H.1.2.1 (Procedure) Civil Rights Complaints and Resolution Procedure
Responsible Department: Alamo Colleges District
Title IX/VII/IV/ADA/504 Coordinator
Based on Board Policy: H.1.2 Civil Rights Discrimination, Harassment and Retaliation
Approved: 10-28-14
Last Amended: 10-28-14, 8-10-2016, 1-17-2017, 7-27-2021, 8-6-2021, 1-25-2022, 3-22-2022

ALAMO COLLEGES DISTRICT

Purpose

The Alamo Community College District (the "College District" or "Alamo Colleges") prohibits discrimination and harassment based on protected criteria and retaliation for opposing discrimination or harassment or participating in a complaint proceeding on campus or a governmental agency. This procedure is established to ensure an environment that affords equal educational and employment opportunities to all students and employees, including faculty and administrators, in the working and academic environments at the Alamo Colleges. This procedure seeks to resolve complaints promptly and effectively with respect for all parties.

Procedure

This procedure provides two processes (grievance procedures) for the College District and Colleges to receive, investigate, evaluate, and resolve reports or complaints of discrimination, harassment, and retaliation which are prohibited by civil rights statutes listed below.

Process A applies only to student complaints of sexual harassment, sexual assault, dating violence, domestic violence, and stalking, as defined, and referenced by 2020 amendments to Title 34, Code of Federal Regulations, Part 106, the implementing regulations for Title IX of the Educational Amendments of 1972, 20 U.S.C. §1681 *et seq*. ("Title IX"). Those new Title IX regulations are 34 CFR §§106.8, 106.30, 106.44, and 106.45.

Process B applies to all other civil rights complaints which are not addressed by Process A, i.e., do not meet the definitions of sexual harassment, sexual assault, dating violence, domestic violence, and stalking against a student and jurisdictional requirements of §§106.30, 106.44, and 106.45 of the Title IX regulations and complaints which arise under other civil rights statutes. *(See 34 CFR §106.8(c)).* Complaints of student gender discrimination and retaliation under Title IX fall under Process B. Complaints of Sexual Harassment in which the complainant is an employee and the respondent is a student are classified as Title VII Sexual Harassment complaints and will be processed under Process B.

Title IX/VII/IV/ADA/504 Coordinators and Leads

The College District has designated responsibility to Coordinators and Leads to conduct the Civil Rights processes for students and employees who receive, investigate, evaluate, and resolve reports

or complaints of discrimination, harassment, and retaliation which are prohibited by civil rights statutes, including Title IX. These designees are the same for Process A and Process B. Their names and contact information are listed in Appendix A to this procedure.

Inquiries about the application of Title IX and its regulations to the College District may be referred to the District Title IX/VII/IV/ADA/504 Coordinator, Assistant Secretary of the Department of Education, or both. *34 CFR §106.8(b)(1)*. The contact information is as follows:

Alamo Colleges District Title IX/Title VII/Title IV/ADA/504 Coordinator

Name: Linda Boyer-Owens, Alamo Colleges District Title IX/ VII/IV/ADA/504 Coordinator
Position: Associate Vice Chancellor for Talent, Organization and Strategic Innovation
Address: 2222 N. Alamo Street, Room 230A-West Wing
San Antonio, Texas 78204-1429
Telephone: (210) 485-0230
Email: lboyer-owens@alamo.edu

Assistant Secretary of the Department of Education

U.S. Department of Education, Office for Civil Rights (OCR)
Address: 400 Maryland Avenue
SW Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012 TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: http://www.ed.gov/ocr

Reporting Discrimination, Harassment, and Retaliation: Employees and Students

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A. General Reporting. Any person may report discrimination or harassment based on any protected criteria (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute discrimination or harassment, including sexual harassment) in person, by mail, telephone, or electronic mail; using a College District or College electronic portal; using the contact information listed for a Title IX Coordinator; or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report, including the electronic portal for Title IX complaints. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, by mail

to the office address listed for Title IX Coordinators in Appendix A, or through the District or College electronic portal. S*ee34 CFR §106.8(a).*

Confidentiality.
Except as otherwise provided by the Title IX regulations and this procedure, the College District and Colleges will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted or required by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of the new Title IX regulations at 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. *34 CFR§ 106.71(a)*

Mandatory Reporting

B. All Alamo Colleges District and College employees who are not employed as a ***Personal Counselor*** or designated as a Confidential Employee are ***Mandated Reporters*** for all the details of which they are aware about an incident. Mandated Reporters must share this information with the Title IX Coordinator. Giving a ***Mandated Reporter*** notice of an incident constitutes official notice to the institution. Incidents of sexual misconduct will be taken seriously when official notice is given to the institution. Such incidents of sexual misconduct will be investigated and resolved in a prompt and equitable manner under the ***Alamo Colleges District Civil Rights/Title IX Policies and Procedures.*** **Reporting by Formal Complaint.** A signed formal complaint, instead of a general report, may be filed with any Title IX Coordinator in person, by mail, by electronic mail using the contact information listed in Appendix A, or through the designated District or College electronic portal. *34 CFR §106.30(a).*

C. **Reporting Deadline.** A report or formal complaint alleging discrimination, harassment, or retaliation must be submitted or filed within) ninety (90) calendar days from the date of the last act of alleged act of discrimination, harassment, or retaliation.

D. **College to Handle Report.** A report or formal complaint of discrimination, harassment, or retaliation by a student against a student will be assigned to the College Title IX Coordinator and Title IX Lead at the college where the alleged discrimination, harassment, or retaliation occurred. If the alleged discrimination, harassment, or retaliation is reported to a different college or the District, it will be transferred the report or complaint to the college where the discrimination, harassment, or retaliation occurred and document the transfer of the report or complaint.

E. District to Handle Report. A report or formal complaint of discrimination, harassment, or retaliation by or against an employee will be assigned to the District Title IX/VII/ADA/504 Coordinator for Employees.

A report or formal complaint of discrimination, harassment, or retaliation involving a student or a student against an employee will be assigned to the District Title IX Coordinator for Employees who will work in collaboration with the College Title IX Coordinator and Title IX Lead at the college the student attends. Any student sanctions to be imposed against a student as a result of a responsibility finding will be assigned to the College Title IX Coordinator and will be processed under the Student Code of Conduct. Any discipline of an employee based on a finding of responsibility against the employee will be handled by the District Title IX Coordinator for Employees and processed under the employee procedures for progressive discipline or termination of employment. A work study student will be considered a student for purposes of Title IX and not an employee so that a complaint by or against a work study student will be processed by a College.

F. Delay of Sanctions/Discipline. Any sanctions against a student or discipline against an employee based on a finding of responsibility for discrimination, harassment, or retaliation will not be imposed until after the appeal time has expired or a decision on appeal is rendered, whichever occurs later.

H. Retaliation.

1. **Retaliation Prohibited.** No institution of higher education or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, Title VII, or any other statute protecting employees or students, their regulations if any, this procedure and its underlying policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX, Title VII, any other statute protecting employees or students, or this procedure. *(See 34 CFR §106.71(a)).*

2. **Interference with Rights Per Title IX.** Intimidation, threats, coercion, or discrimination, including charges against an individual for Student Code of Conduct or employee procedure violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sex discrimination or sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or the regulations constitute retaliation and may be addressed through the Student Code of Conduct or Progressive Discipline procedure for employees, whichever is applicable. *34 CFR §106.71(a).*

3. **Conduct Not Retaliation.** The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under Title IX. *34 CFR §106.71(b)(1).* Charging an individual with a Student Code of Conduct or employee procedure violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited by Title IX, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. *(See 34 CFR §106.71(b)(2).*

4. **Retaliation Complaints.** Complaints alleging retaliation for having exercised rights under Title IX or any other statute will be processed under this Process B. *(See 34 CFR§ 106.71(a)).*

PROCESS A: Applicable Only to Complaints of Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence and Stalking Under Title IX

Process A applies *only* to complaints of sexual harassment. For purposes of Title IX, sexual harassment is conduct on the basis of sex and includes sexual assault, dating violence, domestic violence and stalking. *34 CFR §106.30(a)(3).* After a report or complaint of sexual harassment is received and determined to meet the criteria of Title IX, the following Process A will apply.

A. Process A: Definitions.

1. *"Actual knowledge"* means notice of sexual harassment or allegations of sexual harassment to a Title IX Coordinator or any official who has authority to institute corrective measures on behalf of the College District or Colleges. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. The standard of actual knowledge is not met when the only official of the College District is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment or having been trained to do so does not qualify an individual as one who has authority to institute corrective measures on behalf of the College District or Colleges. *Notice"* for purposes of *"actual knowledge"* includes but is not limited to a report of sexual harassment to a Title IX Coordinator as described in *34 CFR §106.8(a). 34 CFR §106.30(a).*

2. *"College District"* means the Alamo Community College District (ACCD) and its five independently accredited colleges: Northeast Lakeview College, Northwest Vista College, Palo

Alto College, St. Philip's College, and San Antonio College. "Alamo Colleges District" and "Alamo Colleges" are synonymous for the College District.

3. *"Complainant"* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Where a Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party to the complaint. *34 CFR §106.30(a).* A third person who reports sexual harassment does not become a party (complainant) to a formal complaint. Parents and guardians may report sexual harassment but do not become parties to a formal complaint even if they signed a complaint.

4. *"Dating violence"* under Title IX has the meaning assigned in the Violence Against Women Act ("VAWA"), 34 U.S.C. § 12291(a). *34 CFR §106.30(a)(3).* Under VAWA, "dating violence" means violence committed by a person:
   (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
   (b) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. *34 U.S.C. § 12291(a)(10).*

5. *"Domestic violence"* under Title IX has the meaning assigned in VAWA. *34 CFR §106.30(a)(3).* Under VAWA, "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. *34 U.S.C. § 12291(a)(8).*

6. *"Education program or activity"* includes locations, events, or circumstances over which the College District exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College District or one of the colleges. *34 CFR §106.44(a).*

7. *"Formal complaint"* means a document filed and signed by a complainant or signed by a Title IX Coordinator, alleging sexual harassment against a respondent, and requesting that the College District investigate the allegation of sexual harassment. At the time of filing a formal

complaint, a complainant must be participating in or attempting to participate in the education program or activity of the College District or one of its colleges. *34 CFR §106.30(a).*

As used above, *"document filed by a complainant"* means a written document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. *34 CFR §106.30(a).* Parents and guardians of minor students retain their legal rights to act on behalf of the minor as complainant or respondent in Title IX matters, including filing a formal complaint for the minor student child. *34 CFR §106.6(g).*

8. *"Grievance process"* and *"complaint process"* are synonymous terms for purposes of this procedure. The Title IX regulations state, "a recipient must adopt and publish *grievance* procedures that provide for the prompt and equitable resolution of student and employee *complaints* alleging any action that would be prohibited by this part and a *grievance* process that complies with §106.45 for formal *complaints* as defined in §106.30." *34 CFR §106.8(c).*

9. *"Recipient"* in this procedure means the College District and/or one or more Colleges, all of which receive federal financial assistance. *34 CFR §106.2(a)(i).*

10. *"Respondent"* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. *34 CFR §106.30(a).*

11. *"Sex discrimination."* A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute gender discrimination under Title IX. *34 CFR §106.45(a).* A complaint of gender discrimination would be processed under Process B.

12. "*Sexual Assault"* under Title IX has the meaning assigned in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "Clery Act"), 20 U.S.C. 1092(f)(6)(A)(v). *34 CFR §106.30(a)(3).* Under the Clery Act, "sexual assault" is an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

13. *"Sexual harassment"* under Title IX means conduct on the basis of sex that satisfies one or more of the following:

(a) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; *34 CFR §106.30(a)(1).*
(b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education programs or activities. *34 CFR §106.30(a)(2);*
(c) "Sexual assault" as defined in the Clery Act. *34 CFR §106.30(a)(3).*
(d) "Dating violence" as defined in VAWA. *34 CFR §106.30(a)(3)*;
(e) "Domestic violence" as defined in VAWA). *34 CFR §106.30(a)(3);* or
(f) "Stalking" as defined in VAWA. *34 CFR §106.30(a)(3).*

14. *"Stalking"* under Title IX has the meaning assigned in VAWA. *34 CFR §106.30(a)(3).* Under VAWA, "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress. *34 U.S.C. § 12291(a)(30).*

15. *"Student"* means a person who has applied for admission or gained admission. *34 CFR §106.2(r).* A work study student will be considered a student for purposes of Title IX and not an employee so that a complaint by or against a work study student will be processed by a College.

16. *"Supportive measures"* means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment. *34 CFR §106.30(a).*

"Supportive measures" may include but are not limited to services offered in the community, 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 absence, increased security, and monitoring of certain areas of the campus, and other similar measures. The Title IX Coordinator handling a complaint or report may fashion other supportive measures which are appropriate to the situation. A Title IX Coordinator will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the College District or Colleges to provide the supportive measures. The applicable Title IX

Coordinator is responsible for coordinating the effective implementation of supportive measures for a student or employee. *34 CFR §106.30(a).*

B. Process A: Grievance Process – Overview of Title IX Concepts.

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1. **Title IX Coverage.** This Process A grievance procedure applies only to sexual harassment occurring against a person in the United States. *34 CFR §106.8(d)*. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the College District or one of the colleges. *34 CFR §106.30(a).*

2. **Presumption of Non-Responsibility.** All Title IX Coordinators, Title IX Leads, investigators, decisionmakers, and any person who facilitates an informal resolution process must operate at all times with the presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. *34 CFR §106.45(b)(1)(iv).*

3. **Gag Order Prohibited.** Neither the College District, Colleges, Title IX Coordinators nor any investigator may restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. *34 CFR §106.45(b)(5)(iii).*

4. **Standard of Evidence Declared.** The standard of evidence to be used to determine responsibility for all formal complaints of sexual harassment is the preponderance of the evidence standard. The preponderance of the evidence standard applies to all other formal complaints against students and employees, including faculty. 3*4 CFR §106.45(b)(1)(vii).*

5. **Objective Evaluation of Evidence Required.** This procedure requires an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence— and that credibility determinations may not be based on a person's status as a complainant, respondent, or witness. *34 CFR §106.45(b)(1)(ii).*

6. **Impartiality Required.** Every individual designated as a Title IX Coordinator, Title IX Lead, investigator, decisionmaker, or any person designated by the College District or a College to facilitate an informal resolution process is required to not have a conflict of interest or bias for or against complainants or respondents generally or an individual

complainant or respondent. *34 CFR §106.45(b)(1)(iii).* None of the foregoing persons may serve in more than one capacity during the grievance process.

7. **Duration of Grievance Process.** The Title IX regulations require the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX. 3*4 CFR §106.8(c).* To comply with this requirement, the grievance process in this procedure should be concluded within ninety (90) calendar days from the date of receipt of a report or formal complaint to the date on which an appeal is decided or the date on which the time to appeal expires if no appeal is filed, subject to any extensions of time. 3*4 CFR §106.45(b)(1)(v).* The 90-calendar day time period excludes holidays and days on which the College District and Colleges are closed for operations, such as the holiday and spring breaks and closures for weather or other emergencies.

8. **Extensions of Time.** The 90-calendar day time period for the grievance process may be extended by temporary delays or extensions of time granted. Any party (complainant or respondent), the College District, a College, investigator or decision-maker may request in writing for good cause at any time during the grievance process an extension of time to accomplish a duty or requirement in this procedure. Good cause may include considerations, such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. *34 CFR §106.45(b)(1)(v).* Requests for extension of time should be submitted in writing to the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint with copies served on the complainant and respondent and their advisors, if any. Extensions of time should be judiciously requested to avoid dismissal because the complainant or respondent is no longer a student.

9. **Required Training #1.** The District Title IX Coordinator, District Title IX Coordinator for Employees, and District Title IX Coordinator for Students will ensure that the College Deputy Title IX Coordinators, Title IX Leads, investigators, decision-makers, and any person who facilitates an informal resolution process receive training on the definition of sexual harassment stated in Section I(A)(13) above, the scope of the education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. *34 CFR §106.45(b)(1)(iii).*

10. **Required Training #2.** The District Title IX Coordinator, District Title IX Coordinator for Employees, and District Title IX Coordinator for Students will 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. *34 CFR §106.45(b)(1)(iii).*

11. **Required Training #3.** The District Title IX Coordinator, District Title IX Coordinator for Employees, and District Title IX Coordinator for Students will ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence as required by 34 CFR § 106.45(b)(5)(vii) and discussed in Section II(E)(7) below. Any materials used to train Title IX Coordinators, Title IX Leads, investigators, decision-makers, and any person who facilitates an informal resolution process must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment. 3*4 CFR §106.45(b)(1)(iii).*

12. **Equitable Treatment Before Sanctions.** Complainants and respondents will be treated equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent and by following Process A which complies with the new federal regulations before the imposition of any disciplinary sanctions or other actions that are not supportive measures. Remedies must be designed to restore or preserve equal access to the College District's education program or activity. Such remedies may include the individualized services defined as ''supportive measures." *34 CFR §106.45(b)(1)(i).*

13. **Available Sanctions and Remedies.** The possible disciplinary sanctions and remedies that a College may implement against a student following any determination of responsibility are listed in the Student Code of Conduct, which is incorporated herein by reference, and as may be determined appropriate for the circumstances, including but not limited to placing a student in online classes, allowing a student to withdraw without penalty and take the class in a following semester, and allowing a student to retake exams or complete assignments by the end of the semester. The possible disciplinary sanctions and remedies that the District may implement against an employee following any determination of responsibility are listed in the Progressive Discipline and Termination Procedures in Section D of Board Policies, available on the College District website and incorporated herein by reference. *34 CFR §106.45(b)(1)(vi).*

14. **Notice of Meetings Required.** At all times during the Process A grievance process, the District Title IX Coordinator for Employees or College Title IX Coordinator and Title IX Lead handling the formal complaint will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all

hearings, investigative interviews, or other meetings with sufficient time for the party to prepare to participate. *34 CFR § 106.45(b)(5)(v).*

15. **Equal Right to an Advisor.** The parties will have equal opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding. The College District has the right to exercise reasonable restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. *34 CFR § 106.45(b)(5)*(iv).

C. Process A: Response to Report or Complaint of Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence and Stalking.

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1. **Duty to Not Be Deliberately Indifferent.** If the College District or a college has actual knowledge of sexual harassment in an education program or activity against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent to a report or formal complaint. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. *34 CFR § 106.44(a).* The duty to not be deliberately indifferent is not satisfied if it is based on the recipient's restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment. *34 CFR § 106.44(a).*

2. **Supportive Measures Required.** If the College District or a College has actual knowledge of sexual harassment in an education program or activity against a person in the United States, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the report will treat a complainant and respondent equitably to offer supportive measures and will follow the grievance process discussed below *before* the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. *34 CFR §106.44(a).* The District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the report also will respond to the report to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures, and explain to the complainant the process for filing a formal complaint. *34 CFR §106.44(a).* Supportive measures must be provided even if the reporting began with the filing of a formal complaint. A range of

supportive measures available to complainants and respondents is listed in Section II(A)(16) above. 3*4 CFR §106.45(b)(1)(ix).*

3. **Student Emergency Removal.** A College may remove a student-respondent from the education program or activity only on emergency basis and provided that the College undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justify removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act. *34 CFR §106.44(c).* Emergency removal is the exception and not the rule. An individualized safety and risk analysis must be documented by the College Title IX Coordinator and Title IX Lead.

4. **Employee Administrative Leave.** A non-student employee-respondent may be placed on administrative leave during the pendency of the grievance process provided no rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act are modified. *34 CFR §106.44(d).*

5. **Evaluating Report for Title IX Coverage.** After supportive measures are provided, **t**he District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the report must determine:

   (a) Whether the report is submitted timely within ninety (90) calendar days of the date on which the last alleged act of sexual harassment occurred;
   (b) Whether the report complains of sexual harassment in an education program or activity;
   (c) Whether the reporter is participating in or attempting to participate in the education program or activity of the College District or a College; and
   (d) Whether the report or allegations are against a person in the United States. *34 CFR § 106.45(b)(3)(i).*

If the report does not meet the factors above, it cannot be accepted as a Title IX complaint for purposes of Process A and must be dismissed and closed after any supportive measures are implemented. The District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the report will notify the reporter about the dismissal and process the report under Process B.

6. **Report to Formal Complaint.** If the report of sexual harassment was not initiated with the filing of a formal complaint and is accepted because it satisfies the factors above, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the report will ask the complainant to proceed with filing a signed formal complaint. *34 CFR §106.30(a).* A complainant's wishes to not file a written complaint must be respected, unless the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the report determine that the signing of a formal complaint by a Title IX Coordinator is clearly reasonable in light of the known circumstances. If the complainant does not wish to file a formal complaint and a Title IX Coordinator does not sign a formal complaint, then the grievance process will not proceed, no investigation will occur, and the case will be closed. Where a Title IX Coordinator signs a formal complaint, the investigation will commence. In such situation, the Title IX Coordinator is not a complainant or a party during the grievance process and will comply with the requirements for Title IX personnel to be free from conflicts and bias. *34 CFR §106.30(a).*

7. **Consolidation of Formal Complaints.** The District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead may 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. References to the singular "party," "complainant," or "respondent" include the plural, as applicable. *34 CFR § 106.45(b)(4).*

8. **Complaint Dismissal Before Investigation.** If the reporting occurred with the filing of a formal complaint and the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in the College District's education program or activity, or did not occur against a person in the United States, then the formal complaint with regard to that conduct must be dismissed. Such a dismissal does not preclude processing under Process B or action under another provision of the Student Code of Conduct. *34 CFR §106.45(b)(3)(i).* Dismissal for purposes of Title IX also applies if the formal complaint was not submitted timely within 90 calendar days of the date of the last act of harassment. Upon dismissing a formal complaint, the Title IX Coordinator handling the complaint will promptly send written notice of the dismissal and reason(s) for the dismissal simultaneously to the parties. *34 CFR §106.45(b)(3)(iii).*

9. **Complaint Dismissal During Grievance Process.** The College District or a College may dismiss a formal complaint or any allegations therein, if at any time during the

investigation or hearing: (a) a complainant notifies the District Title IX for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint in writing that the complainant would like to withdraw the formal complaint or any allegations therein; (b) the respondent is no longer enrolled or employed by the College District; or (c) specific circumstances prevent the College District or College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. *34 CFR §106.45(b)(3)(ii).* Upon a dismissal of a formal complaint, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint must promptly send written notice of the dismissal and reason(s) the dismissal simultaneously to the parties. *34 CFR §106.45(b)(3)(iii).*

D. Process A: Grievance Process - Notice of Allegations to Satisfy Due Process.

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1. **Notice Required.** Within five (5) calendar days of receiving a formal complaint, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint will provide a written notice to the known parties with the following information:

   (a) Notice that a formal complaint has been filed by a named complainant against a named respondent, and the complaint will be investigated under Process A of the grievance procedure at H.1.2.1 on Civil Rights Discrimination, Harassment, and Retaliation.
   (b) Notice of the allegations constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview of the complainant or respondent. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment and the date and location of the alleged incidents, if known. Notice of the allegations includes notice of the allegations to be investigated. *34 CFR §106.45(b)(2)(i)(B).*
   (c) A statement that the respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. *34 CFR §106.45(b)(2)(i)(B).*
   (d) Notice that the parties will be contacted by an investigator and interviewed. Notice that the respondent will be notified that he/she will have an opportunity to respond to the formal complaint and allegations and present his/her side of the story.
   (e) Notice that each party may have an advisor of choice during the grievance proceeding, including investigation, who may be, but is not required to be, an attorney, and may inspect and review any evidence obtained as a part of the investigation. *34 CFR*

§106.45(b)(2)(i)(B). A request that each party inform the Title IX Coordinator handling the complaint of the name and contact information, including email address, for an advisor selected.

(f) Notice of the College District's grievance and informal resolution processes. *34 CFR §106.45(b)(2)(i)(A).* This requirement may be satisfied by providing a copy of this procedure and the procedure for appeals. Informal resolution is available at any time prior to the live hearing, provided the complaint does not include allegations that an employee sexually harassed a student.

(g) Notice that after the investigation, a live hearing to present oral and documentary evidence will be conducted. *34 CFR §106.45 (b)(6)(i).*

(h) Notice that this procedure, the Student Code of Conduct, and Progressive Discipline Procedure for employees prohibit knowingly making false statements or knowingly submitting false information during the grievance process. *34 CFR §106.45(b)(2)(i)(B).*

(i) Notice that threatening, intimidating, coercing or retaliating against a party, witness or any person participating in the grievance process is prohibited. *34 CFR §106.71.*

(j) Notice that sanctions under the Student Code of Conduct or discipline under the Progressive Discipline Procedure for employees may be imposed if either party is found responsible.

(k) Notice that other communications will be sent to advise of the opportunity to review evidence before the hearing, date of the hearing, and other matters related to the hearing.

2. **Notice of Additional Allegations.** If in the course of an investigation, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint investigate allegations about the complainant or respondent that are not included in the notice discussed in the above paragraph, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint will provide notice of the additional allegations to the parties whose identities are known. *34 CFR §106.45(b)(2)(ii).*

E. Process A: Grievance Process - Investigation of a Formal Complaint.

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1. **Investigation Delayed.** If the sexual harassment is also reported to campus police or other police department, the investigation under this procedure may be delayed for a reasonable time period not to exceed thirty (30) calendar days for the police department to complete its investigation. However, supportive measures and notice of allegations must be provided. The

District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the report or complaint is responsible for following up with the police department on conclusion for their investigation and the complainant to confirm the intent to proceed with the investigation and process under this procedure.

2. Investigator Appointment. The College District bears the burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility. *34 CFR §106.45(b)(5)(i).* To meet these burdens, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint will appoint a team of two investigators to investigate a formal complaint of sexual harassment. This appointment will occur within ten (10) calendar days of receiving a formal complaint that does not involve conduct reported to campus police or other police department, or within ten (10) days after the expiration of the reasonable time period for a police department to investigate a formal complaint. The investigators must not have any conflict of interest or bias and must have received the training specified in Section II(B)(9-11) above before commencing any investigation. The appointment shall be documented in a letter to the investigator that:

(a) Identifies the parties and generally states the allegations;
(b) Informs that the respondent is presumed not responsible for the alleged conduct throughout the investigative and hearing process. *34 CFR §106.45(b)(1)(iv);*
(c) States the definition of sexual harassment that must be followed under Title IX. *34 CFR §106.30(a)(1-3);*
(d) Provides a copy of this procedure, the written complaint of sexual harassment, and any other information obtained prior to investigation and requests that the documents provided be reviewed before the start of the investigation;
(e) Informs that the investigators are required to interview the complainant and respondent separately;
(f) Informs that to satisfy due process, the investigators will discuss *all* allegations with the respondent and ask the respondent to present his/her side of the story;
(g) Informs that witness names and contact information must be collected from the complainant and respondent and the witnesses of each party must be interviewed;
(h) Informs that throughout the investigation, the parties must be provided an equal opportunity for the parties to name and present witnesses, including fact and expert witnesses, and offer other inculpatory and exculpatory evidence. *34 CFR §106.45(b)(5)(ii);*
(i) Informs that the College District and investigators are required to not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. *34 CFR §106.45(b)(5)(iii);*

(j) Informs that the investigators are required to provide the parties an equal opportunity to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney and not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding. *34 CFR §106.45(b)(5)(iv);*

(k) Informs that the College District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. *34 CFR §106.45(b)(5)(iv).* In this regard, a complainant or respondent must be allowed by an advisor to speak, answer questions, discuss the complaint, and offer evidence during the investigation process. In other words, a complainant or respondent must speak for himself/herself; and

(l) Informs that the investigator is required to treat the parties with respect and dignity; gather any documentary evidence; take notes and document the witness statements, evidence and interviews; communicate with the parties through email and not texts; comply with all requirements stated in this procedure; and preserve the documentation obtained throughout the investigation.

3. Commencement of Investigation. Upon receipt of the appointment and complaint, the investigators will prepare for the investigation by among other things, reviewing the documents provided by the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint and determining other information needed and questions to ask. Within ten (10) calendar days of receiving the complaint and any other information, the investigators will commence the investigation process by interviewing the complainant and respondent separately and following the directions provided in the letter of appointment and other requirements in this procedure. The investigators will provide written notice of the date, time and place of interview with sufficient time for a party to prepare for the interview. *34 CFR §106.45(b)(5)(v).* The investigation should be completed within thirty (30) calendar days from receipt of the appointment.

4. Consents Required for Provider Records. The District Title IX Coordinator for Employees, College Deputy Title IX Coordinators, Title IX Leads, investigators and those participating in the live hearing may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College District or College obtains a voluntary written consent to do so for use in the grievance process. If the complainant or respondent is a minor, the consent must be obtained from a parent or guardian. *34 CFR*

§106.45(b)(5)(i). A consent form to allow the privileged records to be used in the grievance process must be completed and signed and executed by a party or parent or guardian if the party is a minor and be accompanied by a written consent. Written consent must be provided thorough the execution of the College District's consent form under the Family Educational Rights and Privacy Act ("FERPA").

5. **Right to Inspect Investigation Evidence.** After the investigation is concluded, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint will provide the parties and advisors in writing an equal opportunity to inspect and review all evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including a copy of the formal complaint and the evidence upon which the College District or College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. *34 CFR §106.45(b)(5)(vi).* The parties and advisors shall have ten (10) calendar days to inspect and review the evidence obtained from the investigation.

6. **Equal Access to Evidence.** After the parties review and inspect the evidence obtained as part of the investigation and prior to completion of the investigative report, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint will have five (5) calendar days to send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. *34 CFR §106.45(b)(5)(vi).*

7. **Investigative Report.** After receiving the parties' responses to the investigation evidence, the investigators will have fifteen (15) calendar days to prepare a written investigative report that fairly summarizes the relevant evidence and send it to the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint. The investigators will document the evidence in the report without reaching a conclusion or determination. A form for the report will be provided to the investigator. Within five (5) calendar days of receiving the investigator's report, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint will send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. *34 CFR §106.45(b)(5)(vii).* The written response is due within ten (10) calendar days. Any timely written response will be part of the record to be considered by the decision-maker.

8. Selection of Decision-maker Panel. Within ten (10) calendar days from the date the investigation report is sent to the parties, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint will select and appoint in consultation with the District Title IX Coordinator and District Title IX Coordinator for Students, a three-person decision-making panel to hear the evidence at and conduct a live hearing. The members of the decision-making panel may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent and to have had the training specified in Section II(B)(9-11) above, including how to serve impartially and determine issues of relevance. *34 CFR §106.45(b)(1)(iii).* None of the College Title IX Coordinators or College Title IX Leads listed on Appendix A may serve as decision-makers at their own college or for a case involving a students or employee of their own college.

9. Notices of Decision-making Panel Appointment. Within five (5) calendar days of selecting a decision-making panel, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint will notify the parties and advisors in writing of the appointment of the decision-making panel in writing and notify the decision-making panel members of the appointment. Each decision-makers must be provided a copy of the complaint, the evidence gathered in the investigation, all responses to the evidence, the investigation report, this procedure, and all notices sent to the parties and investigator. Also, within five (5) calendar days of selecting a decision-making panel, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint will select a date for the live hearing that is at least fifteen (15) calendar days prior to the hearing or other time of determination regarding responsibility.

F. Process A: Grievance Process - Live Hearings

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1. **Live Hearing Required.** The College District is required to conduct a live hearing of evidence to determine any responsibility (*i.e.*, hear the merits of the complaint or allegations). *34 CFR §106.45(b)(6)(i).* The live hearing will be recorded in real-time by audio, audiovisual recording, or stenographer and make the recording available to the parties for inspection and review. *34 CFR §106.45(b)(6)(i).*

2. **Notice of Hearing.** Within five (5) calendar days from selecting a live hearing date, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and

Title IX Lead handling the complaint will issue a letter to the parties with the following information:

(a) Notice that a live hearing will be conducted to hear evidence of the allegations of sexual harassment and determine any responsibility; *34 CFR §106.45(b)(6)(i).*
(b) Notice of the date, time, and place of the live hearing with sufficient time for the parties to prepare to participate; *34 CFR §106.45(b)(5)(v).*
(c) Notice that each party may be accompanied by an advisor at the live hearing; *34 CFR §106.45(b)(6)(i).*
(d) A request that the name and contact information of each party's advisor be disclosed immediately if it has not been disclosed already or notification that a party does not have an advisor;
(e) Notice that if a party does not have an advisor designated to be present at the live hearing, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint will, upon request, provide without fee or charge to that party, an advisor of the College District's or College's choice, who may be, but is not required to be, an attorney, to conduct cross examination on behalf of that party; *34 CFR §106.45(b)(5)(iv).*
(f) A request that each party disclose the names of his/her witnesses any disability accommodations that any party or witness would need for the live hearing; and
(g) Other information about the conduct of the live hearing, such as the right of an advisor to ask a party and witnesses all relevant questions and follow-up questions, including those challenging credibility. *34 CFR §106.45(b)(6)(i).*

3. **Location of Hearing.** Live hearings may be conducted with all parties physically present in the same geographic location, via Zoom, or, at the College District's or College's discretion or at the request of either party, any or all parties, witnesses, and other participants may appear at the live hearing in separate rooms with technology enabling participants simultaneously to see and hear each other answering questions. *34 CFR §106.45(b)(6)(i).* The parties may agree to exclude a non-party, non-advisor witness from a live hearing when not being cross examined.

4. **Availability of Evidence.** The District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross examination. *34 CFR §106.45(b)(5)(vi).*

5. **Cross Examination Generally.** At the hearing, the parties and witnesses may be cross examined (may be asked questions) by an advisor. Only relevant cross examination or other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-makers must first determine whether the question is relevant and explain any decision to exclude a question is not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. *34 CFR § 106.45(b)(6)(i).*

6. **Cross Examination by Advisors.** The decision-maker will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the College District to otherwise restrict the extent to which advisors may participate in other parts of the grievance process. *34 CFR §106.45(b)(6)(i).* In this regard, a complainant or respondent must be allowed by an advisor to speak, answer questions, discuss the complaint, and offer evidence during the investigation process. In other words, a complainant or respondent must speak for himself/herself.

7. **Absence of Party or Witness.** A party is required to submit to cross examination. The advisor may not testify on behalf of the party. If a party or witness is not present does not submit to cross examination at the live hearing because he/she is absent, the decision-maker may consider statements made by the parties and witnesses during the investigation, emails or text exchanges between the parties leading up to the alleged sexual harassment, and statements about the alleged sexual harassment that satisfy the regulation's relevance rules, regardless of whether the parties or witnesses submit to cross-examination at the live hearing. A decision-maker at a postsecondary institution may also consider police reports, Sexual Assault Nurse Examiner documents, medical reports, and other documents even if those documents contain statements of a party or witness who is not cross-examined at the live hearing; provided, however, that the decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions. *34 CFR §106.45(b)(6)(i) and U.S. Department of Education Title IX Bulletin of at 08/24/2021 04:42 PM EDT*

8. **Objective Evaluation of Evidence Required.** This grievance process requires an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence— and provides that credibility determinations may not be based on a person's status as a complainant, respondent, or witness. *34 CFR §106.45(b)(1)(ii).*

G. Process A: Grievance Process - Informal Resolution Before Hearing Determination.

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1. Offer. At any time prior to reaching a determination regarding responsibility and provided that no allegations that an employee sexually harassed a student are involved, the District Title IX Coordinator for Employees or College Deputy IX Coordinator and Title IX Lead handling the complaint may offer an informal resolution process, , that does not require a formal report or aa full investigation and adjudication, provided that a report was filed and the responsible Title IX Coordinator:

(a) Provides to the parties a written notice disclosing: The allegations of sexual harassment; the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; *34 CFR §106.45(b)(9)(i).*
(b) Obtains the parties' voluntary written consent and agreement to participate in the informal resolution process. *34 CFR §106.45(b)(9)(ii).* Mutual consent and agreement are required.
(c) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. *34 CFR §106.45(b)(9)(iii).*
(d) Obtains the parties' agreement in writing to the resolution achieved and the case will be closed.

2. Prohibitions to Informal Resolution. A College may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment. Similarly, a College may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. *34 CFR §106.45(b)(9).* The informal resolution process is not available to resolve allegations that an employee sexually harassed a student. *34 CFR §106.45(b)(9)(iii).*

H. Process A: Grievance Process - Determination Regarding Responsibility.

1. Written Determination Required. The decision-maker, who cannot be the same person as the District Title IX Coordinator for Employees, College Deputy Title IX Coordinator, Title IX Lead, or the investigator, must issue a written determination regarding responsibility based on the preponderance of evidence standard. *34 CFR §106.45(b)(7)(i).* The decision-maker is required to objectively evaluate all evidence and apply the preponderance of the evidence standard. *34 CFR §106.45(b)(1)(ii) and (vii); 34 CFR §106.45(b)(7)(i).* Any finding of unwelcomed conduct in a determination must have met the standard that "unwelcome conduct determined by a reasonable person to be so *severe, pervasive, and objectively offensive* that it effectively denies a person equal access to the College District's or College's education program or activity." *34 CFR §106.30(a)(2).*

2. Determination Requirements. The written determination must be issued by the decisionmaker regarding responsibility within fifteen (15) calendar days from the day the live hearing concluded. *34 CFR §106.45(b)(7).* The determination must be signed and dated and required to include the following:

(a) The allegations in the complaint potentially constituting sexual harassment. *34 CFR §106.45(b)(7)(ii)(A);*
(b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held. *34 CFR §106.45(b)(7)(ii)(B);*
(c) A statement of the parties and other persons present at the live hearing and the persons who were cross-examined;
(d) The allegations found to be substantiated or unsubstantiated as sexual harassment based on a preponderance of the evidence;
(e) Findings of fact which support the determination. *34 CFR §106.45(b)(7)(ii)(C);*
(f) A statement and rationale for why each allegation was found to be substantiated or unsubstantiated. *34 CFR §106.45(b)(7)(ii)(E);*
(g) A finding of responsibility, if any, or a statement that the respondent is not found responsible;
(h) Any disciplinary sanctions or discipline recommended to be imposed on the student respondent or employee-respondent;

(i) Conclusions regarding the application of the Student Code of Conduct or employee personnel policies or procedures to the findings of facts. *34 CFR §106.45(b)(7)(ii)(D);*
(j) Any recommendation of remedies designed to restore or preserve equal access to the College's education program or activity. *34 CFR §106.45(b)(7)(ii)(E);* and
(k) The procedures, deadlines, and permissible bases for the complainant and respondent to appeal. 34 *CFR §106.45(b)(7)(ii)(F).*

3. Distribution of Determination. The decision-maker must send the written determination to the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator handling the complaint who will provide it to the parties simultaneously within five (5) calendar days of receiving the determination.

4. Remedies. The District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint are responsible for effective implementation of any remedies recommended by the decision-maker. *34 CFR §106.45(b)(7)(iv).*

5. Time to Appeal. An appeal must be submitted to the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint within ten (10) calendar days from the date the determination was issued by the decision-maker after the conclusion of a live hearing. The determination regarding responsibility becomes final on the 11th day after the date of the determination decision if no appeal is filed or on the date of the appeal decision if an appeal was filed. *34 CFR §106.45(b)(7)(iii).* The process for appealing a determination is further discussed in the Civil Rights Complaints Appeals Procedure at H.1.1.2.

6. After Appeal Time Expires. After the appeal time has expired, whether or not an appeal was filed and determined, the District Title IX Coordinator for Employees handling the complaint will forward the determination to the employee's immediate Administrator for a determination of any discipline of the employee-respondent, and the College Deputy Title IX Coordinator handling the complaint will forward the determination to the College Student Conduct Officer for processing to determine disciplinary sanctions against a student-respondent. The District Title IX Coordinator for Employees or College Deputy Title IX Coordinator and Title IX Lead handling the complaint will send notification to the parties of the discipline or sanctions being imposed, with a copy to the Student Conduct Officer at the College if the respondent was a student or to Records in Human Resources if the respondent was an employee.

I. Process A: Grievance Process - Recordkeeping

1. **Preservation of Records of Actions Taken.** For each response to a general report or formal complaint, the College District and College will create and maintain for a period of seven (7) years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator handling the report or complaint will document the basis for its conclusion that its response was not deliberately indifferent, and document that measures have been taken designed to restore or preserve equal access to the recipient's education program or activity. If a complainant is not provided with supportive measures, the District Title IX Coordinator for Employees or College Deputy Title IX Coordinator handling the report or complaint will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the College District or College in the future from providing additional explanations or detailing additional measures taken. *34 CFR §106.45(b)(10)(ii).*

2. **Preservation of Formal Complaint Records.** The College District and Colleges will maintain for a period of seven (7) years records of the following: *34 CFR §106.45(b)(10)(i).*

   (a) Each sexual harassment investigation, including investigator notes, statements from witnesses, the determination regarding responsibility, the audio or audiovisual recording or transcript required by this procedure, the documents containing the disciplinary sanctions or discipline imposed on the respondent, the documents providing supportive measures, the investigation report, all notices to the parties and advisors, and the remedies provided to the complainant designed to restore or preserve equal access to the College District's education program or activity; *34 CFR §106.45(b)(10)(i)(A).*
   (b) Any appeal and the result therefrom; *34 CFR §106.45(b)(10)(i)(B).*
   (c) Any informal resolution and the result therefrom; *34 CFR §106.45(b)(10)(i)(C).*
   (d) All materials used to train Title IX Coordinators, Title IX Leads, investigators, decision-makers, and any person who facilitates an informal resolution process. The College will make these training materials publicly available on its website, or if the College does not maintain a website, the College must make these materials available upon request for inspection by members of the public. *34 CFR §106.45(b)(109)(i)(D).*

(e) The determination, all written communications between the District Title IX Coordinator, College Deputy Title IX Coordinator, Title IX Leads, and the parties, and all documents and responses submitted by the parties. *34 CFR §106.45(b)(10)(i)(A).*
(f) The reports and formal complaints of sexual harassment submitted.

3. **Responsible Departments.** The office of the District Title IX Coordinator for Employees at Human Resources is responsible for records retention pertaining to reports and complaints involving employees. The College Deputy Title IX Coordinator, Office of the Vice President for Student Success, and College Title IX and Student Conduct offices at each college, are responsible for records retention at the College Level and the documentation pertaining to reports and complaints involving students.

J. Process A: Effect of Other Laws.

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1. **Constitutional Protections.** This Process A procedure:

(a) Does not restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution. *34 CFR §106.6(d)(1);*
(b) Does not deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution. *34 CFR §106.6(d)(2);* or
(c) Does not restrict any other rights guaranteed against government action by the U.S. Constitution. *34 CFR §106.6(d)(3).*

2. **Effect of Other Laws.**

(a) The obligations imposed by 34 CFR Part 106 are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 292d and 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation. *34 CFR §106.6(a).*
(b) The obligation to comply with 34 CFR Part 106 is not obviated or alleviated by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, the FERPA regulations at 34 CFR Part 99, or Section 444 of the General Education Provisions Act (GEPA). *34 CFR §106.6(e).*

(c) Nothing in 34 CFR Part 106 may be read in derogation of any individual's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* or any regulations promulgated thereunder. *34 CFR §106.6(f).*

(d) Subject to FERPA requirements, nothing in the Title IX regulations or this procedure may be read in derogation of any legal right of a parent or guardian under state or federal law to act on behalf of a "complainant," "respondent," "party," or other individual, including but not limited to filing a formal complaint. *34 CFR §106.6(g).*

(e) **Preemptive Effect.** To the extent of a conflict between State or local law and Title IX as implemented by §§ 106.30, 106.44, and 106.45, the obligation to comply with §§ 106.30, 106.44, and 106.45 is not obviated or alleviated by any State or local law. *34 CFR §106.6(h).*

(f) Texas Education Code, Chapter 51, Sub-chapters E-2 and E-3, and the associated regulations at 19 Texas Administrative Code, Chapter 3, Sub-chapter A address the reporting and processing requirements for complaints of sexual harassment, sexual assault, dating violence, and stalking. (Domestic violence is not covered by the foregoing Texas statutes).

III. PROCESS B: Applicable to All Civil Rights Complaints of Discrimination, Harassment, And Retaliation, Except Complaints of Sexual Harassment Under Title IX

As stated above, this civil rights procedure provides two processes (grievance procedures) for the College District and Colleges to receive, investigate, evaluate, and resolve reports or complaints of discrimination, harassment, and retaliation which are prohibited by civil rights statutes listed below.

Process A applies *only* to complaints of sexual harassment, sexual assault, dating violence, domestic violence and stalking, as required by 2020 amendments to Title 34, Code of Federal Regulations, Part 106, the implementing regulations for Title IX. ("Title IX"). Those amendments are 34 CFR §§106.8, 106.30, 106.44, and 106.45.

Process B applies to all other complaints which do not meet the definitions of sexual harassment, sexual assault, dating violence, domestic violence, and stalking and jurisdictional requirements of §§106.30, 106.44, and 106.45 of the Title IX regulations as well as complaints of gender discrimination under Title IX, complaints which arise under other civil rights statutes, and complaints of retaliation. *(See 34 CFR §106.8(c)).* Complaints may be filed as to the following statutes as provided in Section I above on Reporting Complaints of Discrimination, Harassment and Retaliation.

ALAMO COLLEGES DISTRICT

A. Civil Rights Statutes Which Apply to Employees Only

1. **Title VII** - Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq*., as amended, and its federal regulations at 29 CFR §1606.2 *et seq*., prohibit discrimination and harassment against employees based on race, color, national origin, creed, and sex. "National origin" includes ethnicity or ancestry. "Creed" refers to religion.

2. **ADA** - Title I of the Americans With Disabilities Act of 1990, 42 U.S.C. §12101 *et seq*., as amended, and its federal regulations prohibit discrimination and harassment against employees on the basis of mental or physical disabilities. An employee who requires an accommodation of one or more disabilities covered by the ADA bears the responsibility to initiate a written request for an ADA accommodation with Human Resources. The form request and procedures are available in the employee electronic portal to Human Resources. The employee will be required to provide medical certification from the employee's medical provider that includes: (a) identification of the health provider; (b) the medical provider's diagnosis of the disabling condition; (c) identification of specific limitations and/or suggested restrictions and their relation to the disability; and (d) suggested accommodations. Human Resources will engage in an interactive process with the employee to determine the reasonable accommodation(s).

3. **ADEA** – The Age Discrimination in Employment Act of 1967, 29 U.S.C. §621 *et seq*., and its federal regulations at 29 CFR part 1625, prohibit discrimination and harassment against employees 40 years and older and permits the use of certain age-related distinctions and factors.

B. Civil Rights Statutes Which Apply to Students Only

1. **Section 504 –** Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and its federal regulations, prohibit discrimination against, and exclusion from participation or denial of benefits in an educational program or activity benefits, of a qualified individual with a disability solely by reason of the disability.

2. **ADA** – Title II of the Americans With Disabilities Act, 42 U.S.C. §12132 *et seq*., and its regulations at 28 CFR part 35, prohibit discrimination against, and exclusion from

participation in an educational or denial of benefits of the services, programs, or activities of a public entity solely by reason of the disability. Students must self-identify the need for academic accommodations based on disabilities and request accommodations from the Disability Support Services (DSS) office at the college where classes are being taken. An Initial Request for Disability Services form must be completed. Students will be required to provide medical certification to support the disabilities claimed. DSS will determine the reasonable academic accommodations and issue a Letter of Accommodation ("LOA) for the particular course and semester. Students are required to renew requests for accommodations every semester at every Alamo College they are attending. Complaints of denial of accommodations at a particular college will be processed through the DSS office and offices of the Dean of Student Success and Vice President of Student Success.

3. **Title VI** – Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§2000d-2000d-7 *et seq*., and its regulations at 34 CFR part 100, prohibit discrimination against, and the denial of benefits or exclusion from participation on the basis of race, color and national origin in educational programs and activities that receive federal financial assistance.

4. **Title IV** – Title IV of the Civil Rights Act of 1964, 42 U.S.C. §2000c *et seq*., prohibits discrimination on the basis of religion in public primary and secondary schools and higher education.

5. **ADEA** – The Age Discrimination Act of 1975, 29 U.S.C.§6101 *et seq*., and its regulations at 29 CFR §1626, prohibit discrimination on the basis of age in programs and activities receiving federal financial assistance. The act applies to persons of all ages and permits the use of certain age-related distinctions and factors.

C. Civil Rights Statutes Which Apply to Employees and Students

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1. **Title IX -** Title IX of the Educational Amendments of 1972, 20 U.S.C. §1681 *et seq*., and its federal regulations at 34 CFR §§106.1-106.82 covers sex discrimination in educational programs and activities which receive federal financial assistance. Sex discrimination includes gender discrimination, pregnancy discrimination, sexual orientation and transgender discrimination, sexual harassment, sexual assault, dating violence, domestic violence, and stalking. However, complaints of sexual harassment, sexual assault, dating violence, domestic violence, and stalking will be processed under Process A as required by the Title IX regulations. For Title IX to apply to an employee, the employee must be

participating, or attempting to participate in an education program or activity. Otherwise, a complaint of sex discrimination will be processed under Title VII.

2. **Texas Civil Rights Law.** Texas Education Code, Chapter 51, Sub-chapters E-2 and E-3, and the associated regulations at 19 Texas Administrative Code, Chapter 3, Sub-chapter A address the reporting and requirements for processing complaints of sexual harassment, sexual assault, dating violence, and stalking. The procedure required under Texas law is stated in Board Procedure H.2.1.1.

D. Process B: Other Behaviors Prohibited as to Employees and Students.

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1. Harassment. Harassment of an employee or student whether or not based on a protected status is inconsistent with the values of the College District for civility and respect for all and is prohibited by the College District. Harassment is unwelcomed conduct that becomes unlawful as to employees where (a) enduring the offensive conduct becomes a condition of continued employment, or (b) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

As stated in Process A, sexual harassment under Title IX means conduct on the basis of sex where (a) an employee conditions the provision of an aid, benefit, or service on the student's participation in unwelcome sexual conduct; or (b) the unwelcome conduct as determined by a reasonable person is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education programs or activities.

Harassment as to students that does not meet the definition of sexual harassment under Title IX becomes unlawful where it interferes with the access or participation in the educational process and programs at the Alamo Colleges.

2. Hostile Environment. A hostile environment may be created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent, or pervasive so as to interfere with, limit or deny the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities. Merely offensive speech of a generic nature and not on the basis of a protected status does not rise to the level of unlawful harassment.

3. Other Behaviors Prohibited by College District Policy.

4.

(a) Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class;

(b) Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a protected class;

(c) Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College District community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity as defined further in the Student Code of Conduct or the basis of actual or perceived membership in a protected class. Hazing also is illegal under the Texas Penal Code and Texas Education Code.

(d) Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control, or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class or other class, including sex/gender and sexual orientation. Cyberbullying is bullying that takes place using electronic technology. Bullying sometimes overlaps discriminatory harassment under Title VII and Title IX. Bullying is prohibited by this policy and other laws which prohibit harassment on the basis of protected criteria. Bullying not on the bases of a protected class is also prohibited the Texas Education Code and District Policy.

(e) Hate Crimes are defined by the Texas Government Code as crimes that are motivated by prejudice, hatred, or advocacy of violence and defined by the Federal Hate Crime Act as crimes that manifest evidence of bias or prejudice against a group identified by race, color, disability, religion, national origin, ancestry, age, gender, or sexual orientation. Hate crimes include offenses such as murder, assault, kidnapping, arson, criminal mischief, and graffiti. Hate crimes are prohibited by Texas and federal law and this policy.

E. Process B: Reporting Discrimination, Harassment, and Retaliation.

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1. Reporting Complaints. Section I above on reporting discrimination, harassment and retaliation applies to Process B. Complainants have the right, and can expect, to have complaints taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures. Reports and oral complaints must be reduced to writing for an investigation to be conducted by an investigative panel.

2. Immediate Action. Before a report or oral complaint is required to be reduced to writing, the College District reserves the right to act immediately under the following circumstances:

(a) The District Title IX/VII/ADA/504 Coordinator or designee will immediately notify the Alamo Colleges Police Department ("ACPD") of any immediate or potential threat to individual, campus, or workplace safety.
(b) Any incidents occurring on premises owned or controlled by the College District or off-campus when the off-campus conduct could have an on-campus impact or impact on the mission or interest of Alamo Colleges. A substantial College interest is defined to include any action that constitutes a criminal offense as defined by federal or Texas law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality where the College is located;
(c) Any situation where it appears that the accused individual may present a danger or threat to the health or safety of him/herself or others at Alamo Colleges;
(d) Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder;
(e) Any situation that is detrimental to the educational mission, interests or goals of the College District or Colleges; and/or
(f) Any online postings or other electronic communication, including cyber-bullying, cyber-stalking, cyber-harassment, etc. occurring completely outside of the College's control (e.g., not on Alamo Colleges networks, websites or between Alamo Colleges email accounts) when those online behaviors can be shown to cause a substantial on-campus disruption or misrepresent that the communication was authorized by Alamo Colleges.

3. Other Action. The following will apply after any immediate action is considered.

(a) As to all discrimination, harassment, and retaliation complaints and reports, the complainant or reporter is encouraged to provide a written complaint and contact information to enable the College District to proceed with an investigation of the charges and take any remedial action as soon as necessary or possible.
(b) The District Title IX Coordinator for Employees or College Title IX Coordinator handling the complaint will assist the complainant in preparing a formal written complaint, which shall include the date, time, place, and a specific description of the alleged conduct that constitutes the alleged discrimination, harassment, retaliation.
(c) Complainants have the right and can expect to have complaints taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through the applicable civil rights procedures.

(d) All initial contacts will be treated with the maximum possible confidentiality, but due process requires disclosure of the allegations and complainant to the respondent. Confidentiality cannot be guaranteed if the complaint becomes the subject of an administrative, arbitral, or court proceeding, including a subpoena.
(e) Victims of sexual assault, domestic violence, and stalking should be aware that the ACPD must issue timely warnings when reported incidents pose a substantial threat of bodily harm or danger to members of the campus community. The College District will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.
(f) Victims of sexual assault shall not be identified by name in the annual required by the Clery Act or Texas SB212 Reports.

F. Process B: Summary of Process and Steps.

The complaint and resolution process is designed to receive, investigate, evaluate and resolve a complaint or report of civil rights discrimination, harassment or retaliation within sixty (60) calendar days and will be conducted with that end in mind. A Procedure Diagram outlining the process steps and roles is attached to this procedure (see Attachment B). The primary steps in Process B are summarized as follows:

(a) The victim or witness reports or notifies the District Title IX/VII/IV/ADA/504 Coordinator, College Title IX Coordinator, or Alamo Colleges Police Department ("ACPD") of a violation or potential violation. In the event of a sexual assault or violence, the reporter should not hesitate to contact the ACPD immediately. ACPD will immediately notify the District Title IX/VII/IV/ADA/504 Coordinator.
(b) The District Title IX/VII/ADA/504 Coordinator designates the District Title IX Coordinator for Employees or a College Deputy Title IX Coordinator at the college where the alleged discrimination, harassment or retaliation occurred to process the complaint for resolution under Process B.
(c) District Title IX/VII/ADA/504 Coordinator notifies ACPD if the matter is also a potential police matter.
(d) The Designated Title IX Coordinator helps reporter prepare a formal complaint.
(e) The Designated Title IX Coordinator establishes any interim remedies required to protect victim and campus and/or workplace safety (such as suspension of employee or student).

(f) The Designated Coordinator provides concurrent official notice of the complaint and allegations to the complainant and respondent and appoints an Investigative Panel to investigate the written complaint allegations.
(g) The Investigative Panel launches an investigation to include interviewing the complainant, respondent, and witnesses and collecting evidence.
(h) The Investigative Panel concludes the investigation and prepares a Preliminary Investigative Report based on a preponderance of the evidence that is provided to the parties for review and responding within five (5) calendar days to provide any additional information for consideration by the Investigative Panel.
(i) The Investigative Panel considers and may investigate any additional information provided in a response to the Preliminary Investigative Report.
(j) The Investigative Panel Chair prepares and issues a Final Report of Investigative Findings to the Designated Coordinator handling the complaint based on a preponderance of the evidence.
(k) The Designated Coordinator handling the complaint renders an appropriate Resolution of the complaint based on the Investigation Panel's Final Report of Investigative Findings and the preponderance of all evidence collected by the Panel.
(l) The Designated Coordinator handling the complaint provides a written Resolution concurrently to the complainant and respondent.
(m) The responsible Administrator determines and issues and implements discipline and/or sanctions.
(n) Complainant and Respondent each have the opportunity to accept the Resolution or submit an Appeal to the District Title IX/VII/ADA/504 Coordinator.
(o) Appeals are processed in accordance with Civil Rights Complaints Appeal Procedure at (H.1.2.2).

G. Process B: Interim Remedial Action

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1. Possible Remedies. If, in the judgment of the Alamo Colleges District Title IX/VII/ADA/504 Coordinator or Designated Coordinator, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on campus of the accused individual or the ongoing activity of a student organization whose behavior is in question, the District Title IX/VII/ADA/504 Coordinator (or designee) may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further violations. These remedies may include referral to counseling and health services or to the Employee Assistance Program, education to the community, altering work arrangements for

employees, providing campus escorts, implementing contact limitations between the parties, offering adjustments to academic deadlines, course schedules, etc.

2. Suspension. Alamo Colleges may interim suspend a student, employee, or organization pending the completion of investigation and procedures. In all cases in which an interim suspension is imposed, the student, employee or student organization will be given the opportunity to meet with the District Title IX/VII/IV/ADA/504 Coordinator or Designated Coordinator prior to such suspension being imposed or as soon thereafter as reasonably possible to show cause why the suspension should not be implemented. Depending on whether the offending party is an employee or student, the District Title IX/VII/IV/ADA/504 Coordinator or an appropriate administrator at the college where the student is enrolled has sole discretion to implement or stay an interim suspension under this policy, and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for expulsion or termination. During an interim suspension, an employee or student will be denied access to Alamo Colleges facilities and events. As to a student, this restriction may include classes and/or all other College/College District activities or privileges for which the student might otherwise be eligible. In addition, alternative coursework options may be pursued to ensure as minimal an impact as possible on the accused student.

3. Other Remedies. Victims and the College District have the right to seek restraining, judicial no-contact and/or protective orders, and internal no-contact and criminal trespass warnings to maintain individual and campus safety.

H. Statement of Complainant's Rights, Whether Employee or Student.

A complainant is the person who makes a complaint of civil rights discrimination, harassment or retaliation under this procedure and its policy.

(a) A complainant has the right to file a criminal complaint.
(b) A complainant has the option to, or not to, notify and seek assistance from law enforcement and/or Alamo Colleges' authorities.
(c) A complainant and the College District have the right to seek restraining, judicial no contact and protective orders, internal no contact orders, and criminal trespass warnings to ensure personal safety and maintain a safe campus and work environment.
(d) A complainant has the right to have a prompt, fair, and impartial Civil Rights Complaint and Resolution Procedure that ensures a fair, prompt, and equitable process for both parties.

(e) A complainant has the right to present his or her case, including the right to an adequate, reliable, and impartial investigation of complaints, the right to an equal opportunity to present witnesses and other evidence, and the right to the same appeal procedure for complainant and respondent.
(f) A complainant has the right to be treated with respect by College officials.
(g) A complainant has the right to take advantage of Alamo Colleges support resources (such as College Counseling, College Health Services for students, or EAP services for employees).
(h) A complainant has the right for the complaint to be decided using a preponderance of the evidence standard (i.e., more likely than not the harassment other conduct occurred).
(i) A complainant has the right to have a representative, an adviser, attorney, or other advocate of the complainant's choice and at the complainant's cost present during the Civil Rights Appeal Procedure.
(j) A complainant has the right to refuse to have an allegation resolved through conflict resolution procedures.
(k) A complainant has the right to be considered for amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
(l) A complainant has the right to be free from retaliation for engaging in protected activity.
(m) A complainant has the right to have complaints heard in substantial accordance with the Civil Rights Complaint and Resolution Procedure and procedures and to participate in the process whether the injured party or the College District is the complainant.
(n) A complainant has the right to be informed in writing of the outcome/resolution of the complaint, sanctions where permissible, and the rationale for the outcome where permissible. A complainant has the right to challenge any finding, decision, determination, sanction, or action taken and the right for Student Code of Conduct procedures to be followed where applicable.

I. Statement of Respondent's Rights, Whether Employee or Student.

A respondent is the person against whom a complaint is lodged or made under this policy.

(a) A respondent has the right to have a prompt, fair, and impartial Civil Rights Complaint and Resolution Procedure that ensures an equitable process to both parties.
(b) A respondent has the right to be advised of the complaint against him or her and to the same due process rights as the complainant.
(c) A respondent has the right to an adequate, reliable, and impartial investigation of complaints, the right to an equal opportunity to present witnesses and other evidence, and the right to the same appeal procedure as the complainant.

(d) A respondent has the same right as a complainant to present his or her case, to present witnesses and other evidence, and to challenge the complaint made against respondent.
(e) A respondent has the right for the complaint to be decided using a preponderance of the evidence standard (i.e., more likely than not the harassment other conduct occurred).
(f) A respondent has the right to have an adviser, attorney, representative, or other advocate of the respondent's choice and at the respondent's cost present during the Civil Rights Appeal Procedure.
(g) A respondent has the right to be considered for amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
(h) A respondent has the right to have complaints heard in substantial accordance with the Civil Rights Complaint and Resolution Procedure and to participate in the process whether the injured party or the College District is the complainant. A respondent has the right to be treated with respect by College officials.
(i) A respondent has the right to take advantage of campus support resources (such as Counseling, College Health Services for students, or EAP services for employees).
(j) A respondent has the right to refuse to have an allegation resolved through conflict resolution procedures.
(k) A respondent has the right to have complaints heard in substantial accordance with the Civil Rights Complaint Resolution Procedure and to participate in the process whether the injured party or the College District is the complainant.
(l) A respondent has the right to be informed in writing of the outcome/resolution of the complaint, any sanctions imposed against the respondent, and the rationale for the outcome.
(m) A respondent has the right to challenge any finding, decision, determination, sanction, or action taken against respondent and the right for applicable Student Code of Conduct or employee disciplinary procedures to be followed where applicable.

J. Process B: Title IX Coordinator's Investigation Obligations

The District Title IX/VII/IV/ADA/504 Coordinator shall coordinate a prompt investigation of all complaints and allegations of discrimination, harassment, and retaliation based on protected class. Upon receipt of a civil rights-based complaint, the District Title IX/VII/IV/ADA/504 Coordinator shall:

(a) Immediately designate a Coordinator to conduct the complaint resolution process and issue the final resolution of the case. If the complaint is against an employee, the

District Title IX Coordinator for Employees will be designated. If the complaint is against a student, a College Deputy Title IX Coordinator be designated.

(b) Immediately appoint two members to the investigative panel from the available trained panel members. If either party to the complaint is a faculty member, the investigative panel shall include at least one faculty member. If either party to the complaint is a staff member, the investigative panel shall include at least one staff member;

(c) Within five (5) College District business days, notify the accused (respondent) and complainant of the complaint and investigation by hand delivering the notice to the respondent (accused) with a copy of the notice to the complainant. The District Title IX/VII/IV/ADA/504 Coordinator or designee may extend the time allotted for delivering the notice to the accused in writing before the expiration of the original deadline under extraordinary circumstances. Spring and Winter breaks constitute an extraordinary circumstance.

(d) During this time period (between filing of the complaint and notification of the respondent (accused), the designated coordinator and investigative panel shall be appointed, briefed and begin the investigation.

K. Process B: Investigation

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1. **Interviews.** An Investigative Panel shall have the authority to interview witnesses and gather documentation. Interviews will be the primary method of collecting information as part of the fact-finding investigation. Attorneys, representatives, advisors, and advocates are not allowed at internal interviews. Witnesses and the respondent are expected to be cooperative and truthful.

2. **Confidentiality Under Process B.** At all times, except as provided by Title IX, the investigative panel shall take steps to ensure privacy and confidentiality for witnesses, complainant and the respondent (accused) during the investigation, including without limitation, requiring all parties to agree, in writing, that information disclosed during the investigation shall not be disclosed to others unless required by law, court order, subpoena, or to defend the College District in legal or administrative proceedings, including appeals of the decision on the complaint. A violation of privacy or confidentiality shall be grounds for disciplinary action up to and including termination. The rights of a complainant and respondent, as stated in the College District's Policy on Civil Rights Discrimination, Harassment, and Retaliation shall be observed. Under Process A for complaints of sexual harassment, neither the College District, Colleges, Title IX Coordinators nor any

investigator may restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. *34 CFR §106.45(b)(5)(iii).*

3. **Investigation Time Period.** In most cases, the investigative process will take approximately 60 business days, but the investigation of more complex cases may take longer. The investigation shall be conducted as expeditiously as possible and, where necessary, the administration shall provide panel members with substitutes for pre-assigned responsibilities. spring and winter breaks constitute an extraordinary circumstance that justifies an extension of the 60-day period for investigation and resolution, however the summer term will not be considered an appropriate period to forgo the investigation and resolution.

4. **Time Period for Criminal Investigation.** In the event of a criminal investigation of sexual misconduct charges, including sexual assault, or an investigation in which a College District police officer is accused of sexual misconduct, sexual harassment, sexual violence, or other form of civil rights harassment or discrimination, the time lines in this procedure may be extended by three (3) to ten (10) days to enable the law enforcement to gather evidence and conduct preliminary investigation and determine if the matter will be taken up by the ACPD or other agency with jurisdiction. If the case is continued as an internal Civil Rights Complaint Resolution process cannot be delayed beyond ten (10) days.

5. **Consequence of False Information.** Because the investigative panel has a serious responsibility to ascertain the facts, the whole College District has an interest in the accuracy and reliability of the information the investigative panel receives. For that reason, if any witness or alleged violator of this policy is later found to have knowingly provided false information to the investigative panel, the College District reserves the right not to indemnify or defend any employee who knowingly provides false information to the investigative panel in violation of this procedure and the right to take appropriate disciplinary action.

L. Process B: Investigative Panel Findings

1. **Final Report Required.** Once all the facts and evidence are gathered from all parties and witnesses; and the investigative panel concludes that the fact finding is complete, the investigative panel will issue a Final Report of Investigative Findings.

2. **Preliminary Report.** Before issuing a Final Report of Investigative Findings to the Title IX/VII/ADA/504 Coordinator or designee, the investigative panel will provide their conclusions concurrently to the complainant and accused parties and the administrator(s) in a Preliminary Report of Findings. The complainant and accused will be given an opportunity to comment and respond to the information presented and provide any additional information that may not have been reviewed by the investigative panel but should be considered prior to a decision and final report being issued regarding the complaint. Any additional information must be provided to the investigative panel within (5) business days.

3. **Consideration of Additional Information.** Final Report Within the next five (5) business days, the investigative panel will consider any additional information provided and render a Final Report of Investigatory Findings to the District Title IX/VII/ADA/504 Coordinator. The Final Report of Investigatory Findings will include the factual findings and the panel's conclusion whether the preponderance of the evidence obtained in the investigation establishes a violation of College District policy. The final report shall be dated and signed by all members of the investigative panel.

M. Process B: Resolution of Complaint

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1. **Decision-maker.** The District Title IX/VII/ADA/504 Coordinator or designated Deputy Coordinator assigned to conduct the complaint resolution process will determine the appropriate resolution of the complaint based on the factual evidence provided in the Final Report of Investigative Findings and the preponderance of evidence presented in the report.

2. **Notice of Resolution.** The District Title IX Coordinator for Employees or College Deputy Title IX Coordinator handling the complaint will provide a formal written Notice of Complaint Resolution to the complainant and respondent and administrator(s) concurrently in writing, within five (5) business days from receiving the report from the investigative panel. The notice of resolution will identify any findings of policy violation by any party and indicate which Alamo Colleges Administrator is responsible for determining the appropriate disciplinary action or sanctions to be taken. The Complaint Resolution Notice will include information about the timeline for initiating sanctions and/or disciplinary actions as well as the Civil Rights Appeal Process that is available to the complainant and accused.

N. Disciplinary Actions or Sanctions

1. **Referral to Administrator.** When the Complaint Resolution refers employee discipline and/or student sanction considerations to an Administrator(s), the Administrator or designee will have ten (10) business days to render a determination of action to be taken. Student Sanctions may be referred by the Administrator to the Student Conduct Officer, Dean or other Student Success leader for action. Employee Discipline may be referred to the employee's supervisor and Human Resources for determination and action.

2. **Employee Discipline.** Complaints against an employee may result in disciplinary action up to and including discharge in accordance with Alamo Colleges Policy (9.1, Progressive Discipline and 10.2, Separation from Employment) and associated Procedures.

3. **Student Sanctions.** Complaints against students may result in sanctions up to and including Expulsion in accordance with Alamo Colleges Student Code of Conduct (Policy F.4.2 and associated Procedure F.4.2.1).

4. **Policy Violations.** In the event of policy violations, a number of factors will be considered in determining appropriate discipline or remedial action, including the nature of the violation, the severity and pervasiveness of the conduct. Nothing in this procedure limits or delays the College District's right to take appropriate disciplinary actions, up to and including termination, when an employees' behavior warrants the action, and nothing in this procedure shall prevent the College District from taking appropriate action against a person who knowingly makes a false accusation.

5. **Notice of Discipline or Sanctions.** Once the appropriate disciplinary action or sanctions have been determined, the complainant and accused respondent will be notified concurrently- in writing of the decision by the District Title IX/VII/ADA/504 Coordinator or designated deputy.

O. Process B: Appeals

Both the complainant (complaining party) and the respondent (the accused party) may opt to accept the decision and determination of the action or sanctions imposed or submit an appeal to proceed before an Appeal Hearing Panel within ten (10) business days of the date of the letter

communicating the decision of the investigative panel and the determination of disciplinary action or sanctions. The appeal procedure is stated in procedure H.1.1.2 Civil Rights Appeal Procedure.

Legal References:
TASB Community College Policy Manual Reference
34 CFR Part 106;
DIAA(LEGAL) Freedom from Discrimination, Harassment and Retaliation-Sex and Sexual Violence-Employees
FFDA(LEGAL) Freedom from Discrimination, Harassment and Retaliation-Sex and Sexual Violence-Students

APPENDIX A

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