
D. Credibility Assessment

IX. Policy Analysis and Determination

D. Step 4: Report Findings
1. Draft report completed, turned in to Senior Director of Human Resources for review.
2. A review of the completed report will be conducted for grammatical and formatting errors, and corrections made as needed.
3. Report corrections completed, etc.

E. Step 5: Final Report Distribution
1. Student vs. Student – Student Conduct Officer
2. Employee vs. Student – Student Conduct Officer and/or Human Resources Administrator
3. Employee vs. Employee – Human Resources Administrator

F. Step 6: Corrective Action Taken
1. Student Action – Student Conduct Officer
2. Employee Action – As deemed appropriate by Human Resources Administrator or Manager/Dean as determined through disciplinary processes

G. Step 7: Notifications
1. All notification letters regarding employees sent by Human Resources.
2. All notification letters for investigations regarding students will be sent by Title IX Coordinator.

X. Formal Complaint Grievance Process

A. Notice to Parties
Upon receipt of a formal complaint, the Title IX Coordinator will provide the following notice in writing, to the Parties:
1. Copy of BP 3-8020;
2. Copy of written complaint, unless otherwise prohibited by law or if such disclosure would compromise the integrity of the investigation;
3. Notice of the District’s Title IX grievance process;
4. 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;
5. 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;
6. Notice that the Parties may have Advisor of their choice, who may be, but is not required to be, an attorney;
7. 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
8. 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.

B. 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:

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

Though the District must dismiss the allegations for purposes of Title IX, the District may still address the allegations in any manner that the District deems appropriate under the District’s own code of conduct policies.

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

1. 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;
2. If the Respondent is no longer enrolled or employed by the District; or
3. 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.

C. Consolidation of Formal Complaints

The District may, but is not require 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.

D. 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.
E. 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.

F. Bias or Conflict of Interest

The District’s Title IX Coordinator, investigator, Decision-Maker, or any person designated by the District to facilitate an 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:

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

G. 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, or due to the complexity of the investigation. 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.

H. Role of Advisor

The role of the Advisor is to provide support and assistance in understanding and navigating the investigation process. The advisor’s role will comply with BP 3-8020 and Title IX regulations.

Investigation Interviews: The Advisor may not testify in or obstruct an interview or disrupt the process. The Title IX Coordinator has the right to use reasonable discretion to determine what
constitutes inappropriate behavior of an Advisor and take reasonable steps to ensure compliance with this procedure during both the investigation interviews and hearings.

Hearings: 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, question evidence and relevance; consult with his or her respective party; and request reasonable breaks as needed. 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 one Advisor, with the exception of collective bargaining unit members who may have both a union representative and an Advisor.

I. 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.

J. 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.

K. 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.

L. 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 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.

M. Burden of Gathering Evidence
The District, not the Parties, has the responsibility to gather information and interview witnesses. As part of the District’s burden of gathering evidence, the District’s investigator will create an investigative report that fairly summarizes relevant evidence, whether it is inculpatory or exculpatory. When the investigator evaluates the evidence, he/she/they will do so using the clear and convincing evidence standard. The investigator shall not make findings or determinations of law or fact.
N. Notice of Investigative Interview

At least 10 business days in advance, the District will provide a written notice of the date, time, location, participants, and purpose of all investigative interviews to a Party whose participation is invited or expected.

O. 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.

XI. Investigative Report

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

A. 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:
   1. A description of the circumstances giving rise to the formal complaint;
   2. A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
   3. A summary of the testimony of each witness the investigator interviewed;
   4. An analysis of relevant evidence collected during the investigation, including a list of relevant documents;
   5. A specific finding as to whether the allegations occurred using a clear and convincing evidence standard;
   6. A table of contents if the report exceeds ten pages; and
   7. 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 he/she/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, 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.
B. 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.

For the purpose of this section, a live hearing means in person or live video feed.

C. 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.

D. 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.

E. 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. 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.

F. 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.

G. Cross-Examination
The District shall permit each Party’s Advisor to ask the other Party and any witness relevant questions, including 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.

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.

Before a Complainant, Respondent, or witness answers a 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.

The Decision-Maker cannot rely on the statements or testimony of a Party or witness who has refused to answer a question the Decision-Maker had found relevant unless the Decision-Maker reconsiders and changes the ruling before reaching the determination of responsibility. If the Decision-Maker changes the determination of relevance of an unanswered question, the Decision-Maker must explain the decision to reconsider the ruling in the written determination of responsibility.

The Decision-Maker cannot draw an inference about the determination of responsibility based solely on a Party’s or witness’ absence from the live hearing or refusal to submit to cross-examination or to answer any question.

The Decision-Maker may also ask any Party or witness relevant questions. If a Party or witness refuses to respond to a Decision-Maker’s questions, the Decision-Maker is not precluded from relying on that Party or witness’ statements.

H. 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 20 business 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 clear and convincing evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether sexual harassment occurred.
I. The written determination will include:

1. Identification of the allegations potentially constituting Title IX sexual harassment as defined in these procedures;

2. 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;

3. 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;

4. Conclusions regarding the application of the District’s code of conduct to the facts;

5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;

6. A statement of, and rationale for, any disciplinary sanctions the District imposes on the Respondent;

7. 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;

8. 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;

9. 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.

J. 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, 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:

1. Providing an escort to ensure that the Complainant can move safely between classes and activities;

2. Ensuring that the Complainant and Respondent do not attend the same classes or work in the same work area;

3. Providing counseling services or a referral to counseling services;

4. Providing medical services or a referral to medical services;
5. Providing academic support services, such as tutoring;
6. 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
7. 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 include written or verbal reprimand, required training or counseling, reduction in pay [if negotiated or available through policy or procedure], demotion [if negotiated or available through policy or procedure], suspension, or discharge.

K. 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 business 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.

L. Grounds for Appeal

The Board of Trustees will serve as the Decision-Maker on Appeal. 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:

1. A procedural irregularity affected the outcome;
2. 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
3. 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.

M. Appeal Procedure

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

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

The appeal Decision-Maker 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.

N. 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.

O. 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.

P. Dissemination of Policy and Procedures

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

Q. 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 pre judgment 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.

R. File Retention

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

1. The original report or complaint;
2. Any actions taken in response to the complaint, including supportive measures;
3. The investigative report including all evidence gathered and any responses from the Parties;
4. The District’s determination regarding responsibility;
5. Audio or audiovisual recording or transcript from a hearing;
6. Records of any disciplinary sanctions imposed on the Respondent;
7. Records of any remedies provided to the Complainant;
8. Any appeal and the result;
9. Any informal resolution and the result; and
10. 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.

Cross References (see also):
YCCD Policy 3430 – Prohibition of Harassment
YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX
YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
YCCD Policy 3540 - Sex/Gender Harassment, Discrimination and Sexual Misconduct Sexual and Other Assaults on Campus
YCCD Policy 3-8020 – Due Process
YCCD Policy 5500 – Standards of Student Conduct
YCCD Policy 5530 – Compliant Policy Student Rights and Grievances
YCCD Policy 7700 – Whistleblower Protection

References:
Education Code Section 67386; 20 U.S. Code Sections 1681 et seq.; 34 Code of Federal Regulations Part 106.1 et seq.

Procedure Last Revised:
Last Reviewed:
Policy Change ☒
Procedure Change ☒
New Policy ☐
New Procedure ☐

Subject Matter Area Review ☒
Constituency Group Review ☒
District Council ☒
Board 1st Reading ☒
Board 2nd Reading ☒

Comments:
CCLC Fall 2017 Update
Revised CCLC Update 7/27/20
CCLC Fall Update 10/30/20

KEY:
BOLD= new language
strikethrough= delete language

Edited:
9/8/20 Subject Matter Area
9/29/20 Legal Counsel
10/21/20 P&P Committee
10/22/20 Constituency Groups
11/18/20 P&P Committee
11/18/20 District Council
12/16/20 District Council
1/11/21 Board Policy Committee
1/13/21 Board Meeting

Yosemite Community College District Policies and Administrative Procedures

Policy

3435 Discrimination and Harassment Complaints and Investigations

The text below is YCCD language as CCLC does not have a policy.

The Chancellor shall ensure procedures are enacted, as appropriate and permitted by law, regarding discrimination and harassment investigations.

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. The District will ensure that this administrative procedure conforms to the due process requirements of state and federal laws and regulations, and to the requirements of YCCD Board Policy 3-8020 Due Process.

Cross References (see also):
YCCD Policy 3430 – Prohibition of Harassment
YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX
YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX
YCCD Policy 3540 – Sex/Gender Harassment, Discrimination and Sexual Misconduct
YCCD Policy 3540 – Sex/Gender Harassment, Discrimination and Sexual Misconduct
YCCD Policy 3540 – Sexual and Other Sexual Assaults on Campus
YCCD Policy 3-8020 – Due Process
YCCD Policy 5500 – Standards of Student Conduct
YCCD Policy 5530 – Complaint Policy
YCCD Policy 7700 – Whistleblower Protection
YCCD Policy 3540 – Sex/Gender Harassment, Discrimination and Sexual Misconduct
References:
Collective Bargaining Agreements and Leadership Team Handbook

Adopted: August 26, 2016
Last Reviewed: August 26, 2016
Administrative Procedure

3435 Discrimination and Harassment Complaints and Investigations

(Additional information specific to sex/gender-based harassment, discrimination or sexual misconduct investigation begins on page 9.)

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. The District will ensure that this administrative procedure conforms to the due process requirements of state and federal laws and regulations, and to the requirements of YCCD Board Policy 3-8020 Due Process.

I. Reporting and Filing Complaints

The law prohibits coworkers, supervisors, managers, 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 file a formal or informal complaint of harassment, discrimination, or retaliation. Complainants may have the option of filing an informal complaint or formal complaint.

A formal complaint is a written and signed statement filed with the District or the State Chancellor’s Office that alleges harassment, discrimination, or retaliation in violation of the District’s Board Policies, Administrative Procedures or in violation of state or federal law. An informal complaint is any of the following: (1) An unwritten allegation of harassment, discrimination, or retaliation; (2) a written allegation of harassment, discrimination, or retaliation that falls outside the timelines for a formal complaint; or (3) a written complaint alleging harassment, discrimination, or retaliation filed by an individual who expressly indicates that he/she/they does not want to file a formal complaint.

A. Informal Complaints

An informal complaint is any of the following: (1) a written allegation of harassment, discrimination, or retaliation that falls outside the timelines for a formal complaint; or (2) a written complaint alleging harassment, discrimination, or retaliation filed by an individual who expressly indicates that he/she/they does not want to file a formal complaint.

Any person may submit an informal complaint to the Vice Chancellor Senior Director of Human Resources or any other District or college administrator. Administrators receiving an informal complaint shall immediately notify the Vice Chancellor Senior Director of Human Resources in writing of all pertinent information and facts alleged in the informal complaint.

Upon receipt of an informal complaint, the Vice Chancellor Senior Director of Human Resources will notify the person bringing the informal complaint of his/her/their right to file a formal complaint, if the incident falls within the timeline for a formal complaint, and explain the procedure for doing so. The Complainant may later decide to file a formal complaint, if within the timelines to do so. If the individual chooses not to file a formal complaint, or if the alleged conduct falls outside the timeline to file a formal complaint, the Vice Chancellor Senior Director of Human Resources shall consider the allegations contained in the informal complaint and
determine the appropriate course of action. This may include efforts to informally resolve the matter, or a fact-finding investigation.

Investigation of an informal complaint will be appropriate if the Vice Chancellor Senior Director of Human Resources determines that the allegation(s), if proven true, would constitute a violation of the District policy prohibiting harassment, discrimination, or retaliation. The Vice Chancellor Senior Director of Human Resources will explain to any individual bringing an informal complaint that the Vice Chancellor Senior Director of Human Resources may decide to initiate an investigation, even if the individual does not wish the Vice Chancellor Senior Director of Human Resources to do so. The Vice Chancellor Senior Director of Human Resources 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.

B. 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, Administrative Procedures, or in violation of state or federal law. Formal Complaints must be filed with the Vice Chancellor Senior Director of Human Resources or the State Chancellor unless the party submitting the Formal Complaint alleges discrimination, harassment, or retaliation against the responsible District officer, in which case it should be submitted directly to the Chancellor or the State Chancellor.

The District may request, but shall not require the Complainant to submit a formal complaint. Formal Complaints should be submitted on the form prescribed by the State Chancellor’s Office. A copy of the form is available at the District website. A Complainant shall report verbal complaints to the Senior Director of Human Resources. The Senior Director of Human Resources shall record the verbal complaint in writing. The Senior Director of Human Resources will take steps to ensure the writing accurately reflects the facts alleged by the Complainant.

If any party submits a written allegation of harassment, discrimination, or retaliation not on the form described above, the District will seek to have the individual complete and submit the form. However, if the individual chooses not to do so, the District will attach the written allegation(s) to the form and treat it as a Formal Complaint. In no instance will the District reject a written allegation of harassment, discrimination, or retaliation on the basis that it was not submitted on the proper form.

A Formal Complaint must meet each of the following criteria:
1. It 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;

2. The complainant must sign and date the Formal Complaint;

3. The Complainant must file any Formal Complaint not involving employment within one year of the date of the alleged discriminatory, harassing, or retaliatory conduct or within one 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.

4. 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 Chancellor Senior Director of Human Resources will promptly contact the complainant and specify the defect. If the sole defect is that the Formal Complaint was filed outside the applicable prescribed timeline (as described above), the Vice Chancellor Senior Director of Human Resources may still address the allegations in any manner that the District deems appropriate under the District’s code of conduct policies will handle the matter as an informal complaint.

Oversight of Complaint Procedure: The Vice Chancellor Senior Director of Human Resources, or in the case of sex/gender based harassment or discrimination the Title IX Administrator or Campus Coordinator, 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 Chancellor Senior Director of Human Resources to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the Vice Chancellor Senior Director of Human Resources 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, or harassed by, or retaliated against 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 or harassed in violation of these policy and procedures may make a complaint orally or in writing, using the District’s Unlawful Discrimination Complaint Form.

If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, he/she must file the complaint on a form prescribed by the State Chancellor’s Office. Complainants may but are not required to use the form prescribed by the State Chancellor’s Office. These approved forms are available at the District’s website and at the State Chancellor’s website.

The completed form must be filed with the Vice Chancellor of Human Resources or the State Chancellor unless the party submitting the Formal Complaint alleges discrimination, harassment, or retaliation against the responsible District officer, in which case it should be submitted directly to the Chancellor or the State Chancellor.

C. 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).

Complaints filed with the EEOC or the DFEH should be forwarded to the State Chancellor’s Office.
Any District employee who receives a harassment or discrimination complaint shall notify the Vice Chancellor Senior Director of Human Resources immediately.

Filing a Timely Complaint: Since 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 or discriminated against to file a complaint. The District also strongly encourages the filing of such complaints as soon as possible or 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 supervisors and managers 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 off campus if there is a demonstrated nexus they are related to an academic or work activity or if the harassing conduct interferes with or limits a student’s or employee’s ability to participate in or benefit from the school’s programs or activities.

Communicating that the Conduct is Unwelcome: The District further encourages students and staff to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste or inappropriate.

Intake and Processing of the Complaint: Upon receiving notification of a harassment or discrimination complaint, the Vice Chancellor Senior Director of Human Resources, or in the case of sex/gender based harassment or discrimination the Title IX Administrator or Campus Coordinator, shall:

1. 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, etc.

2. Advise the complainant all Parties that he/she/they need not participate in an informal resolution of the complaint, as described above, and has the right to end the informal resolution process at any time. Mediation is not appropriate for resolving incidents involving sexual violence.

   Note: Districts should exercise care in using mediation in cases of sexual violence.

3. Advise a student Complainant that he/she/they may file a complaint with the Office of Civil Rights of the U.S. Department of Education and employee Complainants may file a complaint with the Department of Fair Employment and Housing. 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 even if the Complainant files a complaint with local law enforcement. In addition, the District should ensure that Complainants are aware of any available resources, such as counseling, health, and mental health services. The Vice Chancellor Senior Director of Human Resources shall also notify the State Chancellor’s Office of the complaint.

4. 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 Chancellor of
Human Resources, or Title IX Administrator/Campus Coordinator, should notify the complainant of his/her 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 or housing while allowing accused individuals to remain.

Take supportive measures, i.e. non-disciplinary, non-punitive individualized measures offered to the Complainant or the Respondent as the District deems appropriate and reasonably available to restore or preserve equal access to the District’s education program and activities. These measures are designed to protect the safety of all Parties, protect the District’s educational environment or deter further discrimination, retaliation and/or harassment. The District will provide these supportive measures on a confidential basis and will only make disclosures to those with a need to know in order 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 or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

II. Investigation

A. The Vice Chancellor Senior Director of Human Resources, or in the case of sex/gender-based harassment or discrimination the Title IX Administrator or Campus Coordinator, shall:

1. 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 Parties complainants opt for informal resolution, the designated officer 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 accused, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.

2. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, 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 or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. This includes complaints involving activities that occur off campus and 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 bus, or at a class or training program sponsored by the District at another location. Complaints involving harassment, discrimination and/or retaliation occurring in the District’s education program or activity. Education program or activity includes locations, events or circumstances over which the District exercises a substantial amount of control over the Parties and the context in which the conduct occurred, and includes any building owned or controlled by a student organization.
officially recognized by the District. The District shall promptly investigate complaints of harassment or discrimination that occur off campus if the alleged conduct creates a hostile environment on campus. 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** complainant opts for an informal resolution, the **Vice Chancellor**, **Senior Director** of Human Resources, or in the case of sex/gender based harassment or discrimination the **Title IX Administrator** or **Campus Coordinator**, 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 harassment; the Complainant’s age; whether there have been other harassment complaints about the same individual; and the accused individual’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** *(in accordance with BP 3-8020)*: The District will fairly and objectively investigate harassment and discrimination complaints. Investigations will be conducted in a dignified and respectful manner. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes sexual harassment, 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: interviewing the Complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses and evidence identified by each party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District’s no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reach a conclusion as to the allegations and remedial action; and see that all recommended action is carried out in a timely fashion.

**Standard of Evidence:** When the District evaluates the complaint, it shall do so using a clear and convincing preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is highly or substantially more probable to be true than not that discrimination or harassment has occurred.

**Timeline for Completion:** The District will undertake its investigation promptly and swiftly as possible. To that end, every effort will be made to complete the investigation, and prepare a written report within ninety (90) days of when the District first received the complaint or information triggering the investigation the investigator shall complete the above steps, and prepare a written report within 90 days of the District receiving the complaint.

**Cooperation Expected Encouraged:** All students and employees are expected to cooperate with a District investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a Complainant or witnesses does not relieve the District of its obligation
to investigate. The District will investigate if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed. **No employee will be retaliated against as a result of lodging a complaint or participating in any workplace investigation.**

### III. Written Report

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

1. A description of the circumstances giving rise to the Formal Complaint;
2. A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
3. A summary of the testimony provided by each witness, including the Complainant and any available witnesses identified by the Complainant in the complaint interviewed by the investigator;
4. An analysis of relevant data or other evidence collected during the course of the investigation, including a list of relevant documents;
5. A specific finding as to whether there is reasonable cause to believe it is highly or substantially more probable to be true than not that discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint;
6. A table of contents if the report exceeds ten pages and
7. Any other information deemed appropriate by the District.

### IV. 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 and to protect the rights of accused students and employees **Respondents** during the investigation process and any ensuing discipline.

### V. Administrative Determination

A. In any case not involving employment discrimination, within 90 days of receiving a formal complaint, the District shall complete its investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant, and written notice to the Complainant setting forth all of the following to both the complainant and the Chancellor:

1. The determination of the Chancellor’s or his/her/their designee’s determination as to whether there is reasonable cause to believe it is highly or substantially more probable to be true than not that discrimination occurred with respect to each allegation in the complaint;
2. In the event a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination problems from occurring in the future;
3. The proposed resolution of the complaint; and
4. The Complainant’s right to appeal to the District’s governing Board of Trustees and the State Chancellor’s Office; and
5. In matters involving student sexual misconduct, the Respondent’s right to appeal to the District’s Board of Trustees any disciplinary sanction imposed upon the Respondent.
B. In any case involving employment discrimination, within 90 days of receiving a formal complaint, the District shall complete its investigation and forward a copy or summary of the report to the complainant, and written notice to the Complainant setting forth all the following to the complainant:

1. The determination of the Chancellor’s or his/her/their designee’s determination as to whether there is reasonable cause to believe it is highly or substantially more probable to be true than not that discrimination occurred with respect to each allegation in the complaint;
2. A description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future;
3. The proposed resolution of the complaint; and
4. The Complainant’s right to appeal to the District’s governing Board of Trustees and to file a complaint with Department of Fair Employment and Housing or the U.S Equal Employment Opportunity Commission.

The District shall also provide the Respondent the following:

1. The Chancellor’s or his/her/their designee’s determination as to whether it is highly or substantially more probable to be true than not that discrimination occurred with respect to each allegation in the complaint;
2. The proposed resolution of the complaint, including any disciplinary action against the Respondent; and
3. In matters involving student sexual misconduct not subject to Title IX, the Respondent’s right to appeal to the District’s Board of Trustees any disciplinary sanction imposed upon the Respondent.

VI. 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 and a live hearing conducted by a neutral third party to attend the hearing solely for the purpose of asking any questions to the witnesses. 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 charged with making a final determination regarding discipline.

VII. Discipline and Corrective Action

A. If harassment, discrimination, or retaliation occurred in violation of the policy or procedure, the District shall take disciplinary action against the accused 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 might include, but are not limited to:

1. providing an escort to ensure that the Complainant can move safely between classes and activities;
2. ensuring that the Complainant and alleged perpetrator do not attend the same classes or work in the same work area;
3. preventing offending third parties from entering campus;

4. providing counseling services or a referral to counseling services;

5. providing medical services or a referral to medical services;

6. providing academic support services, such as tutoring;

7. 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

8. 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.

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

Disciplinary actions against faculty, staff, and students will conform to all relevant statutes, regulations, personnel policies, and procedures, including the provisions of any applicable collective bargaining agreement.

The District shall also take reasonable steps to protect the Complainant from further harassment, or 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 problems, and should follow-up with Complainants to determine whether any retaliation or new incidents of harassment have occurred. The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all Parties to the extent possible without impeding the District’s ability to investigate and respond effectively to the complaint.

If the District cannot take disciplinary action against the accused individual 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.

VIII. Appeals

A. 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 procedure for appealing a disciplinary decision. For employees these procedures are found in applicable collective bargaining agreements and state statutes. For students the procedures are described in BP 5500 titled Standards of Student Conduct.
If the Complainant is not satisfied with the results of the administrative determination, he/she/they may, within fifteen days, submit a written appeal to the Board of Trustees.

In a complaint involving student sexual misconduct not subject to the Title IX, a Respondent who is not satisfied with the results of the administrative determination may submit a written appeal to the District’s Board of Trustees within 30 days.

The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within 45 days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the Complainant and to the Respondent State Chancellor’s Office. The Complainant shall also be notified of his/her/their right to appeal this decision.

If the Board does not act within 45 days the administrative determination shall be deemed approved on the forty-six 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 Board’s action, or if the Board took no action, that the administrative determination is deemed approved.

In any case not involving workplace discrimination, harassment, or retaliation, the Complainant shall have the right to file a written appeal with the State Chancellor’s Office within thirty days after the 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 employment discrimination, including workplace harassment, the Complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the Department of Fair Employment and Housing.

IX. Remand

The State Chancellor’s Office may remand any matter to the District for any of the following reasons: to cure defects in the investigation or in procedural compliance; 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 to modify or reverse a decision of the District’s Board of Trustees based upon misapplication of an applicable legal standard or an abuse of discretion.

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

X. Extension of Time

If the District is unable to comply with the 90-day deadline, the District may extend the time to respond by up to 45 additional days. An extension may be taken only once without permission from the State Chancellor’s Office, and must be necessary for one of the following reasons:

1. A need to interview a party or witness who has been unavailable;
2. A need to review or analyze additional evidence, new allegations, or new complaints related to the matter; or
3. 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 necessity of an extension, the justification for the extension, and the number of days the deadline will be extended. The District shall send this notice no later than 10 days prior to the initial time to respond.

The District may request additional extensions from the State 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 State Chancellor within 5 days of receipt.

XI. Disclosures to the State Chancellor’s Office

A. Within 150 days of receiving a formal complaint, the District shall forward to the State Chancellor’s Office, the District shall provide copies of all documents related to a discrimination complaint, including the following: the original complaint, any investigative report unless subject to the attorney-client privilege, a copy of the written notice to the Complainant setting forth the results of the investigation, a copy of the final administrative decision rendered by the Board or statement indicating the date upon which the decision became final, and a copy of the notification to the Complainant of his/her appeal rights; the Complainant’s appeal of the District’s administrative determination, any other non-privileged documents or information the State Chancellor requests. If, due to circumstances beyond its control, the District is unable to comply with the 150 day deadline for submission of materials, it may file a written request for an extension of time no later than ten days prior to the expiration of the deadline.

The District shall provide to the State Chancellor’s Office an annual report with the following information: the number of employment and non-employment discrimination 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 complaints of unlawful discrimination received in the previous academic year, and the number of those complaints that were sustained in whole or in part; and any other information requested by the State Chancellor’s Office.

XII. File Retention

A. The District will retain on file for a period of at least three years after closing the case copies of:
   1. the original complaint;
   2. the investigatory report;
   3. the summary of the report if one is prepared;
   4. the notice provided to the Parties, complainant, of the District’s administrative determination and the his/her right to appeal;
   5. any appeal; and
   6. the District’s final decision.

The District will make such documents available to the State Chancellor upon request. For any appeal to the State Chancellor’s Office shall provide all relevant, non-privileged documents upon request of the Chancellor.

Where the complaint allegation consists of Sex/Gender Harassment, Discrimination, or Sexual Misconduct, as defined by Title IX, the following applies:

Complaint Procedure:
Where the complaint involves a minor, the District will comply with California mandated reporting requirements.

All responsible employees are required to report all actual or suspected sexual misconduct to the Title IX Administrator or Campus Coordinator immediately. A responsible employee is any employee who has the authority to take action to redress sexual misconduct, who has been given the duty of reporting incidents of sexual misconduct to the Title IX Administrator or Campus Coordinator, or whom a student or employee could reasonably believe has this authority or duty. The District is on notice if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual misconduct. All District employees are considered responsible employees.

Any person may make a complaint by contacting the Title IX Administrator or Campus Coordinator directly. The Title IX Administrator or Campus Coordinator will receive all relevant details about the alleged sexual misconduct reported to the District responsible employee in order to determine what occurred and how to resolve the situation. This includes the names of alleged victim and alleged perpetrator (if known), and the date, time, and location of the alleged sexual misconduct.

Privileged or Confidential Reporting:
Before a student or employee reveals information that he or she may wish to keep confidential, a responsible employee should, whenever possible, ensure that the person making the report understands the employee’s obligations to report to the Title IX Administrator or Campus Coordinator and the victim’s option to request confidentiality, which the District will take into consideration. Furthermore, the responsible employee should, whenever possible, ensure that the reporting party understands the victim’s ability to share the information confidentiality with designated District employees.

Professional, licensed, mental health counselors, who provide mental-health counseling to members of the District community, or interns, graduate students, and others supervised by professional licensed counselors, are not required to report any information to the Title IX Administrator or Campus Coordinator. However, the reporting of aggregate, non-identifying, information is encouraged in order for the District to meet its statistical reporting requirements pursuant to the Clery Act.

Non-professional counselors who work or volunteer in health services, including front desk personnel and student employees in the course of their duties, may maintain confidentiality under certain circumstances. They are not required to report actual or suspected sexual misconduct to the Title IX Administrator or Campus Coordinator in a way that identifies the student without the victim’s consent. (Note that health services employees are mandated by California law to report to local law enforcement if they treat any physical condition that is the result of abusive or assaultive behavior, this includes any type of sexual assault. Therefore, they may keep the information confidential from the campus community but cannot guarantee complete confidentiality.)

Authority over Parties:
The District has authority over students, employees, and third parties for alleged violations of this policy that occur on District property. The District has authority over District employees and students for alleged violations of this policy that occur at District activities or events. The District may exercise authority over events that occur off-campus to determine if the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

Standard of Proof:
The District will use a “preponderance of the evidence” standard of proof in determining whether there has been a violation of this policy. This standard of proof is also known as “more likely than not” standard.
Upon Receiving the Complaint – Health and Safety:
The Title IX Administrator or Campus Coordinator will make an immediate assessment concerning the
health and safety of the victim and campus community as a whole. The District will provide the victim
with immediate, interim measures necessary to protect his or her health and safety. These immediate,
interim measures may include, but are not limited to: providing an escort to ensure that the victim can
move safely between classes, ensuring that the victim and perpetrator do not attend the same classes or
work in the same area, preventing offending third parties from entering campus, providing counseling
services or a referral to counseling services, providing academic support services, such as tutoring,
arranging for a victim to retake a course or withdraw from a course without penalty, including ensuring
that any changes do not adversely affect the victims’ academic record, and reviewing any disciplinary
actions taken against the victim to see if there is a causal connection between the harassment,
discrimination, or retaliation and the misconduct that may have resulted in the victim being disciplined.

Where the District determines that there is a substantial threat to the campus community, it will issue a
timely warning. The District will issue the warning according to District Administrative Procedures. The
District will not disclose the victim’s name or other identifying information when issuing the warning.

Communicating that the Conduct is Unwelcome:
The employee or student may, but is not required to let the offending person know immediately and
firmly that the conduct or behavior is unwelcome, offensive, in poor taste, or inappropriate. This is not
required.

Intake and Processing of the Complaint:
The Title IX Administrator or Campus Coordinator will not use mediation or any similar process to
informally resolve a sexual misconduct complaint.

Confidentiality:
Where the victim requests confidentiality or that the District not conduct an investigation, the District will
take all reasonable steps to investigate while honoring the request. Where the victim insists that the
District not disclose his or her name or other identifiable information to the alleged perpetrator, the
District will inform the victim that its ability to respond will be limited. The District will evaluate this
request in the context of its responsibility to provide a safe and nondiscriminatory environment for all
employees and students. When weighing a request for confidentiality against the seriousness of the
alleged harassment, the Title IX Administrator or Campus Coordinator will take the factors listed above
into consideration.

Fact-Finding Investigation:
Where the victim has filed a criminal complaint with local law enforcement, the District will consider what
information the District is able to share, pursuant to state and federal law, to ensure that victims are not
unnecessarily required to give multiple statements about a traumatic event. The District will continue to
conduct its own thorough, reliable, prompt, and impartial investigation. The District will normally
complete its sexual misconduct investigation within 60 business days of receiving the complaint, unless
extended by the Title IX Administrator or Campus Coordinator for good cause. The Title IX Administrator
or Campus Coordinator will notify the victim and accused in writing of the reason for the extension and
the projected new timeline.

The victim and accused will have equal opportunity to present relevant witnesses and other evidence to
the District investigator. The District will provide the same opportunities to the victim and accused, for
example both parties are entitled to an advisor of their choosing to guide and accompany them
throughout the campus resolution process. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is both eligible and available. People who will be interviewed as witnessed may not serve as advisors. Employees have rights pursuant to collective bargaining agreements, Leadership Team Handbook, and statute that may pertain.

The parties are entitled to be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present. Advisors should help their advisees for each meeting, and are expected to advise ethically, with integrity and in good faith. The District cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney but the other party does not, or cannot afford an attorney, the District is not obligated to provide one.

The results of the fact-finding investigation will be set out in a formal investigative report which will include the requirements listed above and a credibility determination of the victim, accused, and witnesses.

At any point during the investigation, if it is determined there is no reasonable cause to believe that District policy has been violated, the Vice Chancellor of Human Resources (accused employee investigations), the Title IX Administrator, or Campus Coordinator has the authority to terminate the investigation and end resolution proceedings.

Where the responding party is found not responsible for the alleged violation(s), the investigation will be closed. Where a violation is found, the District will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the District community. All parties will receive written notification of the outcome, to the extent permitted by or mandated by law. In cases involving sexual misconduct, sexual harassment, stalking and/or intimate partner violence, the written notification includes the finding any resulting responsive actions, and the rationale for the decision. This written notification explains appeals options and procedures for appeal. It also describes changes to the results that could occur before the decision is finalized.

Reporting to State Chancellor's Office:
The District considers all sexual misconduct complaints to be formal complaints. The Title IX Administrator must notify the State Chancellor’s Office of any sexual misconduct complaints. Upon completing the investigation, the District shall forward to the Chancellor’s Office a copy of the investigative report and administrative determination and to the complainant a summary of the investigative report and administrative determination.

XIII. Dissemination of Policy and Procedures
A. District Policy and Procedures related to harassment will include information that specifically addresses sexual violence. District policy and procedures, including BP 3-8020, and academic freedom policies BP 4030 and 5-8081, will be provided to all students, faculty members, members of the administrative staff and members of the support staff, and will be posted on campus and on the District’s website.

When hired, employees are required to sign that they have received the policy and procedures, and the signed acknowledgment of receipt is placed in each employee’s personnel file. In addition, these policies and procedures are incorporated into the District’s course catalogs and orientation materials for new students.

XIV. Training
A. **By January 1, 2021**, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment and abusive conduct training to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment and abusive conduct training to all nonsupervisory employees. All new supervisory employees must be provided with the training and education within six months of their assumption of a supervisory position. **After January 1, 2021,** the District shall provide sexual harassment training and education to each supervisory employee once every two years. An employee who received this training and education in 2019 is not required to have refresher training until after two 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 prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment, a review of “abusive conduct,” and harassment based on gender identity, gender expression, and sexual orientation. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. Supervisor’s harassment 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, and a review of “abusive conduct.”

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, copies of all certificates of attendance or completion issued, the type of training provided, 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 document all written response or guidance the trainer provided during the webinar. The District will retain these records for at least two years.

Training of all staff will be conducted. This includes counselors, faculty, health personnel, coaches, and all staff who regularly interact with students. Training for academic staff should emphasize environmental harassment in the classroom. The District will also provide training to students who lead student organizations. **The District should provide copies of the sexual harassment policies and training to all District law enforcement unit employees regarding 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, all District employees will attend a training update or receive a copy of the revised policies and procedures.

Participants in training programs will be required to sign a statement that they have either understood the policies and procedures, their responsibilities, and their own and the District’s potential liability, or that they did not understand the policy and desire further training.

B. **Education and Prevention for Students**

In order to take proactive measures to prevent sexual harassment and 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, and in training for student athletes and coaches. These
programs will include discussion of what constitutes sexual harassment and sexual violence, the
District’s policies and disciplinary procedures, and the consequences of violating these policies. A
training program or informational services will be made available to all students at least once
annually.

The education programs will also include information aimed at encouraging students to report
incidents of sexual violence to the appropriate District and law enforcement authorities. Since
victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other
violations of District or campus 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 violence. If other rules are violated, the District will address such violations
separately from an allegation of sexual violence.

Cross References (see also):
YCCD Policy 3430 – Prohibition of Harassment
YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX
YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX
YCCD Policy 3540 – Sex/Gender Harassment, Discrimination and Sexual Misconduct Sexual and Other
Assaults on Campus
   YCCD Policy 3-8020 – Due Process
   YCCD Policy 5500 – Standards of Student Conduct
   YCCD Policy 5530 – Complaint Policy Student Rights and Grievances
   YCCD Policy 7700 – Whistleblower Protection

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; 20 U.S. Code
Sections 1681 et seq.; 34 Code of Federal Regulations Section 106.8(b)

Procedure Last Revised: August 26, 2016
Last Reviewed: August 26, 2016
Members of the Yosemite Community College District community (to include Modesto Junior College and Columbia College), guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The District has zero tolerance for sex/gender misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator’s attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the reporting party (complainant) and community are remedied, including serious sanctions if a responding party (accused) is found to have violated related District policy. District policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and the associated procedures to establish a mechanism for determining when those expectations have been violated.

The District’s sex/gender harassment, discrimination, and sexual misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom (see YCCD Policy 4030).

The District uses the preponderance of the evidence (also known as “more likely than not”) as a standard of proof of whether a violation occurred. In campus resolution proceedings, legal terms like “guilt”, “innocence” and “burdens of proof” are not applicable, but the District never assumes a responding party is in violation of District policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.
This policy applies to behaviors that take place on the campus, at District-sponsored events and may also apply off-campus and to actions online when the Title IX Administrator or Vice President of Student Services/Campus Coordinator determines that the off-campus conduct affects a substantial District interest. A substantial District interest is defined to include:

A. Any action that constitutes criminal offense as defined by federal or California state law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality where the District facility is located;

B. Any situation where it appears that the accused individual may present a danger or threat to the health or safety of self or others;

C. Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace or causes social disorder; or

D. Any situation that is detrimental to the educational interests of the District.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc. occurring completely outside of the District’s control (e.g. not on District networks, websites or between District email accounts) will only be subject to this policy when those online behaviors can be shown to cause a substantial on-campus disruption. Otherwise, such communications are considered speech protected by the 1st Amendment.

Off-campus discriminatory or harassing speech by employees may be regulated by the District only when such speech is made in an employee’s official or work-related capacity.

Any sex/gender harassment, discrimination or sexual assault or physical abuse, including, but not limited to rape as defined by California law misconduct, whether committed by an employee, student or member of the public, that occurs on District property and/or in a District education program or activity under the District’s obligation to act, is a violation of District policies and procedures, and is subject to all applicable punishment, potentially including criminal procedures and employee or student discipline procedures consistent with state and federal law. Students, faculty, and staff who may be victims of sex/gender harassment, discrimination or sexual and other assaults misconduct shall be treated with dignity and provided comprehensive assistance.

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

The procedures shall meet the criteria contained in Education Code Sections 67385, 67385.7, and 67386, and 34 Code of Federal Regulations Part 106 & Section 668.46.

The District’s Title IX Administrator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Administrator reports directly to the District Vice Chancellor of Human Resources, and is housed at the District office. Questions about this policy should be directed to the Title IX Administrator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the District Title IX Administrator or the college’s Title IX Campus Coordinator:

District Title IX Administrator
Additionally, reports can be made by victims and/or third parties using the online reporting form posted at www.yosemite.edu/title9, or the reporting hotline at (209) 575-6710, or via the reporting email address of TitleIXCoordinator@yosemite.edu. Note that these reports may prompt a need for the institution to investigate.

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

**San Francisco Office**
Office for Civil Rights (OCR)
U.S. Department of Education
50 Beale Street, Suite 7200
San Francisco, CA 94105-1813
Telephone: 415-486-5555
FAX: 415-486-5570; TDD: 800-877-8339
Email: ocr.sanfrancisco@ed.gov
Web: http://www.ed.gov/ocr

**U.S. Department of Justice Civil Rights Division**
950 Pennsylvania Avenue, N.W.
Educational Opportunities Section, PHB
Washington, D.C. 20530
By e-mail to education@usdoj.gov
By telephone at (202) 514-4092 or 1-877-292-3804 (toll-free)
By facsimile at (202) 514-8337

In the event that an incident involves alleged misconduct by the Title IX Administrator, reports should be made directly to the Office of the Chancellor:
Yosemite Community College District
2201 Blue Gum Ave., Modesto, CA 95358
(209) 575-6509
Cross References (see also):
YCCD Policy 3430 – Prohibition of Harassment
YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX
YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX
YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
YCCD Policy 3-8020 – Due Process
YCCD Policy 4030 – Academic Freedom – Faculty
YCCD Policy 5500 – Standards of Student Conduct
YCCD Policy 5530 – Complaint Policy – Student Rights and Grievances
YCCD Policy 7700 – Whistleblower Protection

References:
Education Code Sections 67382, 67385, and 67386; 20 U.S. Code Section 1092(f); 20 U.S. Code Section 1681; 34 Code of Federal Regulations Section 668.46 subdivision (b)(11); 34 Code of Federal Regulations Part 106; California School Employees Association Chapter 420 Agreement; Leadership Team Handbook; Yosemite Faculty Association Faculty Contract

Adopted: June 10, 2015
Revision Adopted: August 26, 2016
Last Reviewed: August 26, 2016
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 and/or in a District education program or activity, 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 regulations, and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. (See also AP 5500 titled Standards of Student Conduct.)

“Sexual assault,” “dating violence,” “domestic violence,” and “stalking” are defined in Administrative Procedure 3434 – Responding to Harassment Based on Sex under Title IX.

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

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, see also AP 3500, 3510, and 3515.)

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 and/or in a District education program or activity shall be provided with information regarding options and assistance available to them. Information shall be available from the District Campus Safety, which shall maintain the identity and other information about alleged sexual assault victims as confidential unless and until the Director of District, Campus Safety, Compliance and Emergency Preparedness is authorized to release such information.

The Director of District, Campus Safety, Compliance and Emergency Preparedness 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; notification should be made to the appropriate personnel.
• Information about the importance of preserving evidence and the identification and location of witnesses;
• A description of available services, and the persons on campus available to provide those services if requested. Services and those responsible for provided or arranging them include:
  o transportation to a hospital, if necessary;
  o counseling, or referral to a counseling center;
  o a list of other available campus resources or appropriate off-campus resources;
• The victim’s option to:
  o notify proper law enforcement authorities, including on-campus and local police;
  o be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
  o decline to notify such authorities;
• Information about the participation of victim advocates and other supporting people;
• 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 of 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:
  o criminal prosecution;
  o civil prosecution (i.e., lawsuit);
  o District disciplinary procedures, both student and employee;
  o modification of class schedules;
  o tutoring, if necessary.

The Director of District, Campus Safety, Compliance and Emergency Preparedness should be available to provide assistance to law enforcement unit employees 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 3434 Responding to Harassment Based on Sex under Title IX, 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 and/or in a District education program or activity shall be kept informed, through the Title IX Coordinator or Human Resources, as appropriate, 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 consistent with state and federal law.

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 consistent with state and federal law, 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 Public Information Officer, which shall work with the Chancellor’s Office to assure that all confidentiality rights are maintained consistent with state and federal law.

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 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, 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 services for victims;
• Written notification of 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;
• Procedures for campus disciplinary action in cases of an alleged domestic violence, dating violence, sexual assault, or stalking including a clear statement that:
  o Such proceedings shall provide a prompt, fair, and impartial resolution;
  o 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;
  o The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and
  o 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 changes 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 Campus Title IX Coordinator shall:
• Provide, as part of each campus’ established on-campus orientation program, education, prevention, and outreach information about domestic violence, dating violence, sexual assault, and stalking. The information shall be developed in collaboration with campus-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.

The outreach programming included as part of an incoming student’s orientation must include, at a minimum, all of the following:
  o The warning signs of intimate partner and dating violence.
  o Campus policies and resources relating to intimate partner and dating violence.
  o Off-campus resources and centers relating to intimate partner and dating violence.
  o A focus on prevention and bystander intervention training as it relates to intimate partner and dating violence.

• Post sexual violence prevention and education information on the campus internet website regarding domestic violence, dating violence, sexual assault and stalking.
The Yosemite Community College District (to include Modesto Junior College and Columbia College) does not permit discrimination or harassment in its programs and activities on the basis of sex, gender identity, gender expression, sexual orientation, pregnancy status or any other characteristic protected by District policy or state, local, or federal law. Anyone who believes they have been subjected to discrimination or harassment in violation of District policy should follow the procedure outlined in this document to report these concerns.

This procedure involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the sex/gender harassment, discrimination and sexual misconduct policy has been violated. If so, the District will initiate an investigation that is thorough, reliable, impartial, prompt and fair. This investigation determines whether the District’s policy has been violated. If so, the District will promptly implement an effective remedy designed to end the discrimination or harassment, prevent its recurrence and address its effects.

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be affirmative, conscious, and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity, without actions demonstrating permission, cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy, or of the faculty/staff handbooks. The District does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the District. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student, supervisor-supervisee) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. While no relationships are
prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in
disciplinary action for an employee.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to
raise such questions. When alcohol or other drugs are being used, a person will be considered unable to
give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when,
where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals
who consent to sex must be able to understand what they are doing. Under district policy, “No” always
means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing and voluntary consent
to any sexual activity is equivalent to a “no.”

Sexual misconduct offenses include, but are not limited to:
- Sexual harassment. See Section I.
- Non-consensual sexual contact (or attempts to commit same). See Section II.
- Non-consensual sexual intercourse (or attempts to commit same). See Section III.
- Sexual exploitation. See Section IV.

I. Sexual harassment is:
   A. unwelcome,
   B. sexual, sex-based, or gender-based verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any District program is encouraged to report it immediately to
the Title IX Administrator, Title IX Campus Coordinator, or a Deputy Coordinator. Remedies, education, or
training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory
harassment, or creates a hostile environment.

A hostile environment is created when sexual harassment is:
   A. sufficiently severe, or
   B. persistent or pervasive, and
   C. objectively offensive that it unreasonably interferes with, denies or limits someone’s ability to
      participate in or benefit from the District’s educational, employment, social access or residential
      programs.

Quid Pro Quo harassment is:
   A. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of
      a sexual nature,
   B. by a person having power or authority over another constitutes sexual harassment when,
   C. submission to such sexual conduct is made either explicitly or implicitly a term or condition of
      rating or evaluating an individual’s educational or employment progress, development, or
      performance,
   D. This includes when submission to such conduct would be a condition for access to receiving the
      benefits of any educational or employment program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly
subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual
based request; to condition a benefit on submitting to sexual advances; sexual violence, intimate partner
violence, stalking; gender-based bullying.
Retaliation harassment is:

A. Any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation of sex/gender harassment, discrimination or misconduct is a serious violation of District policy and may be treated as another instance of harassment or discrimination. The District is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

II. Non-consensual sexual contact is:

A. any intentional sexual touching,
B. however slight,
C. with any object,
D. by a person upon another person,
E. that is without consent or by force.

Sexual contact includes:

A. Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
B. Any other intentional bodily contact in a sexual manner.

III. Non-consensual sexual intercourse is:

A. any sexual intercourse
B. however slight,
C. with any object,
D. by a person upon another person,
E. that is without consent or by force.

Intercourse includes:

A. vaginal or anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

IV. Sexual exploitation:

Occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

A. Invasion of sexual privacy;
B. Prostituting another person;
C. Non-consensual digital, video or audio recording of nudity or sexual activity;
D. Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
E. Engaging in voyeurism;
F. Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
G. Knowingly exposing someone to or transmitting an STI, STD, or HIV to another person;
H. Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
I. Sexually-based stalking or bullying may also be forms of sexual exploitation

V. Additional applicable definitions:

A. Consent:

1. Consent is
   a) clear, and
   b) knowing, and
   c) affirmative, conscious and voluntary,
   d) words or actions,
   e) that give permission for specific sexual activity.

2. Consent is active, not passive.

3. Silence, in and of itself, cannot be interpreted as consent.

4. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.

5. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.

6. Previous relationships or prior consent cannot imply consent to future sexual acts.

7. Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.

8. In order to give consent, one must be of legal age.

9. Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of District policy.
   a) Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.
   b) The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
   c) Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
   d) This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs.

B. Force:

1. Force is the use of physical violence or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).
   a) Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
   b) NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
Use of alcohol or other drugs will never function to excuse any behavior that violates District policy. This procedure and corresponding policy are applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.

VI. Other misconduct offenses that will fall under Title IX when sex or gender based:

A. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;

B. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;

C. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;

D. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the District community, when related to the admission, initiation, joining, or any other group-affiliation activity;

E. Bullying, defined as
   1. Repeated or severe;
   2. Aggressive behavior;
   3. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally;
   4. That is not speech or conduct otherwise protected by the 1st Amendment;

F. Intimate Partner Violence (to include domestic violence and dating violence), defined as violence or abuse between those currently, or previously, in an intimate relationship to each other, or who have previously or are currently cohabitating;

G. Stalking
   1. Stalking 1:
      a) A course of conduct,
      b) Directed at a specific person,
      c) On the basis of actual or perceived membership in a protected class,
      d) That is unwelcome, AND
      e) Would cause a reasonable person to feel fear.
   2. Stalking 2:
      a) Repetitive and menacing,
      b) Pursuit, following, harassing or interfering with the peace and/or safety of another.

H. Any other District policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party’s sex or gender.

VII. All District employees (faculty, staff, and administrators) are considered responsible employees and are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality, meaning they are not required to report actual or suspected discrimination or harassment to appropriate District officials, thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options for the District:

A. Confidential Reporting:
If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

1. On-campus licensed professional counselors and staff
2. On-campus health service providers and staff (Note that health services employees are mandated by California law to report to local law enforcement if they treat any physical condition that is the result of abusive or assaultive behavior, this includes any type of sexual assault. Therefore, they may keep the information confidential from the campus community but cannot guarantee complete confidentiality.)
3. On-campus individuals designated by the District to provide confidential counseling
4. Off-campus:
   a) Licensed professional counselors
   b) Local rape crisis counselors
   c) Domestic violence resources
   d) Local or state assistance agencies
   e) Clergy/Chaplains

All of the above employees will maintain confidentiality except as previously noted and in extreme cases of immediate threat or danger, or abuse of a minor. Campus mental health counselors or the Employee Assistance Program are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees are encouraged to submit timely, anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client, or patient.

B. Formal Reporting Options:

All District employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Administrator or Campus Coordinators. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak outs do not provide notice that must be reported to the Administrator by employees. Remedial actions may result without formal District action.

If a victim does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Administrator or Campus Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons or violence, the District will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the District to honor that request, the District will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the District when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: the Division of Student Services, Campus Safety, and Behavioral Intervention Teams. Information will be shared as necessary with investigators,
witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party’s rights and privacy.

However, California law requires campus security authorities to immediately, or as soon as practicably possible, disclose to local law enforcement any report of a Part 1 violent crime, hate crime, or sexual assault, whether committed on or off campus. This includes reports victims make directly to campus security authorities as well as reports victims make to other campus employees that are then conveyed to campus security authorities.

While the reporting disclosure of the act of violence itself is mandated, a victim’s identity may not be disclosed to local law enforcement unless the victim consents to being identified after being informed of his or her right to have identifying information withheld. If a victim does not consent to disclosing his or her identity, the responding party’s identity may not be disclosed either.

Regardless of whether a victim consents to the disclosure of his or her identifying information, under state and federal law, a victim has: (1) the right to a Sexual Assault Forensic Medical Examination at no cost to the victim/patient and (2) the right to participate or not participate with the local law enforcement agency or the criminal justice system, either prior to the examination, or at any other time. Additionally, a victim may agree to engage with local law enforcement and participate in the investigation and prosecution using a pseudonym (i.e. Jane or John Doe) instead of his or her true name.

Certain campus officials—those deemed Campus Security Authorities—have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to local law enforcement regarding the type of incident and its general location (on or off campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus safety, local police, coaches, athletic directors, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Victims of sexual misconduct should also be aware that District administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The District will ensure that a victim’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

VIII.—Investigation and Resolution Process:
Details regarding the investigative process and procedures used in sex/gender harassment, discrimination and sexual misconduct inquiries can be found in AP 3435.

IX.—Interim Remedies/Actions:
The Title IX Administrator, or Campus Coordinator (or designee) may provide interim remedies intended to address the short-term effects of harassment, discrimination or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further violations. The District will keep interim remedies and actions as private as possible. These remedies may include, but are not limited to:

A. Referral to counseling and health services
B. Referral to the Employee Assistance Program
C. Education to the community
D. Altering the housing situation of the responding party (resident student (or the alleged victim, if desired))
E. Altering work arrangements for employees
F. Providing campus escorts
G. Providing transportation accommodations
H. Implementing contact limitations between the parties
I. Offering adjustments to academic deadlines, course schedules, etc.

The District may interim suspend a student, employee or organization pending the completion of the investigation and resolution, particularly when in the judgment of the Title IX Administrator or Campus Coordinator, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on campus of the responding party whose behavior is in question.

The District will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the institution’s ability to provide the accommodations or protective measures.

Sanctions may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination and Misconduct Policy. Disciplinary actions against faculty, staff, and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.

Additional provisions:

1. Attempted violations
   In most circumstances, the District will treat attempts to commit any of the violations listed in the Sex/Gender Harassment, Discrimination and Sexual Misconduct policy as if those attempts had been completed.

2. False Reports
   The District will not tolerate intentional false reporting of incidents. It is a violation of the Standards of Student Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

3. Amnesty for Victims and Witnesses
   The District community encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to District officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report to District officials, and that witnesses come forward to share what they know. To encourage reporting,
the District pursues a policy of offering victims of misconduct and witnesses amnesty from minor policy violations related to the incident.

Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, as student who has been drinking underage might hesitate to help take a sexual misconduct victim to the Campus Safety). The District pursues a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the District will provide educational options, rather than punishment, to those who offer their assistance to others in need.

4. Parental Notification

The District reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The District may also notify parents/guardians of non-dependent students who are under age 21 of alcohol or drug policy violations. Where a student is non-dependent, the District will contact parents/guardians to inform them of situations in which there is a significant and articulable health or safety risk. The District also reserves the right to designate which District officials have a need to know about individual conduct reports pursuant to the Family Educational Rights and Privacy Act.

X. District students and employees are responsible for knowing the information, policies and procedures outlined in this document.

The District reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. Students and employees are encouraged to check online www.yosemite.edu/Trustees/boardpolicy.htm for the updated versions of all policies and procedures. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form. Reports of misconduct made after the fact may raise issues of policy and procedure application, if policies and procedures have changed. Unless the parties accept current policies, all reports are governed by the policies that were in place at the time the alleged misconduct occurred. Procedures applicable are those that are in place at the time of resolution.

Cross References (see also):
YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX
YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX
YCCD Policy 3-8020 – Due Process
YCCD Policy 5500 – Standards of Student Conduct
YCCD Policy 5530 – Complaint Policy Student Rights and Grievances
YCCD Policy 7700 – Whistleblower Protection

References:
Education Code Sections 67380, 67385, 67385.7, and 67386; 20 U.S. Code Section 1092 subdivision (f); 34 Code of Federal Regulations Section 668.46 subdivision (b)(11); Penal Code Sections 243.4, 261-269, 314, 11160, and 13700

Procedure Last Revised: June 10, 2015, August 26, 2016
Last Reviewed: August 26, 2016
3-8020 Due Process

Due Process rights are basic human rights and are enumerated in the Fifth and Fourteenth Amendments of the United States Constitution. By establishing fair and equitable dispute resolution policies, it is the intent of the Governing Board of the Yosemite Community College District to respond to allegations of misconduct with a balance that protects the accuser while affording the safeguards of due process for the accused.

YCCD policy prohibits retaliation against an individual who in good faith reports or provides information about concerns or suspected violations of law or District policy. However, false accusations determined to have been made with the intent of harming or harassing another person may subject the accuser to disciplinary action. An accusation that is not made in good faith is not protected.

The Governing Board desires to maintain an environment of fair treatment for all members of the District community, including faculty, staff, students, volunteers, trustees, contract employees, and others in the YCCD community. The Governing Board recognizes that state and federal laws and regulations establish constitutional due process standards and that California state law supports the rights of workers in California to negotiate the due process procedures applicable to their workplace through the collective bargaining process. Consequently, nothing included in this policy will supersede or nullify the language of existing collective bargaining agreements or contracts, existing policies governing due process (including those related to student conduct), or federal or state laws, regulations, case law, or precedential regulatory decisions. However, as of the time of adoption of this policy, it is the intention of the Board that existing due process policies will be reviewed and revised to be brought into alignment and consistent with this policy, provided that such revised policies are consistent with the law.
The Governing Board believes that adopting Policy 3-8020 will promote fairness and equality for all members of our institution—employees (whether full or part-time), students, volunteers, docents, trustees, etc. - and will support the Governing Board’s efforts to maintain high morale throughout our two-college District. However, nothing in this policy provides any additional property rights than already provided in the California Education Code or any other state or federal law.

The Chancellor is directed to ensure that the following minimum standards for due process will be applied for all members of the District community and that Administrative Procedures are drafted if necessary to further implement this policy:

1. If a complaint is received by the District, the District may close the matter without further action after the District conducts a thorough preliminary investigation.

2. If the District determines that further investigation beyond the preliminary stage is warranted, the District shall inform the individual against whom allegations have been made (referred to as the Responding Party or “RP”), in writing, of the nature and scope of all charges brought against the RP, at least ten business days before an initial meeting with an administrator or investigator. At minimum, unless legally prohibited, a copy of Board Policy 3-8020 and a written detailed summary of the allegations will be provided, including reference to time(s), date(s) and location(s), individuals involved, specific conduct alleged, and policies alleged to have been violated. The written complaint shall be provided unless otherwise prohibited by law or if such disclosure would compromise the integrity of the investigation, or the safety of a complainant or witness.

3. The District reserves the right to place the RP on leave, or reassign the RP to another position or work area, and/or to take any additional supportive measures the District deems necessary, while it carries out an investigation.

4. The RP shall be informed that she or he has the right to a presumption of innocence and that the burden of proof lies with the District.

5. The RP will have the right to have a representative of the RP’s choice present at interviews or hearings at RP’s sole expense. In addition, a CBA member has a right to a union representative. Representatives are permitted to be active participants (but not obstruct) any hearings, meetings, or interviews. Recording of any interviews during the investigation will only be made by mutual consent of RP and the investigator. All proceedings should be conducted in a respectful and dignified manner.

6. Prior to the District taking any final disciplinary action against the RP, the District shall provide to the RP any relevant documents, including any final investigative report and notice of the right to respond to the charges, either orally, in writing, or both, prior to the disciplinary action. Such notice will be provided at least ten (10) working days prior to any disciplinary action or hearing.

7. RP shall notify the applicable administrator within five (5) working days if RP requests an informal hearing. To the extent permitted by law, the RP will be provided with a copy of the report, including when there is no finding of misconduct, and even if the formal accusation was dropped. Retaliation or threats made by RP (or the RP’s allies) against accusers is itself grounds for discipline.
8. If RP requests a hearing, the Human Resources Administrator or other appropriate administrator will serve as the hearing officer. The hearing officer shall not be the same person who investigated the matter. The RP is entitled to an impartial, unbiased panel or trier of fact. Any hearing officer must render an impartial review and decision of the issue in dispute. The RP has the right to challenge a fact-finder(s) for bias if the RP contends that the fact-finder cannot be a fair or impartial decision-maker. Any challenge submitted by the RP to the fact-finder shall be submitted, as applicable to the person and situation, to the College President, Human Resources Administrator, District Chancellor, or District Board of Trustees ("decision-maker"). The decision-maker’s determination shall be final.

9. During the hearing, the RP will have the right to present RP’s side of the issues, refute the evidence, and produce any oral or written documentary evidence, in real time. The RP’s representative also has the right to question witnesses, including the accuser, and respond to another party’s version of events. Witnesses may participate in the hearing from an off-site location through the use of videoconferencing or similar means.

10. An RP has a right to a decision based on the “clear and convincing’ standard of evidence.

11. The hearing officer will present his or her written findings to the RP within ten (10) working days.

12. Any finding of misconduct may be appealed according to existing procedures.

Cross References (see also):
YCCD Policy 3430 – Prohibition of Harassment
YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX
YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX
YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
YCCD Policy 3540 - Sex/Gender Harassment, Discrimination and Sexual Misconduct Sexual and Other Assaults on Campus
YCCD Policy 5500 – Standards of Student Conduct
YCCD Policy 5530 – Compliant Policy Student Rights and Grievances
YCCD Policy 7700 – Whistleblower Protection

References:

Adopted: April 8, 2020
Last Reviewed: April 8, 2020
Yosemite Community College District Policies and Administrative Procedures

4260 Prerequisites, and Co-requisites, Advisories, and Limitations on Enrollment

The Chancellor is authorized to establish prerequisites, co-requisites, and advisories on recommended preparation for courses in the curriculum. All such prerequisites, co-requisites, and advisories shall be established in accordance with the standards set out in Title 5. Any prerequisites, co-requisites or advisories shall be necessary and appropriate for achieving the purpose for which they are established. The procedures shall include a way in which a prerequisite or co-requisite may be challenged by a student on grounds permitted by law. Prerequisites, co-requisites, and advisories shall be identified in District publications available to students.

References:
Title 5 Sections 55000 and 55003

Adopted: June 28, 2004
Revision Adopted: February 11, 2009, March 11, 2015, July 11, 2018
Last Reviewed: July 11, 2018
4260 Prerequisites, and Co-requisites, Advisories, and Limitations on Enrollment

Prerequisites, co-requisites, advisories, and limitations are necessary to ensure that students can succeed in their coursework and have access to the courses they require. It is important to have prerequisites in place where they are a vital factor in promoting student success and maintaining academic standards. It is also necessary to ensure that prerequisites, co-requisites, advisories, and limitations do not constitute unjustifiable obstacles to student access and success.

Therefore, to foster the appropriate balance between these two concerns, the Education Code requires that prerequisites, co-requisites, advisories, and limitations be established based solely on content review or content review with statistical validation.

(INCLUDING ADVISORIES ON RECOMMENDED PREPARATION, AND LIMITATIONS ON ENROLLMENT)

If the student’s enrollment in a course or program is to be contingent on having met the proposed prerequisite(s) or co-requisite(s), then such a prerequisite or co-requisite must be established as follows. If enrollment is not blocked, then what is being established is not a prerequisite or co-requisite but, rather, an advisory on recommended preparation and must be identified as such in the schedule and catalog. Establishing advisories does not require all the following steps.

The following provides for the establishing, reviewing, and challenging of prerequisites, co-requisites, advisories on recommended preparation, and certain limitations on enrollment in a manner consistent with law and good practice. If prerequisites, co-requisites, advisories, and limitations are established unnecessarily or inappropriately, they constitute unjustifiable obstacles to student access and success.

Therefore, this procedure calls for caution and careful scrutiny in establishing them. Nonetheless, it is as important to have prerequisites in place where they are a vital factor in maintaining academic standards as it is to avoid establishing prerequisites where they are not needed. For these reasons, the District has sought to foster the appropriate balance between these two concerns.

I. Information in the Catalog and Schedule of Classes.

The college shall provide the following explanations both in the college catalog and in the schedule of classes:

A. Definitions of prerequisites, co-requisites, and limitations on enrollment including the differences among them and the specific prerequisites, co-requisites, and limitations on enrollment that have been established.

B. Procedures for a student to challenge prerequisites, co-requisites, and limitations on enrollment and circumstances under which a student is encouraged to make such a challenge. The information about challenges must include, at a minimum, the specific process including any deadlines, the various types of challenge(s) that are established in law, and any additional types of challenge(s) permitted by the college, including Credit for Prior Learning (BP/AP 4235).

C. Definitions of advisories on recommended preparation, the right of a student to choose to take a course without meeting the advisory, and circumstances under which a student is encouraged to exercise that right.
D. Definitions of contract course, co-requisite, noncredit basic skills course, non-degree-applicable basic skills course, prerequisite and satisfactory grade.

II. Challenge Process

A. Any student who does not meet a prerequisite or co-requisite or who is not permitted to enroll due to a limitation on enrollment but who provides satisfactory evidence may seek entry into the class as follows:

1. If space is available in a course when a student files a challenge to the prerequisite or co-requisite, the District shall reserve a seat for the student and resolve the challenge within five (5) working days. If the challenge is upheld or the District fails to resolve the challenge within the five (5) working-day period, the student shall be allowed to enroll in the course.

2. If no space is available in the course when a challenge is filed, the challenge shall be resolved prior to the beginning of registration for the next term and, if the challenge is upheld, the student shall be permitted to enroll if space is available when the student registers for that subsequent term.

B. Grounds for challenge shall include the following:

1. Those grounds for challenge specified in Title 5 Section 55003(p) 55201(f).

2. The student seeks to enroll and has not been allowed to enroll due to a limitation on enrollment established for a course that involves intercollegiate competition or public performance, or one or more of the courses for which enrollment has been limited to a cohort of students. The student shall be allowed to enroll in such a course if otherwise he or she would be delayed by a semester or more in attaining the degree or certificate specified in his or her educational plan.

3. The student seeks to enroll in a course that has a prerequisite established to protect health and safety, and the student demonstrates that he or she does not pose a threat to himself or herself or others.

4. The student has the obligation to provide satisfactory evidence that the challenge should be upheld. However, where facts essential to a determination of whether the student’s challenge should be upheld are, or ought to be, in the college’s own records, then the college has the obligation to produce that information.

III. C. Curriculum Review Process

The curriculum review process shall at a minimum be in accordance with all of the following:

A. 1. Establish a curriculum committee and its membership in a manner that is mutually agreeable to the college administration and the Academic Senate.

B. 2. Establish prerequisites, co-requisites, and advisories on recommended preparation (advisories) only upon the recommendation of the Academic Senate except that the Academic Senate may delegate this task to the curriculum committee without forfeiting its rights or responsibilities.
under Title 5 Sections 53200-53204 and within the limits set forth in Title 5 Section 55003. Certain limitations on enrollment must be established in the same manner.

C. 3. Establish prerequisites, co-requisites, advisories on recommended preparation, and limitations on enrollment only if:

1. a. The faculty in the discipline or, if the college has no faculty member in the discipline, the faculty in the department do all of the following will prepare the course proposal, and the Curriculum Committee will act as below to:

   a. 1) Approve the course; and,

   b. 2) As a separate action, approve any prerequisite or co-requisite, only if:

      1) a) The prerequisite or co-requisite is an appropriate and rational measure of a student's readiness to enter the course or program as demonstrated by a content review including, at a minimum, all of the following:

         a) i) Involvement of faculty with appropriate expertise;

         b) ii) Consideration of course objectives set by relevant department(s). The curriculum review process should be done in a manner that is in accordance with accreditation standards;

         c) iii) Be based on a detailed course syllabus and outline of record, tests, related instructional materials, course format, type and number of examinations, and grading criteria;

         d) iv) Specification of the body of knowledge and/or skills which are deemed necessary at entry and/or concurrent with enrollment;

         e) v) Identification and review of the prerequisite or co-requisite which develops the body of knowledge and/or measures skills identified under iv d;

         f) vi) Matching of Validating that the knowledge and/or skills in the targeted course (identified under iv d.) and are those developed or measured by the prerequisite or co-requisite (i.e., the course or assessment identified under v e.); and

         g) vii) Maintain documentation that the above steps were taken.

   c. 3) Approve any limitation on enrollment that is being established for an honors course or section, and/or for a course that includes intercollegiate competition or public performance, or so that a cohort of students will be enrolled in two or more courses, and, in a separate action, specify which.

      4) Approve that the course meets the academic standards required for degree applicable courses, non-degree applicable courses, non-credit courses, or community service respectively.
5) Review the course outline to determine if a student would be highly unlikely to receive a satisfactory grade unless the student had knowledge or skills not taught in the course. If the student would need knowledge or skills not taught in the course itself, then the course may be approved for degree applicable credit only if all requirements for establishing the appropriate prerequisite have been met excepting only approval by the curriculum committee.

d. For courses dependent upon skills in communication or computation, review the course outline to determine whether receiving a satisfactory grade is dependent on skills in communication or computation. If receiving a satisfactory grade is sufficiently dependent on such skills, then the course may be approved for degree applicable credit only if all requirements have been met for establishing a prerequisite or co-requisite of not less than eligibility for enrollment to a degree-applicable course in English or mathematics, respectively.

2. A course which should have a prerequisite or co-requisite as provided in d. (v) or (vi) but for which one or more of the requirements for establishing a prerequisite have not been met may only:

1) Be reviewed and approved pursuant to the standards for non-degree applicable credit, non-credit, or community service; or

2) Be revised and reviewed as required to meet the criteria for establishing the necessary prerequisites or co-requisites.

c. The curriculum committee also reviews the course and prerequisite in a manner that meets each of the requirements specified above.

3. If the District chooses to use content review, as defined in Title 5 Section of the Code of California Regulations 55000 subdivision (f-e), to define prerequisites and co-requisites in reading, written expression, or mathematics for courses that are degree applicable and are not in a sequence, a Content Review Plan consistent with Title 5 of the Code of California Regulations Section 55003 subdivision (c) must be adopted. The YCCD has chosen not to use content review to establish reading, written expression, or mathematics requisites for non-sequential, degree-applicable courses.

D. Program Review: As a regular part of the program review process or at least every six years, except that the prerequisites and co-requisites for vocational courses or programs shall be reviewed every two years, the college shall review each prerequisite, co-requisite, or advisory to establish that each is still supported by the faculty in the discipline or department and by the curriculum committee and is still in compliance with all other provisions of this policy and with the law. Any prerequisite or co-requisite that is still supported shall be reviewed promptly thereafter to assure that it is in compliance with all other provisions of this policy and with the law.

E. Implementing Prerequisites, Co-requisites, and Limitations on Enrollment. Implementation of prerequisites, co-requisites, and limitations on enrollment must be done in a consistent manner and not left exclusively to the classroom instructor. Every attempt shall be made to enforce all conditions a student must meet to be enrolled in the class through the registration process so
that a student is not permitted to enroll unless he or she has met all the conditions or has met all except those for which he or she has a pending challenge or for which further information is needed before final determination is possible of whether the student has met the condition.

F. Instructor's Formal Agreement to Teach the Course as Described. **The instructor of record is responsible to teach according to the approved Course Outline of Record (COR).** Adherence to the COR is an expectation and is assessed as part of the evaluation process via materials review, syllabi review, etc. Each college shall establish a procedure so that courses for which prerequisites or co-requisites are established will be taught in accordance with the course outline, particularly those aspects of the course outline that are the basis for justifying the establishment of the prerequisite or co-requisite. The process shall be established by consulting collegially with the local Academic Senate and, if appropriate, the local bargaining unit.

III. Review of Individual Courses

If the student's enrollment in a course or program is to be contingent on his or her having met the proposed prerequisite(s) or co-requisite(s), then such a prerequisite or co-requisite must be established as follows. If enrollment is not blocked, then what is being established is not a prerequisite or co-requisite but, rather, an advisory on recommended preparation and must be identified as such in the schedule and catalog. Establishing advisories does not require all the following steps.

A. Prerequisites and Co-requisites

1. Levels of Scrutiny. Prerequisites and co-requisites must meet the requirements of at least one of the following subsections:

a. The Standard Prerequisites or Co-requisites: The college may establish satisfactory completion of a course as prerequisite or co-requisite for another course provided that, in addition to obtaining the review of the faculty in the discipline or department and the curriculum committee as provided above, the college specifies as part of the course outline of record at least three of the campuses of the University of California and the California State University which reflect in their catalogs that they offer the equivalent course with the equivalent prerequisite(s) or co-requisite(s). Any combination of University of California campuses and California State University campuses is acceptable in satisfaction of this requirement.

b. Sequential Courses Within and Across Disciplines: A course may be established as a prerequisite or co-requisite for another course provided that, in addition to the review by faculty in the department or discipline and by the curriculum committee as described above, skills, concepts, and/or information taught in the first course are presupposed in the second course, and a list of the specific skills and/or knowledge a student must possess in order to be ready to take the second course is included in its outline of record.

c. Courses in Communication or Computation Skills: Prerequisites establishing communication or computational skill requirements may not be established across the entire curriculum unless established on a course-by-course basis. A course in communication or computation skills, or eligibility for enrollment in such a course, may be established as a prerequisite or co-requisite for any course other than another course in communication or computation skills if, in addition to the review by the faculty in the
discipline or department and by the curriculum committee as provided above, the following is also done:

1) A list of the specific skills a student must possess in order to be ready to take the course is included in the course outline of record; and

2) Research is conducted as provided above.

d. The prerequisite or co-requisite may be established for a period of not more than two years while the research is being conducted provided that a determination is made that a student who lacks the particular skills is highly unlikely to receive a satisfactory grade because a sufficient percentage of the grade is directly dependent on these skills. This determination must be approved both by the faculty in the discipline and by the curriculum committee as provided above and must be based on a review of the syllabus as well as samples of tests and other assignments on which the grade is based.

e. Cut Scores and Prerequisites: Whether or not research is required to establish a prerequisite, data collected to validate assessment instruments and cut scores is always relevant to reviewing the prerequisites for the associated courses. If such data are insufficient to establish the cut scores, any course prerequisites established for the same course or courses may not be printed in subsequent catalogs and schedules nor enforced in subsequent semesters until the problems are resolved, and sufficient data exist to establish the cut scores. In such a case, the collection of these data shall be done in the manner prescribed above in addition to other requirements of law. Such a prerequisite may be changed to an advisory on recommended preparation while the problems are being resolved.

f. Programs: In order to establish a prerequisite for a program, the proposed prerequisite must be approved as provided for a course prerequisite in regard to at least one course that is required as part of the program.

g. Health and Safety: A prerequisite or co-requisite may be established provided that, in addition to the review by faculty in the department or division and by the curriculum committee as provided above:

1) The course for which the prerequisite is proposed is one in which the student might endanger his or her own health and safety or the health and safety of others; and

2) The prerequisite is that the student possesses what is necessary to protect his or her health and safety and the health and safety of others before entering the course.

h. Recency and Other Measures of Readiness: Recency and other measures of readiness may be established as a prerequisite or co-requisite only if, in addition to the review by the faculty in the discipline or department and by the curriculum committee as provided above, the following is also done:

1) A list of the specific skills a student must possess in order to be ready to take the course is included in the course outline of record.
2) Data are gathered according to sound research practices in at least one of the following areas:

i. The extent to which students, those currently enrolled in the course or those who have completed it, believe the proposed prerequisite or co-requisite is necessary.

j. Comparison of the faculty members' appraisal of students' readiness for the course to whether students met the proposed prerequisite or co-requisite. The faculty appraisal could be done at any time in the semester that the college determined was appropriate and based on independent assignments, quizzes and exams, participation in classes or other indicators that the student was or was not ready to take the course.

k. Comparison of students' performance at any point in the course with completion of the proposed prerequisite or co-requisite.

l. Comparison of student performance in the course to their scores on assessment instruments in the manner required to validate an assessment instrument and cut scores for the course in question as described above.

1) The standard for any comparison done shall be that a student is highly unlikely to receive a satisfactory grade in the course unless the student has met the proposed prerequisite or co-requisite. The research design, operational definitions, and numerical standards, if appropriate, shall be developed by research personnel, discipline faculty, and representatives of the Academic Senate. If the evidence fails to meet the standard established, each college may establish the proposed prerequisite or co-requisite as a recommended preparation and may seek to establish it as a prerequisite or co-requisite only by following the process described in this policy and any applicable college policies.

2) If the curriculum committee has determined as provided in these procedures that a new course needs to have a prerequisite or co-requisite, then the prerequisite or co-requisite may be established for a single period of not more than two years while research is being conducted and a determination is being made, provided that:

a) All other requirements for establishing the prerequisite or co-requisite have already been met; and

b) Students are informed that they may enroll in the course although they do not meet the prerequisite. However, students who lack the prerequisite may not constitute more than 20% of those enrolled in any section of the course.

3) Prerequisites and co-requisites that are exempt from review at the time they are, or were, established are not eligible for this exception, and the research must be conducted during the six years before they must be reviewed.

2. Additional Rules. Title 5 Section 55202 specifies additional rules, which are to be considered part of this document as though reproduced here.

IV. B. Advisories on Recommended Preparation:
The college may recommend that a student meet a standard of readiness at entry only if recommended by the faculty in the discipline or department and by the curriculum committee as provided in above. This process is required whether the college used to describe such recommendations in its catalog or schedule as "prerequisites," or "recommended," or by any other term.

V. Limitations on Enrollment:

The types of limitation on enrollment specified below may only be established through the curriculum review process by the discipline or department faculty and the curriculum committee specified above including the requirement to review them again at least every six years; for example, as part of program review. The following requirements must also be met in order to establish these particular limitations on enrollment.

A. Performance Courses. The college may establish audition or try-out as a limitation on enrollment for courses that include public performance or intercollegiate competition such as but not limited to band, orchestra, theater, competitive speech, chorus, journalism, dance, and intercollegiate athletics provided that:

1. a. For any certificate or associate degree requirement which can be met by taking this course, there is another course or courses which satisfy the same requirement; and

2. b. The college includes in the course outline of record a list of each certificate or associate degree requirement that the course meets and of the other course or courses which meet the same requirement.

   a. 2. Limitations on enrollment established as provided for performance courses shall be reviewed during program review or at least every six years to determine whether the audition or try-out process is having a disproportionate impact on any historically under-represented group and, if so, a plan shall be adopted to seek to remedy the disproportionate impact. If disproportionate impact has been found, the limitation on enrollment may not be printed in subsequent catalogs or schedules nor enforced in any subsequent term until such a plan has been endorsed by the department and the college administration and put into effect.

B. Honors Courses. A limitation on enrollment for an honors course or an honors section of a course may be established if, in addition to the review by the faculty in the discipline or department and by the curriculum committee as provided above, there is another section or another course or courses at the college which satisfy the same requirements. If the limitation is for an honors course and not only for an honors section, the college must also include in the course outline of record a list of each certificate or associate degree requirement that the course meets and of the other course or courses which meet the same associate degree or certificate requirement.

C. Blocks of Courses or Sections. Blocks of courses or blocks of sections of courses are two or more courses or sections for which enrollment is limited in order to create a cohort of students. Such a limitation on enrollment may be established if, in addition to review by the faculty in the discipline or department and by the curriculum committee as provided above, there is another section or another course or courses that satisfy the same requirement. If the cohort is created
through limitations on enrollment in the courses rather than limitations on specific sections of

courses, then the college must include in the course outline of record a list of each certificate or

associate degree requirement that the course meets and of the other course or courses which

satisfy the same associate degree or certificate requirement.

D. Health and Safety. The college may establish a Health and Safety prerequisite or co-requisite

as a limitation on enrollment provided that in addition to the review by faculty in the

department or division and by the curriculum committee as provided above:

1. The course for which the prerequisite is proposed is one in which the student might

   endanger his or her own health and safety or the health and safety of others; and/or

2. The prerequisite is required by an external accrediting or licensing agency.

References:

Title 5 Sections 55000 et seq.

Procedure Last Revised: March 12, 2008, March 11, 2015, July 11, 2018

Last Reviewed: July 11, 2018
Policy

7700 Whistleblower Protection

The Chancellor shall establish procedures regarding the reporting and investigation of suspected unlawful activities by District employees, and the protection from retaliation of those who make such reports in good faith and/or assist in the investigation of such reports. For the purposes of this policy and any implementing procedures, “unlawful activity” refers to any activity—intentional or negligent—that violates state or federal law, local ordinances, or District policy.

The procedures shall provide that individuals are encouraged to report suspected incidents of unlawful activities without fear of retaliation, that such reports are investigated thoroughly and promptly, remedies are applied for any unlawful practices and protections are provided to those employees who, in good faith, report these activities and/or assist the District in its investigation.

Furthermore, District employees shall not:

- (1) retaliate against an employee, or applicant for employment, who has made a protected disclosure, assisted in an investigation, or refused to obey an illegal order;
- retaliate against an employee, or applicant for employment, because the employee or applicant is a family member of a person who has made a protected disclosure, assisted in an investigation, or refused to obey an illegal order; or
- (2) directly or indirectly use or attempt to use the official authority or influence of his or her position for the purpose of interfering with the right of an applicant or an employee, or applicant for employment, to make a protected disclosure to the District. The District will not tolerate retaliation, and will take whatever action may be needed to prevent and correct activities that violate this policy, including discipline of those who violate it, up to and including termination.

Cross References (see also):
YCCD Policy 3430 – Prohibition of Harassment
YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX
YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX
YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
YCCD Policy 3540 – Sex/Gender Harassment, Discrimination and Sexual Misconduct Sexual and Other Assaults on Campus
YCCD Policy 3-8020 – Due Process
YCCD Policy 5500 – Standards of Student Conduct
YCCD Policy 5530 – Compliant Policy, Student Rights and Grievances

References:
Education Code Sections 87160-87164; Government Code Section 53296; Labor Code Section 1102.5; Private Attorney General Act of 2004 (Labor Code Section 2698); Affordable Care Act (29 U.S. Code Section 218C)

Adopted: March 8, 2006
Revision Adopted: February 11, 2009, October 12, 2016
Last Reviewed: October 12, 2016
Administrative Procedure

7700 Whistleblower Protection

Individuals are encouraged to report suspected incidents of unlawful activities by District employees in the performance of their duties. Reports will be investigated promptly, and appropriate remedies applied. Employees, or applicants for employment, who, in good faith, reported such activities and/or assist the District in the investigation will be protected from retaliation.

This procedure sets out the processes for responding to and investigating reports of unlawful activities, as defined in Board Policy 7700 titled Whistleblower Protection, and addressing complaints of retaliation for making such reports.

Filing a Report of Suspected Unlawful Activities

Any person may report allegations of suspected unlawful activities. Knowledge or suspicion of such unlawful activities may originate from any source, inside or outside of the District, academic personnel, staff, or administrators carrying out their assigned duties, internal or external auditors, law enforcement, regulatory agencies, customers, vendors, students, or other third parties.

Anonymous reports will be investigated to the extent possible. However, employees, or applicants for employment, are strongly encouraged not to report anonymously because doing so impedes the District’s ability to thoroughly investigate the claim and take appropriate remedial measures. As set forth fully below, retaliation against individuals who report suspected unlawful activities will not be tolerated.

Normally, a report by a District employee of allegations of a suspected unlawful activity should be made to the reporting employee’s immediate supervisor or other appropriate administrator or supervisor within the operating unit. However, if the report involves or implicates the direct supervisor or others in the operating unit, the report may be made to any other District official whom the reporting employee believes to have either responsibility over the affected area or the authority to review the alleged unlawful activity on behalf of the District. When the alleged unlawful activities involve a college president, the report should be made directly to the Chancellor. When the alleged unlawful activity involves the Chancellor, the report should be made to the Chair of the Board of Trustees. When the alleged unlawful activity involves the Board of Trustees or one of its members, the report should be made to the Chancellor who will confer with the Chair of the Board of Trustees and/or legal counsel on how to proceed.

Allegations of suspected unlawful activities should be made in writing so as to assure a clear understanding of the issues raised, but may be made orally. Such reports should be factual and contain as much specific information as possible. The receiving supervisor or administrator should elicit as much information as possible. If the report is made orally, the receiving supervisor or administrator shall reduce it to writing and make every attempt to get the reporter to confirm by his or her signature that it is accurate and complete.

Once the receiving supervisor or administrator has received and/or prepared a written report of the alleged unlawful activity, he or she must immediately forward to the President of the College where the alleged activity has occurred or to the Chancellor if the activity involves the District Office or is District-wide. However, if this process would require submitting the report to an employee implicated in the report, the receiving supervisor or administrator should follow the reporting options outlined, above.
high-level administrator or Trustee who receives the written report pursuant to this paragraph is responsible for ensuring that a prompt and complete investigation is made by an individual with the competence and objectivity to conduct the investigation, and that the assistance of counsel and/or an outside investigator is secured if deemed necessary.

In the course of investigating allegations of unlawful conduct, all individuals who are contacted and/or interviewed shall be advised of the District’s no-retaliation policy. Each individual shall be: a) warned that retaliation against the reporter(s) and/or others participating in the investigation will subject the employee to discipline up to and including termination; and b) advised that if he or she experiences retaliation for cooperating in the investigation, then it must be reported immediately.

In the event that an investigation into alleged unlawful activity determines that the allegations are accurate, prompt, and appropriate corrective action shall be taken.

Protection from Retaliation
When a person makes a good-faith report of suspected unlawful activities to an appropriate authority, the report is known as a “protected disclosure.” District employees and applicants for employment who make a protected disclosure are protected from retaliation. **A District employee or applicant whose family member makes a protected disclosure is also protected from retaliation.**

Any employee, or applicant for employment, who believes he or she has been (1) subjected to or affected by retaliatory conduct for reporting suspected unlawful activity, or (2) for refusing to engage in activity that would result in a violation of law, should report such conduct to the appropriate supervisory personnel (if such supervisory personnel is not the source of, or otherwise involved in the retaliatory conduct). Any supervisory employee who receives such a report, or who otherwise is aware of retaliatory conduct, is required to advise their College President, the Chancellor or the Chancellor’s designee. If the allegations of retaliation, or the underlying allegations of unlawful conduct involve the President or Chancellor, the supervisor shall report to the highest level administrator and/or Trustee who is not implicated in the reports of unlawful activity and retaliation.

All allegations of retaliation shall be investigated promptly and with discretion, and all information obtained will be handled on a “need to know” basis. At the conclusion of an investigation, as appropriate, remedial and/or disciplinary action will be taken where the allegations are verified and/or otherwise substantiated.

Whistleblower Contact Information
Employees who have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees should contact the California Community Colleges Chancellor’s Office or the Board of Trustees for the District. Employees can contact the State Personnel Board with complaints of retaliation resulting from whistleblower activities. The State Personnel Board hotline is (916) 653-1403.

Other Remedies and Appropriate Agencies
In addition to the internal complaint process set forth above, any employee who has information concerning allegedly unlawful conduct may contact the appropriate government agency.

Cross References (see also):
YCCD Policy 3430 – Prohibition of Harassment
YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX
YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX
YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
YCCD Policy 3540 - Sex/Gender Harassment, Discrimination and Sexual Misconduct Sexual and Other Assaults on Campus
YCCD Policy 3-8020 – Due Process
YCCD Policy 5500 – Standards of Student Conduct
YCCD Policy 5530 – Compliant Policy Student Rights and Grievances

References:
Education Code Sections 87160-87164; Government Code Section 53296; Labor Code Section 1102.5; Private Attorney General Act of 2004 (Labor Code Section 2698); 29 U.S. Code Section 218C (Affordable Care Act)

Last Reviewed: October 12, 2016