

FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION
SEX AND SEXUAL VIOLENCE

DIAA
(REGULATION)

INTRODUCTION

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

Inherent Authority: The College District reserves the right to take necessary and appropriate action to protect the safety and well-being of the College District community. The College District will respond to any complaint of sexual misconduct, including conduct alleged to have occurred during breaks, leaves of absence or periods of dismissal, whether on or off College District property or premises. The disciplinary process is available as an option so long as the respondent remains within the jurisdiction of the College District.

Student/Employee Participation: Students and employees may be asked to assume positions of responsibility in the resolution of allegations of sexual misconduct. However, final authority in disciplinary matters is vested in the College District administration and in the Board.

Third Parties/Guests: Third parties and/or guests or visitors of the College District who are alleged to have engaged in sexual misconduct shall be subject to corrective action, up to and including removal and/or ban from College District property or premises and termination of any and all contractual arrangements with the College District.

Vendors or agencies in contract with the College District or one of its colleges will be promptly notified if an employee is alleged to have violated College District policy. A vendor's or agency's employee may be banned from any and all College District events/activities, properties, and facilities.

Glossary of Terms: A glossary of terms frequently used in the College District's sexual misconduct policy and procedure is available at DIAA(EXHIBIT).

CONSENT

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.

Consent to some sexual contact (such as kissing or fondling), or the existence of a previous dating or sexual relationship shall not be presumed to be consent for other sexual activity (such as intercourse). The existence of consent shall be based on the totality of the circumstances, including the context in which the alleged inci-

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dent occurred and any similar previous patterns that may be evidenced.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including the use of alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally unable to give knowing consent is in violation of College District policy and regulations.

The perspective of a reasonable person shall serve as the basis for determining whether a respondent knew, or reasonably should have known, whether consent was given.

MINORS

The College District prohibits sexual contact of any kind by an adult with a person younger than 18 years old, regardless of consent.

Similarly, it is a violation of College District policy and regulations for an employee of the College District to engage in sexual contact or inappropriate conduct or behavior, of any kind, with a student enrolled in a College District charter high school or participating in a College District dual credit or early college high school program, regardless of the age of the student.

CONSENSUAL
RELATIONSHIPS

Consensual romantic or sexual relationships in which one party maintains a direct or indirect supervisory or evaluative role or influence over the other party (e.g., faculty member and student or supervisor and employee) are inherently conflicted, as these relationships may be less consensual than perceived by the individual whose position confers power.

The College District does not wish to interfere with private choices regarding personal relationships when those relationships do not interfere with the goals and policies of the College District. However, for the personal protection of members of the College District community, consensual relationships between individuals for whom power differentials are inherent and any conduct (e.g., dating) that might reasonably be expected to lead to a romantic or sexual relationship are generally discouraged.

If such a relationship develops, the supervisor or faculty member, in the case of a student/faculty relationship, must promptly disclose, in writing, the existence of the relationship to the location human resources director or the College District's chief talent officer. The employee or student may also make the disclosure. Such disclosure will likely result in the necessity to remove the supervisor from his or her supervisory or evaluative responsibilities,

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or shift a party out of being supervised or evaluated by someone with whom he or she has established a consensual relationship.

The location human resources director or the College District's chief talent officer or designee shall inform the employee's next higher level supervisor or the faculty member's department head (and others on a need-to-know basis) of the existence of the relationship, and the highest level administrator will ensure that the supervisor or faculty member does not participate in activities or decisions that may either benefit or harm the employee or student.

The College District recognizes that the terms "romantic" and "dating" are not capable of precise definition. However, the College District believes that either or both parties in such a relationship can and will understand the meaning of the terms as they apply to them, and will act in a manner consistent with this policy.

While no relationships are prohibited by this policy, failure to self-report such relationships can result in disciplinary action for an employee, up to and including termination of employment.

STANDARDS OF DUE
PROCESS

No person shall search the personal possessions of a student or employee of the College District for the purpose of enforcing this policy or procedure unless the student's or employee's prior permission has been obtained or unless a law enforcement officer conducts the search as authorized by law.

Formal rules of evidence shall not be applicable, nor shall deviations from prescribed procedures necessarily invalidate a decision or proceeding, unless significant prejudice to the respondent or complainant may result.

ACCOUNTABILITY

Students and employees may be accountable to both civil and criminal authorities and to the College District for acts of sexual misconduct that constitute violations of law and College District policy. College District disciplinary action with respect to any such act or omission on the part of a student or employee shall proceed during the pendency of civil and/or criminal proceedings and shall not be subject to challenge on the ground that civil and/or criminal charges involving the same incident have been filed, dismissed, or reduced.

REPORTING

An individual alleging sexual misconduct may file a complaint with the College Title IX Coordinator for the location, a Deputy Title IX Coordinator, if applicable, or the Office of Institutional Equity (OIE).

A complaint may also be initiated by referral from College District Talent Central, College Location Human Resources, Student Services, or a responsible employee. [See REPORTING OBLIGATIONS]

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Employees receiving a report alleging sexual misconduct are expected to promptly contact their Location College Title IX Coordinator/Deputy, Title IX Coordinator, or the OIE within 24 hours of becoming aware of the report or incident.

Complaints alleging sexual misconduct shall be handled in consultation with the Designated Administrator (DA) or administrative officer(s) directly responsible for student discipline or employee grievances.

TIMELY REPORTING

An allegation or complaint of sexual misconduct should be raised as soon after the offending conduct as possible. Complaints that are not promptly filed may hinder the College District's ability to conduct a thorough investigation, contact relevant witnesses, or ensure evidence availability. In all cases, a decision will be made based on existing facts and evidence to determine whether the information, if true, would constitute a violation of College District policy such that an investigation is warranted.

CONFIDENTIALITY

The College District and its colleges recognize that confidentiality is important. Once a complaint is filed, every effort will be made to protect the confidentiality of the investigation and proceedings to the extent reasonably possible, and all participants in the process are expected to respect the confidentiality of the proceedings and circumstances giving rise to the dispute.

Although the College District supports the confidentiality interests of its employees and students, complete confidentiality cannot be guaranteed. Examples of situations in which confidentiality cannot be maintained include:

1. When the College District is required by law to disclose information (such as in response to a legal process).
2. When disclosure of information is determined necessary for conducting an investigation of the claim.
3. When confidentiality concerns are outweighed by the College District's interest in protecting the safety or rights of others.

Parties bringing a complaint should consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared with the appropriate designees.

CONFIDENTIAL
REPORTING

Within the College District some resources may serve in a professional role in which communication is privileged under law or may be designated a confidential resource. If a complainant would like the details of an incident to be kept confidential, the complainant may speak with College District counselors, College District health

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service providers, off-campus local rape crisis counselors, domestic violence resources, local or state assistance agencies, or members of the clergy/chaplains who will maintain confidentiality except in extreme cases of immediacy of threat or danger, or abuse of a minor.

PRIVILEGE

Privileged communications are communications protected by law that cannot be disclosed to (shared with) anyone else without permission.

The College District shall recognize as privileged communications between a respondent or complainant with a licensed member of the professional staff of the College District health center, counseling, or guidance center, or any other person to whom statutory privilege may apply, where such communications were made in the course of performance of official duties and when the matters discussed were understood by the staff member and the respondent or complainant to be confidential.

Such privileged information shall be deemed inadmissible for purposes of consideration in disciplinary proceedings under this policy.

REPORTING
OBLIGATIONS

As members of the College District community, all College District employees, including faculty, are expected to report sexual misconduct unless they meet the description outlined in the "Confidential Reporting" section. However, whether an individual is obligated to report alleged incidents of sexual misconduct depends on whether the individual is a "responsible employee" of the College District.

RESPONSIBLE
EMPLOYEE

A "responsible employee" includes any employee who has authority to take action to redress sexual misconduct; who has been given the duty of reporting sexual misconduct to the Title IX Coordinator or other appropriate party; or who a student or employee could reasonably believe has such authority or duty.

Responsible employees must report allegations of sexual misconduct to a College Title IX Coordinator, Deputy Title IX Coordinator, if applicable, or the OIE.

REQUESTS FOR
CONFIDENTIALITY

If a complainant does not wish for his or her name to be shared, including with the respondent; does not wish for an investigation to take place; or does not want a formal resolution to be pursued, the complainant may make such a request of the OIE. Staff in the OIE, in consultation with the College Title IX Coordinator or Deputy Title IX Coordinator, will evaluate the request in light of the duty to ensure the safety of the campus and to comply with federal law.

In cases indicating pattern, predation, threat and/or violence, the College District may be unable to honor a request for confidentiality.

ty. When the College District must override a request for confidentiality in order to comply with Title IX or other federal, state, or local law, the information will only be shared, as necessary with those individuals involved in responding to and investigating the complaint. If it is determined that the identity of a complainant who wished to remain anonymous must be disclosed, the OIE shall inform the complainant prior to disclosure.

NOTICE

Notice regarding an allegation of sexual misconduct shall be provided in writing to the respondent at his or her designated or last known mailing address via certified mail, return receipt requested; personal delivery; or any other verifiable method of delivery, including electronic mail.

The notice shall notify the respondent that a complaint has been filed against the respondent, inform the respondent of the nature of the complaint, and include a description of the disciplinary process and copies of the relevant College District policies and procedures.

PRELIMINARY
INVESTIGATION

Upon receipt of notice of an allegation of sexual misconduct by the College District, the College Title IX Coordinator/Deputy Title IX Coordinator or a designated investigator shall conduct a preliminary investigation of the alleged violation, which may include, but is not limited to, reviewing initial information available, reviewing student/employee records, and/or discussions with witnesses, the complainant, and the respondent.

After completing the preliminary investigation, the College Title IX Coordinator/Deputy Title IX Coordinator may:

1. Dismiss the allegation for failing to allege facts sufficient to indicate that a violation of this policy may have occurred or that a formal investigation is warranted; or
2. Proceed administratively, which includes a formal investigation, conference, and disposition.

Notice of the outcome of the preliminary investigation shall be provided to the respondent and the complainant in writing via certified mail, return receipt requested, hand delivery, or by any other verifiable method of delivery.

When a preliminary investigation fails to yield facts sufficient to support an allegation of sexual misconduct, the complaint shall be dismissed and the dismissal shall be provided, in writing, to the complainant and the respondent. A dismissal for failure to yield facts sufficient to substantiate a violation of policy is the final decision of the College District, unless additional facts are submitted to warrant proceeding with the disciplinary process.

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FORMAL
INVESTIGATION

If the College Title IX Coordinator determines a formal investigation should proceed, the College District will conduct a prompt, fair, and impartial investigation.

A formal investigation of sexual misconduct will generally involve an investigator, as designated by the College Title IX Coordinator/Deputy Title IX Coordinator and/or the OIE, interviewing both the complainant and respondent separately to hear or clarify each party's account of the incident, review the disciplinary process, and discuss other possible remedies. During the investigation, the investigator will interview witnesses, collect additional information as necessary, and submit a written report. The investigator will determine whether to interview an identified witness and the extent to which testimony of a witness is relevant and/or included in a report.

WITNESS
PARTICIPATION

Members of the College District community who serve as witnesses during an investigation of an allegation of sexual misconduct are expected to cooperate with the investigator and the investigation, keep confidential matters discussed during the investigation in order to ensure that the fact-finding nature of the investigation is in no way hindered or compromised, and adhere to the standards of conduct prescribed by the College District's policy and regulations. Failure to do so could result in disciplinary action. All persons involved with the investigation, including witnesses, are cautioned that retaliation against anyone participating in an investigation is strictly prohibited.

TIME FRAME

It is the intention of the College District to resolve complaints made under this policy within 60 business days from receipt of the complaint, excluding days required to conduct the appeals process. Investigations typically take 15 to 30 business days to complete.

In some cases, extenuating circumstances may force the delay of the projected time frame. For example, investigations of certain forms of sexual misconduct may undertake a short delay when criminal charges are filed on the basis of the same conduct that is the subject of the College District investigation. Delays due to fall/spring/summer breaks and holidays and inclement weather may also occur. In such cases, written notice, along with the reason(s) for the delay and, where possible, the anticipated completion date will be provided to the complainant and the respondent.

College District remedial actions will not be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed, dismissed, or reduced.

INTERIM MEASURES

During an investigation and up to resolution of the matter involved, the College District reserves the right to pursue interim measures, as deemed appropriate, to protect the complainant, the respond-

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ent, and/or to ensure the stability and continuance of normal College District functions and/or operations. Interim measures may include, but are not limited to, suspension, administrative leave, restrictions between the complainant and the respondent, providing campus escorts, altering work arrangements for employees, and offering adjustments to academic deadlines and course schedules.

If suspension is adopted as an interim measure, such action shall utilize existing policies and procedures as set forth in the College District Board Policy Manual. [See DM(REGULATION), DMAA, and FM]

INVESTIGATIVE
REPORT

An investigation is considered concluded when the investigator provides to the Title IX Coordinator/Deputy Title IX Coordinator and the DA or administrative officer(s) directly responsible for student discipline or employee grievances an investigative report, with the investigator's finding(s) as to whether, based on a preponderance of the evidence, the allegation(s), more likely than not occurred.

NOTICE TO APPEAR
FOR ADMINISTRATIVE
CONFERENCE

As promptly as possible, but no more than three business days after conclusion of the investigation, the respondent and the complainant shall be directed, in writing, to appear for an administrative conference with the DA and the College Title IX Coordinator/Deputy Title IX Coordinator at a specific time and place, not less than five business days after the date of notice.

The DA has the authority to impose restrictions up to and including disciplinary action upon a student or employee if he or she fails, without good cause, to comply with a notice to appear.

ADMINISTRATIVE
CONFERENCE

At the administrative conference, the DA and the College Title IX Coordinator/Deputy Title IX Coordinator shall review the findings of the formal investigation privately with each party to the complaint and provide each with the opportunity to respond. Once each party has responded, the DA shall:

1. Accept the investigator's findings; or
2. Request that the investigator reopen the investigation to consider additional information and resubmit the investigative report.

The respondent and the complainant will be notified, in writing, of the outcome of the administrative conference and of any disciplinary action imposed concurrently. If the parties accept the administrative resolution, such acceptance shall be made, in writing, with acknowledgment by both the respondent and the complainant that acceptance of the administrative resolution constitutes a waiver of the right to a hearing and the right to appeal.

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Notice of acceptance of the administrative resolution, and the disciplinary action imposed, if any, must be provided to the DA within two business days of receiving notice of the administrative outcome.

If either party rejects the administrative resolution, such refusal shall be noted by the DA and acknowledged in writing by the rejecting party within the same timeframe as above. A student or employee rejecting administrative resolution may appeal the administrative resolution or request a hearing before a hearing panel. A request for hearing must be made on one or more of the following grounds:

1. Respondent or complainant was deprived of his or her rights; or
2. The administrative resolution does not adequately account for all available evidence.
3. The respondent is a student and the recommended disciplinary action is suspension or expulsion.

HEARING

HEARING REQUEST

A hearing request must be made in writing, include the grounds on which the request is being made, and be submitted to the OIE within three business days of the date of refusal of the administrative resolution. If such a request is made, the OIE will review the request and determine whether there is cause to proceed in scheduling a hearing panel. Where the recommended disciplinary action is suspension or expulsion, a request for a hearing will be granted.

If it is determined that there is cause for the matter to be heard by a hearing panel, a hearing will be scheduled. If the OIE determines not to proceed with a hearing, notice of that decision will be provided to the respondent and complainant. Either party may still appeal the administrative resolution. [See PETITION FOR ADMINISTRATIVE REVIEW]

COMPOSITION OF
HEARING PANEL

If a hearing is scheduled, the OIE will appoint a specially trained three-person panel to resolve the complaint. The hearing panel will receive a copy of the investigative report provided to the DA. However, neither the investigator's findings nor the proposed outcome of the administrative conference will be disclosed to the hearing panel unless the complainant or respondent decides to share such information.

The panel will include:

1. For students – two College District employees and one student. When possible, at least one of the three panelists will be from the college of the complainant and/or the respondent.

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2. For employees –three College District employees. When possible, at least one of the three panelists will be from the location of the complainant and/or respondent.

The panel and its chair shall be appointed by the OIE on a rotating basis or on the basis of availability. The chair of the panel shall rule on the admissibility of evidence, motions, and objections to procedure. All members of the panel are expected to attend all meetings and are eligible to vote in the hearing.

The OIE shall set the date, time, and place for the hearing. The chair may summon witnesses and require the production of documentary and other evidence.

A finding of responsibility by a hearing panel must be based on a majority vote.

NOTICE OF
HEARING

The OIE shall notify the parties of the date, time, and place for the hearing by certified mail, return receipt requested, e-mail, or personal delivery. The notice shall specify a hearing date not more than seven business days after the date of the letter. In the case of a student who is under 18 years of age, a copy of the letter shall be sent to the parent(s) or guardian(s) of the student.

The chair may, for good cause, postpone the hearing so long as all interested parties are notified of the new hearing date, time, and place.

CONTENT OF
NOTICE

The notice shall include the alleged violation and the basis for the allegation, and advise the parties of their right:

1. To a private hearing.
2. To appear alone or with an adviser or legal counsel. The role of legal counsel is limited, as provided in the section “Adviser/Legal Counsel.”
3. In the case of a student, to have a parent or legal guardian present at the hearing.
4. To know the identity of each witness who will testify.
5. To know the identity of each hearing panelist.
6. To cause the panel to summon witnesses, and to require the production of documentary and other evidence possessed by the college or to be introduced at the hearing.
7. To choose not to testify.

CONFLICT OF
INTEREST

A complainant or a respondent may challenge the participation of an appointed hearing panelist based on a perceived conflict of in-

terest, bias, or prejudice. The decision to challenge the participation of a panelist must be made in writing, include the basis of the challenge, and be submitted to the OIE at least three business days before the commencement of the hearing. If the rationale for the challenge is deemed relevant to the case by the OIE, the information will be shared with the hearing panel and the non-challenging party. The decision as to whether the stated conflict of interest, bias, or prejudice exists and whether to replace a panelist will be made at the discretion of the OIE.

HEARING
WITNESSES

A complainant or a respondent may identify and offer material witnesses to testify at a hearing. Notice of the intent to offer a witness should be provided to the OIE at least three business days in advance of the hearing. Such notice should include the name and contact information for each witness and the nature of their testimony. The names of the witnesses submitted to the OIE will be shared with the other party in advance of the hearing. The hearing panel may, at its sole discretion, exclude a witness or witness testimony if it deems the information the witness intends to provide irrelevant or duplicative. The decision to exclude a witness or witness testimony must be unanimous.

ADVISER / LEGAL
COUNSEL

Each party may have an adviser/legal counsel present during the hearing. However, the role of the adviser/legal counsel shall be limited to observation, support, or advice. Such person shall not represent or speak on behalf of the respondent or complainant to whom they are providing support or advice; nor may they question or cross-examine any of the participants of the hearing.

A person who serves as an adviser/legal counsel in a proceeding may not also serve as a witness in that proceeding.

RECORDING /
ELECTRONIC
DEVICES

The recording, including transcription, or distribution of a recording of a hearing proceeding by a party to the case, hearing panelist, parent/guardian, or an adviser/legal counsel to the complainant/respondent is strictly prohibited. The OIE will arrange for transcription or audio recording of the hearing proceeding, which will be kept on file for a minimum of three years. Reasonable care will be taken to create a quality audio recording; the lack of a quality audio recording or presence of technical problems that result in no recording will not be deemed valid arguments for appeal.

ATTENDANCE

A respondent or complainant may request not to be present for the entire hearing or a portion of the hearing, or not to be present in the same room as the other party. If such a request is made, it should be made in writing to the OIE within three business days of the hearing. The OIE will, subject to availability, make the necessary accommodation/arrangements, including access to audio/visual services.

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PRELIMINARY MATTERS HEARING PACKET	In advance of the hearing, the OIE will prepare a packet with information relevant to the case, including the investigative report, to be shared with the hearing panel. Both the respondent and the complainant shall receive a copy of the hearing packet at least five business days prior to the hearing.
JOINT HEARINGS	Charges arising out of a single transaction or occurrence against one or more students or employees may be heard together, or, upon request by the students or employees in interest, a separate hearing may be held.
DISCLOSURES	<p>Not later than 12:00 p.m., three full business days before the hearing date, each party to the hearing shall provide to the OIE for disclosure to the other and the hearing panel:</p> <ol style="list-style-type: none">1. Any documentary evidence and summaries of testimony intended to be introduced at the hearing. At the request of a party, the panel chair shall exclude evidence at hearing that was not disclosed at least three business days before the hearing, unless the chair determines that the evidence could not have been disclosed within that time.2. The name of each witness he or she wants summoned.3. Any objection that, if sustained by the chair of the panel would prevent the hearing.4. The name of the adviser/legal counsel, if any, and the name of any parent or guardian who may accompany a student.5. A request for a separate hearing or accommodations, if applicable, and the grounds for such a request.
STANDARD OF REVIEW	The panel shall presume a respondent innocent of the alleged violation until there is a preponderance of the evidence, (i.e., it is more likely than not) that the respondent engaged in sexual misconduct.
HEARING PROCEDURE	<p>The Chair of the hearing panel shall have general authority over the hearing proceeding, setting time frames for witness testimony and open/closing statements, determining the relevancy of any information presented/submitted at the hearing, and excluding information he or she deems irrelevant.</p> <p>The hearing shall proceed generally as follows:</p> <ol style="list-style-type: none">1. Persons present shall be the complainant and the respondent, unless otherwise requested; a parent or guardian if desired and as permitted by this policy, and an adviser/legal counsel if applicable.

2. Before the hearing begins, either party to the hearing may request that witnesses remain outside the hearing room.
3. The Chair shall make introductions followed by:
 - a. Respondent's statement accepting or denying responsibility for the complaint;
 - b. Complainants opening comments;
 - c. Respondent's opening comments;
 - d. Questions from the panel;
 - e. Testimony/questions of other material witnesses (if applicable);
 - f. Closing comments from the complainant; and
 - g. Closing comments from the respondent.
4. The complainant and the respondent may not question each other directly. If a complainant or respondent wishes to ask a question of the other, he or she may raise the question to be asked through the hearing panel; the panel will determine whether to ask the question. Neither parents/guardians nor advisers/legal counsel are permitted to ask questions.
5. The panel, by majority vote, shall determine using a preponderance of the evidence standard the responsibility of the respondent regarding the alleged violation.
6. The panel shall state in writing its findings and the disciplinary action imposed. Each panel member shall sign the statement. The panel shall include in the statement its reasons for the findings. The OIE shall notify each party to the hearing of the decision of the panel in the same manner as the notice of hearing, at approximately the same time, and no more than ten business days after the hearing.

EVIDENCE /
RELEVANCE

Legal rules of evidence shall not apply to hearings under this code. Evidence that is commonly accepted by reasonable persons in the conduct of their affairs is admissible. Irrelevant, immaterial, and unduly repetitious evidence may be excluded.

In making a determination of relevance, the chair of the hearing panel shall evaluate, as appropriate, among other things, whether the information offered bears on a fact at issue in the case, is more prejudicial than probative, or is duplicative. In the case of sexual misconduct, a complainant or respondent's prior sexual history will typically be found as not relevant, unless the previous or subsequent behavior involved the other party to the case or was substan-

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tially similar to the conduct at issue or indicates a pattern of behavior and substantial conformity with that pattern. Information related to a respondent or complainant's sexual history that does not fall into one of those categories may not be introduced at a hearing.

The panel will make a determination of responsibility based on the evidence presented.

RECORD

The hearing record shall include: a copy of the notice of hearing; all documentary and other evidence offered or admitted in evidence; written motions, pleas, and other materials considered by the panel; a copy of the hearing transcript or recording and the panel's decision.

PETITION FOR
ADMINISTRATIVE
REVIEW

A student or employee is entitled to submit in writing a petition for administrative review to the College President or a designee who may alter, modify, or rescind the finding of the DA or the hearing panel and/or the disciplinary action imposed by each. Disciplinary action will not be imposed while the review is pending.

A petition for administrative review of the decision of the DA or hearing panel is a review of the record; it is not a new hearing.

A petition for administrative review shall contain the date of the disciplinary action and the basis for the petition, i.e., why the petitioner believes such review is necessary. A petition must be based on or more of the following:

1. New evidence or information not reasonably available at the time of the investigation or hearing that should be considered and that could significantly affect the finding;
2. The DA or hearing panel did not consider all information that was available during the investigation/hearing (e.g., the investigator did not interview a key witness, the hearing panel did not consider applicable documentation, etc.);
3. Procedural errors within the investigation/hearing, which may have significantly affected the finding;
4. The disciplinary action imposed does not provide for adequate intervention for or is disproportionate to the violation for which the respondent was found responsible; or
5. The finding has no plausible basis.

The petitioner shall file his or her petition with the College President or his or her designee on or before the third business day after receiving notice of the DA/hearing panel decision. If the College President or designee rejects the petition, the decision is final and the action of the DA/hearing panel stands.

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The College President or designee, in his or her review may take any action that the DA or the hearing panel is authorized to take; however, neither the College President nor his or her designee may increase the disciplinary action imposed. The College President or designee may receive written briefs and hear oral arguments during the review.

The College President or designee shall modify or set aside the finding of violation, disciplinary action, or both, of the DA or the hearing panel if the substantive rights of the petitioner were prejudiced because the DA or panel's finding of facts, conclusions, or decisions were:

1. In violation of federal or state law or published college regulation or policy;
2. Clearly erroneous or disproportionate in view of the reliable evidence and the preponderance of the evidence; or
3. Capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The College President or designee shall provide written notification of the result of the administrative review to each party at approximately the same time and in the manner described above [see NOTICE]. Petitions for administrative review will generally be decided within ten business days from the date the petition was received. If a decision will take longer, notice of the delay will be provided to both the respondent and the complainant.

AUTHORIZED
DISCIPLINARY
PENALTIES

A finding of responsibility by the DA or the hearing panel will result in the imposition of one or more disciplinary actions against the respondent:

1. Employees who are found to have engaged in sexual misconduct may be subject to disciplinary action, up to and including termination of employment. If suspension or termination of an employee is contemplated, the appropriate College District policy and procedures governing dismissal will apply.
2. Students may be subject to one or more of the penalties for violation of a College District Board policy included under FMA.

The DA and/or the hearing panel will determine the appropriate disciplinary action to apply by considering certain factors, including, but not limited to, the nature of the conduct, prior disciplinary history of the respondent (shared with the hearing panel only upon a finding of responsibility for the allegation), previous action by the College District or college in response to similar conduct, and the

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interest of the College District community. In any case, educational/behavior programming or alcohol/substance assessment may be required.