

**Introduction**

The College District is committed to promoting the goals of fairness and equity in all aspects of the educational enterprise. Any report or notice of an alleged violation of College District policy or regulations related to sexual misconduct, as described in DIAA(LOCAL), is subject to resolution in accordance with the procedures set forth below.

**Inherent Authority**

The College District reserves the right to take necessary and appropriate action to protect the safety and well-being of the College District community. The College District will respond to any report of sexual misconduct alleged to have been committed against an employee of the College District (the “complainant”), as defined in DIAA(LOCAL), including conduct alleged to have occurred on College District-owned or -controlled premises, in an education program or activity, including College District-sponsored activities and events, or off College District property when the conduct potentially affects a person’s employment with the College District or potentially poses a risk of harm to members of the College District community. The disciplinary process provided hereunder is available as an option so long as the individual who is alleged to have engaged in sexual misconduct (the respondent) is within the jurisdiction of the College District at the time a formal complaint is filed.

**Accountability**

If found responsible under this procedure, an employee may also be accountable to both civil and criminal authorities and for acts of sexual misconduct that constitute violations of law. Unless the College District disciplinary process would impede a criminal or regulatory investigation, the College District disciplinary process, including any investigation, shall proceed during the pendency of civil and/or criminal proceedings, and shall not be subject to challenge on the ground that civil and/or criminal charges involving the same incident have been filed, dismissed, or reduced.

For definition of terms frequently used in the procedure, please see DIAA(LOCAL).

**Reporting**

This procedure distinguishes between reports of sexual misconduct and formal complaints. As set forth in College District policy, a report of sexual misconduct informs the College District of the incident.

Any employee who believes that he or she has experienced sexual misconduct, or that another employee has experienced sexual misconduct, may file a report of sexual misconduct, as provided by College District policy DIAA(LOCAL). However, a report of sexual misconduct does not necessarily result in the initiation of the grievance process. To initiate the grievance process, a formal complaint must be filed.

### **Confidentiality**

Once a report of sexual misconduct is filed with the College District, the College District shall, to the greatest extent possible, consistent with the law, respect the privacy of the proceedings; however, complete confidentiality cannot be guaranteed.

Examples of situations in which confidentiality cannot be guaranteed include:

1. When the College District is required by law to disclose information;
2. When disclosure of information is determined necessary to provide supportive measures or to conduct an investigation of a claim; and
3. When the College District's interest in protecting the safety or rights of others outweigh confidentiality concerns.

All participants to the grievance process, including the complainant and the respondent, the person who makes the report of alleged sexual misconduct, and witnesses are expected to respect the confidentiality of the proceedings and circumstances giving rise to the dispute.

### **The Grievance Process**

#### Standards of Due Process

The College District supports fair, robust procedural protections for complainants and respondents (each a "party," collectively the "parties") participating in its grievance process. To that end, the College District shall endeavor to treat complainants and respondents equitably and afford any rights or opportunities available to one party under this procedure to the other party, unless otherwise required by state or federal law or regulation; protect against conflicts of interest and bias in the grievance process; and ensure an objective evaluation of all relevant evidence.

Formal rules of evidence shall not be applicable under this procedure, nor shall procedural irregularities necessarily invalidate a decision or proceeding, unless such irregularity affects the outcome. [See Appeals]

For purposes of this procedure:

1. A "day" represents those business days and hours the College District is open for business;
2. A notice shall be considered received by a party on the date it is sent by the College District (i.e., postmarked (U.S. Mail) or time stamped (electronic mail)); and
3. In cases involving a student who is a minor, any notice required under this procedure will also be sent to the parent(s) or guardian(s) of the minor student.

<b>Receipt of Report</b>	The Title IX coordinator shall promptly contact the complainant upon receipt of a report for which it has been determined by the coordinator that the allegations, if proven, would constitute sexual misconduct as defined by DIAA(LOCAL). The Title IX coordinator shall discuss with the complainant, among other things, the availability of supportive measures, consider the complainant's wishes with respect to supportive measures and any request not to investigate, and explain the process for filing a formal complaint.
<b>Supportive Measures</b>	As provided by DIAA(LOCAL), the College District may, on an emergency basis, temporarily remove (suspend), in accordance with law, an employee-respondent as a supportive measure. If removal is adopted as a supportive measure, such action shall utilize existing policies and procedures as set forth in the College District Board Policy Manual. [See DMAA(LOCAL)]
<b>Formal Complaint]</b>	Only a complainant who is participating in or attempting to participate in a College District-sponsored program or activity at the time of filing or a Title IX coordinator may file a formal complaint. Parents, friends, and other third parties may not file a formal complaint on behalf of a complainant under this procedure.
Filing by Complainant	A complainant who wishes to file a formal complaint may do so by completing the College District's formal complaint form or by physically or digitally signing and submitting a formal complaint to the Title IX coordinator in person or by U.S. Mail or electronic mail.
Filing by Title IX Coordinator	As permitted by College District policy, DIAA(LOCAL), a complainant may request that the College District not investigate a report alleging sexual misconduct.  Whether or not to initiate and sign a formal complaint in such circumstances or based on a report made by a parent, friend, or third party is at the sole discretion of the Title IX coordinator, shall only be decided after consulting the complainant, and will only occur if filing the formal complaint is not clearly unreasonable under the facts and circumstances.  In deciding whether to file a formal complaint, a Title IX coordinator shall consider factors such as the severity of the conduct at issue, the risk that the conduct may be repeated, the availability of evidence, etc. If a Title IX coordinator chooses to initiate the grievance process, notice of that decision, in addition to any other notice required under this procedure, will be shared with the respondent and the complainant, if known.
Withdrawal of Formal Complaint	To withdraw a formal complaint, a complainant must notify the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein. Upon receipt of a

notice of a request to withdraw, the Title IX coordinator shall assess the request in accordance with local policy. A decision to dismiss the formal complaint shall be acted upon no earlier and no later than two days after receipt of the notice of the request to withdraw. During the period preceding dismissal, a complainant may rescind the request; if rescinded within the time period allowed, the disciplinary process will continue.

### **Dismissal of Formal Complaint**

The College District shall dismiss a formal complaint for the purposes of this grievance procedure if at any time after the filing of the complaint and prior to its resolution, the Title IX coordinator determines that the conduct alleged in the formal complaint, if assumed true:

1. Does not constitute prohibited sexual misconduct as defined in DIAA(LOCAL);
2. Did not occur in a College District-sponsored program or activity; or
3. Did not occur against a person in the United States.

If a formal complaint is dismissed for any of the above reasons, the College District reserves the right to address such conduct under another applicable College District policy.

The College District may also, at its sole discretion, dismiss a formal complaint at any time if:

1. The complainant withdraws the formal complaint, subject to the College District's assessment of such a request, as provided at Withdrawal of Complaint;
2. In the case of an employee-respondent, the respondent is no longer employed by the College District; or
3. Specific circumstances prevent the College District from gathering evidence sufficient to reach a determination as to the formal complaint or the allegations therein. Under such circumstances, the College District reserves the right to resume the grievance process should circumstances change making it possible to gather evidence sufficient to reach a determination.

Upon dismissal of a formal complaint, the Title IX coordinator shall send notice of the dismissal to the parties in writing via certified mail, return receipt requested, hand-delivery, or by any other verifiable method of delivery.

### **Timeline**

It is the intention of the College District to resolve formal complaints made under this procedure within 90 days of receipt of the

complaint by the College District, excluding days required to conduct the appeals process. Investigations generally take 45 days to complete.

In some cases, good cause may force the temporary delay or extension of the projected time frame. For example, investigations of certain forms of sexual misconduct may undertake a short delay when criminal charges are filed on the basis of the same conduct that is the subject of the College District investigation. Delays due to the absence of a party, a party's advisor, or a witness; a challenge to the assignment of a decision-maker (hereinafter designated administrator or DA) or advisor; a conduct violation; concurrent law enforcement activities; the need for language assistance or accommodation of disabilities; technological limitations, breaks, holidays or inclement weather; or a state of emergency, as declared by public health or state officials, may also constitute good cause.

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**Note:** The examples provided above are intended to be illustrative and are not exhaustive.

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As required by College District policy, when a delay occurs, written notice, along with the reason(s) for the delay, will be provided to the parties.

### **Notice of Formal Complaint**

Not more than five days after receipt of a formal complaint, notice regarding an allegation of sexual misconduct shall be provided in writing to each party at their designated or last known mailing address via certified mail, return receipt requested; personal delivery; or any other verifiable method of delivery, including electronic mail.

The notice shall notify the parties that a formal complaint has been filed and include the following:

1. The nature of the complaint and the allegations included therein, including but not limited to the identities of the parties, if known, and the date and location of the alleged incident;
2. A brief description of the formal and informal options for resolution and copies of the relevant College District policies and procedures;
3. Information regarding the parties' rights, including that the respondent is presumed not responsible until a determination regarding responsibility is made, and responsibilities throughout the grievance process; and

4. If known at the time notice is provided, the date, time, location, participants, and purpose of any meeting or interview required under this grievance procedure.

Upon receipt of notice of an allegation of sexual misconduct from the College District, the respondent shall have ten days to respond to the allegations contained in the notice. The response may include any information directly related to the allegations included in the notice of the formal complaint and should be submitted in writing to the Title IX coordinator.

Should any allegations about the complainant or respondent not included in the initial notice become the subject of a College District investigation, the College District shall provide written notice of the additional allegations to the parties, if known.

### **Rights and Responsibilities of Parties**

#### Right to an Advisor

Each party has the right to be accompanied by an advisor of their choice (Advisor of Choice), who may or may not be an attorney, during any grievance proceeding, including in any related meeting, interview, or proceeding. However, the role of the advisor in any portion of the grievance process other than at the hearing, shall be limited to observation, support, or advice. [See Hearing] Accordingly, an advisor may not represent or speak on behalf of the respondent or complainant for whom he or she is serving as an advisor or otherwise actively participate in any meetings or proceedings in the grievance process. A party shall provide the name and contact information for the party's designated advisor at least 24 hours before the advisor's participation in any grievance proceeding.

Advisors are subject to all applicable College District policies and procedures relating to standards of conduct. If a party's advisor violates College District standards of conduct, the College District reserves the right to remove the advisor and require the party to use a different advisor.

#### False Claims

Parties remain subject to all applicable College District policies and procedures during the grievance process. A complainant or respondent who intentionally makes a false claim or offers false statements during the grievance process is in violation of College District policies and procedures and shall be subject to appropriate disciplinary action, up to and including dismissal or separation from the College District. A determination that a respondent is not responsible for allegations of sexual misconduct does not imply a report, formal complaint, or information provided was false.

Similarly, a determination that a respondent is responsible for a policy violation does not imply that the respondent's statements disclaiming responsibility were false.

**Informal Resolution**

In accordance with College District policy DIAA(LOCAL), if parties agree in writing and the Title IX coordinator deems it appropriate, a formal complaint may be resolved by the College District's informal resolution process. Informal resolution options may include mediation, specific action plans, voluntary agreements, or agreed-upon sanctions. Under any informal resolution option, a complainant will not be required to resolve the problem directly with the respondent, unless desired by the complainant. A party may end the informal resolution process and resume the formal process at any time prior to resolution of the formal complaint. Informal resolution shall not be used in cases involving sexual violence or where the respondent is an employee and the complainant is a student. For more information on informal resolution, please see the [College District Title IX and Sexual Misconduct website](#)<sup>1</sup>.

**Formal Resolution–  
Investigation**

If a complaint is not subject to informal resolution, the College District shall conduct a prompt, fair, and impartial investigation following receipt of a formal complaint of sexual misconduct. The investigation will generally be conducted by an investigator, designated by the College District Title IX coordinator or a designee or a third party designated by the College District, such as an attorney. The investigation may involve interviews of the complainant and respondent, if known, separately to hear or clarify each party's account of the incident. During the investigation, the investigator will also interview witnesses, gather additional information and evidence as necessary, and analyze other information or documents related to the allegations.

**Gathering and  
Presenting  
Evidence (including  
Witnesses)**

The College District, the respondent, and the complainant each shall have the opportunity to present witnesses, including both fact and expert witnesses, as well as any other inculpatory (incriminating) and exculpatory (exonerative) evidence. All parties must submit to the investigator prior to finalization of the investigation report any evidence, including any fact or expert witnesses who may provide relevant information and how they may be relevant to the complaint. Parties may also submit to the investigator any questions they would like asked of any potential witnesses or parties. The investigator shall not ask any questions not deemed relevant to the investigation. [See Relevance, below]

Any individual serving as a witness is expected to cooperate with the facilitators of the grievance process (including, but not limited to, the Title IX coordinator, investigator, hearing officer, and decision-maker) and adhere to the policies and procedures of the College District, including prescribed standards of conduct, as applicable. All persons involved with the investigation, including witnesses,

are cautioned that witness tampering and/or retaliation against anyone participating in an investigation or any portion of the grievance procedure is strictly prohibited.

**Inspection and  
Review of Evidence**

Each party, and a party's advisor (if any), shall have the opportunity to inspect and review a copy of any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, excluding evidence deemed inadmissible under this procedure. Each party and their respective advisors shall keep confidential and refrain from disclosing, reproducing, distributing, publishing, or disclosing to any third party any of the evidence subject to inspection and review.

Evidence subject to inspection and review shall be sent to the parties prior to completion of the investigation report. Parties shall have up to ten days after receipt of the evidence to submit to the designated investigator a written response (e.g., make corrections, provide appropriate context, provide additional relevant evidence), which the investigator will consider. Advisors may not submit responses to the evidence on their own or on behalf of the party they are advising. Parties must submit with their response any evidence not previously submitted or deemed inadmissible that they would like the investigator to consider. The investigator will consider all timely responses submitted by the parties.

**Inadmissible  
Evidence**

Parties shall not be required to submit to the investigator as evidence and the College District shall deem as inadmissible for purposes of consideration under this procedure, information protected by a legally recognized, unwaived privilege and any party's medical, psychological, and similar records (unless the party has given voluntary written consent). Evidence deemed inadmissible shall be recorded as such in a privilege log and shared with the parties. A party who wishes to challenge the admissibility of evidence may do so in writing. A challenge and the basis for that challenge must be submitted to the designated investigator within 48 hours of receipt of the privilege log. The investigator will share the results of any challenge with the parties in writing.

**Investigation Report**

An investigation is considered concluded upon finalization of an investigation report that fairly summarizes relevant evidence [see Relevance] and includes the investigator's credibility assessment and recommended finding(s) or conclusions. On average, a copy of the finalized investigation report should be provided, in accordance with applicable law, to the parties and each party's advisor, if any, within 48 hours of filing with the Title IX coordinator. If a delay occurs, written notice, along with the reason(s) for the delay and, where possible, the anticipated completion date will be provided to the parties and their advisors.



A party that wishes to respond to the investigation report may do so by submitting a response in writing to the Title IX coordinator within ten days following receipt of the investigation report. The Title IX coordinator will consider all timely responses submitted by the parties.

#### Relevance

A determination that evidence or a question is irrelevant for the purposes of exclusion from the investigation report or consideration at a hearing shall be made by applying logic and common sense, and not according to any legal standard. [See also Relevance Determination–Decision-Maker (DA)]

The following information shall automatically be deemed irrelevant and subject to exclusion from the investigation report and any subsequent hearing:

1. Information protected by a legally recognized and unwaived privilege;
2. Any party's medical, psychological, or similar records (unless the party has given voluntary written consent);
3. (As to adjudications by the College District, including those under this procedure, or other postsecondary institutions) party or witness statements that have not been subject to cross examination; and
4. Evidence or questions about a complainant's prior sexual history, unless such evidence is offered to prove someone other than the respondent committed the alleged offense, or the evidence is specifically about the complainant and the respondent and is offered to prove consent.

#### Hearing

No later than the parties' deadline to respond to the investigation report, the Title IX coordinator shall submit a copy of the report and any response from the parties to the hearing officer. The hearing officer shall summon the parties for a hearing, at which all parties must be physically present or, at the discretion of the College District, any or all parties, witnesses, and other participants to the hearing may participate via videoconference, provided such participation is facilitated by technology that allows for participants to simultaneously see and hear each other.

The hearing officer shall contact the parties by phone or email to schedule the hearing within a reasonable time frame, not to exceed ten days after the hearing officer has received the investigation report, and any response to or from the parties. If contact is delayed for any reason, prompt notice of the delay and the reason for the delay shall be provided in writing to each party. The hearing officer, to the extent possible, shall consider the schedules of the parties

and participants to the hearing when scheduling the hearing. However, in all cases the hearing officer shall endeavor to schedule the hearing to ensure a prompt resolution to the allegations.

Notice of Hearing

The hearing decision maker (DA) shall notify the parties of the date, time, and place for the hearing by certified mail, return receipt requested, email, or personal delivery. The notice shall specify a hearing date not earlier than ten days after the date of the letter.

*Content of Notice*

The hearing notice shall also include the alleged violation, the investigator's recommended findings and conclusions and advise the parties of their right to:

1. A live or virtual hearing.
2. Be accompanied at the hearing by an advisor, who may or may not be an attorney. The role of an advisor in the hearing is limited, as provided at Hearing Advisor.
3. Select from a pool of trained advisors provided by the College District for the sole purpose of conducting cross examination at the hearing, if a party does not have an advisor.
4. Present evidence, including requesting the participation of witnesses. [See Hearing Witnesses] Lesser weight shall be assigned to any evidence submitted at the hearing that was not submitted in the investigation phase of the grievance process unless the evidence to be submitted was otherwise unavailable during the investigation or is deemed by the DA to be inculpatory or exculpatory in nature.
5. Have their advisor question the other party and any witnesses. Neither the complainant nor the respondent may personally question, including for the purpose of cross examination, the other party or a witness during the hearing. [See Questioning]
6. In the case of a minor, have a parent or legal guardian present at the hearing.
7. Know the identity of each witness who will testify.
8. Know the identity of the DA.
9. Choose not to testify.

Parties, their advisors, and all other participants to the hearing shall be subject to all applicable College District policies and procedures, including but not limited to, those relating to standards of conduct.

Hearing Decision-Maker (DA)

Once a hearing is scheduled, the hearing decision maker (DA) will preside over the hearing, objectively evaluate (for weight and/or credibility) all relevant evidence and reach a determination regarding responsibility. The DA shall be selected by the Title IX coordinator on a rotating basis, or, as may be necessary, based on availability, from a pool of trained College District administrators, and the selection shared with the parties in advance of the hearing.

The DA shall have the right to ask questions and elicit information from parties on the DA's own initiative to aid the DA in obtaining relevant evidence. In addition, the DA shall rule on the admissibility of evidence and objections to procedure and make determinations of relevancy. The DA may request the participation of witnesses and require the production of documentary and other evidence.

The assignment of a DA by the Title IX coordinator is final unless a party can demonstrate good cause (e.g., conflict of interest or bias) why the DA cannot serve as the decision-maker for the hearing. [See Conflict of Interest/Bias]

Hearing Advisor

At the hearing, each party's advisor will have the opportunity to question the other party and any witness directly and in real time, otherwise the role of the advisor shall be limited to observation. A party who intends to have an advisor of choice present at the hearing shall provide the name and contact information for the party's designated advisor to the hearing officer by 12:00 p.m. at least three full days in advance of the hearing date. [See Hearing Disclosures]

If a party does not have an advisor of choice, the party may, at no cost to the party, select an advisor from a pool of trained advisors provided by the College District for the purpose of asking questions of the other party and any witness only during the hearing. The pool of advisors shall be composed of College District employees who have received training on the College District's policies and procedures relating to sexual misconduct and the purpose and scope of cross examination. The College District shall not provide a party with a professional (i.e., an attorney or experienced advocate) for the purpose of questioning a party or witness or for any other purpose provided herein. If an advisor provided by the College District is so credentialed, such credentials shall be incidental to the individual's position within the College District and their role as an advisor and shall have no effect on the advisor's role in the hearing or the limitations thereto.

A party who does not have an advisor of choice and who chooses to use a College District-provided advisor, must notify the hearing officer of such a decision at least eight days in advance of the hearing date, at which time, the hearing officer will send the party a

list of available advisors from which to make a selection. A party who chooses to use a College District-provided advisor must select an advisor from the list of College District advisors and submit that selection to the hearing officer at least five days before the hearing. If a party does not submit the party's selected advisor to the hearing officer within the provided time frame, the hearing decision maker will select, at his or her sole discretion, an advisor from the pool to conduct cross examination on behalf of that party.

If a party appears at the hearing without an advisor of choice or a College District-provided advisor, the hearing may be temporarily delayed to allow the hearing decision maker time to assign an advisor. In such cases, the hearing decision maker will assign the first available advisor.

The selection of an advisor by a party from the advisor pool or the assignment of an advisor by the hearing officer is final unless a party can demonstrate good cause (e.g., conflict of interest or bias) why the advisor selected cannot serve the intended purpose. [See Conflict of Interest/Bias]. That an advisor is not a professional (i.e., an attorney or an experienced advisor) shall not qualify as good cause.

All Title IX personnel must serve impartially and free from conflicts of interest or bias against the individual complainant and respondent involved in a formal complaint or against complainants and respondents generally.

For the purpose of the College District's response to allegations of sexual harassment, including the formal complaint process, bias includes but is not limited to bias against an individual's sex, race, ethnicity, sexual orientation, gender identity, disability or immigration status, or financial ability.

All College District actions must presume that the respondent is not responsible for the alleged conduct until after a final determination in a formal complaint process. In a formal complaint process, a respondent may face Title IX disciplinary sanctions for sexual harassment only after a fair process determines responsibility. However, even if a Title IX formal complaint is not filed or signed, the College District may investigate and respond to prohibited conduct in accordance with Board policies and the Student Code of Conduct.

#### Hearing Witnesses

The College District, the respondent, and the complainant each may identify and offer (request) witnesses to testify at a hearing. Notice of the intent to offer a witness should be included in the hearing disclosure and submitted to the DA not later than 12:00 p.m. at least three full days in advance of the hearing. [See Hearing Disclosures]

Such notice should include the name and contact information for each witness and the nature of their testimony. The names of the witnesses, and all other disclosures, submitted to the DA will be shared with the other party in advance of the hearing. The DA may exclude a witness's testimony if the DA deems the information the witness intends to provide as irrelevant. The decision to exclude a witness's testimony and the reason for such exclusion shall be shared with the parties in writing. [See Determinations of Relevance–Decision-Maker (DA)]

Attendance

All parties to a formal complaint are expected to appear at the scheduled hearing and to submit to cross examination. [See Cross Examination]. A party may request not to be present in the same room as another party during the hearing. If such a request is made, it should be made in writing to the DA within five days of the scheduled hearing date. The DA will, subject to availability, make the necessary accommodations/arrangements, including providing access to audiovisual services, to conduct the hearing in accordance with this procedure.

Recording /  
Electronic Devices

The recording, including transcription, or distribution of a recording of a hearing proceeding by a party, witness, advisor, or any other participant of a hearing is strictly prohibited. The College District will arrange for transcription or audio or audiovisual recording of the hearing proceeding, which will be kept on file in accordance with the College District's record retention procedures.

Reasonable care will be taken to create a quality audio or audiovisual recording; the lack of a quality audio or audiovisual recording or presence of technical problems that result in no audio or audiovisual recording will not be deemed a valid basis for appeal.

Preliminary Matters  
– Hearing  
Disclosures

Not later than 12:00 p.m., three full days before the hearing date, each party to the hearing shall provide to the hearing officer for disclosure to the other party and the DA:

1. The name and contact information of each witness to appear on behalf of the party and the nature of their testimony.
2. The name and contact information of the party's advisor of choice, if any, who shall appear at the hearing.
3. If a party is a minor, the name and contact information of the parent or guardian who will accompany the party. If a party's parent or guardian will also serve as the party's advisor, please indicate as such in the disclosure.
4. If applicable, any request for accommodations and the nature of the accommodation required.

Standard of Evidence	<p>A respondent shall be presumed not responsible for an allegation that is the subject of a formal complaint under this procedure unless and until that presumption is disproved or outweighed by a preponderance of the evidence (i.e., it is determined based on facts that are more likely true than not that the respondent engaged in the alleged conduct).</p>
Hearing Procedure	<p>The hearing officer shall have general administrative authority over the hearing proceeding, setting reasonable time limitations on the hearing, including, but not limited to, time frames for opening/closing statements. The DA shall make determinations relative to the allegations that are the subject of the hearing, including but not limited to the relevancy of any information presented/submitted at the hearing; and excluding information deemed irrelevant.</p> <p>The hearing shall proceed generally as follows:</p> <ol style="list-style-type: none"><li>1. Persons present shall be the parties to the formal complaint, the advisor(s) for the parties, and, if applicable, the parents or guardians of the parties (if a party is a minor).</li><li>2. Witnesses shall remain outside the hearing “room” until they are called to testify.</li><li>3. The hearing officer shall make introductions followed by (in this order):<ol style="list-style-type: none"><li>a. Respondent’s statement accepting or denying responsibility for the allegation contained in the formal complaint;</li><li>b. Complainant(s) and respondent(s)’ opening statements (each party shall have up to five minutes; the hearing officer reserves the right to modify the time limit for opening statements);</li><li>c. Questioning of the parties and witnesses, if any, by the DA (the DA, at the DA’s discretion, may ask questions of the parties or witnesses at any time during the hearing);</li><li>d. Questioning of the parties and witnesses, if any, by the parties’ advisors; and</li><li>e. Complainant(s) and respondent(s)’ closing statements (each party shall have up to five minutes); the hearing officer reserves the right to modify the time limit for closing statements.</li></ol></li><li>4. The hearing officer shall conclude the hearing.</li></ol>
Questioning	<p>The DA shall be the first to question the parties and any witnesses at the hearing to elicit from the participants relevant evidence with</p>

which to make a determination regarding responsibility. Each party's advisor will then have the opportunity to ask relevant questions and follow-up questions of the other party and witnesses, if any, including questions that challenge credibility. Cross examination of a party or witness at the hearing shall be conducted directly, and in real time, by a party's advisor of choice or a party's College District-provided advisor only. Neither the complainant nor the respondent may personally question the other or any witnesses during the hearing.

All questioning shall be conducted in accordance with the College District's established standards of conduct. Only relevant questions shall be permitted on questioning. Accordingly, parties and their advisors should endeavor to ensure that questions asked are relevant and respectful of all hearing participants; yelling, abusive language, and acts of intimidation during cross examination or at any other time during the hearing are prohibited.

A party or witness who declines to participate in the hearing or to submit to cross examination forfeits the right to have his or her prior statements (written or otherwise) considered by the DA. Only those statements that have been tested for credibility (i.e., subject to cross examination) shall be considered by the DA in reaching a determination regarding responsibility. However, other evidence, including video evidence may be relied on (if available) to determine responsibility. The DA shall not draw any inference regarding responsibility based solely on a party's absence from the hearing or refusal to answer questions.

Determinations of  
Relevance –  
Decision-Maker  
(DA)

The DA shall determine before a party or witness answers a question whether the question is relevant to the allegations that are the subject of the formal complaint and briefly explain in real time any decision to exclude a question as not relevant. If a question is determined to be relevant, the participant will answer it.

In addition to information that shall automatically be deemed irrelevant, as provided at Relevance (i.e., privileged information, treatment records, statements not subject to cross examination, and prior sexual history, unless otherwise allowed by this procedure), the DA shall, in making a determination of relevance, evaluate, as appropriate, whether the information offered bears on a fact at issue in the complaint or is duplicative. Information that the DA determines is not probative of any material fact concerning the allegations or considers duplicative shall be deemed irrelevant and will be excluded from the hearing.

Questions or evidence concerning a party's character or prior bad acts shall not be admissible under this procedure unless they are deemed relevant by the DA. Where such information is considered

relevant, the DA shall objectively evaluate the relevant evidence to determine whether such evidence warrants a high or low level of weight or credibility.

Upon making a determination of relevance, the DA's decision is final. However, parties may appeal an erroneous relevance determination, provided the determination affected the outcome of the matter. [See Appeals]

Determination of  
Responsibility

The DA shall make and issue a determination of responsibility based on the evidence presented.

The determination of responsibility shall include a description of the procedural steps taken from receipt to determination of responsibility; a statement of, and rational for, the result as to each individual allegation of sexual misconduct included in the complaint, including findings of fact supporting the determination; conclusions regarding the application of the College District policies and procedures, and the evidentiary basis for such conclusions; any disciplinary action or corrective action imposed on the respondent; whether any remedies are to be provided to the complainant; and procedures and permissible bases for appeal.

The DA shall submit the determination of responsibility to the hearing officer, who shall notify each party to the hearing of the determination in the same manner as the notice of hearing, at approximately the same time, and no more than ten business days following the hearing. In a case involving a minor student, who is also enrolled as a dual credit or early college high school student, a determination of responsibility will also be shared with the student's high school. Determinations of responsibility shall become final after expiration of the time period to file an appeal, or if a party does appeal, after notice of the appeal decision is sent to the parties.

Hearing Record

The hearing record shall include: a copy of the notice of the hearing; all documentary and other evidence offered or admitted in evidence, including the investigation report; a copy of the hearing transcript or recording; the DA's determination regarding responsibility, any appeal, any disciplinary sanctions imposed on the respondent, and whether remedies were provided to the complainant. The hearing record will be kept on file in accordance with the College District's record retention procedures.

Grounds for Appeal

A party is entitled to submit in writing an appeal to the appropriate appeal decision maker (ADA) who may alter, modify, or rescind a determination regarding responsibility, any disciplinary action imposed, a dismissal of a formal complaint, or any of the allegations therein. An appeal of a determination of the DA is a review of the



record; it is not a new hearing. Disciplinary action shall not be imposed while an appeal is pending.

An appeal shall include the appealing party's grounds for appeal, i.e., why the party believes such review is necessary. A petition must be based on one or more of the following:

1. New evidence or information, not reasonably available at the time the determination of responsibility or dismissal was made, that could affect the outcome of the matter;
2. Procedural errors within the grievance process that affected the outcome of the matter. Procedural irregularities may include, but are not limited to, failure by the DA to objectively evaluate all relevant evidence or an erroneous relevance determination by the DA; or
3. A facilitator of the grievance process (the Title IX coordinator, investigator, DA) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

A party shall file an appeal in writing on or before the fifth day after receiving the Determination of Responsibility or notice of dismissal. If an appeal is not filed within the specified time frame, the determination or dismissal is final.

Upon receipt of a party's petition for appeal, the ADA shall notify the other party in writing that an appeal has been filed. The nonappealing party shall have five days from receipt of that notice to submit a statement in support of or challenging the outcome.

The ADA shall not be required to consider a statement submitted outside of the provided time frame.

The ADA shall simultaneously notify each party in writing of the result of the appeal and the rationale for the result. Appeals will generally be decided within 15 days from the date the petition was received. If a decision will take longer, notice of the delay and the reason for the delay will be provided to the parties.

**Authorized  
Disciplinary  
Penalties**

An appeal may result in any one of the following:

1. Affirm the DA's determination regarding respondent's responsibility and affirm the disciplinary sanctions and remedies if applicable;
2. Affirm the DA's determination regarding respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable;

3. Remand the process back to the hearing stage for the DA to amend any procedural irregularity;
4. Reverse the DA's determination regarding respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
5. Affirm or amend the disciplinary sanctions and/or remedies, if applicable.

A finding of responsibility by the DA may result in the imposition of one or more disciplinary or corrective actions, as provided in DIAA (LOCAL).

#### Remedies

The DA will determine the appropriate disciplinary action to apply by considering certain factors, including, but not limited to, the nature of the conduct, prior disciplinary history of the respondent, previous action by the College District in response to similar conduct, and the interest of the College District community.

The College District may, upon a determination of responsibility against a respondent, provide the complainant with remedies designed to restore or preserve for the complainant equal access to College District-sponsored programs and activities. Remedies may include, but are not limited to, those services described at Supportive Measures in DIAA(LOCAL). The Title IX coordinator shall implement remedies as necessary.

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<sup>1</sup> College District Title IX and Sexual Misconduct website: <http://coastal-bend.edu/content.aspx?id=19901&terms=sexual%20misconduct>