FOOTHILL-DE ANZA
Community College District

AP 3435

Administrative Procedure
Chapter 3 – General Institution

AP 3435 Discrimination and Harassment Complaints and Investigations

References:

Education Code Sections 212.5, 231.5, 66281.5, 66281.8, 67386, and 87623;
Government Code Section 12950.1;
Title 5, Sections 59320, 59324, 59326, 59328, and 59300 et seq.;
Title 2 Sections 11023 and 11024

For sex discrimination under Title IX, Complainants must proceed under BP 3433 Prohibition of Sex Discrimination under Title IX, AP 3433 Prohibition of Sex Discrimination under Title IX, and AP 3434 Responding to Sex Discrimination under Title IX. For other forms of discrimination and harassment, Complainants should use this procedure.

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 harassment, discrimination, or retaliation. Complainants may have the option of filing a Complaint.

All FHDA employees who are not otherwise designated as confidential employees under this procedure, are required to report all actual or suspected sexual harassment to the Chief Human Resources Officer (CHRO) or their designee immediately.

Confidential Reporting and Confidential Employees
An employee who is a therapist, physician, psychotherapist, member of the clergy, sexual assault counselor, domestic violence counselor, or other individual acting in a professional capacity for which confidentiality is mandated by law is exempt from having to report sexual harassment concerns to the CHRO or their designee, unless otherwise required by law.

Outreach
When an employee reports actual or suspected sexual harassment involving students to the CHRO or their designee, the CHRO or their designee will assess the report of sexual harassment and provide outreach, as appropriate, to each identifiable student

Commented [KP1]: To comply with California Civil Rights Department regulations, this procedure accompanies BP/AP 3410 Nondiscrimination and AP 3430 Prohibition of Harassment.

Commented [KP2R1]: Operational note:
NOTE: *DFEH Regulations require any employer whose workforce contains 10 percent or more of persons who speak a language other than English as their spoken language to translate its harassment, discrimination, and retaliation policies into every language that is spoken by at least 10 percent (10%) of the workforce. In order to comply with this requirement, Districts should translate BP 3410 Nondiscrimination, BP 3430 Prohibition of Harassment, AP 3410 Nondiscrimination, AP 3430 Prohibition of Harassment, and AP 3435 Discrimination and Harassment Complaints and Investigations into any applicable languages.*

Commented [KP3]: Title conforms to CCLC model

Commented [KP4]: This provision directs the reader that when an allegation falls within the definition of Title IX, that those BPs and APs would apply, and not this one.

These policies and procedures are also already under review with CAC and will be prepared to go to the Board following the January meeting. The FHDA team is ensuring that the District is working with the most up-to-date versions of the League Title IX samples that are compliant and responsive to the various legal challenges to the 2024 Title IX regulations.

Commented [KP5]: This provision will align employee reporting responsibility with both federal and state non-discrimination laws. TNG/ATIXA recommend a common reporting point for all discrimination-related issues, with a designee who can work to delegate specific responsive responsibilities as appropriate. TNG/ATIXA's structural review can further make recommendations regarding this process, but getting procedures aligned now will support eventual ease of implementation and streamlined reporting. The workgroup discussed this in its first meeting.

who is alleged to be the victim of the reported conduct. The outreach shall include all of the following information:

- The District received a report that the student may have been a victim of sexual harassment;
- A statement that retaliation for filing a complaint or participating in the complaint process, or both, under this procedure is prohibited;
- Counseling resources within the District or in the community;
- Where a crime may have occurred, notice that the student has the right, but not the obligation, to report the matter to law enforcement;
- The District's complaint and investigation procedures established pursuant to this procedure;
- Potential interim measures, such as no-contact directives, housing changes, and academic schedule changes, where applicable;
- The importance of preserving evidence;
- A request for the student to meet with the Chief Human Resource Officer (CHRO) or their designee, or the campus Title IX coordinator or other designated employee to discuss options for responding to the report; and
- The manner in which the District responds to reports of sexual harassment and a description of potential disciplinary consequences.

The District shall consider and respond to requests for accommodations relating to prior incidents of student sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the District's policies.

Complaints
A 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. Complaints must be filed with the CHRO or their designee unless the Party submitting the Complaint alleges discrimination, harassment, or retaliation against the CHRO, in which case it should be submitted directly to the Chancellor.

The District may request but shall not require the Complainant to submit a Complaint on the form prescribed by the Chancellor of the California Community Colleges. A copy of the form will be available at the Foothill-DeAnza Human Resources webpage. A Complainant shall report a verbal Complaint to the CHRO or their designee. The CHRO or their designee shall record the verbal Complaint in writing. The CHRO or their designee will take steps to ensure the writing accurately reflects the facts alleged by the Complainant.

A Complaint must meet **each of the following** criteria:

Commented [KP6]: This phrasing contemplates whether the campus TIXCs would potentially be involved in this initial outreach and intake, at the CHRO's direction and discretion.

Commented [KP7]: Recommend that you put the specific URL here in brackets.

FOOTHILL-DE ANZA
Community College District

- It must allege facts with enough specificity to show that the allegations, if true, would constitute a violation of District policies or procedures or state or federal law prohibiting discrimination, harassment, or retaliation;
- The Complainant must file any 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 allegations of discrimination, harassment, or retaliation; and
- The Complainant must file any Complaint alleging discrimination, harassment, or retaliation in employment within three years of the date of the alleged discriminatory, harassing, or retaliatory conduct.

If the Complaint does not meet the requirements set forth above, the CHRO or their designee will notify the Complainant within 14 days that the complaint does not contain allegations of unlawful discrimination that are sufficient under this procedure to trigger an investigation. The CHRO or their designee will specify why the complaint is defective.

If the defect is based on the Complainant's failure to state sufficient facts to support a claim of unlawful discrimination, the CHRO or their designee shall offer the Complainant an opportunity to proffer additional facts to support his/her/their claims through an intake interview, which shall be scheduled as soon as reasonably convenient for the Complainant and CHRO or their designee.

If, after the intake interview, the CHRO or their designee determines that the Complainant has still not stated sufficient facts to support a claim of unlawful discrimination, the CHRO or their designee shall provide the Complainant with a written determination explaining the basis for dismissing the complaint within 14 days of the intake interview. The CHRO or their designee must also notify the Complainant of his/her/their right to appeal this determination directly to the Chancellor of the California Community Colleges within 30 days from the date of the notice of dismissal.

Oversight of Complaint Procedure: The CHRO or their designee is the "responsible District officer" charged with receiving complaints of discrimination or harassment and coordinating their investigation.

The investigation of complaints must be assigned CHRO to a neutral investigator. A neutral investigator means an outside investigator or an internal investigator who is not in the chain of command of the respondent, not substantially implicated by the allegations in the complaint, and who is otherwise impartial. Neutral investigators must be properly trained to conduct such investigations.

Who May File a 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 a student, employee, or third party in violation of this procedure and the related policy.

Where to File a 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 directed to the CHRO or designee. Complainants may but are not required to use the form prescribed by the Chancellor of the California Community Colleges. These forms are available from the CHRO or designee, at the Foothill-DeAnza Human Resources webpage, and at the California Community Colleges Chancellor's Office website.

Commented [KP8]: Recommend that you put the specific URL here in brackets.

Advisers in Student Harassment Complaints
Student Parties in Complaints involving sexual harassment are permitted to have a support person or adviser accompany him/her/them during any stage of the Complaint process described in this procedure. Student Parties in Complaints involving sexual harassment have the right to consult with an attorney, at his/her/their own expense, at any stage of the Complaint process if they wish to do so. An attorney may serve as a support person or adviser.

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 California Civil Rights Department (CRD).

Any District employee who receives a harassment or discrimination complaint shall notify the CHRO or designee 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 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 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.

FOOTHILL-DE ANZA
Community College District

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 CHRO or designee shall:

- Consider whether the District can undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules, obtaining apologies, providing informal counseling, training, etc.
- Advise all Parties that he/she/they need not participate in an informal resolution of the Complaint, as described above, and they have the right to end the informal resolution process at any time.
- Advise a student Complainant that he/she/they may file a Complaint with the Office for Civil Rights of the U.S. Department of Education and employee Complainants may file a Complaint with the California Civil Rights Department. 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.
- In matters involving student sexual harassment, provide student Parties notice regarding appropriate counseling resources developed and maintained by the District.
- 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 CHRO or designee should notify the Complainant of his/her/their options to avoid contact with the accused individual and allow students to change academic situations as appropriate. For instance, the District may prohibit the accused individual from having any contact with the Complainant pending the results of the investigation. When taking steps to separate the Complainant and accused individual, the District shall minimize the burden on the Complainant. For example, it is not appropriate to remove Complainants from classes or housing while allowing accused individuals to remain.

Commented [KP9]: Note that per CA law, and best practices, parties would never be invited to a mediation form of an informal resolution in an allegation that alleges any form of sexual or interpersonal violence.

Regardless of whether a Complaint has been filed under this procedure, if the District knows, or reasonably should know, about possible sexual harassment involving individuals subject to the District's policies at the time, the District shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond if the District determines that an investigation is not required.

Student Complainant Requests for Confidentiality

If a student Complainant requests confidentiality when reporting sexual harassment, which could preclude a meaningful investigation or potential discipline of the Respondent, or that no investigation or disciplinary action be pursued to address

alleged sexual harassment, the District shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the Complainant. The District shall normally grant the request when possible. In determining whether to disclose a Complainant's identity or proceed to an investigation over the objection of the Complainant, the District may consider whether any of the following apply:

- There are multiple or prior reports of sexual misconduct against the Respondent;
- The Respondent reportedly used a weapon, physical restraints, or engaged in battery;
- The Respondent is a faculty or staff member with oversight of students;
- There is a power imbalance between the Complainant and Respondent;
- The Complainant believes that the Complainant will be less safe if the Complainant's name is disclosed or an investigation is conducted; and
- The District is able to conduct a thorough investigation and obtain relevant evidence in the absence of the Complainant's cooperation.

If the District determines that it can honor the student Complainant's request for confidentiality, it shall still take reasonable steps to respond to the Complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against Respondent or revealing the identity of the Complainant. The District shall also take immediate steps to provide for the safety of the Complainant while keeping the Complainant's identity confidential as appropriate. The District shall notify the Complainant that the steps the District will take to respond to the Complaint will be limited by the Complainant's request for confidentiality.

If the District determines that it must disclose the student Complainant's identity to the Respondent or proceed with an investigation, it shall inform the Complainant prior to making this disclosure or initiating the investigation. The District shall also take immediate steps to provide for the safety of the Complainant where appropriate. In the event the Complainant requests that the District inform the Respondent that the Complainant asked the District not to investigate or seek discipline, the District shall honor this request.

Investigation

The CHRO or designee shall:

- Provide notice to student Parties to a sexual harassment complaint that the District is conducting an investigation. The notice shall include the allegations against the Respondent and the alleged District policy violations under review. If new allegations that arise during the course of the District's investigation that could subject either student Party to new or additional discipline or corrective action, the CHRO or designee shall provide a supplemental notice to the student Parties.

- 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 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. 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.
- 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. 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. 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 opt for an informal resolution, the CHRO or designee may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged 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: The District will fairly and objectively investigate harassment and discrimination complaints. 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 using trauma-informed investigation techniques.

The investigation and adjudication of alleged misconduct under this procedure is not an adversarial process between the Complainant, the Respondent, and the witnesses, but rather a process for the District to comply with its obligations under existing law. The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

Investigators will use the following steps: interviewing the Complainant; interviewing the accused individual; 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 any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion. When the District evaluates the Complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that discrimination or harassment has occurred. Student Complainants should be aware that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing, if a hearing is required under this procedure.

Timeline for Completion: The District will undertake its investigation promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report, and the District shall notify the Complainant and Respondent of the outcome within 90 days of the District receiving the Complaint. The District will toll the timeline while the Parties are engaged in good faith efforts at informal resolution.

Cooperation Expected: All 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 conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim 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.

Written Report
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:

- A description of the circumstances giving rise to the Complaint;

- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony provided by each witness with information relevant to the allegations, including the Complainant;
- An explanation of why an identified potential witness was not interviewed;
- An analysis of relevant data or other evidence collected during the course of the investigation, including a list of relevant documents;
- A specific finding as to whether each factual allegation in the Complaint occurred based on the preponderance of the evidence standard;
- A table of contents if the report exceeds ten pages and
- Any other information deemed appropriate by the District.

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

Evidence of Past Sexual History
An investigator or hearing officer, if required by this procedure, shall not consider the past sexual history of the Complainant or Respondent except in the limited circumstances described below:

- The investigator or hearing officer shall not consider prior or subsequent sexual history between the Complainant and anyone other than the Respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual;
- The investigator or hearing officer shall not consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent unless the evidence is relevant to how the Parties communicated consent in prior or subsequent consensual sexual relations;
    - Where the investigator or hearing officer allows consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent pursuant to this circumstance, the mere fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

Before allowing the consideration of any evidence proffered pursuant to this section, the investigator or hearing officer shall provide a written explanation to the Parties as to why consideration of the evidence is consistent with this procedure.

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

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

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

- The Chancellor's or their designee's determination as to whether discrimination occurred with respect to each allegation in the Complaint based on the preponderance of the evidence standard and the basis for that determination including factual findings;
- If a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future;
- The proposed resolution of the Complaint; and
- The Complainant's right to appeal to the District's Board of Trustees and to file a Complaint with the California Civil Rights Department.

The District shall also provide the Respondent the following:

- The Chancellor's or their designee's determination as to whether unlawful discrimination occurred with respect to each allegation in the Complaint based on the preponderance of the evidence standard and the basis for that determination including factual findings;

- The proposed resolution of the Complaint, including any disciplinary action against the Respondent; and
- In matters involving student sexual misconduct not subject to Title IX, the Respondent's right to appeal to the District's Board of Trustees any disciplinary sanction imposed upon the Respondent.

The District will toll the timelines described above while the Parties are engaged in good faith efforts at informal resolution.

In matters involving an academic employee placed on involuntary paid administrative leave, the District shall complete its investigation within 90 working days of the administrative leave commencing, unless the period of paid administrative leave is extended by agreement of the employee and District for a period not exceeding 30 additional calendar days.

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, conducted by a neutral decision-maker other than the investigator.

In other Complaints involving sexual harassment against a student, the District shall decide whether a hearing is necessary to determine whether any sexual misconduct more likely than not occurred. In making this decision, the District may consider whether the Parties elected to participate in the investigation and whether each Party had the opportunity to suggest questions to be asked of the other Party and witnesses during the investigation.

The District shall appoint 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. Either Party or any witness may request to answer the questions by videoconference from a remote location.

At the hearing, the other Party shall have an opportunity to note an objection to the questions posed. The District may limit such objections to written form, and neither the hearing officer nor the District are obligated to respond, other than to include any objection in the record. The hearing officer shall have the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the formal rules of evidence.

Generally, the Parties may not introduce evidence, including witness testimony, at the hearing that the Party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

The hearing officer shall provide an explanation of the meaning of the preponderance of the evidence standard and affirm that it shall apply to adjudications under this procedure. The preponderance of the evidence standard is met if the District determines that it is more likely than not that the alleged misconduct occurred, based on the facts available at the time of the decision.

Discipline and Corrective Action
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.

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, suspension, or discharge, consistent with applicable collective bargaining agreements.

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

- providing an escort to ensure that the Complainant can move safely between classes and activities;
- ensuring that the Complainant and alleged perpetrator do not attend the same classes or work in the same work area;
- preventing offending third parties from entering campus;
- providing counseling services or a referral to counseling services;
- providing medical services or a referral to medical services;
- providing academic support services, such as tutoring;
- arranging for a student Complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and
- reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant being disciplined.

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, address the hostile environment, if one has been created, prevent its recurrence, address its affects, and protect the Complainant and witnesses from retaliation as a result of communicating with 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.

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

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

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

The Board's review on appeal is limited to the following issues:

- whether there was a procedural error in violation of this procedure;
- whether there was a defect in the investigation;
- whether new evidence unavailable during the investigation despite the Complainant's due diligence would substantially impact the outcome of the investigation;
- whether correct legal standards were applied; and
- whether the District's determination was an abuse of discretion.

Commented [KP10]: These grounds for an appeal are recommended by the CCLC and endorsed by TNG/ATIXA and would align FHDA policy/procedure with the same grounds that the California Community College's Chancellor's Office would apply if the matter were appealed to that body.

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 the Respondent. 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 46th 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 California Community Colleges Chancellor's Office within 30 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 California Civil Rights Department.

In any complaint dismissed pursuant to Title 5 Section 59332, a complainant may file a written appeal with the California Community Colleges Chancellor's Office within 30 days from the date of the notice of dismissal.

Remand
The California Community Colleges 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 the California Community Colleges 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 California Community Colleges Chancellor's Office within 30 days by following the appeal procedures above.

Extension of Time
A student Complainant or Respondent may request, in writing, an extension of a deadline related to a Complaint during periods of examinations or school closures. The District shall grant a student Party's reasonable request for an extension of a deadline related to a Complaint during periods of examinations or school closures.

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 California Community Colleges Chancellor's Office, and must be necessary for one of the following reasons:

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

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

The extension of time provisions described above do not apply to investigations involving an academic employee placed on involuntary paid administrative leave.

Disclosures to the California Community Colleges Chancellor's Office
Upon request of the California Community Colleges Chancellor's Office, the District shall provide copies of all documents related to a discrimination Complaint, including the following: the original Complaint, any investigative report unless subject to the attorney-client privilege, the written notice to the Complainant setting forth the results of the investigation, the final administrative decision rendered by the Board or a statement indicating the date upon which the decision became final, and a copy of the notification to the Complainant of his/her/their appeal rights, the Complainant's appeal of the District's administrative determination, any other non-privileged documents or information the Chancellor requests.

The District shall provide to the California Community Colleges Chancellor's Office an annual report with the following information: the number of employment and non-employment 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 Chancellor.

Interim and Supportive Measures

Interim measures are individualized services offered as appropriate to either or both the Complainant and Respondent in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending.

Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a Complaint has been filed.

The District will provide interim or supportive measures to Parties as appropriate and as reasonably available.

Interim and supportive measures may include changes to academic, living, transportation, and working situation or protective measures such as 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.

No-Contact Directives
When requested by a Complainant or otherwise determined to be appropriate, the District shall issue an interim no-contact directive prohibiting the Respondent from contacting the Complainant during the pendency of the investigation. The District shall not issue an interim mutual no-contact directive automatically, but instead shall consider the specific circumstances of each case to determine whether a mutual no-contact directive is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to respond to interference with an investigation. If the District issues a no-contact directive after making decision of responsibility, the no-contract directive shall be unilateral and only apply against the Party found responsible.

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

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

- the original Complaint;
- the investigatory report;
- the summary of the report if one is prepared;
- the notice provided to the Parties of the District's administrative determination and the right to appeal;
- any appeal; and

- the District's final decision.

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

Dissemination of Policy and Procedures
District policy and procedures related to harassment will include information that specifically addresses sexual violence. District policy and procedures will be provided to all students, all employees, all volunteers who will regularly interact with students, and each individual or entity under contract with the District to perform any service involving regular interaction with students at the District. District policy and procedures related to harassment will also 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.

Training
By January 1, 2021, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees. All new employees must be provided with the training and education within six months of their assumption of his/her/their position. After January 1, 2021, the District shall provide sexual harassment training and education to each employee once every two 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, and appropriate remedial measures to correct harassing behavior. Training for employees must also address the employee's obligation to report sexual harassment and instruction on how to report sexual harassment to the responsible District officer.

The District will also provide comprehensive, trauma-informed training to each employee involved in the District's sexual harassment or discrimination grievance procedure including investigating and adjudicating complaints involving sexual violence, sexual assault, domestic violence, dating violence, and stalking. This training shall include information on trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process, best practices for assessment of a sexual harassment or sexual violence complaint, best practices for questioning of the complainant, respondent, and witnesses, and implicit bias and racial inequities, both broadly and in school disciplinary processes. Materials for this training shall include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity.

Where the District maintains any student housing facilities, the District shall ensure that all residential staff, including student staff, annually receive training on how to handle, in a trauma-informed manner, reports made to them of sexual harassment or sexual violence, and situations in which they are aware of sexual harassment or sexual violence, in student residential facilities.

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, all written materials used by the training and all written questions submitted during 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.

The District may 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.

Education and Prevention for Students

FOOTHILL-DE ANZA
Community College District

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. An individual who participates as a Complainant or witness 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 dishonesty.