

MEMORANDUM

TO: Michael Claire, Chancellor

FROM: Richard Storti, Executive Vice Chancellor for Administrative Services

PREPARED BY: Marie Billie, Interim Chief Human Resources Officer
Mwanaisha Sims, Director of Policy, Training and Compliance, Office of Human Resources

DATE: March 20, 2022

SUBJECT: AFT Concerns Regarding Title IX Processes

We recently became aware of concerns from the AFT relating to concerns (included below in **Blue**) regarding the District responding appropriately and timely to complaints of sexual harassment filed under Title IX. The District takes very seriously all allegations/complaints of violations of Title IX and remains committed to investigating all matters in accordance with established federal, state and District policies and protocols. Further, the District is committed to transparency in its Title IX work and welcomes opportunities to share with all faculty, staff and students information about Title IX protocols, while respecting the confidentiality of formal investigations.

For your information and reference, we are outlining in this memorandum a detailed overview of the District's policies, procedures and practices, particularly as they relate to concerns and issues raised by AFT. Please note that in addition to our responses, we have included text from the newly updated San Mateo County Community College District Procedure on Sexual Harassment AP 3434 Responding to Harassment Based on Sex under Title IX (hereinafter SMCCCD SH AP).

AFT Issue

- 1. Provide a flowchart of investigation processes of Title IX cases, accessible to all District community members and publicly posted online, that:**

- a. Indicates who qualifies as a mandated reporter when a student shares information about sexual harassment, sexual misconduct, or gender discrimination.

District Response: See flow chart (Attachment #1); however, this would not indicate who is a mandated/mandatory reporter, that definition is on the District [Title IX website](#). The District position is that any employee, including student employees, who have knowledge of behavior that violates Title IX or any policies related to any state or federal sexual misconduct laws including, but not limited to, sexual harassment, stalking, or sexual exploitation, must report to their supervisor or a Title IX Coordinator any concerns or information they may have.

- b. Specifies what constitutes a Title IX case and clearly delineates the threshold for initiating an investigation.

District Response: Title IX Jurisdictional Requirements

Title IX administrative procedures apply if the conduct meets the definition of Title IX Sexual Harassment and the following jurisdictional requirements:

- The conduct took place in the United States;
- The conduct took place in a District education program or activity. This includes locations, events, or circumstances over which the District exercised substantial control over both the Respondent and the context in which the harassment occurred, including on-campus and off-campus property and buildings the District owns or controls or student organizations officially recognized by the District. (SMCCCD SH AP, p. 2)

- c. Lays out the steps of an investigation, including the normative time expected for each step to be completed.

District Response: The process and timeline is outlined in Attachment #2. An excerpt of the process from the SMCCCD SH AP is outlined below.

INTAKE AND PROCESSING OF REPORT

A. Receipt of Report

After receiving a report of sexual harassment, even if a formal complaint is not filed, the Title IX Coordinator shall contact the Complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, and explain to the Complainant the process for filing a formal complaint. The Title IX Coordinator will also notify the Respondent of the complaint and offer to meet with the Respondent to review and discuss the complaint. The Title IX Officer will discuss supportive measures with the Parties.

B. Timeframe for Reporting

To promote timely and effective review, the District strongly encourages individuals to report sexual harassment as soon possible because a delay in reporting may affect the ability to collect relevant evidence and may affect remedies the District can offer. (SMCCCD SH AP, p. 7) [To clarify, there is no deadline after a which a report cannot be taken. The District will address any complaint as fully as possible whenever it is received.]

FORMAL COMPLAINT GRIEVANCE PROCESS

A. Notice to Parties

Upon receipt of a formal complaint, the Title IX Coordinator will provide the following Notice of Investigation and Allegations in writing, to the Parties:

- *Notice of the District's Title IX grievance process;*
- *Notice of the allegations of alleged sexual harassment with sufficient details known at the time and with sufficient time to prepare a response before any initial interview;*
- *The specific policies implicated;*
- *Statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;*
- *A statement of the potential sanctions/responsive actions that could result;*
- *Notice that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney. The District may provide a trained employee who has volunteered to serve as an Advisor in these matters, or may suggest ways a party can identify an Advisor;*
- *Details on how the party may request disability accommodations during the grievance process;*
- *Notice that the Parties may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a Party or other source;*
- *The name(s) of the Investigator(s), if known, along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have;*
- *Inform the Parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process; and*
- *An instruction to preserve any evidence that is directly related to the allegations.*

If, in the course of an investigation, the District decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided above, the Title IX Coordinator will provide notice in writing of the additional allegations to the Parties. (SMCCCD SH AP, p. 8)

B. Dismissal of Formal Complaint

The District must investigate the allegations in a formal complaint. However, the District must dismiss the formal complaint and will not process the complaint under these procedures if any of the following three circumstances exist:

- *If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in this procedure, even if proven;*
- *If the conduct alleged did not occur in an educational program or activity controlled by the District;*
- *If the conduct alleged did not occur against a person in the United States.*

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

- *If at any time during the investigation or hearing: a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;*
- *If the Respondent is no longer enrolled or employed by the District; or*
- *If there are specific circumstances that prevent the District from gathering evidence sufficient to reach a determination regarding responsibility as to the formal complaint or allegations therein.*

Upon dismissal, the Title IX Coordinator shall promptly, and simultaneously to the Parties, send written notice of the dismissal and the reasons for the dismissal. The Title IX Coordinator shall also notify the Parties of their right to appeal the dismissal.

The District may commence proceedings under other policies and procedures after dismissing a formal complaint. (SMCCCD SH AP, pp. 9 – 10)

C. Consolidation of Formal Complaints

The District may, but is not required to, consolidate formal complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of sexual harassment arise out of the same facts or circumstances. (SMCCCD SH AP, p. 10)

G. Timeline for Completion

The District will undertake its grievance process promptly and as swiftly as possible. The District will complete the investigation and its determination regarding responsibility or the informal resolution process within 180 calendar days from the date of the Notice of Investigation and Allegations is issued to the Parties.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the 180 calendar-day period to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the unavailability of witnesses or delays by the Parties, to account for District breaks or vacations, or due to the complexity of the investigation. The District will provide notice of this extension to the Complainant and Respondent in writing and include the reason for the delay and anticipated timing of completion.

A Party may request an extension from the Title IX Coordinator in writing by explaining the reason for the delay and the length of the requested continuance. The Title IX Coordinator will notify the Parties and document the decision to grant or deny a request for extension or delay as part of the case recordkeeping. (SMCCCD SH AP, p. 11)

d. Indicates the District or College staff person responsible for each step.

District Response: *Please find in Attachment #3 the District Title IX Organizational Chart and Campus Title IX Organization Chart. The roles and responsibilities of each position is explained below and excerpted from the SMCCCD Title IX Administrative Procedure.*

Title IX Coordinator

Oversees the Title IX process, receives Title IX complaints, reviews complaints, coordinates interim measures and provides resources to the parties.

Role of Advisor

The Parties may each have an Advisor of their choice and a support person present with them for all meetings, interviews, and hearings within the grievance process. The role of the Advisor is to provide support and assistance in understanding and navigating the grievance process.

The Advisor may not testify in or obstruct an interview or disrupt the process. The Title IX Coordinator has the right to determine what constitutes appropriate behavior of an Advisor and take reasonable steps to ensure compliance with this procedure.

A Party does not have a right to self-representation at the hearing; an Advisor must conduct any cross-examination. The District must provide an Advisor of its choice, free of charge to any Party without an Advisor in order to conduct cross-examination. If an

Advisor fails to appear at the hearing, the District will provide an Advisor to appear on behalf of the non-appearing Advisor. To limit the number of individuals with confidential information about the issues, each Party may identify one Advisor. (SMCCCD SH AP, p. 11)

Trained Investigators

The District will investigate Title IX formal complaints fairly and objectively. Individuals serving as investigators under this procedure will have adequate training on what constitutes sexual harassment and how the District's grievance procedures operate. The District will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence and complies with this procedure. (SMCCCD SH AP, p12.)

Decision-Maker

The Decision-Maker(s) will be free from conflict of interest or bias, including bias for or against Complainants or Respondents. In cases where the Complainant or Respondent objects to a Decision-Maker based on a conflict of interest, the Complainant or Respondent may request the Title IX Coordinator select a different Decision-Maker. The Complainant or Respondent must make this request to the Title IX Coordinator in writing at least five business days prior to the hearing. The Title IX Coordinator will consider such requests but is not obligated to grant the requests.

The Decision-Maker(s) may ask the Parties and the witnesses questions during the hearing. The Decision-Maker(s) must objectively evaluate all relevant evidence both inculpatory and exculpatory and must independently reach a determination regarding responsibility without giving deference to the investigative report. The Decision-Maker(s) must receive training on issues of relevance, how to apply the rape-shield protections for Complainants, and any technology to be used at the hearing.

*When the Decision-Maker(s) makes a determination of responsibility or non-responsibility, the Decision-Maker will deliver to the Title IX Coordinator a written determination regarding responsibility, no later than **30 calendar days** after the date that the hearing ends. (SMCCCD SH AP, p. 14)*

e. Indicates whom to contact if the processes are not followed.

District Response: *The District Title IX Coordinator, the Chief Human Resources Officer or designee (currently Mwanaisha Sims, Director of Policy, Training and Compliance), is the designated individual responsible for Title IX compliance. Any non-compliance should be reported to the Title IX Coordinator. Any complaints regarding non-compliance involving the*

Title IX Coordinator should be addressed to the Executive Vice Chancellor for Administrative Services.

- f. Clarifies the appeals process when a filer does not agree with the investigation results.

District Response: Appeal of Dismissal of a Formal Complaint or of the Determination of Responsibility

A Complainant or Respondent may appeal the District's determination regarding responsibility or the dismissal of a formal complaint or any allegations therein. A Complainant or Respondent must submit a written appeal within **10 calendar days** from the date of the notice of determination regarding responsibility or from the date of the District's notice of dismissal of a formal complaint or any allegations. (SMCCCD SH AP, pp. 17 – 18)

2. Share districtwide the organizational chart that indicates the District- and College-level personnel who are responsible for investigating and acting on Title IX complaints.

District Response: See Attachment #3.

3. Specify whether SMCCCD has a Title IX investigator within the District and/or Colleges. If so, explain how this individual is chosen and the criteria used to select the investigator. Additionally, indicate how the selection process ensures that the investigator's identity and background promote accessibility, inclusivity, and the necessary level of trust necessary for reporting matters as sensitive as gender-based aggression.

District Response: Volunteer Title IX Investigators are selected from employees who have an interest in gender equality and the principles Title IX upholds. They are selected by the Deputy Title IX Coordinators at each campus in consultation with their campus Presidents. They receive rigorous training and may work in a team to ensure the parties received a fair and thorough investigation. Volunteer Title IX Investigators are only used for student against student complaints and are never used in complaints involving faculty or staff. All Title IX Investigators receive appropriate and periodic training. The District has a contract with the State University of New York (SUNY) Conduct Institute to provide training and other programming for our Title IX Investigators and other team members. They are the vendor recommended by the State Chancellor's Office.

Title IX investigations may be completed by outside investigators, primarily from law firms that the District retains. The District Title IX Coordinator may complete a limited number of investigations time permitting, but Title IX Coordinators should not perform the dual role of being a Title IX investigator.

4. Explain how Title IX coordinators are chosen and the criteria used to select them. Additionally, indicate how the selection process ensures that their identities and backgrounds promote accessibility, inclusivity, and the necessary level of trust necessary for reporting matters as sensitive as gender-based aggression.

District Response: Title IX Coordinators are generally selected through the hiring process and have the background to perform these duties. The District Title IX Coordinator position is imbedded in the Chief Human Resources Officer Position which is currently vacant. Mwanaisha Sims, Director of Policy, Training and Compliance, has taken on this role on an interim basis until a new CHRO is hired. Ms. Sims is an attorney and experienced in Title IX work.

The Deputy Title IX Coordinators are selected from among volunteer employees who have an interest in gender equality and the principles Title IX upholds. They are selected by each campus President or their designee. Deputy Title IX Coordinators only accept student complaints. Faculty and staff Title IX matters are handled by the District Title IX Coordinator. All Title IX Coordinators receive appropriate and periodic training. The District has a contract with the State University of New York (SUNY) Conduct Institute to provide training and other programming for our Title IX Coordinators and team members. They are the vendor recommended by the State Chancellor's Office.

5. Articulate a clear definition of retaliation and specific protocols to prevent retaliation. Specify what protections are available to the reporter/complainant.

District Response: Under the SMCCCD SH AP, retaliation is strictly prohibited. Retaliation includes: intimidation, threats, coercion, or discrimination against any individual who made a report or complaint of sexual harassment, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Individuals who experience retaliation may file a complaint using the formal complaint process described in the procedures. (SMCCCD SH AP, p. 19)

6. Provide thorough institutional support for the victims of gender aggression, including:
 - a. Information about how complainants and others can address retaliation when it happens.

District Response: Complainants or other individuals who experience retaliation due to any involvement in a Title IX matter may file a complaint using the formal complaint process described in the SMCCCD SH AP at page 19.

- b. Details on what accommodations and protections/preventions are available to allow complainants and others to continue working and learning in the District while protecting their safety.**

District Response: *The District provides supportive measures to allow complainants, respondents or others involved in the process to continue working or learning in a safe and supportive campus environment. If the health and safety of the complainant or the campus community is threatened, the emergency removal or a student respondent may be required. If the respondent is an employee, they may be placed on administrative through the conclusion of the process. (SMCCCD SH AP, generally pp. 7 – 9)*

Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a formal complaint has been filed. The District will provide such measures to Complainant and Respondent as appropriate and as reasonably available to restore or preserve equal access to the District's education program or activities without unreasonably burdening the other party. These measures are designed to protect the safety of all Parties, or protect the District's educational environment, or deter sexual harassment. The District will provide supportive measures on a confidential basis and will not disclose that the District is providing supportive measures except to those with a need to know to enable the District to provide the service. Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absences, increased security and monitoring of certain areas of the campus, and other similar measures. (SMCCCD SH AP, p. 7)

- c. Detailed, publicly accessible information about the extent to which confidentiality is available to Title IX complainants, including the specific circumstances in which their identities will be disclosed and to whom.**

District Response: *Confidentiality Generally – If a complainant wishes to keep their identity confidential it may impede the District's ability to investigate and address their complaint. If a complainant wishes to keep their identity confidential, we will work to the best of our ability to do so and offer supportive measures and other means to prevent the complained of behavior from continuing and affecting their educational or workplace participation. If the complaint allows us to share their identity, we will then proceed with the utmost discretion and will share the information on a need to know basis. To protect the privacy of all involved the parties and advisors are required to sign a confidentiality agreement restricting the use of information*

obtained through the grievance process for any purpose outside the process. (SMCCCD SH AP, generally, pp. 2, 11)

d. Information about personal counseling and mental health support provided by the District as well as resources available in the community.

District Response: Students are supported through Personal Counseling Centers located on campus and links to community resources are listed on the Title IX website. Employees are supported through the District Employee Assistance Program and links to community resources are listed on the Title IX website: <https://www.smccd.edu/titleix/campusresources.php>

Employee Assistance Program: District paid coverage for private, off-site counseling in a wide variety of personal life areas: <https://www.smccd.edu/titleix/campusresources.php>

7. Offer a required Title IX training to all SMCCCD employees, including administrators and students, that includes:

a. Explanation of what constitutes a Title IX violation, including noting that sexual harassment can be perpetrated by individuals in various roles against individuals in various roles: for example, students can commit Title IX violations against faculty, staff, or administrators.

District Response: The District requires all employees to have training through Keenan Safe Colleges platform. That training program addresses all of the items in Item 7.a.

b. Well-rounded information on all forms of gender aggression (including micro-aggressions) that could take place both in person and virtually.

District Response: The training program used by the District covers various forms of sexual harassment covered by current Title IX laws. Sexual misconduct that is considered a “micro-aggression” may not be covered in that for behavior to be cognizable under the law it must be severe, pervasive or objectively offensive.

c. For students, a detailed explanation of who is a mandated reporter.

District Response: All District employees are Mandatory Reporters. Faculty, staff and administrators who learn of suspected instances of discrimination, sexual harassment or suspected sexual misconduct - directly or indirectly - have a duty to report. Student employees are considered mandatory reporters of information or acts that come to their attention in their work capacity or while they are working. We will be sure to clarify their role in our student employment hiring package.

- d. For employees including administrators, a detailed explanation of how to navigate mandatory reporting requirements in working with students: for example, a flow chart indicating what employees should do at each stage of working with a student who discloses sexual misconduct or gender-based oppression.

District Response: For all employees, including faculty, staff and administrators, if a student discloses sexual misconduct or gender-based oppression (or any matter of concern), the employee should immediately advise the student to report the matter to the Title IX Coordinator AND the employee should immediately report the matter to the Title IX Coordinator or campus safety if it is an emergency situation. Students should also be referred to the Personal Counseling Center on campus. If a student is distraught, an employee should walk the student to the Personal Counseling Center where counselors are trained to address students who have experienced trauma.

8. The Preamble to Title IX states that “If a recipient [of Federal financial assistance] has actual knowledge of a pattern of alleged sexual harassment by a perpetrator in a position of authority, then a response that is not deliberately indifferent or clearly unreasonable may require the recipient’s Title IX Coordinator to sign a formal complaint obligating the recipient to investigate in accordance with § 106.45, even if the complainant (i.e., the person alleged to be the victim) does not wish to file a formal complaint or participate in a grievance process” (85 Fed. Reg. at 30,089). Given this guideline, provide transparency regarding how the District identifies and addresses patterns of harassment (including repeat offenders).

District Response: The District utilizes a tracking system for Title IX complaints so that repeat offenders are identified.

9. Publicly post an annual report indicating:
 - a. How many Title IX complaints have been filed at each college in the past year.
 - b. How many of those complaints have been investigated.
 - c. Of those complaints that have been investigated, how many investigations have concluded and how many are still under investigation.
 - d. How many instances of sexual misconduct or gender-based discrimination were found to have occurred.

District Response: Current information responsive to items 9. a. – d. is outlined below. Please note that these data reflect Title IX cases only, not unlawful discrimination or harassment cases based on a protected category, that falls outside of Title IX.

Cañada College:

2020 – 7 Title IX reports filed; 1 Investigated and policy violations found.

2021 – 2 Title IX reports filed; 0 investigated.

Skyline College:

2020 – 4 Title IX reports filed; 2 Investigated, 1 policy violation found.

2021 – 3 Title IX reports filed; 1 investigation pending.

College of San Mateo:

2020 – 11 Title IX reports filed; 1 Investigated and policy violation found.

2021 – 10 Title IX reports filed; 0 investigations.

We believe the above responses, along with the attached documents, provide a comprehensive summary of the District's Title IX processes. For your reference, we are also attaching a number of documents, including training materials, and reports presented to the Board of Trustees in regular meetings and full study sessions relating to Title IX. The District is committed to a fair and transparent Title IX process and Human Resources staff welcome the opportunity to engage faculty, staff and students in training and education about Title IX practices.

If you have any questions about any of the information in this memorandum, or desire additional information, please let us know.

ATTACHMENTS

Attachment #1 – Title IX Complaint Flow Chart and Resource Guide

Attachment #2 – Timeline to Complete Each Step of the Title IX Complaint Process

Attachment #3 – Title IX Organizational Charts

Attachment #4 – District Investigation of Complaints Summary Information Form

Attachment #5 – Title IX and SB 493 Training Presentation

Attachment #6 – Board Report (July 22, 2020) Relating to Effect of Title IX Final Rule and Regulations (Video of the presentation of the report can be found at:

<https://smccd.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=f3cbbac8-40cf-4bbb-a4cf-ac9401232548> (Time marker 3:01:33))

Attachment #7 – Board Study Session (September 23, 2020) Presentation on Title IX New Regulations (Video of the presentation of the report can be found at:

<https://smccd.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=af13b567-97a6-48f5-a26f-ac94016bb589> (Time marker 10:28))

Attachment #8 – Listing of Title IX, Sexual Harassment Prevention and Awareness and Anti-Discrimination Trainings

SMCCCD SEXUAL HARASSMENT RESOURCE GUIDE

EMERGENCY RESPONSE (24/7)

- **SMCCCD Public Safety**
Tel: 650-738-7000
- **911**

San Mateo County Sheriff's Office
400 County Center
Redwood City, CA
Tel: 650-216 - 7676

MEDICAL ASSISTANCE
**San Mateo County General Hospital
Emergency Room**
22 West 39th Avenue
San Mateo, CA
Tel: 650-573-2222

CONFIDENTIAL RESOURCES AND SUPPORT

These resources will keep your identity confidential unless and until you give permission to disclose it. **Telephones for some of these resources may be answered by a receptionist, so when you call, specify that you want to speak to a confidential resource.**

ON-CAMPUS

Personal Counseling & Wellness Services

College of San Mateo (CSM)
1700 W. Hillsdale Boulevard
San Mateo, CA 94402
Building 1, Room 147
(650) 574-6396
csmwellness@smccd.edu

<https://canadacollege.edu/pcc/>

Skyline College
Student Services
3300 College Drive
San Bruno, CA 94066
Building 19, Room 110
<https://www.skylinecollege.edu/healthandwellness/>

Cañada College
4200 Farm Hill Blvd.
Redwood City, CA
Building 5, Room 303
(650) 308-3573

OFF-CAMPUS (non-campus resource)

Sexual Assault Center for San Mateo County 24-Hour Hotline
Tel: 650-692-7273
Web: <https://www.rapetraumaservices.org/get-help/helpful-links/san-mateo-county-resources.html>

MAKE A REPORT

Reports of sexual harassment can be made to the following:

Title IX Coordinator

Mwanaisha Sims

Available M-F 8:00 a.m.—4:30 p.m.
Tel: 920-403-3018
Email: titleix@smccd.edu

Deputy Title IX Coordinators

Cañada College:
Max Hartman: 650-306-3132

College of San Mateo:
Lizette Bricker: 650-574-6640

Skyline College:
Newin Orante: 650-738-4333

Public Safety

Available 24/7
Tel: 650-738-7000
Email: tupper@smccd.edu

San Mateo Sheriff's Office
Available 24/7
400 County Center
Redwood City, CA
Tel: 650-216 - 7676

These are non-confidential resources. The identity of the individual (s) involved is gathered for reporting purposes but never publicly or openly shared. Private information is shared only with individuals who have a need to know.

PRELIMINARY INQUIRY OCCURS

San Mateo County Community College District will provide both the Complainant and the Respondent with information on the investigation process outlined in the District's policies and will seek to resolve the matter within 90 days of the receipt of a request for investigation. Please refer to the "Pathways for Addressing Sexual Misconduct" flowchart on the following page for an in-depth overview of the investigation process.

PATHWAYS FOR ADDRESSING SEXUAL HARASSMENT

The College learns about incident/or complaint

The complainant comes forward to **report** an experience, or a **mandatory reporter** alerts the college of an incident.

When the identity of the complainant is known, they will be provided with **information about resources and options**. An advocate will be provided.

The complainant may decide to report to the **local sheriff's office**, when appropriate.

The District/College will strive to honor the survivor/complainant's wishes regarding participation in any investigation. When the safety of the SMCCCD community is at risk, **the District reserves the right to take further action** to investigate the matter.

Filing a Complaint & Formal Grievance Process

The complainant may choose to **file a complaint**, and participate in the College grievance process. An advocate, process advisor and supportive measures will be provided.

The complainant and respondent are informed of their rights. An advocate and process advisor will be provided.

Supportive measures may be considered to support either party. These may include changes in academic or work-related activities.

A Formal investigation is conducted resulting in an investigation report.

The investigation report is made available to complainant and respondent.

A **Sexual Harassment Decision-maker(s)** will determine whether the respondent violated the District's policy.

If the decision-maker(s) determines a violation has occurred, the appropriate **sanction** will be rendered.

The complainant or the respondent may request an **appeal**.

If the appeal is granted, an Appeals Officer will make a determination after consideration of the basis of the appeal. The appeals decision is final.

Informal Resolution

The complainant may seek an **informal resolution**, which the respondent may or may not accept. *This option is not available for sexual assault reports*. An advocate and process advisor will be provided. Supportive measures will be offered to both parties.

If the respondent declines, the complainant may move to a formal resolution.

Both the complainant and respondent have the right to end the informal process and begin the formal process at any time prior to the resolution.

The goal is to find a solution that both parties can agree on moving forward.

END OF INFORMAL RESOLUTION PROCESS

Informal Resolution Process

The complainant may choose to do nothing further. Supportive measures may be implemented. An advocate will be provided.

END OF PROCESS

END OF FORMAL PROCESS

SUPPORT IS AVAILABLE THROUGHOUT THE WHOLE PROCESS

Targeted Timeline to Complete Each Step of the Process

Action Steps	Time Frame
Notice of Complaint, Investigation and Allegations (written)	Upon receiving a formal complaint (within five (5) business days).
Investigation completed	No set timeline for the investigation; minimum 30 business days from investigation starting to hearing. It is expected that the entire grievance process will be completed within 180 days but may be extended to account for District breaks, vacations, scheduling of witness interviews or complexity of investigation.
Upon receipt of preliminary investigation report and evidence, complainant and respondent review and respond	10 business days given to parties to submit a written response after review and inspection of the draft report.
Final summary of investigative report completed, including all evidence (hard copy or electronic version)	Final summary of report must be delivered (to respondent, complainant, and advisors) at least 10 business days prior to the hearing.
Pre-hearing meetings with respondent and complainant completed. Hearing date scheduled.	<p>These meetings will take place at least ten (10) business days prior to the hearing.</p> <p>Parties must have at least ten (10) days notice of the hearing being scheduled.</p>
Hearing takes place, outcome determined and parties notified of outcome.	No later than thirty (30) calendar days after the date of the hearing, the Title IX Coordinator and/or Hearing Facilitator send Notice of Outcomes letter to respondent and complainant.
Filing an appeal (must be in writing)	Either party may submit an appeal within ten (10) calendar days of the notification of the hearing outcome.
Grant/deny appeal request	Appeals officer must notify other Party of appeal within five (5) business days of receiving a Party's appeal. Allow non-appealing Party at least ten (10) calendar days to respond.

Appeal heard and final outcome determined

Appeals officer has thirty (30) business days to review, make a decision and notify parties.

District
Title IX
Coordinator

Cañada College

Deputy Title IX Coordinator
Deputy Title IX Coordinator
(Athletics)
Civil Rights Investigator(2)
Advisor (2)
Confidential Resources
Hearing Officer(s)
Appeal Officer

College of San Mateo

Deputy Title IX Coordinator
Deputy Title IX Coordinator
(Athletics)
Civil Rights Investigator (2)
Advisor (2)
Confidential Resources
Hearing Officer(s)
Appeal Officer

Skyline College

Deputy Title IX Coordinator
Deputy Title IX Coordinator
(Athletics)
Civil Rights Investigator(2)
Advisor (2)
Confidential Resources
Hearing Officers (2)
Appeal Officer

SMCCC District
Title IX Coordinator
Mwanaisha Sims, Interim

Cañada College

Deputy Title IX Coordinator - Max Hartman

Deputy Title IX Coordinator (Athletics) – Matt Lee

Title IX Investigator(2)

Michiko Kealoha

David Vera

Mary Ho

Advisor (2) – Bettina Lee and Mayra Arellano

Confidential Resources/Advocates – Marcos Chacon and Maria Quinones

Hearing Officer(s)/Appeal Officer – Karen Engel

SMCCC District
Title IX Coordinator
Mwanaisha Sims, Interim

College of San Mateo

Deputy Title IX Coordinator – Lizette Bricker
Deputy Title IX Coordinator (Athletics) – Andreas Wolf
Title IX Investigator (2) – Tarana Chapple
Advisor (2)- Carol Newkirk-Sakaguchi/Aaron Schaefer
Confidential Resources - Counseling Center
Hearing Officer(s) - Tiffany Zammit/Claudia Menjivar
Appeal Officer – Krystal Duncan

SMCCC District
Title IX Coordinator
Mwanaisha Sims, Interim

Skyline College

Deputy Title IX Coordinator – Newin Orante
Deputy Title IX Coordinator (Athletics) – Dino Nomicos
Title IX Investigator(2) – Will Minnich/Luis Escobar
Advisor (2) – Golda Margate
Confidential Resources – Personal Counseling Center
Perry Chen
Elizabeth Llamas
Hearing Officers (2) – Waldon Russell
Appeal Officer - TBD



SAN MATEO COUNTY
COMMUNITY
COLLEGE DISTRICT

Office of Human Resources

3401 CSM Drive, San Mateo, CA 94402
Tel: (650) 358-6808 • Fax: (650) 574-6574

DISTRICT INVESTIGATION OF COMPLAINTS

SUMMARY INFORMATION

OUR ROLE

We are neutral: Our role is to conduct an impartial, fair, and unbiased investigation into allegations of violations of District policies and procedure (“Policy”).

ADVISOR/SUPPORT PERSON

You have the right to bring an advisor or support person of your choice to all meetings called by us in connection with the investigation of the complaint.

Employees who are part of a union (AFT, AFSCME, CSEA) may bring a union representative.

INTERIM AND PROTECTIVE MEASURES

Interim measures are accommodations and other assistance provided to a complainant or respondent to temporarily address issues identified in a complaint. The measures are implemented on a case-by-case basis when we receive a notice of an incident. Interim measures can include no-contact orders, changes to class-work schedules, and other accommodations. Interim measures remain in place while the investigation is being conducted.

INVESTIGATION TIMELINE

Every reasonable effort will be made to complete a formal investigation within 90 calendar days from the date the complaint is received, recognizing that delays may be necessary based on such things as availability of parties, witnesses, documents, vacations, and academic breaks during the year. We will provide notice if the investigation timeline is extended beyond 90 calendar days.

SUMMARY OF INVESTIGATION PROCESS

An investigation typically involves the following:

- Interviews of the complainant (the person making the complaint), the respondent (the individual responding to the complaint), and any relevant witnesses;
- Collection of any relevant documentary evidence, including audio and video evidence;
- Drafting of a preliminary report that describes all of the evidence collected. Both complainants and respondents will have an opportunity to review their own statements that are contained in the preliminary investigation report and provide feedback prior to the issuance of the final investigation report; and
- Drafting of a final report that includes a determination of whether the respondent violated District policy.
- The District uses the preponderance of the evidence standard to review allegations of Policy violations. This standard means that, in determining whether the policy has been violated, the investigator will assess whether, based on the evidence, it is more likely than not that the respondent engaged in the prohibited conduct.
- Information received is not confidential, and may need to be disclosed to the other party and/or included in the investigation report to ensure a fair investigation.

NOTICE TO POLICE

For complaints that potentially involve criminal conduct, complainants may choose to file a complaint with local law enforcement agencies in addition to filing a complaint with the District. In some cases, the District may have an obligation to notify the police directly of allegations of misconduct.

The Police investigate to determine whether there has been a violation of criminal law. The Police and District investigations may proceed at the same time, and the outcome of one investigation does not determine the outcome of the other investigation.

RIGHT TO FILE A COMPLAINT WITH THE U.S. EEOC OR DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

In addition to filing a complaint with the District, all Employees also have the right to file employment discrimination/harassment/retaliation complaints with the U.S. Equal Employment Opportunity Commission (<https://www.eeoc.gov/employees/howtofile.cfm>) or the CA Department of Fair Employment and Housing (<https://www.dfeh.ca.gov/complaint-process/>).

PROHIBITION ON RETALIATION

We want you to know that, you have a right to be protected from retaliation related to the information you share with the District as part of an investigation.

Federal and state civil rights laws, as well as District policy, prohibit retaliation against an individual who brings concerns about possible civil rights violations or against an individual (such as a witness) for participating in the complaint or investigation process. If the District is made aware of retaliation against a complainant, witness, or respondent by other students, employees, or third parties, the District will immediately investigate to determine what has occurred. The District will take strong responsive action if it determines that retaliation occurred.

If you believe that you are experiencing retaliation, please contact us at (650) 358-6808 immediately.

AFFIRMATION

I affirm that I have received the Summary Information and the District Policy/Procedure.

Signature

Date

Printed Name

Formal Investigation Requested

FOR HR USE ONLY

Interim Measures Requested:

Investigator: _____

Date: _____



Title IX and SB 493 – Title IX Team

Prepared by Mwanaisha A. Sims

Director of Policy, Training and Compliance – Human Resources SMCCCD

Disclosure: Presentation is provided for information purposes only and should not be relied on to ensure legal compliance.

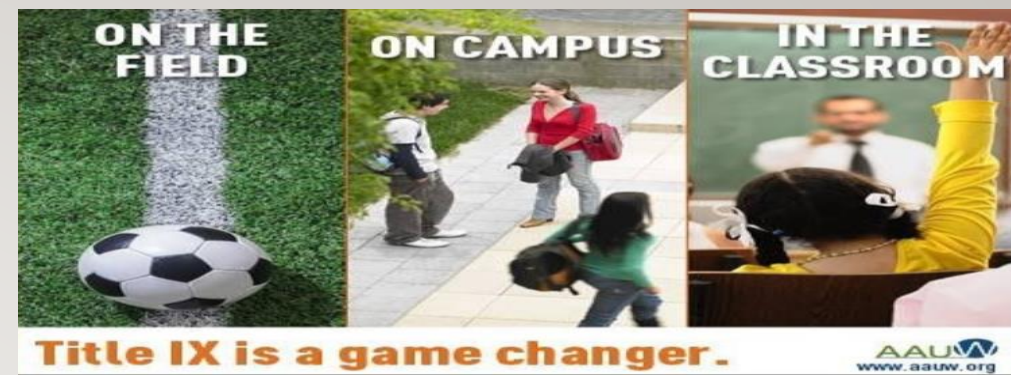
AGENDA

- Welcome/Introductions
- Title IX
- SB 493
- Overview of Requirements
- Title IX Team
- Trainings

LAWS AND REGULATIONS

- Title IX – Gender Equality
- SB 493 – Clarifies Ed code section 66262.5 regarding sexual harassment
- Title VII – Nondiscrimination
- Title 5 section 53000 et seq. (Community College Nondiscrimination Regulations)
- California Government Code Section 12940 et seq. (Fair Employment and Housing Act)
- Education Code Section 200 et. seq. (Nondiscrimination Statute)

WHAT IS TITLE IX?



- Title IX of the Education Amendments of 1972 states:
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or subjected to discrimination under any education program or activity receiving federal financial assistance.”
- Title IX **prohibits discrimination** on the basis of gender, which includes sexual harassment, sexual assault, sexual misconduct, relationship (dating or domestic) violence and stalking.

OVERVIEW OF SB 493

- Provides a new grievance procedure
- Seeks to clarify the process and provide grievance procedures for adjudicating student complaints of sexual harassment at postsecondary institutions, including sexual or gender-based violence, and dating or domestic violence.
- Establishes specific employee training requirements.

THE DISTRICT'S BOARD POLICIES AND ADMINISTRATIVE PROCEDURES

- 2.19 – Nondiscrimination, 2.19.1 – Procedure Nondiscrimination, 2.19.2 – Discrimination & Harassment Investigations
- 2.25 – Prohibition of Harassment – 2.25.1 – 2.25.2 Discrimination & Harassment Investigations
- 2.29 – Sexual Assault Education, Prevention & Reporting – 2.29.1 Sexual Assaults & Other Assaults on Campus

T9-OVERVIEW OF REQUIREMENTS

1. Title IX Personnel
2. Sexual Harassment
3. Supportive Measures
4. Emergency Removal
5. Informal Process
6. Investigation
7. Hearings
8. Finding
9. Appeals
10. Retaliation

TITLE IX TEAM

1. Title IX Coordinator

- Oversees Title IX compliance, accepts initial complaint, implements remedies

2. Investigator(s)

- Investigates the complaint and provides written findings

3. Hearing Officer/Decision Maker

- Conducts hearing, facilitates “cross-examination” & renders decision

4. Appeal Decision Maker

- Addresses appeal requests & renders decision

5. Informal Process Facilitator

- If informal process is feasible, likely a separate facilitator
- 

SEXUAL HARASSMENT DEFINED

Conduct on the *basis of sex* under one of following:

1. **Quid Pro Quo Harassment**

- Employee conditioning any educational opportunity or benefit on the participation in unwelcome sexual conduct (Only applies to Faculty to Student)

2. **Hostile Environment Sexual Harassment**

- Unwelcome conduct that a reasonable person finds to be so severe, pervasive and objectively offensive that effectively denies equal educational access

3. **“Sexual Acts”**

- Sexual assault (Clery Act), dating violence, domestic violence, or stalking (VAWA)
- 

SUPPORTIVE MEASURES

1. Requirement to Offer

- Must be offered to anyone as soon as institution has notice of possible Title IX issue

2. Avoid Burden on Parties

- Non-punitive, non-disciplinary and not unreasonably burdensome to the other party

3. Individualized

- Ensure equal educational access, protect safety or deter sexual harassment

4. Examples

- Counseling, course-related adjustments, modify schedule, escort, increased security and monitoring, and mutual restrictions on contact between the

EMERGENCY REMOVAL

1. Institution may remove respondent
2. Undertake individualized safety and risk analysis
3. Analysis reveals immediate threat to the physical health or safety of individual
4. Notice to respondent
5. Opportunity to challenge decision immediately following the removal
6. Cannot modify rights under IDEA, Section 504, or ADA

INFORMAL RESOLUTION PROCESS

1. Optional Process

- May use informal resolution process on a case-by-case basis

2. Informed, Mutual Consent

- Both parties must give voluntary, informed, and written consent but cannot be required as a condition of enrollment/employment

3. Right to Withdraw from Informal Process

- Either party can withdraw from informal process at any time and resume formal process

4. Not Suitable for Student vs. Employee Matters

- No informal process for allegations that employee harassed a student

INVESTIGATION

1. **Written Notice to Both Parties** – Of investigation, potential policy violations, allegations, all interviews, changes in process, meetings, hearings, appeals, decisions
2. **Trained Investigator** – Should not also be designated as a hearing officer or appeal officer
3. **Equal Treatment** - Both parties equal opportunity for advisor, avoid credibility determinations based on role, provide same opportunity to present and consider evidence, no orders to restrict discussing allegations or to gather evidence
4. **Evidence Requirements** - Investigator has burden to gather evidence & provide evidence to both parties with 10 days to review and comment

INVESTIGATION...CONTINUED

5. **Burden of Proof** – Preponderance of the Evidence or Clear & Convincing Evidence
6. **Report Requirement** – Report provided to both parties with 10 days to review & respond
7. **Presumption Like “Innocent Until Proven Guilty”** - Must presume respondent is not responsible for the alleged conduct
8. **Dismissal Requirement** - *Must* dismiss if allegations do not meet the definition of sexual harassment, or conduct occurred outside of program or activity, or conduct did not occur against person in U.S. *May* dismiss if complainant requests, respondent is no enrolled/employed or circumstance prohibit gathering of sufficient evidence

HEARINGS

Live Hearing with Cross-Examination Required For Postsecondary Institutions

1. **Separate Room Virtual Option**

- At request of either party, entire live hearing conducted with parties separate through technology

2. **Cross Examination**

- Each party's advisor may ask other party and witnesses relevant, follow-up and credibility questions

3. **Rape Shield Protection** - Evidence about complainant's prior sexual behavior irrelevant unless offered to prove someone else committed the conduct

-

DECISION AFTER HEARING

1. Decision Maker Determines Responsibility

- Cannot be the Title IX Coordinator or investigator
- Must be trained to rule on relevant questions and weigh evidence
- Understands the “preponderance of the evidence” or “clear and convincing evidence”

2. Written Decision


- Includes the findings of fact, conclusion, rationale, disciplinary sanction, remedies to the complainant, how to file an appeal

APPEALS

1. **Equal Opportunity**

- Both parties must have opportunity to appeal the determination of responsibility or the dismissal of a formal complaint or allegations

2. **Bases for Appeal**

- Procedural irregularity that affected the outcome;
 - New evidence that was not reasonably available & could have affected outcome; or
 - Conflict of interest or bias generally or specifically by Title IX Coordinator, investigator, decision-maker
 - May include other bases for appeal if both parties have equal right to use
- 

“TO DO” LIST

- Training for Title IX Team: SUNY, ATIXIA, SAFECOLLEGES
Title IX Coordinator, Investigators, Facilitator of Informal Resolution Process, Advisors, Hearing Officer/Decision Maker, Appeal Officers
- Train Employees on Reporting Responsibilities
- Post Most Current Title IX Training Materials on Website
- Title IX – Student Training

KEENAN SAFECOLLEGE SYSTEM

[HTTPS://SMCCD-KEENAN.SAFECOLLEGES.COM/ADMIN/MAIN](https://smccd-keenan.safecolleges.com/admin/main)

- Title IX and gender equity in athletics
- Title IX and Sexual Harassment
- Title IX and Sexual Harassment Prevention for employees
- Title IX: Regulations and Roles Overview
- Title IX: Roles of employees
- Workplace Bullying Awareness and Prevention
- Making campus safe for LGBTQ+ students
- Sexual violence awareness for employees (campus SAVE Act)
- Discrimination Awareness in the workplace

WHERE TO GET MORE INFORMATION

Point of Contact for Faculty and Staff related matters:

Mwanaisha A. Sims, J.D., M.P.A., Director of Policy, Training, and Compliance of Human Resources – (650) 358-6808; simsm@smccd.edu

Point of Contact for Title IX related matters:

- Lizette Bricker (CSM)
- Dr. Newin Orante, Title IX Coordinator (Skyline)
- Max Hartman (Cañada)

Links to Student Conduct Policy and Title IX related Policy:

- <http://smccd.edu/titleix/policiesandprocedures.php>
- <https://smccd.edu/ethics.php>

San Mateo County Community College District

July 22, 2020

BOARD REPORT NO. 20-7-4C

TO: Members of the Board of Trustees

FROM: Michael Claire, Chancellor

PREPARED BY: Mwanaisha A. Sims, Director of Policy, Training and Compliance, Human Resources

UPDATE ON EFFECT OF THE TITLE IX FINAL RULE AND NEW REGULATIONS

This report provides a general overview of changes relating to recent Title IX regulations issued by the U.S. Department of Education (DOE) on May 6, 2020, with implementation on August 14, 2020. The final regulations govern campus sexual assault under Title IX, the law prohibiting sex discrimination at federally-funded institutions. Due to the complexity and number of changes of the new regulations, District staff will present a full study session on this topic, with the assistance of outside counsel, at a time agendized by the Board in the coming months.

These regulations will be the first Title IX guidance published by DOE's Office of Civil Rights (OCR) to go through a formal notice and comment process since 1997, and will have the force of law, whereas guidance issued by the previous administration in 2011 and 2014 did not.

Under this new guidance, major changes include:

1. Narrowing definition of sexual harassment; (a) Unwelcome conduct on the basis of sex that a reasonable person would determine is so "severe, pervasive and objectively offensive" that it effectively denies a person equal access to the recipient's education program or activity; (b) Quid pro quo harassment, which includes teacher and student but excludes student and student; or (c) Sexual assault, dating violence, domestic violence, or stalking as defined in the Clery Act/Violence Against Women Act ("VAWA").
2. Live Hearings that include schools providing an advisor to each party for cross-examination.
3. Clear and distinct roles of each person on the Title IX Team; at the hearing, the decision maker(s) cannot be the investigator of the complaint or the Title IX Coordinator. The decision maker(s), cannot be the appeals officer.
4. Both parties have a right to appeal a determination regarding responsibility on the following bases: (a) Procedural irregularity that affected the outcome of the matter; (b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and (c) The Title IX Coordinator, investigator(s), or decision-maker(s) 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.
5. No Title IX jurisdiction for conduct that occurs off campus via social media if not tied to an educational program or activity; no Title IX jurisdiction for study abroad programs.

6. A school must make all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.
7. Shift from Mandatory Reporter to Responsible Employee with actual knowledge.

The District's Title IX Team has been working to comply with these new regulations. The team currently consists of each of the campuses' Title IX Coordinators and the District Director of Policy, Training and Compliance as the District Investigator. In planning and preparing for the new regulations, the Title IX team has been expanded to include the campuses' Student Conduct Disciplinary Officers and District Human Resources Director.

Because all colleges and universities will be responsible for implementing these new regulations, the District is meeting with colleagues in the Bay 10 Area Human Resources and Region Eight Title IX groups to discuss best practices and sharing plans for implementation. Further, the District team is participating in statewide trainings and workshops to better understand the impact of the regulations and to design necessary revisions to District policies, practices, procedures and training.

The District is diligently working on completing the following tasks by August 14, 2020, to be in compliance with the new regulations:

- Preparing "interim" policies and regulations, as it relates sexual harassment and sexual misconduct definitions, notice to parties and timeline for investigations.
- Training administrators (listed above) on new duties and responsibilities, a school must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on [1] the definition of sexual harassment in [2] the scope of the recipient's education program or activity, [3] how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and [4] how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. A school must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- Training employees on reporting responsibilities
- Revising and posting current Title IX training materials on Websites
- Updating District Website in compliance with Title IX and California law
- Reviewing existing compliance officer titles and include "Title IX Coordinator" (where appropriate)
- Determining Title IX Team: Title IX Coordinator, Investigators, Facilitator of Informal Resolution Process, Advisors, Hearing Officer/Decision Maker, Decision Maker for Appeals, etc.

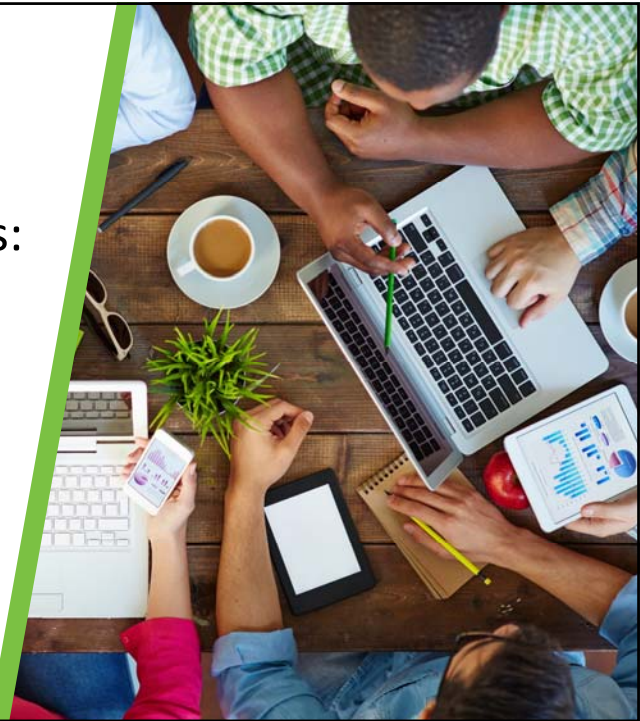


The Title IX New Regulations: *What Higher Education Institutions Must Know*

San Mateo County Community
College District

PRESENTED BY:
Mellissa Gallegos, Senior Associate

Cerritos • Fresno • Irvine • Marin • Pasadena • Pleasanton • Riverside • Sacramento • San Diego



Disclaimer

This AALRR presentation is intended for informational purposes only and should not be relied upon in reaching a conclusion in a particular area of law. Applicability of the legal principles discussed may differ substantially in individual situations. Receipt of this or any other AALRR presentation/publication does not create an attorney-client relationship. The Firm is not responsible for inadvertent errors that may occur in the publishing process.

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Agenda

- Effect of Title IX Final Rule/New Regulations
- Overview of Requirements: Top 10 Issues
- “To Do” List



Effect of New Title IX Regulations

1. Focus on Regulations and Guidance

- Full force and effect of law
- OCR 2001, Prior OCR 2017 Guidance, Final 2020 Rule/Regulations

2. Overall Intent of Changes

- “strengthen Title IX protections for survivors of sexual misconduct” ... “also provide due process protections to students facing accusations of sexual misconduct”

3. Consider California Law

- Be wary of “national” advice, but watch for preemption of state law

4. K-12 vs. Post-Secondary Institutions

- Some overlap, but key differences (e.g. required/optional hearings)

5. Court Challenges

- Complaints challenging new regulations filed, but no injunction yet

Overview of Requirements

Top Ten Issues

- | | |
|------------------------|------------------|
| 1. Title IX Personnel | 6. Investigation |
| 2. Sexual Harassment | 7. Hearings |
| 3. Supportive Measures | 8. Finding |
| 4. Emergency Removal | 9. Appeals |
| 5. Informal Process | 10. Retaliation |

1. Title IX Team

- 1. Title IX Coordinator**
 - Oversees Title IX compliance, accepts initial complaint, implements remedies
- 2. Investigator(s)**
 - Investigates the complaint and provides written findings
- 3. Hearing Officer/Decision Maker**
 - Conducts hearing, facilitates “cross-examination” & renders decision
- 4. Appeal Decision Maker**
 - Addresses appeal requests & renders decision
- 5. Informal Process Facilitator**
 - If informal process is feasible, likely a separate facilitator

2. Sexual Harassment Defined

Conduct on the *basis of sex* under one of following:

1. Quid Pro Quo Harassment

- Employee conditioning any educational opportunity or benefit on the participation in unwelcome sexual conduct

2. Hostile Environment Sexual Harassment

- Unwelcome conduct that a reasonable person finds to be so severe, pervasive *and* objectively offensive that effectively denies equal educational access

3. “Sexual Acts”

- Sexual assault (Clery Act), dating violence, domestic violence, or stalking (VAWA)

3. Supportive Measures

1. Requirement to Offer

- Must be offered to anyone as soon as institution has notice of possible Title IX issue

2. Avoid Burden on Parties

- Non-punitive, non-disciplinary and not unreasonably burdensome to the other party

3. Individualized

- Ensure equal educational access, protect safety or deter sexual harassment

4. Examples

- Counseling, course-related adjustments, modify schedule, escort, increased security and monitoring, and mutual restrictions on contact between the parties

4. Emergency Removal

1. Institution may remove respondent
2. Undertake individualized safety and risk analysis
3. Analysis reveals immediate threat to the physical health or safety of individual
4. Notice to respondent
5. Opportunity to challenge decision immediately following the removal
6. Cannot modify rights under IDEA, Section 504, or ADA

5. Informal Resolution Process

- 1. Optional Process**
 - May use informal resolution process on a case-by-case basis
- 2. Informed, Mutual Consent**
 - Both parties must give voluntary, informed, and written consent but cannot be required as a condition of enrollment/employment
- 3. Right to Withdraw from Informal Process**
 - Either party can withdraw from informal process at any time and resume formal process
- 4. Not Suitable for Student vs. Employee Matters**
 - No informal process for allegations that employee harassed a student

6. Investigations

1. Written Notice to Both Parties

- Of investigation, potential policy violations, allegations, all interviews, changes in process, meetings, hearings, appeals, decisions, etc.

2. Trained Investigator

- Should not also be designated as a hearing officer or appeal officer

3. Equal Treatment

- Both parties equal opportunity for advisor, avoid credibility determinations based on role, provide same opportunity to present and consider evidence
- No orders to restrict discussing allegations or to gather evidence

4. Evidence Requirements

- Investigator has burden to gather evidence & provide evidence to both parties with 10 days to review and comment

6. Investigations, continued

5. Burden of Proof

- Preponderance of the Evidence or Clear & Convincing Evidence

6. Report Requirement

- Report provided to both parties with 10 days to review & respond

7. Presumption Like “Innocent Until Proven Guilty”

- Must presume respondent is *not responsible* for the alleged conduct

8. Dismissal Requirement

- Must dismiss if allegations do not meet the definition of sexual harassment, or conduct occurred outside of program or activity, or conduct did not occur against person in US
- May dismiss if **complainant** requests, respondent is not enrolled/employed or circumstance prohibit gathering of sufficient evidence

7. Hearings

Live Hearing with Cross-Examination Required For *Postsecondary Institutions*

1. Separate Room Virtual Option

- At request of either party, entire live hearing conducted with parties separate through technology

2. Cross-Examination

- Each party's advisor may ask other party and witnesses relevant, follow-up and credibility questions
- Failure to be at hearing for cross-exam eliminates certain evidence

3. Rape Shield Protections

- Evidence about complainant's prior sexual behavior irrelevant unless offered to prove someone else committed the conduct

8. Decision After Hearing

1. Decision Maker Determines Responsibility

- Cannot be the Title IX Coordinator or investigator
- Must be trained to rule on relevant questions and weigh evidence
- Understands the “preponderance of the evidence” or “clear and convincing evidence” standard

2. Written Decision

- Includes the findings of fact, conclusion, rationale, disciplinary sanction, remedies to the complainant, how to file an appeal

9. Appeals

1. Equal Opportunity

- Both parties must have opportunity to appeal the determination of responsibility or the dismissal of a formal complaint or allegations

2. Bases for Appeal

- Procedural irregularity that affected the outcome;
- New evidence that was not reasonably available & could have affected outcome; or
- Conflict of interest or bias generally or specifically by Title IX Coordinator, investigator, decision-maker
- May include other bases for appeal if both parties have equal right to use

10. Retaliation

1. Code of Conduct v. Title IX

- Retaliation includes pursuing “Code of Conduct” violation based on the same facts alleged in a formal complaint in order to interfere with a party’s Title IX rights; fact specific analysis

2. Confidentiality

- Keep complainant, respondent, and witness confidential unless required by law “or as necessary to carry out Title IX proceeding.”

3. First Amendment

- Parties exercising 1st Amendment rights is not retaliation

4. False Statement Charge

- Recipient charging individual with making a false statement in bad faith during Title IX process is not retaliation
- Responsibility not sufficient to conclude bad faith false statement

“To Do” List

- Review existing compliance officer titles & include “Title IX Coordinator” where appropriate
- Prepare and Approve “Interim” Policy and Regulations
- Determine Title IX Team:
 - Title IX Coordinator, Investigators, Facilitator of Informal Resolution Process, Advisors, Hearing Officer/Decision Maker, Decision Maker for Appeals, etc.
- Train Administrators Listed Above
- Train Employees on Reporting Responsibilities
- Post Most Current Title IX Training Materials on Website
- Update District Website via Title IX and California Law

Thank You

For questions or comments, please contact:

{ Mellissa Gallegos
mgallegos@aalrr.com }

Title IX, Sexual Harassment and Anti-Discrimination Trainings

1/9/2020

1/22/2020 – Study Abroad Title IX Presentation

1/17/2020

6/24/2020

8/6/2020

8/10/2020

8/12/2020

8/21/2020

9/9/2020

9/10/2020

9/16/2020

9/22/2020

9/23/2020

10/14/2020

10/30/2020

11/5/2020

1/27/2021