



FOOTHILL-DE ANZA
Community College District

Book	Administrative Procedures
Section	Chapter 3 General Institution
Title	Sex-based Violence, Harassment & Discrimination
Number	AP 3540
Status	Active
Legal	Education Code Section 67385.7 Education Code Section 67386 Education Code Section 67385 20 U.S. Code Section 1092(f) U.S. Code Section 1681 34 Code of Federal Regulations Section 668.46(b)(11)
Adopted	<i>Draft</i>

From Board Policy 3540: “Members of the Foothill – De Anza Community College District (FHDA) community, including employees, students, guests and visitors have the right to be free from discrimination. Any form of sex-based violence, harassment, or discrimination interferes with those rights.

All acts of sex-based violence, harassment, or discrimination are prohibited. The district will respond promptly and equitably to an allegation of sex-based violence, harassment, or discrimination or retaliatory harassment as a result of a complaint about sex-based violence, harassment, or discrimination and, shall provide protective and other interim measures to reasonably ensure that such conduct ends and is not repeated. Further, the **district will respond to remedy the effects** on the [Reporting Party](#) and community, including commensurate disciplinary sanctions when a Respondent is found to have violated this policy.

The complete language of Board Policy 3540 Sex-based Violence, Harassment & Discrimination is located at: <http://www.boarddocs.com/ca/fhda/Board.nsf/goto?open&id=9U5PUR6583E5>. Key terms included in BP and AP 3450 are defined beginning on page 20 of AP 3450.

Consent

In order for individuals to engage in sexual activity of any type with each other, there must be affirmative, conscious, and voluntary [consent](#) prior to and during sexual activity. Failure to have affirmative, conscious, and voluntary consent for any type of sexual activity **is a form of sex-based violence, harassment, or discrimination.**

Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between the individuals does not establish consent. Silence or passivity without actions demonstrating permission cannot be assumed to show consent. Consent, once given, can be withdrawn at any time.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand. Additionally, individuals may lack the intellectual or physical ability to consent as a result of a disability.

Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing, and voluntary consent to any sexual activity is equivalent to a “no.”

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

To ensure that our community has an understanding of the scope of this policy and these procedures, each campus shall inform students, faculty, staff, and administrators regarding Awareness, Bystander Intervention, Prevention and Risk Reduction, Resources, and Reporting at least annually. This may include training, informational materials, website information, and other mechanisms for disseminating information and educating members of the district community.

The Sex-based Violence, Harassment & Discrimination policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom. [Academic freedom](#) encompasses the freedom to study, teach and express ideas and viewpoints, including unpopular and controversial ones, without censorship, political restraint or retribution.

Each Campus and Central Services shall assign a Campus/Central Services Coordinator responsible for: ensuring compliance with relevant regulations such as state Title 5, federal Title IX, federal Title VII, and related laws; addressing complaints of sex-based violence, harassment, or discrimination; and enforcement of this policy. The District shall also assign a District Officer responsible for ensuring compliance and providing support to the colleges and central services.

Overview Of Our Expectations With Respect To Consensual Relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal

positions (such as teacher and student, or supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers authority or power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of sexual misconduct.

The District does not regulate employee's private choices regarding personal relationships when these relationships do not interfere with the goals of the District or create a conflict of interest. However, for the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student, supervisor-supervisee) are highly discouraged. Further, employees may not engage in relationships that interfere with or create a conflict regarding the employee's performance of his or her duties.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role or has substantial influence over the other party are unethical and prohibited. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their own supervisor. This will often result in removing the employee from the supervisory or evaluative responsibilities, or reassigning the employee or student out of being supervised or evaluated by someone with whom they have established a consensual relationship.

NOTE: These procedures are not a substitute for immediate help and support that is available through campus and community resources. These procedures are best accessed once the individual is safe.

Immediate help: 9-1-1

[Santa Clara Valley Medical Center – Sexual Assault Response Team: 751 S. Bascom Avenue, San Jose, CA 95128](#)

Our Procedures are intended to provide prompt and equitable resolution of sex-based violence, harassment, or discrimination concerns.

Prevention and Educational Programs

[Video: Not Anymore](#)

[De Anza College Title IX Resources](#)

[Foothill College Title IX Resources](#)

[National Sexual Violence Resource Center \(NSVRC\)](#)

[RAINN \(Rape, Abuse & Incest National Network\)](#)

Whether the Sex-based Violence, Harassment, or Discrimination happened to you, someone you know or you witnessed or became aware of it, We Want You To Report It.

The college and or the district will address all reports of sex-based violence, harassment or discrimination. Reports made by third parties will initially be addressed as informal complaints pending review by the appropriate Title IX Coordinator.

Why make a Sex-Based Violence, Harassment, or Discrimination Report?

Making a report may:

- help make our campuses safer
- potentially prevent someone else from being hurt by the same individual
- lead to disciplinary sanctions via the appropriate channel.

Making a report will:

- allow campus/district officials to take immediate steps to eliminate misconduct
- allow campus/district officials to put interim measures in place pending a resolution
- allow campus/district officials to implement remedial action to address the effects of the misconduct on the Reporting Party and the campus community

Making a report does not:

- initiate criminal proceedings

How to Report Sex-Based Violence, Harassment, or Discrimination

Note: You have the right to make an oral or written report to the college or district under these procedures and file a report with law enforcement simultaneously. A criminal investigation of allegations of sex discrimination, including sex-based violence, harassment, or discrimination, does not relieve the college or district of its duty to resolve such allegations promptly and equitably.

Sex-Based Violence, Harassment, or Discrimination Reports not involving criminal proceedings may be made by:

1. Contacting a Title IX Coordinator/Officer directly. See Title IX Coordinators/Officers listed below.
2. Submitting a written complaint that specifies that you wish to file a Formal Complaint. You are encouraged, but not required, to use this form.
http://hr.fhda.edu/_downloads/UnlawfulDiscrimForm_Rev%20October%202015.pdf
3. Notifying a [“Responsible Employee”](#), which is defined in the Definitions below.

Sex-Based Violence, Harassment, or Discrimination Reports that initiate criminal proceedings may be made by:

1. Filing a report with the Foothill–De Anza Police Department
2. Filing a report with law enforcement where the incident occurred

Note: Law enforcement agencies do not automatically notify campus authorities.

Title IX Coordinator Role and Contact Information

The Title IX Coordinator oversees compliance with all aspects of the Sex-based Violence, Harassment & Discrimination policy for his/her assigned location. The Coordinator is also responsible for identifying and addressing any patterns or systemic problems identified via complaints, reports, and other notice of discrimination, including harassment, on the basis of sex. While it is the responsibility of each campus and the district to take immediate and effective steps to end sex-based violence, harassment, or discrimination, the Title IX Coordinator has the authority to ensure that those steps get taken.

Each Campus Title IX Coordinator reports directly to the President of the College. The Central Services Title IX Coordinator reports directly to the Vice Chancellor of Human Resources. The District Title IX Officer reports directly to the Chancellor of the District. Questions about this policy and related procedures can be directed to any Title IX Coordinator or District Title IX Officer.

Anyone wishing to make a report relating to sex-based violence, harassment, or discrimination may do so by reporting the concern to the appropriate college or district Title IX Coordinator.

De Anza College Title IX Coordinator

Vice President, Student Services
21250 Stevens Creek Boulevard
Cupertino, CA 95014
(408) 864-8989
datitleixcoordinator@fhda.edu

Foothill College Title IX Coordinator

Associate Vice President, Student Services
12345 El Monte Road
Los Altos Hills, CA 94022
(650) 949-7823
fhtitleixcoordinator@fhda.edu

Central Services Title IX Coordinator

Director of Human Resources
12345 El Monte Road
Los Altos Hills, CA 94022
(650) 949-6210

cstitleixcoordinator@fhda.edu

District Title IX Officer

Vice Chancellor, Human Resources/EO

12345 El Monte Road

Los Altos Hills, CA 94022

(650) 949-6210

vchumanresources@fhda.edu

Interim Measures and Long-term Remedies

Interim measures and long-term remedies will depend on the nature of the incident and Respondent's status; i.e., employee, student, third party, etc. Possible interim measures and additional remedies include:

- No-contact order between Respondent and Reporting Party
- Limiting Respondent's access to certain college facilities or activities (including "social probation")
- Limiting Respondent's access to campus to specific times of day
- Alteration of class schedules
- Changing campus work schedules or job assignments
- Administrative leave from on-campus employment for the Respondent
- Administrative removal from athletic teams or other student organizations for the Respondent
- Rescheduling of exams, papers, or other assignments
- Assigning the Respondent an Incomplete for a class
- Authorized withdrawal from a class
- Alternative course completion options
- Voluntary leave of absence
- Access to counseling services
- Providing an escort to ensure safe movement between classes and activities for the Reporting Party
- Providing academic support services for the Reporting Party
- Placing a Respondent employee on administrative leave
- Any other remedy that can be tailored to the involved individuals to achieve the goals of the Policy

When taking steps to separate the Reporting Party and the Respondent, the District will minimize the burden on the Reporting Party.

Retaliation Prohibited

Retaliation against the Reporting Party, or anyone associated with her/him due to her/his

report, whether by students, employees, or third parties participating in FHDA programs and activities, will not be tolerated.

What Options are there for *Confidentially* Discussing a Report of Sex-Based Violence, Harassment, or Discrimination?

A Reporting Party wishing to discuss sex-based violence, harassment, or discrimination confidentially may access either of these two sources:

- **Professional Mental Health Counselors.**
Generally, professional, licensed mental health counselors who are working in that capacity in one of the district's Psychological Services offices located on each campus (excluding academic counselors) are required to maintain confidentiality and may not report any personally identifiable information about an incident to the Title IX coordinator without a Reporting Party's permission.
- **Health Services Professionals**
Generally, professional, licensed health practitioners working in that capacity in one of the district's Health Centers located on each campus are required to maintain confidentiality and may not report any personally identifiable information about an incident to the Title IX coordinator without a Reporting Party's permission.

Both Professional Mental Health Counselors and Health Services Professionals, while maintaining a Reporting Party's confidentiality, are required to report the nature, date, time, and general location of an incident to the Title IX Coordinator. This limited report – which includes no information that would directly or indirectly identify the Reporting Party – helps keep the Title IX Coordinator informed of the general extent and nature of sex-based violence, harassment, or discrimination on and off campus so the coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Before reporting any information to the Title IX Coordinator, these individuals will consult with the Reporting Party to ensure that no personally identifying details are shared with the Title IX Coordinator.

Professional mental health counselors or health services professionals shall inform the Reporting Party of his/her right to file a sex-based violence, harassment, or discrimination complaint with the College or District and a separate complaint with campus or local law enforcement, and offer to assist with the filing of such complaints, if needed. A Reporting Party who speaks to a professional mental health counselor or health services professional is hereby notified that, if the Reporting Party wants to maintain confidentiality, the College will be unable to conduct a full and complete investigation into the particular incident or pursue corrective action against the Respondent.

Even so, these professionals will still assist the Reporting Party in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations, disability, health or mental health services, and changes to working or course schedules. A Reporting Party who at first requests confidentiality may later decide to file a complaint with

the campus or report the incident to law enforcement, and thus have the incident fully investigated. These professionals shall provide the Reporting Party with assistance at the request of the Reporting Party.

Exceptions to Confidentiality: While these professionals may maintain a Reporting Party's confidentiality vis-à-vis the College, they may have reporting or other obligations under state and federal law.

For example, California law states that individuals who have contact with minors via their employment are "mandated reporters." Mandated Reporters **must** make a report "whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect". This may be required even if the individual is no longer a minor at the time a mandated reported acquires the knowledge.

Medical/Mental health professionals are also required to report threats of violence when the professional believes the report represents a serious danger of violence to another.

Threats to the Community: If the College determines that the Respondent poses a serious and immediate threat to the College community, the Foothill De Anza Police Department may be called upon to issue a timely warning to the community. Any such warning should not include any information that identifies the Reporting Party.

Responsibilities of Employees who are Not Considered Confidential as Described Above

Foothill–De Anza Community College District considers *all* non-confidential employees "Responsible Employees." A "Responsible Employee" is an employee who has the duty to report incidents of sex-based violence, harassment, or discrimination to the appropriate Title IX Coordinator. This includes all relevant details about an allegation of sex-based violence, harassment, or discrimination shared by the Reporting Party, including the names of the Reporting Party and Respondent, any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

When a Reporting Party tells a Responsible Employee about an incident of sex-based violence, harassment, or discrimination, the Reporting Party has the right to expect the College to take immediate and appropriate steps to respond to the report and to resolve the matter promptly and equitably. Additionally, if a Responsible Employee becomes aware of an incident, via observation or other means, of sex-based violence, harassment, or discrimination, the Responsible Employee has an obligation to inform the Title IX Coordinator so that the college may take appropriate action to resolve the matter.

NOTE to Reporting Parties: To the extent possible, information reported to a Responsible Employee will be shared only with people responsible for handling the College's response to the report.

What are the Resolution options?

There are two types of resolution procedures: **Informal Resolution Procedure** and **Formal Resolution Procedure**. In either case the Reporting Party also has the additional option of filing a complaint with the Office for Civil Rights (OCR) (for students), or the [Department of Fair Employment and Housing](#) (DFEH) or [Equal Employment Opportunity Commission](#) (EEOC) (employees) at any time.

An Informal Resolution Procedure is a process that a Reporting Party voluntarily undertakes with the appropriate campus or district Title IX Coordinator in an attempt to reach a resolution that is acceptable to both the Reporting Party and the Respondent. In this procedure the Title IX Coordinator does not make a determination as to whether a Respondent has violated District policy. Instead, the Title IX Coordinator attempts to facilitate a mutually acceptable resolution, through use of conflict resolution techniques, mediation, or investigation. In the informal process, the Title IX Coordinator will speak to those individuals whose involvement is necessary to facilitate a resolution to a complaint. Frequently, this includes only the Reporting Party and Respondent, but may include others when deemed necessary. Under this process, the Reporting Party will not be required to work out the problem directly with the Respondent. The informal process is completed when complainant and respondent have reached a resolution which both deem satisfactory. Mediation is not appropriate even on a voluntary basis for cases of alleged sexual assault. The Reporting Party and the Respondent have the right to end the informal resolution process at any time and begin the formal process as detailed below.

A Formal Resolution Procedure includes an official determination as to whether a Respondent(s) has violated the District's policy on sex-based violence, harassment, or discrimination. A Formal Resolution Procedure includes:

1. Filing a written report
2. A meeting with the Title IX Coordinator (or his/her designee)
3. An assessment of necessary Interim/Remedial Measures
4. Investigation
5. Administrative Determination
6. Notification of outcome to the Reporting Party and Respondent
7. Remedial actions and possible disciplinary sanctions if discrimination, including harassment, is found
8. Appeal (if any)
9. Notification of outcome sent to appropriate District, State and/or Federal agencies

If the Reporting Party requests [confidentiality](#), it is the responsibility of the Title IX Coordinator to determine if the request can be honored by evaluating the request in the context of the college's responsibility to take all necessary steps to provide a safe and nondiscriminatory environment for all students and employees, including the Reporting Party, and the rights of the respondent. If the Title IX Coordinator determines that it can respect the Reporting Parties request for confidentiality, the College and the District should take all reasonable steps to respond to the report consistent with that request.

If the Title IX Coordinator determines that a Reporting Party's confidentiality cannot be maintained, the Title IX Coordinator will inform the Reporting Party prior to starting an investigation and will, to the extent possible, only share information with others as needed to properly respond to the report.

The Title IX Coordinator will remain ever mindful of and shall implement reasonable measures to insure the Reporting Party's well-being. Retaliation against the Reporting Party, whether by students, employees, or third parties participating in FHDA programs and activities, will not be tolerated. Further, the Reporting Party is not required to participate in any investigation or disciplinary proceeding; however, failing to participate may affect the campus/district's ability to effectively respond to the complaint. The Title IX Coordinator is responsible to:

- take ongoing steps to protect the Reporting Party from [retaliation](#) or harm and work with the Reporting Party to create a safety plan
- assist the Reporting Party in accessing other available victim advocacy, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus;
- provide other security and support, which could include issuing a no-contact order, helping arrange a change to working arrangements or course schedules for the Respondent or the Reporting Party pending the outcome of an investigation, or adjustments for assignments or tests;
- provide the Reporting Party with assistance if the Reporting Party wishes to report a crime to campus or local law enforcement; and
- implement additional measure, as needed, to protect the Reporting Party from retaliation.

Because the District is under a continuing obligation to address the issue of sex-based violence, harassment and discrimination campus-wide, including sex-based violence, harassment, or discrimination that initially occurs off-campus but results in a hostile environment on campus, reports of such conduct (including non-identifying reports) will also prompt the College to consider broader remedial action, such as: increasing monitoring, supervision or security at locations where the reported conduct occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments surveys; and/or, revisiting its policies and practices.

If the Title IX Coordinator determines that a Reporting Party's request for confidentiality can be respected, the College will also take immediate action as necessary to protect and assist the Reporting Party.

What Resources are available?

Campus resources are NOT available 24 Hours. See below for 24-hour services

[De Anza College Health Services](#)
[Hinson Campus Center, Lower Level](#)

408.864.8732

[De Anza College Psychological Services](#)
[Student and Community Services Building](#)
[Room 127](#)

408.864.8864

[Foothill College Health Services](#)
[Campus Center, Room 2126](#)

650.949.7243

[Foothill College Psychological Services](#)
[Campus Center, Room 2120](#)

650.949.7910

24 Hour Crisis Service for Santa Clara County 1.855.278.4204

What to expect after filing an *Informal Complaint* of sex-based violence, harassment, or discrimination:

The Title IX Coordinator shall provide the following information to the Reporting Party:

- The importance of collection and preservation of evidence;
- The importance of seeking appropriate medical attention;
- Copies of relevant policies and procedures
- A list of available resources
- The Reporting Party's Title IX rights and rights under this policy and related District policies, including the Student Code of Conduct when applicable;
- The Reporting Party's rights under this procedure to file an informal or formal complaint, and alternatives for also filing a complaint externally.
- The college's obligation to treat both the Reporting Party and the Respondent fairly;
- Advise the Reporting Party that information in the complaint will be provided to the Respondent to the extent necessary.
- The college's obligation to promptly investigate the complaint of alleged sex-based violence, harassment, or discrimination;
- The Reporting Party's right to make a criminal complaint including options for investigation and prosecution in addition to this procedure and the college's student conduct process;
- The Reporting Party's right to participate or decline to participate in any investigation to the extent permitted under state or federal law;
- Resources on campus and within the community, including counseling services, sexual assault crisis centers, and domestic violence crisis centers;
- Information about the investigation process including the protection from retaliation;

- Examples of possible retaliation and the procedures for reporting perceived acts of retaliation;
- Possible options for interim measures to avoid contact with the Respondent and to ensure the Reporting Party's well-being, such as, no contact orders, academic accommodations, and/or changing working situations;
- Possible long-term remedies for the Reporting Party, including academic accommodations, tutoring, medical services, and counseling;
- The Title IX Coordinator's obligation to provide the Reporting Party with periodic updates as the investigation progresses;
- The process for handling requests for confidentiality or to not investigate, if requested;
- The Reporting Party's right to also file a complaint with the following where the complaint is within the jurisdiction of these agencies:
 - If non-employment related, with the U.S. Department of Education [Office for Civil Rights](#), in accordance with procedures available via their website at <http://www2.ed.gov/about/offices/list/ocr/index.html>,
 - If employment related, with: 1) the Department of Fair Employment and Housing (DFEH), in accordance with procedures available via the website at www.dfeh.ca.gov; and/or 2) the U.S. Equal Employment Opportunity Commission (EEOC), in accordance with procedures available via the website at www.eeoc.gov.

What to expect after filing a *Formal Complaint* of sex-based violence, harassment, or discrimination:

In addition to the information above, the Title IX Coordinator shall provide the following information to the Reporting Party:

- The investigation steps and the opportunity to present relevant witnesses and other evidence throughout the investigation;
- The right of the Reporting Party to have a Representative present during any meeting conducted as part of the review, investigation or follow-up of the complaint

When the Title IX Coordinator informs the *Respondent of the complaint*, the Title IX Coordinator provides the following information:

- The Respondent's Title IX rights and rights under this policy and related District policies, including the Student Code of Conduct when applicable;
- Copies of relevant policies and procedures
- A list of available resources
- The college's obligation to treat both the Reporting Party and the Respondent fairly;
- The Reporting Party's rights under this procedure to file an informal or formal complaint, and alternatives for also filing a complaint externally
- The college's obligation to promptly investigate the report of alleged sex-based violence, harassment, or discrimination;

- The Reporting Party's right to make a criminal complaint in addition to the college's discipline or student conduct process;
- The college/district has not yet reached a determination or conclusion in the matter;
- Resources on campus and within the community, including counseling services;
- Information about the investigation process and the Reporting Party's protection from retaliation, including examples of conduct which the District might consider forbidden retaliation;
- Possible options for interim measures to avoid contact with the Reporting Party and to ensure the Reporting Party's well-being, including, no contact orders, academic accommodations and/or changing working situations;
- The opportunity to present relevant witnesses and other evidence throughout the investigation; and
- The right of the Respondent to have a representative present during any meeting conducted as part of the review, investigation or follow-up of the complaint.

If the investigation includes witnesses, the witnesses shall be provided with the following information:

- The college's obligation to treat both the Reporting Party and the Respondent fairly;
- The college's obligation to promptly investigate the report of alleged sex-based violence, harassment, or discrimination;
- Resources on campus and within the community, including counseling services; and
- Information about the investigation process including protection from retaliation, including examples of conduct, which the District might consider forbidden retaliation, and procedures to report a perceived violation of the prohibition against retaliation.

Following discussion with the Reporting Party, the Title IX Coordinator may:

- a. propose informal resolution; or
- b. initiate formal investigation

If the Reporting Party and Respondent are satisfied with the outcome of informal resolution, the resolution reached should be documented and, if the resolution is fully implemented and is effective in stopping the alleged conduct and preventing its recurrence, the case may be closed.

The College aims to bring all allegations to a prompt and equitable resolution within the following guidelines: sixty (60) calendar days to conclude informal complaint resolution, and 90 calendar days to complete formal complaint investigation. Such timelines may be extended by the Title IX Coordinator as necessary for appropriate cause and with notice to the parties. The timeline for resolution begins with notice to a Responsible Employee. Once the Responsible Employee notifies the Title IX Coordinator, the Title IX Coordinator initiates prompt inquiry and follow up, usually within 24 hours.

Formal Complaint and Informal Complaint Referred to Investigation Process

If a formal complaint is filed or an informal complaint is referred to investigation, the process and timeline are as follows:

NOTE: There is a 90-calendar day goal for the completion of any investigation.

(Note: actions taken by police are independent of those taken by the Campus or District)

- 1) Upon receipt of a Formal Complaint, the campus or central services Title IX coordinator shall forward the complaint to the District Title IX Officer for processing, including a facial determination regarding the following criteria:
 - a) Does the complaint allege unlawful harassment or discrimination prohibited under Section 59300 of Title 5, California Code of Regulations;
 - b) Was the complaint brought by someone who alleges that he or she has personally suffered unlawful harassment or discrimination, or by someone who has learned of such unlawful harassment or discrimination in his or her official capacity as a District employee;
 - c) For a complaint not involving employment, was the complaint filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination; and
 - d) For a complaint alleging discrimination in employment, was the complaint filed within 180 days (six months) of the date of the alleged unlawful harassment or discrimination occurred, except that this period will be extended by no more than 90 days following the expiration of that 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of 180 days.

NOTE: The complaint must be signed and dated and shall contain at least the name(s) of the individual(s) involved, the approximate date(s) of the event(s) at issue and a description of the actions constituting the alleged harassment or discrimination.

- 2) **Investigation Assignment:** In cases where the District Title IX Officer determines that the complaint meets the above-described criteria, as soon as possible, usually within **three (3) working days** after such determination, an investigator shall be assigned to investigate the complaint. The investigator may be a staff person, where appropriate, or an outside person or organization under contract with the District to perform such services.

In the event of a Student-to-Student complaint, the Campus Title IX Coordinator, or Deputy Coordinator, will normally undertake the investigation.

- 3) **The Investigator's Responsibility & Process:**
 - a. The investigator shall be responsible for performing an independent investigation including determining the steps and sequence of the investigation.

The investigator shall also, as soon as possible, usually within **ten (10) working days** of being assigned to investigate the complaint:

- I. give the Reporting Party an opportunity to meet with the investigator to review the nature of the complaint and identify the scope and nature of the investigation.
 - II. If the Reporting Party fails to meet with the investigator within a reasonable time (**usually 15 working days**), the investigator will continue the investigation to the best of her/his ability based on the information already provided by the Reporting Party.
- b. As soon as possible, usually within **15 working days** of meeting with the Reporting Party and any witnesses the investigator deems necessary the investigator shall:
- I. give the Respondent an opportunity to meet with the investigator to receive the Respondent's answer to the complaint and to review with the Respondent the scope and nature of the investigation.
 - II. If the Respondent fails to meet with the investigator within a reasonable time, (**usually 15 working days**), the investigator may continue the investigation to the best of his/her ability.
- c. The investigator shall complete and document a full, impartial fact-finding investigation that is fair and equitable to all parties. The investigator will review all credible factual information presented and incorporate such information into the investigative report. Confidentiality will be maintained to the extent possible. In addition to witnesses, documents, and other evidence identified by the investigator, the parties involved may
- I. identify witnesses;
 - II. present documents in support of their positions; and
 - III. present written, oral and/or physical evidence.
- d. Interviews may be recorded on an audio device as mutually agreed upon by the investigator and the interviewee.
- e. Once the investigation is complete, the investigator will prepare a written report setting forth the results of the investigation. In reaching a conclusion as to each allegation the investigator will not consider evidence of past relationships of the Reporting Party. The report will be forwarded to the Title IX Coordinator for review. The report will also be forwarded to an [Administrative Determination Panel](#), for resolution recommendation(s). The investigation report shall include the following:
- I. A description of the complaint and each allegation of sex-based violence, harassment, or discrimination;
 - II. A summary of the relevant information provided by each witness, including the Reporting Party, the Respondent and any witnesses identified by the Reporting Party, the Respondent, and/or the investigator;

- III. A listing of all relevant documents, data, or other evidence used as the basis for the conclusions reached and included in the investigation report;
- IV. An analysis of the evidence and a determination as to whether each allegation occurred as reported; and
- V. A copy of all relevant documents, data, or other evidence used as the basis for the conclusions reached.
- VI. Any other information deemed appropriate.

- 4) **Administrative Determination Panel:** The Administrative Determination Panel shall review the investigative report, and make a specific finding as to whether there is a preponderance of evidence (more likely than not) to conclude that a violation of policy occurred with respect to each allegation in the complaint. The Administrative Determination Panel shall recommend the appropriate action, including discipline, if any, to the applicable Campus President or District Vice Chancellor, to resolve the complaint and prevent similar misconduct from occurring in the future. The Administrative Determination Panel will also recommend remedial action to address the effects of the confirmed conduct on the Reporting Party and the campus community, as necessary.

The Administrative Determination Panel shall take into consideration the severity of the conduct, the pervasiveness of the conduct, the pertinent background, and relevant District policies. Generally, the Determination Panel shall conclude its review, determination, and preparation of its report within 15 calendar days of receipt of the investigation report.

Corrective or disciplinary action recommended by the Panel may include the following: oral counseling, written reprimand or letter of warning, suspension, termination/dismissal, or other sanctions as provided by student discipline policies, Education Code, or applicable employee unit bargaining agreement. If corrective or disciplinary action is recommended, appropriate due process, and contractual and statutory processes shall be invoked, where applicable. If the Panel determines that there is not a preponderance of evidence showing that a violation of policy occurred with respect to the complaint, the Panel shall reach a "Not Sustained" determination. In that event the record of the complaint and investigation shall be kept confidential except to the extent that disclosure is required by law.

- 5) **Notification to the Reporting Party and Respondent, The** Administrative Determination Panel report, including any recommendations for corrective action or discipline shall be provided to the Reporting Party and Respondent. In the case of students, the report shall be delivered in person or mailed to the local mailing address of the student as indicated in college records, and a copy emailed to student's on-file email account. In the case of employees, notification will be delivered in person or mailed to the

employee's permanent home address on file, and a copy emailed to the employee's district email account. Once received in person, mailed or emailed, the notice of the findings will be deemed presumptively delivered. Notification shall be made, typically, within five business days of concluding the Panel's review and preparation of its report.

Post-Administrative Determination, any party may appeal the findings and/or recommendations only under the grounds described below.

- 6) **Right to Appeal:** After the Administrative Determination but prior to the final decision of the College President or Vice Chancellor both the **Respondent** and the **Reporting Party** have the Right to Appeal the findings and recommendations of the Determination Panel as expressed in the Determination Panel Report. Appeals are to be submitted in writing to the appropriate Title IX Coordinator and the appropriate Campus President or Vice Chancellor **within fifteen (15) calendar days** of delivery of notification. A timely Appeal shall be included in the investigation file and shall be included in the information provided to the College President or Vice Chancellor.

The Title IX Coordinator will share the appeal request with the other party (e.g., if the Respondent files an appeal, the appeal is shared with the Reporting Party, who may also wish to file a response and/or bring their own appeal on separate grounds; this response or appeal will be shared with the initial appealing party).

The ONLY grounds for appeal are as follows:

- A procedural error occurred that significantly impacted the outcome of the Determination Panel (e.g. substantiated bias, material deviation from established procedures, etc.)
- To consider new evidence, unavailable during the original investigation and which could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included. An appeal on these grounds will usually require the complaint to be remanded to the Title IX Officer.
- The recommended disciplinary sanction is substantially disproportionate to the findings.
- For the Reporting Party, the remedial action is not sufficient to eliminate a hostile environment, prevent its recurrence, and address its effects.

The Determination Panel report will stand if the appeal request is not timely, or does not facially demonstrate a ground for appeal and clear error as to the original finding and/or a compelling justification to modify a disciplinary sanction or remedial or corrective action.

In response to a timely and facially sufficient appeal, the College President or Vice Chancellor can take one of three possible actions: deny the appeal, uphold the appeal,

or take an action different from that recommended by the Determination Panel. The College President or Vice Chancellor will send a letter of outcome to all parties. The College President or Vice Chancellor shall normally conclude his/her review and issue a decision within 30 calendar days following submission of the appeal.

If disciplinary action is to be taken against the Respondent, the Respondent may be entitled to protections, including procedures, provided by the Education Code, the Government Code and/or an applicable collective bargaining agreement.

Interim measures applied during the investigatory process shall remain in effect during the appeal. For example participation in department activities, graduation, study abroad, internships/ externships, etc. do NOT in and of themselves constitute exigent circumstances, and individuals may not be able to participate in those activities during their appeal. In cases where the appeal results in resumption of privileges, all reasonable attempts will be made to restore the individual to his/her prior status, recognizing that some opportunities lost in the short term may not be recoverable.

- 7) **Final Decisions:** The College President or Vice Chancellor shall notify both the Reporting Party and the Respondent of the final findings. However, final decisions regarding disciplinary or corrective actions taken against an employee or student may be shared with the Reporting Party only when the action directly relates to the Reporting Party or when necessary as a means of notifying the Reporting Party that the College or District has eliminated a hostile environment: for example, changing assignments or reporting relationships affecting the parties. The notification will be provided in person or mailed to the local mailing address (student) or permanent home address (employee) of the respective party as indicated in college and/or employee records, and a copy emailed to the parties' on-file email accounts. If there is no local address on file, mail will be sent to the parties' permanent address. Once received in person, mailed or emailed, the notice of the findings will be presumed delivered. Normally, the President or Vice Chancellor shall make his/her decision within 15 calendar days; notification and implementation of the decision shall follow appropriate procedures provided by student discipline, Education Code, or employee bargaining agreement, as applicable.

- 8) **Additional Appeal Rights for Reporting Parties:** In California and as provided by California Code of Regulations, Title 5, Reporting Parties are entitled to appeal administrative actions to the local Board of Trustees within 15 calendar days from the date of the Administrative Finding/Action. The Board of Trustees shall review the original complaint, the investigative report, the Determination Panel Report, and the administrative findings/actions, and issue a final district decision on the matter within 45 calendar days after receiving the appeal. In cases NOT involving employment, Reporting Parties may appeal the decision of the Board of Trustees to the Chancellor of the California Community College system. Instructions for filing a complaint with the State Chancellor's Office may be found here:
<http://extranet.ccco.edu/Divisions/Legal/Discrimination.aspx>

- 9) **Additional appeal rights for the Respondent:** A Respondent may have appeal rights in accordance with his/her applicable collective bargaining agreement.

In Accordance with California Title 5 Notification to the State Chancellor's Office may also be required. When a complaint also meets the definition of a "Formal Complaint" under Title 5, the following shall apply:

Formal Complaint under Title 5, see California Code of Regulations 59300, generally:

- Submitted in writing on the district's or State Chancellor's Unlawful Harassment and Discrimination Complaint form;
- Which includes allegations of conduct that would, if true, constitute a basis for a Title 5 complaint of harassment or discrimination regarding any Title 5 protected status.
- Which meets the timelines for filing a complaint.
- Which meets the definition of a "Complainant".

In any case **not** involving employment discrimination the District Officer will forward:

- **To the State Chancellor:**
 - a. Notice of a formal complaint, including a copy of the complaint and required notices to the complainant and respondent.
 - b. A copy of the investigative report; and
 - c. A copy of the written notice as set forth below.
- **To the Complainant:**
 - a. A copy or summary of the investigative report; and
 - b. Written notice setting forth the following
 1. The decision of the Determination Panel as to whether there is probable cause to believe harassment or discrimination occurred with respect to each allegation in the complaint;
 2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
 3. The proposed resolution of the complaint; and
 4. The complainant's right to appeal to the District Board of Trustees and to the State Chancellor of the California Community Colleges.
- **To the respondent:**
 - a. A copy or summary of the investigative report.

In any case involving employment discrimination, within 90 days of receiving a complaint, the District shall complete its investigation and forward:

- **To the State Chancellor:**
 - a. Notice of a formal complaint, including a copy of the complaint and required notices

- to the complainant and respondent
- b. A copy of the investigative report; and
- c. A copy of the written notice as set forth below.

- **To the Complainant:**

- a. A copy or summary of the report; and
- b. Written notice setting forth all the following to the complainant:
 1. The decision of the Determination Panel as to whether there is probable cause to believe discrimination occurred, with respect to each allegation in the complaint;
 2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
 3. The proposed resolution of the complaint; and
 4. The complainant's right to appeal to the District Board of Trustees and to file a complaint with the Department of Fair Employment and Housing.

- **To the Respondent:**

- a. A copy or summary of the investigation report;
- b. A copy of the Determination Panel's report;
- c. Notice of the Respondent's right to submit a written response to the Administrative Determination.

Maintenance of Documentation

The District Title IX Officer will maintain records of all reports and complaints and the investigations of these reports and complaints to enable the District to monitor, address, and prevent violence, harassment, and discrimination, on the basis of sex.

How will the District and College communicate this policy and information?

This information will be communicated in a variety of ways and places including, but not limited to:

- 1) The Catalog
- 2) The Schedule of Classes
- 3) Posted on the District and college websites
- 4) Student Orientation
- 5) Mandatory training for employees
- 6) Distribution in New Employee Orientation Materials
- 7) Annual distribution of policy and procedure information to employees and students.

The District provides training and/or information to employees and students on the District's harassment and discrimination policy and procedures. Faculty, administrators, and classified staff receive a copy of the District's written policy on harassment and discrimination at the beginning of each academic year.

Each new District employee is required to sign a form acknowledging receipt of the policy and procedures. The District shall offer training to all staff annually. Because of their special responsibilities under the law, District administrators and supervisors are required to participate in mandatory training within 6 months of employment and thereafter once every two years. Such training shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of harassment, discrimination, and retaliation.

District employees involved in any aspect of investigating, resolving, reaching a determination on, or reviewing an appeal of a complaint of harassment or discrimination, including investigators, Administrative Determination Panel members, College Presidents, the District Vice Chancellor of Human Resources/EO, and the Board of Trustees, shall receive training in the handling of such complaints in advance of their service in such capacity. In no instance will a District employee be involved in investigating, resolving, reaching a determination on, or reviewing an appeal of a complaint of harassment or discrimination if he/she is mentioned in the complaint or has a conflict of interest that would prohibit him/her from fairly processing the complaint.

A training program or informational service is available to all students at least once annually. The student training or informational service includes an explanation of this policy, how it works, and how to file a complaint. In addition, a copy of the District's written policy on harassment and discrimination, as it pertains to students, is provided as part of any orientation program conducted for new students.

Definition of terms Used In Sex-based Violence, Harassment & Discrimination Policy and Procedures

- 1) **Administrative Determination Panel:** A group of College/District Administrators trained to address and redress issues of sex-based violence, harassment, or discrimination. A Determination Panel will consist of a minimum of 3 Panel members, one of whom serves as the Determination Panel Chair.
- 2) **Adverse Action:** means an action that has a material adverse effect on the Reporting Party's employment, education, or ability to participate in a college program or activity. A materially adverse action is an action that could well dissuade a reasonable person from making or supporting a charge of discrimination. Whether an action is materially adverse is judged from the perspective of a reasonable person in the Reporting Party's position.
- 3) **Appeal:** A request by a Reporting Party or Respondent made in writing to the appropriate College President or Vice Chancellor to take action other than that recommended in the Administrative Determination.
- 4) **Awareness Program:** Information provided to students to help raise awareness about the concepts of sex-based violence, harassment, or discrimination, how to reduce risk, prevention techniques and options for addressing sexual misconduct.

- 5) **Bystander Intervention:** a program designed to teach bystanders methods for intervening in situations where an individual may be at risk.
- 6) **Campus** means Foothill College, De Anza College, or the Foothill College Sunnyvale Education Center.
- 7) **Coercion:** the use of intimidation via psychological pressure, physical force or threats to compel an individual to do something against their will.
- 8) **Complainant:** an individual, peer, family member or third party alleging unlawful discrimination against a Respondent. Also known as “Reporting Party”.
- 9) **Complaint:** A verbal or written report of alleged sex-based violence, harassment, or discrimination.
- 10) **Complaint Procedures:** The process or steps to follow to file a complaint pursuant to this Policy.
- 11) **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.
- 12) **Days:** Calendar days unless otherwise specified.
- 13) **Disciplinary Sanction:** Formal Disciplinary action affecting a Respondent’s student or employee status available to stop and prevent recurrence of sex-based violence, harassment, or discrimination.
- 14) **Employee,** as defined in California Title 5 §42700(h), means a person legally holding a position in the District. This term includes full-time, part-time, permanent, tenured, probationary, temporary, intermittent, casual, and per-diem positions. This term does not include Third Parties.
- 15) **Extension:** A written request from a District to the State Chancellor’s Office requesting additional time to complete an investigation and submit required the report and other materials to the State Chancellor’s Office.
- 16) **Hostile Environment:** a hostile environment is created when harassment is sufficiently serious that it interferes with or limits an individual’s ability to participate in or benefit from education, employment, or participation in a College or District program or activity.
- 17) **Interim Measures:** immediate, short-term measures taken to address the effects of and prevent recurrence of sex-based violence, harassment, or discrimination during the course of the response or investigation, and appeal process.
- 18) **Preponderance of Evidence** – the standard used in determining sex-based violence, harassment, or discrimination occurred. Preponderance of Evidence means that it is “more likely than not” that the sex-based violence, harassment, or discrimination occurred.
- 19) **Rape:** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, forcibly and/or without the consent of the Reporting Party, or if the Reporting Party was incapable of giving consent
- 20) **Reporting Party** – An individual, peer, family member or third party alleging unlawful discrimination, including harassment. Also known as “Complainant”.

- 21) **Representative:** A person selected by the Reporting Party or the Respondent to advise them in this process. A representative may be a union representative, colleague, legal counsel or another individual selected by the party.
- 22) **Respondent:** An individual or group of individuals against whom a claim of harassment or discrimination is made.
- 23) **Responsible Employee:** Responsible Employees include all supervisors, all employees that interact directly with students, and all employees that students might reasonably believe have some authority to take action or a duty to report. All employees of the District are considered responsible employees under this policy, except Professional Mental Health Counselors and Help Services Professionals who, by law, are required to maintain confidentiality.
- 24) **Retaliation:** means Adverse Action taken against a person because he/she has or is believed to have:
 - a) Exercised rights under this Policy;
 - b) Reported or opposed conduct which he/she reasonably and in good faith believes is Discrimination, Harassment or Retaliation;
 - c) Participated in a Discrimination, Harassment or Retaliation investigation/proceeding; or
 - d) Assisted someone in reporting or opposing Discrimination, Harassment or Retaliation.
- 25) **Sexual Assault:** is a form of Sexual Violence and is actual or attempted sexual contact with another person without that person's consent, and includes: intentional touching of another person's intimate parts without that person's consent; other intentional sexual contact with another person without that person's consent; coercing, forcing, or attempting to coerce or force a person to touch another person's intimate parts without that person's consent; and rape.
- 26) **Sexual Harassment:** Sexual harassment includes sexual violence and may be verbal, written, physical or environmental and, as such, is a form of unlawful harassment.

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, visual, or physical conduct of a sexual nature, made by someone from or in the workplace, the educational setting, or other program or activity of the District.

"Quid pro quo" harassment occurs when submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decision affecting the individual.

"Hostile environment" harassment occurs when the conduct is sufficiently pervasive or severe such that the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment. Subjective perception alone is insufficient evidence for a claim to

be valid; an objective appraisal must be considered as well. The conduct shall be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all of the circumstances.

Examples include but are not limited to:

- a) Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. Examples of sexual harassment which appear in a written form include, but are not limited to: suggestive or obscene letters, notes, or invitations. Examples of verbal sexual harassment include, but are not limited to: derogatory comments, slurs, jokes, or epithets. Examples of physical sexual harassment include, but are not limited to: assault, unwelcome touching, impeding or blocking movements. Examples of visual sexual harassment include, but are not limited to: leering, gestures, displays of sexually aggressive objects or pictures, cartoons, or posters.
 - b) Continuing to express sexual interest after being informed that the interest is unwelcome.
 - c) Making reprisals, threats of reprisal, or implied threats of reprisal following rebuff of harassing behavior. The following are examples of this type of sexual harassment within the educational setting: implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied.
 - d) Engaging in explicit or implicit coercive sexual behavior within the work environment which is used to control, influence, or affect an employee's career, salary, and/or work environment.
 - e) Engaging in explicit or implicit coercive sexual behavior within the educational environment that is used to control, influence, or affect a student's educational opportunities, grades, and/or learning environment.
 - f) Offering favors or educational or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.
 - g) Awarding educational or employment benefits, such as grades or duties or shifts, recommendation, reclassification, etc., to any student or employee with whom the decision-maker has a sexual relationship and denying such benefits to other students or employees.
- 27) **Sexual Misconduct:** An inclusive term that encompasses inappropriate behaviors of a sexual nature, including sexual assault, sexual harassment, and sexual violence.
- 28) **Sexual Violence:** physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol or due to an intellectual or other disability.

- 29) **Stalking:** Unwanted or obsessive attention directed at a specific person with the apparent intent to control or injure the person or someone associated with the person, or instill fear for the person's safety or the safety of others.
- 30) **Student:** A currently enrolled student, a person who has filed an application for admission to the college, or a former student.
- 31) **Third Party:** means a person, other than an Employee or a Student, who participates in a District program or activity. Examples include employees of auxiliary organizations (as defined in Title 5 Cal. Code Regs. §42406), volunteers, independent contractors, vendors and their employees, and visitors.
- 32) **Title IX:** A comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity.
- 33) **Title IX Coordinator:** The designated campus or central services administrator responsible for implementing the sex-based violence, harassment, or discrimination policy and procedures for each campus.
 - a. *De Anza College Campus Coordinator:* Dean of Student Development and EOPS, 21250 Stevens Creek Boulevard, Cupertino, CA 95014, (408) 864-8828 datitleixcoordinator@fhda.edu
 - b. *Foothill College Campus Coordinator:* Dean of Student Affairs and Activities, 12345 El Monte Road, Los Altos Hills, CA 94022, (650) 949-7241. fhtitleixcoordinator@fhda.edu
 - c. *Central Services Coordinator:* Director of Human Resources, Office of Human Resources and Equal Opportunity, 12345 El Monte Road, Los Altos Hills, CA 94022, (650) 949-6210. cstitleixcoordinator@fhda.edu
- 34) **Title IX Officer – District:** the designated district administrator responsible for ensuring compliance with Title IX sex-based violence, harassment, and discrimination policy and procedure and providing support to the colleges and central services; except that all athletic program participation compliance shall be the responsibility of the Title IX Coordinator for each campus.
- 35) **Working Days:** The days that the District Office is officially open for customary business.