

INTERIM TITLE IX PROCESS

SOUTH ORANGE COUNTY
COMMUNITY COLLEGE DISTRICT

I. GENERAL

The District is committed to providing a respectful and inclusive academic and work environment free from sex discrimination in its education programs and activities, consistent with Title IX. Sexual Harassment, including Sexual Assault, Dating Violence, Domestic Violence and Stalking, is unlawful sex discrimination.

In response to recent decisions made by the California Court of Appeals and new Title IX regulations, the South Orange County Community College District hereby implements the following Interim Title IX Process pending changes to Board Policy and Administrative Regulation 4500. This interim process is applicable to sexual harassment that allegedly occurred on or after August 14, 2020. Further, the Interim Title IX Process supersedes the grievance process under BP/AR 4500 and BP/AR 5401 with respect to cases that fall under the jurisdiction of Title IX.

No provision of this interim policy shall be interpreted to prohibit conduct that is protected under academic freedom as defined in AR 4500 or the U.S. Constitution, including the First Amendment, Fifth Amendment and Fourteenth Amendment.

II. OVERSIGHT OF TITLE IX PROCESS

The District's Title IX Coordinator is Karen Dubert, District Director of Employee Relations & Title IX Coordinator, (949) 726-5819, kdubert@socccd.edu, located in District Human Resources (third floor of Saddleback College Health Sciences Building).

The District has also authorized Title IX Officers of each college with coordinating the District's responsibilities under Title IX and this interim policy. The Irvine Valley College Title IX Officer is Dr. Martha McDonald, Vice President for Student Services, (949) 451-5624, mmcdonald@ivc.edu, located in the Administration Building (A 100). The Saddleback College Title IX Officer is Dr. Juan Avalos, Vice President for Student Services, (949) 582-4566, javalos@saddleback.edu, located in the Administration Building (Room 126).

III. REPORTING SEXUAL HARASSMENT

Any person may report Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or Sexual Harassment) at any time, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator or Title IX Officers, or by any other means that results in the Title IX Coordinator/Officers receiving the person's verbal or written report. This Title IX process also applies to allegations of Sexual harassment that are made to any District employee who has authority to institute corrective measures on behalf of the District.

INTERIM TITLE IX PROCESS

A. Response to Report of Sexual Harassment

The District takes all complaints of Sexual Harassment seriously. Upon receiving a report of Sexual Harassment, the Title IX Coordinator, Title IX Officer, or designee must:

1. Promptly contact the Complainant to discuss the availability of supportive measures;
2. Consider the Complainant's wishes with respect to supportive measures;
3. Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint; and
4. Explain to the Complainant the process for filing a formal complaint.

B. Supportive Measures

The District must provide supportive measures to a Complainant and Respondent (collective referred to as "**Parties**") on an equitable basis. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available and without fee or charge to the Parties. The District will provide the Parties with immediate, supportive measures where necessary to ensure equal educational access, protect the safety of all parties or the District's educational environment, or deter Sexual Harassment.

The District must maintain as confidential any supportive measures provided to the Parties, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.

Supportive measures may include:

1. Counseling or a referral to counsel services;
2. Providing medical services or a referral to medical services;
3. Extensions of deadlines or other course-related adjustments;
4. Modifications of work or class schedules;
5. Campus escort services;
6. Mutual restrictions on contact between the parties;
7. Changes in work locations;
8. Leaves of absence;
9. Preventing offending third parties from entering campus; and
10. Increased security and monitoring of certain areas of the campus, and other similar measures.

C. Emergency Removal

1. Students: The District may remove a student Respondent from an education program or activity on an emergency basis after the District has completed an individualized safety and risk analysis and determined that the student Respondent poses an *immediate* threat to the physical health or safety of any student or other individual arising from

INTERIM TITLE IX PROCESS

the allegations of Sexual Harassment. The student Respondent must be provided with notice and an opportunity to challenge the decision immediately following the removal.

2. Employees: The District may place an employee on administrative leave during the grievance process and will conform to all relevant statutes, regulations, and District personnel policies and regulations, including the provisions of any applicable collective bargaining agreement.

IV. DEFINITIONS

A. **Affirmative Consent**

An affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

B. **Complainant**

An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment. The District recognizes the legal rights of parents or guardians to act on behalf of the Complainant (including filing a formal complaint).

C. **Respondent**

An individual who has been reported to be the perpetrator of the conduct that could constitute Sexual Harassment. The District recognizes the legal rights of parents or guardians to act on behalf of the Respondent.

D. **Sexual Harassment**

Conduct on the basis of sex that satisfies one or more of the following:

1. Quid Pro Quo Sexual Harassment: When an employee of the District conditions the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;
2. Hostile Environment Sexual Harassment: Unwelcome conduct determined by a reasonable person in the shoes of the Complainant to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's program or activity; and/or
3. Sexual assault, dating violence, domestic violence, or stalking as defined below.

E. **Sexual Assault**

A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

1. Rape (except Statutory Rape) is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent

INTERIM TITLE IX PROCESS

- because of their age or because of their temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
2. Sodomy is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 3. Sexual Assault with an Object is to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything the offender uses other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.
 4. Fondling is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
 5. Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse
 - a. Incest is defined as non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - b. Statutory Rape is defined as non-forcible sexual intercourse with a person who is under the statutory age of consent.

F. Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

G. Domestic Violence

Domestic violence includes violence committed by:

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

H. Stalking

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

INTERIM TITLE IX PROCESS

V. COMPLAINTS

A. Formal Complaints

1. Who May File a Complaint

- a. At the time of filing a formal complaint, the Complainant must be enrolled as a student or employed by the District, or attempting to enroll or apply for an education program or activity of the District.
- b. If the Complainant does not file a formal complaint, the Title IX Coordinator or Title IX Officer of the college may file and sign a formal complaint requesting that the District investigate the allegation(s) of Sexual Harassment if it is clearly not unreasonable in light of the known circumstances.

2. How to File a Formal Complaint of Sexual Harassment

A formal complaint must meet each of the following criteria:

- a. The allegations of Sexual Harassment in the complaint must have occurred in the District's education program or activity in the United States. Education program or activity includes locations, events, or circumstances over which the District exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurs.
- b. The complaint must be a document (such as the District's complaint form) or electronic transmission filed by a Complainant or signed by the Title IX Coordinator/Title IX Officer alleging Sexual Harassment against a Respondent and requesting that the District investigate the allegation of Sexual Harassment.

The District encourages complaints to be filed on its form prescribed by the Chancellor of the California Community Colleges. A copy of the form will be available from the Vice Chancellor, Human Resources, at the California Community Colleges Chancellor's website, and at the following URL:

<http://www.socccd.edu/humanresources/documents/UnlawfulDiscriminationComplaintFormFillableREV.1-05-17.pdf>.

- c. The document or electronic submission contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.

3. When To File a Complaint

The District does not impose a time limit or statute of limitations on a Complainant's decision to file a formal complaint of Sexual Harassment for purposes of this interim policy. Since failure to report Sexual Harassment impedes the District's ability to stop the behavior, the District strongly encourages anyone who believes they are being sexually harassed to file a complaint.

INTERIM TITLE IX PROCESS

4. Where to File a Complaint

A formal complaint of Sexual Harassment must be filed with one of the following:

- a. The District Title IX Coordinator - Vice Chancellor, Human Resources; or
- b. The designated Title IX Officer of the college - Vice President, Student Services.

B. Notice of Complaint

1. The written notice of complaint to the Complainant and Respondent must include:

- a. Notice of the District's grievance process that complies with this section, including any informal resolution process;
- b. Notice of the allegations potentially constituting Sexual Harassment under this interim policy, with sufficient time to prepare a response before any initial interview;
- c. The identities of the Parties, summary of the alleged conduct, the date and location of the incident, if known;
- d. Statement that the Respondent is presumed not responsible until a determination regarding responsibility is made at the conclusion of the grievance process;
- e. Parties' rights to an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence;
- f. District's use of the preponderance of evidence standard;
- g. The District's code of conduct for making a false statement or knowingly submitting false information during the grievance process; and,
- h. If the District decides to investigate allegations about the Complainant and Respondent that are not included in the notice provided, the District must provide notice of the additional allegations to the known parties.

C. Dismissal of Formal Complaints

A formal complaint must be dismissed by the District for purposes of Sexual Harassment under this interim policy based on one or more of the following factors:

1. The allegations in the formal complaint do not meet the definition of Sexual Harassment under this interim policy;
2. The alleged conduct occurred outside of a District program or activity; or
3. The conduct did not occur against a person in the United States.

The District may also dismiss a formal complaint, if at any time during the investigation or hearing:

1. A Complainant notifies the Title IX Coordinator or Title IX Officer in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
2. The Respondent is no longer enrolled or employed by the District; or
3. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

D. Notification of Dismissal and Right to Appeal Dismissal

The District must promptly send written notice of the dismissal and reasons for the dismissal simultaneously to the parties. This written notification must also include the

INTERIM TITLE IX PROCESS

parties right to appeal the District's dismissal of a formal complaint based only on one or more of the appeal issues as identified in Article X(B) of this interim policy.

A dismissal of a formal complaint under this Title IX process does not preclude action under another provision of the District's board policy and administrative regulation, such as BP/AR 4500 and BP/AR 5401, or an applicable collective bargaining agreement.

VI. INFORMAL RESOLUTION

- A. The District may offer an informal resolution process to the Parties only after a formal complaint has been filed, including but not limited to mediation, rearrangement of work/academic schedules, providing informal counseling or training, etc. The informal resolution process is intended to resolve a formal complaint without a full investigation and adjudication process. The informal resolution process must not be used to resolve allegations that a District employee sexually harassed a student.
- B. Steps for Informal Resolution Process
 1. Prior to initiating the informal resolution process, the District must provide the Parties with written notice of the following:
 - a. The allegations within the formal complaint;
 - b. The right to withdraw from the informal resolution process at any time prior to agreeing to a resolution; and
 - c. That participation and agreement to a resolution in the informal resolution process precludes the Parties from resuming a formal complaint arising from the same allegations.
 2. Both Parties must give their voluntary, informed, and written consent to the informal resolution process.

VII. INVESTIGATION

A. Investigation of Formal Complaint

The District must promptly investigate every formal complaint of Sexual Harassment, unless the Parties give their mutual consent to informal resolution, as set forth above in Article VI.

B. Investigation Steps

The Title IX Coordinator, Title IX Officer, or designated investigator must use the following steps upon receipt of a formal complaint: **(1) gather evidence; (2) allow the Parties an equal opportunity to inspect and respond to the evidence; and, (3) provide an investigative report to the Parties.**

1. The District must gather evidence sufficient to create an investigative report that fairly summarizes the relevant witness statements and other evidence. Throughout the investigation, the District shall:
 - a. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination remain on the District, not the parties;
 - b. Provide all parties and equal opportunity to present all relevant evidence, including expert witnesses, and other inculpatory and exculpatory evidence;

INTERIM TITLE IX PROCESS

- c. Not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence;
 - d. Provide to the Parties, invited or expected to participate, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate; and,
 - e. Decline a Party's request to gather information if the request seeks access to privileged information, or information about the Complainant's sexual history with anyone other than the Respondent, unless offered to prove that someone other than the Respondent committed the alleged misconduct, or if the evidence is offered to prove consent.
2. The District must send the Parties and their advisors, evidence directly related to the allegations, in electronic format or a hard copy, with **at least 10 business days** for the Parties to inspect, review, and submit a written response to the evidence. Any evidence the District does not intend to rely on in reaching a determination regarding responsibility must also be provided to each Party, so that each Party can meaningfully respond to the evidence prior to conclusion of the investigation. The District must consider the Parties' response to the evidence prior to the completion of the investigative report.

The District must make all such evidence subject to the parties' inspection and review available at any hearing to give each Party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

3. The District must send the Parties, and their advisors, an investigative report that summarizes relevant evidence, in electronic format or hard copy, **at least 10 business days** prior to the hearing.

C. Investigation Timeline

The District will normally complete its investigation **within 90 days from the date of the notice of investigation**, unless extended by the Title IX Coordinator or Title IX Officers for good cause. The Title IX Coordinator or Title IX Officers will notify the Complainant and Respondent in writing of the reason for the extension and the projected new timeline.

VIII. HEARING PROCESS

As part of the District's grievance process, the District must provide a live hearing with cross-examination conducted by party advisors following an investigation.

A. Roles and Responsibilities

1. The Title IX Coordinator, Title IX Officer, or designee shall be responsible for managing the hearing process and the necessary logistics (scheduling, notifying witnesses, providing the Parties and hearing officer with appropriate documentation and evidence, coordinating the location of the hearing, and any other support that is necessary for the hearing to run smoothly).
2. The hearing officer is responsible for conducting an impartial live hearing and issuing a written determination regarding responsibility to the Parties without bias or conflict of interest. The hearing officer, as the decision-maker, cannot be the same person(s) as the Title IX Coordinator/Officer or investigator(s).

INTERIM TITLE IX PROCESS

3. The Parties' advisor of choice may be, but is not required to be, an attorney. The Parties' advisors may be present for meetings and proceedings throughout the grievance process, subject to equal restrictions on advisors' participation, at District's discretion. If the Party does not have an advisor at the hearing, the District must provide an advisor of the District's choice, without fee or charge, solely for the purpose of conducting cross-examination.

B. Scope of Hearing Format

1. At the live hearing, the hearing officer must permit each Party's advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
2. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the Party's advisor of choice and never by a Party personally.
3. Only relevant cross-examination and other questions may be asked of a Party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the hearing officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
4. The hearing officer must not rely on the statement of a Party or witness who does not submit to cross-examination. The hearing officer also cannot draw any inference about the determination regarding responsibility based solely on a Party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.
5. The District may consolidate formal complaints/hearing where allegations arise out of the same facts.

C. Hearing Location

Live hearings may be conducted with all Parties physically present in the same geographic location or, at the District's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. The District must create an audio or audiovisual recording, or transcript, of any live hearing.

At the request of either Party, the District must also provide for the entire live hearing (including cross-examination) to occur with the Parties located in separate rooms with technology enabling the Parties to see and hear each other.

D. Standard of Proof

The District will use a "preponderance of the evidence" standard of proof in determining whether there has been a violation of this interim policy. This standard of proof is also known as "more likely than not" standard.

IX. HEARING OFFICER'S WRITTEN DETERMINATION

The hearing officer must prepare a written determination regarding responsibility to the Parties. The written determination must be sent simultaneously to the Parties and must include:

1. Identification of the allegations potentially constituting Sexual Harassment;

INTERIM TITLE IX PROCESS

2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the District's code of conduct to the facts; A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, information about the disciplinary process that the District may initiate against the Respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the Complainant; and
5. The Parties' right to appeal the determination as set forth in Article X.

X. APPEAL

- A. Any Complainant or Respondent who is not satisfied with the determination of responsibility, or the dismissal of a formal complaint or any allegations of Sexual Harassment, may submit an appeal to the Title IX Coordinator or Title IX Officer **no later than 15 working days** after the written notice of determination.
- B. The appeal must be in writing and must be based only on one or more of the appeal issues listed below:
 1. Procedural irregularity that affected the outcome of the matter;
 2. New evidence that was not reasonably available at the time of determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
 3. The Title IX Coordinator, Title IX Officer, investigator, or hearing officer 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
- C. Upon receipt of a written appeal, the District must:
 1. Notify the other party in writing that an appeal was filed; and
 2. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome.
- D. An Appeal Officer will be assigned to consider the appeal of the Hearing Officer's Determination of Responsibility. The Appeal Officer cannot be the same person as the Title IX Coordinator, Hearing Officer, or Investigator(s) responsible for conducting the District's investigation of the formal complaint.
- E. The Appeal Officer must issue a written decision describing the result of the appeal and the rationale for the result to all Parties.

XI. DISCIPLINE AND CORRECTIVE ACTION

If Sexual Harassment occurred in violation of this interim policy, the District will take appropriate disciplinary action against the Respondent and any other remedial action it determines to be appropriate. Remedies may include supportive measures, as set forth in Article III(B). Remedies

INTERIM TITLE IX PROCESS

may also be disciplinary or punitive and will conform to all relevant statutes, regulations, and District personnel policies and regulations, including the provisions of any applicable collective bargaining agreement. With respect to students, remedies may include but are not limited to disciplinary action authorized under the District's Standards of Student Conduct in Administrative Regulation 5401, including warning, reprimand, probation, suspension, or expulsion. With respect to employees, remedies may include but are not limited to written reprimand, suspension, or termination.

XII. RETALIATION PROHIBITED

- A. The District prohibits retaliation against any individual for exercising any rights under this interim process, or against any individual who has participated or refused to participate in any manner in a Title IX report, investigation, proceeding or hearing.
- B. Retaliatory acts, which may include: (1) intimidation; (2) threats; (3) coercion, (4) discrimination, or (5) charges for code of conduct violations that arise out of the same facts or circumstances as the report or complaint of sex discrimination are specifically prohibited by the District.
- C. The exercise of rights under the First Amendment does not constitute retaliation for purposes of this interim policy.
- D. **Materially False Statements:** The District may charge an individual with a code of conduct violation for making a materially false statement in bad faith in the course of the grievance process. A determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement.
- E. A complaint of retaliation may be filed as a separate Title IX complaint under this Title IX Process.

XIII. CONFIDENTIALITY

The District must keep confidential the identity of any Complainant, any Respondent, or any witness except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding under this policy.

References:

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