

# **San Joaquin Valley College**

## **Sexual Harassment and Sexual Assault Prevention Policy and Appendix A**



# *San Joaquin Valley College*

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## **Section 1.0 – Policy Statement**

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All members of the San Joaquin Valley College community (including Santa Barbara Business College (“SBBC”)) (together, “SJVC”) have the right to be treated, and the responsibility to treat others, with dignity and respect. These principles are fundamental to the educational mission of SJVC. It is the policy of SJVC to provide an environment free of unlawful discrimination, harassment, and Sexual Misconduct. SJVC is committed to (1) increasing awareness of unlawful discrimination, harassment, and Sexual Misconduct (2) educating its community on how to prevent unlawful behaviors, (3) fostering an environment in which a victim promptly reports alleged violations, and (4) resolving complaints in a fair and timely manner.

SJVC policies, Title IX of the Higher Education Amendments of 1972 (“Title IX”), applicable provisions of the Code of Federal Regulations, and applicable state statutes prohibit discrimination on the basis of sex in any education program or activity SJVC operates. This policy against discrimination extends to student admissions and employment. SJVC also prohibits retaliation against an individual who reports, submits a complaint, or who otherwise participates in good faith in any matter related to this anti-discrimination policy. Any inquiries about the application of Title IX rules may be addressed to the Title IX Coordinators identified below, the U.S. Department of Education’s Assistant Secretary of the Office of Civil Rights, or both.

This Policy conforms to the Title IX regulations that will become effective on August 14, 2020. The new regulations define what behaviors are prohibited under the Title IX law and how an institution must properly respond to a complaint of such conduct. The regulations also require institutions of higher education to implement certain due process safeguards for individuals accused of prohibited conduct, including, the availability of advisors and a formal hearing process to determine responsibility. These regulations apply to complaints between students, students and employees, and complaints between employees.

Upon receiving a complaint of Prohibited Conduct (see definition below), SJVC will take reasonable and prompt steps to stop any such conduct, prevent its recurrence, determine what occurred, and remedy any subsequent effects. SJVC provides all parties with opportunities to present facts, identify witnesses, and will reach reasonable conclusions based on the evidence collected. SJVC will take appropriate action against those engaging in Prohibited Conduct, including disciplinary measures when warranted, up to and including permanent separation from the institution and/or employment.

SJVC reserves all rights to modify this Policy and Appendix A at its sole discretion.

## **Section 2.0 – Applicability**

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This Policy applies to all current students, employees, volunteers, interns, vendors (including their employees), independent contractors, visitors, and institution-affiliated

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organizations.

This Policy applies to Prohibited Conduct that occurs within the United States:

- On institution-controlled property
- At institution-sponsored events
- In-school programs or activities, and/or
- Off-campus where the conduct has continuing adverse effects on any member of the SJVC community in any SJVC program or activity

Members of the SJVC community are encouraged to promptly report Prohibited Conduct to SJVC, regardless of where the incident occurred or who committed it. An individual who has experienced Sexual Misconduct (as defined below) is encouraged to immediately seek assistance from a medical provider and report the incident to local law enforcement. Reports to SJVC and law enforcement may be pursued simultaneously.

Even if SJVC does not have jurisdiction over the person accused of Prohibited Conduct, SJVC will still take prompt action to provide for the safety and well-being of the Complainant and the campus community. Measures include taking reasonable steps to stop and remedy the effects of the Prohibited Conduct and to prevent recurrence of the behavior.

When used in this Policy and accompanying procedures, “Complainant” refers to the individual who reportedly is the subject or recipient of the Prohibited Conduct and “Respondent” refers to the individual who is reported to have directed the Prohibited Conduct toward the Complainant or another person.

To the extent permitted by law, and when deemed appropriate by the Title IX Coordinator, disputes will be resolved pursuant to other SJVC policies and procedures, which will supersede the provisions of Policy (including Appendix A).

## **Section 3.0 – Prohibited Conduct**

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Sex and gender-based harassment, Sexual Misconduct, and retaliation (“Prohibited Conduct”) violate:

- Title IX of the Educational Amendments Act of 1972
- Violence Against Women Reauthorization Act of 2013
- Campus SaVE Act
- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”)
- State law (where applicable and not in conflict with federal law and regulations)

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All forms of such conduct are prohibited under this Policy, as are attempts or threats to commit Prohibited Conduct. Reported behavior that does not constitute Prohibited Conduct under this Policy but is nevertheless determined to be inappropriate pursuant to another applicable SJVC policy may subject a Respondent to disciplinary action.

All individuals are protected against Prohibited Conduct regardless of sex, gender, sexual orientation, gender identity or gender expression. Prohibited Conduct can be committed by any individual regardless of an individual's sex, gender, gender identity and expression, or sexual orientation, and can occur between individuals of the same or different sex, strangers or acquaintances, as well as people involved in intimate or sexual relationships. Organizations affiliated with the institution or that use SJVC property or resources in connection with their activities are also prohibited from engaging in Prohibited Conduct.

Below are definitions and descriptions of the various forms of Prohibited Conduct:

## **3.1 Unlawful Harassment**

**3.1.1. Quid Pro Quo** is an SJVC employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcomed sexual conduct.

**3.1.2. Hostile Environment** is unwelcomed conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity. An individual may experience unlawful harassment even if the offensive conduct was not aimed directly at them. Unlawful harassment also includes misconduct based on the individual's sexual orientation, gender identity, or gender expression. Inappropriate behavior that does not rise to the level of unlawful harassment under this Policy may be a violation of other applicable SJVC policies and could still subject the Respondent to disciplinary action up to and including permanent separation from SJVC.

The following is a non-exhaustive list of examples of conduct that, depending on the nature, frequency, and severity, may constitute behavior that constitutes a hostile environment:

- Sending unwanted sexually oriented jokes to a student or work group email list
- Displaying explicit sexual pictures in common areas of institution property or on a work computer station where others can view it
- Making or using derogatory comments, epithets, slurs, or jokes of a sexual nature
- Unwelcomed graphic comments about an individual's body or using sexually degrading words to describe an individual

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- Unwanted suggestive or obscene communications
- Unwelcomed touching of any part of the body
- Unwelcomed sexual advances
- Unauthorized sharing or posting sexually explicit photos of another, including a current or former partner
- Surreptitiously taking pictures or videos of individuals, especially of private or intimate areas of their body

Even when relationships are consensual, care must be taken to eliminate the potential for harassment or other conflicts. SJVC's practice, as well as more general ethical principles, prohibits individuals from participating in evaluating the academic performance of those with whom they have amorous and/or sexual relationships. Sexual or romantic relationships between a student and employees, most especially faculty and administrators, are prohibited. Upon learning of the existence of such a relationship, Responsible Employees (as defined below) have an obligation to report it to the Title IX Coordinator and SJVC's VP of Administration, and Ember Education's Human Resources Director.

## **3.2 Sexual Misconduct**

Sexual Misconduct is generally defined as sexual conduct that occurs by force or threat of force or without affirmative consent, including where the person is incapacitated. This definition encompasses a range of sexual conduct that could also fall within the definition of unlawful harassment. The Title IX Coordinator will determine whether allegations should be treated as sexual harassment or misconduct under Title IX, based on the specific conduct alleged and the circumstances. Prohibited forms of Sexual Misconduct include, but are not limited to, non-consensual sexual intercourse, non-consensual sexual contact, relationship violence, and stalking. Below are terms that are relevant to the understanding of Sexual Misconduct.

### **3.2.1 Relevant Terms, Definitions, and Examples**

**Non-consensual sexual intercourse** is defined as having or attempting to have sexual intercourse with another individual by force or threat of force, without affirmative consent, including where the person is incapacitated. Sexual intercourse includes the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person.

**Non-consensual sexual contact** is defined as having sexual contact with another individual by force or threat of force, or without affirmative consent, including where the person is incapacitated. Sexual contact includes intentional contact with the intimate body parts of another (whether directly

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or through clothing), touching any part of the body of another in a sexual manner, or disrobing or exposure of another.

Nonconsensual sexual contact and nonconsensual sexual intercourse are often referred to as “sexual assault.” As defined by the federal Violence Against Women Act, sexual assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

**Affirmative Consent** is the affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other(s) to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing through a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or a past sexual relationship between them, should never by itself be assumed to be an indicator of consent. It is not a valid excuse that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:

- The Respondent’s belief arose from his/her own intoxication or recklessness
- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented

A person who is incapacitated is not capable of giving affirmative consent to sexual activity. A person may be incapacitated by a temporary or permanent mental or physical condition, sleep, unconsciousness, or be incapacitated as a result of consumption of alcohol or drugs. Incapacitation is a state beyond mere intoxication or “drunkenness.” Impairment must be significant enough to render a person unable to understand the fact, nature, or extent of the sexual activity. In evaluating affirmative consent in cases involving incapacitation, SJVC considers the state of incapacitation of the Complainant and the knowledge of the Respondent.

It is not a valid excuse that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

- The Complainant was asleep or unconscious

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- The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity
- The Complainant was unable to communicate due to a mental or physical condition

**Relationship Violence** is Dating Violence or Domestic Violence.

Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with a Complainant. The existence of such a relationship shall be determined by the Complainant's statement and consideration of the length of the relationship, type of relationship, and the frequency of interaction between persons involved in the relationship.

Domestic Violence means use of physical, sexual or emotional abuse or threats to control another person who is a spouse or former spouse, a cohabitant or former cohabitant, a person with whom they have a child, by person similarly situated to that of a spouse under the law of the state where the violence occurred, and by any other person against an adult or youth victim who is protected from that person's acts under the laws of the state where the violence occurred.

**Stalking** is a course of conduct of a sexual or romantic nature or motivation directed at an individual that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with the person or their property. Stalking that is not sex or gender-based should be reported to the Student Services Coordinator and will be handled pursuant to other SJVC policies. The following are examples of conduct that depending on the frequency and severity may constitute stalking:

- Repeated unwanted communication, including face-to-face contact, telephone calls, voice messages, emails, text messages, postings on social networking sites, written letters, or gifts
- Posting picture(s) or information of a sexual nature on social networking sites or other websites
- Gathering information about the person using public records, online searches, going through the garbage, or contacting the person's family,



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friends, or coworkers

- Posting private pictures or videos on school bulletin boards or internet sites
- Installing spyware on another person's personal devices, including phones or computers
- Surveillance or other types of observation
- Pursuing, following, or showing up uninvited at or near places like classrooms, residence, workplace, or other places frequented by an individual
- Directly or indirectly making threats to the person

### **3.3 Retaliation**

Retaliation against any member of the SJVC community for making a good-faith report of Prohibited Conduct, or for participating or assisting in an investigation or hearing conducted by SJVC or a state or federal agency, is strictly prohibited under this Policy. Retaliation includes, but is not limited to, overt or subtle acts of intimidation, threats, coercion, or discrimination for the purpose of interfering with any right or privilege secured by Title IX. SJVC will take prompt and appropriate corrective action to stop and remedy retaliation if it occurs.

It is a violation of SJVC policy to file a knowingly false complaint under this Policy. An individual who feels they have been the subject of a knowingly false complaint may pursue their own complaint in response, upon resolution of the original Formal Complaint and using the steps outlined in this Policy. A complaint filed in good faith under this provision shall not constitute a false report. A finding of no responsibility is not, by itself, evidence that the underlying complaint was not filed in good faith.

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## **Section 4.0 – Privacy**

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SJVC will maintain the privacy of all individuals involved in a report of Prohibited Conduct, to the extent possible. Privacy generally means that information related to a report of Prohibited Conduct will only be shared with those individuals who have a “need to know.” All SJVC employees who are involved in the institution’s response, including, but not limited to, the Title IX Coordinators, receive specific instruction about respecting and safeguarding private information. Throughout the process, every effort is made to protect the privacy interests of all individuals involved, in a manner consistent with the need for a thorough review of the matter. SJVC will inform all individuals involved in the investigation and/or hearing process of the critical importance and expectation that, while the processes are ongoing, they maintain the confidentiality of the process and any information shared with

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them as a result of their participation. Further, all documents provided in preparation for or related to the hearing proceedings may not be disclosed to any other party except as may be required or authorized by law.

## **Section 5.0 – Preservation of Evidence**

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Because Sexual Misconduct (see definition above) may involve physical trauma and is a crime, individuals who have experienced Sexual Misconduct are urged to seek medical treatment as soon as possible. They are strongly encouraged to preserve all physical and digital evidence of the violence. This may be needed to prove criminal sexual violence, or for obtaining a protective order. Individuals who have experienced sexual violence should not shower, bathe, douche, eat, drink, wash their hands, or brush their teeth until after they have had a medical examination. They should save all the clothing they were wearing at the time of the incident. Each item of clothing should be placed in a separate paper bag (not plastic). They should not clean or disturb anything in the area where the sexual violence occurred. Digital evidence relating to the incident, such as texts, emails, and social media posts, should be also be preserved.

## **Section 6.0 – Resources**

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SJVC encourages individuals who have experienced Sexual Misconduct to seek immediate support and advocacy services. The Title IX Coordinator or other campus officials will provide information regarding off-campus resources for support and advocacy.

### **6.1 Off-Campus Resources**

SJVC encourages individuals who have experienced Sexual Misconduct to seek immediate support and services through the following organizations:

National Sexual Assault Hotline  
(800) 656-HOPE  
[www.rainn.org](http://www.rainn.org)

National Domestic Violence Hotline  
(800) 799-7233  
[www.thehotline.org](http://www.thehotline.org)

National Suicide Prevention Lifeline  
(800) 273-8255  
[www.suicidepreventionlifeline.org](http://www.suicidepreventionlifeline.org)

## **Section 7.0 – Reporting to SJVC**

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A victim of Prohibited Conduct has a right to file a Formal Complaint against anyone engaging Prohibited Conduct. To initiate a Formal Complaint, a Complainant must submit a letter or e-mail alleging Prohibited Conduct against a Respondent and requesting that SJVC investigate the allegation. A Formal Complaint may be filed with the Title IX Coordinator (see below) in person, mail, or email. Complainants may use the Title IX Coordinator's email

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address or TitleIXSupport&Assistance@sjvc.edu. The Formal Complaint must indicate that the Complainant is the person filing the formal complaint. Complainants are encouraged, but are not required, to submit complaints through Maxient, which will aid the Complainant in drafting the complaint. A Complainant may, at any time, request a dismissal of the Formal Complaint. All requests for dismissal must be sent to the Title IX Coordinator and be in writing.

Additionally, anyone who witnesses, experiences, or is otherwise aware of conduct that the individual believes to be in violation of this Policy, including retaliation, is urged to contact the Title IX Coordinator.

Upon receipt of a Formal Complaint, the Title IX Coordinator will assess the complaint for a Title IX violation and, if appropriate, refer the matter for investigation and a hearing pursuant to the procedures set forth in Appendix A, which follows this Policy.

## **7.1 Title IX Coordinator and Designee**

The Title IX Coordinator is responsible for coordinating SJVC's compliance with Title IX and for SJVC's overall response to conduct falling under this Policy. The Title IX Coordinator oversees all Title IX complaints, monitors outcomes, identifies and addresses any patterns of systemic problems that arise, and assesses effects on the campus climate. The Title IX Coordinator will also discuss with both parties the offering of any "supportive measures," which are non-disciplinary, non-punitive individualized services that are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party. Please see Appendix A to this Policy for more details. The Title IX Coordinator also oversees the implementation and application of this Policy, coordinates responses to Formal Complaints, and ensures consistent treatment of parties involved as well as prompt and equitable resolution of complaints. The contact information for the Title IX Coordinators can be found below, depending on the Complainant's campus:

### **For San Joaquin Valley College Campuses:**

Alyssa Bahr Casillas  
3828 West Caldwell Avenue  
Visalia, CA 93277  
Phone: (559)622-1992  
E-mail: [Alyssa.Bahr@sjvc.edu](mailto:Alyssa.Bahr@sjvc.edu)

### **For Santa Barbara Business College Campuses:**

Scott DeBoer  
303 Plaza Drive  
Santa Maria, CA 93454  
Phone: (805) 339-6370 ext. 1149  
E-mail: [Scott.DeBoer@sbbcollege.edu](mailto:Scott.DeBoer@sbbcollege.edu)

If a Complainant believes that the campus Title IX Coordinator has a conflict of interest or is biased, the Complainant may contact any other Title IX Coordinator

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listed above or request the appointment of a designee.

## **7.2 Responsible Employees**

If an individual discloses Prohibited Conduct to any Responsible Employee, the Responsible Employee must report to the Title IX Coordinator all relevant details about the alleged conduct. Additionally, to the extent either the Complainant and/or Respondent are SJVC employees, the Responsible Employee must also notify Ember Education's Human Resources Department. Responsible Employees are defined to include certain College officials who have authority to institute appropriate corrective measures. The following are Responsible Employees:

- Title IX Coordinator
- Title IX Investigators
- Campus Presidents
- Deans
- Campus Security Authority

If a member of the SJVC community would like support and guidance in filing a complaint, they may contact the Title IX Coordinator or the designee.

## **7.3 Notification of Law Enforcement**

Individuals who have experienced Sexual Misconduct (see definition above) are encouraged to notify local law enforcement. SJVC will provide assistance in notifying law enforcement if the individual so chooses. An individual who has experienced sexual violence also has the right to decline to notify law enforcement or SJVC.

SJVC has an obligation under applicable state law to report incidents of sexual violence to law enforcement. However, SJVC will not report identifying information about the Complainant without the Complainant's consent.

## **Section 8.0 – Requests for Confidentiality or that Complaint Not Be Pursued**

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If a Complainant discloses an incident to the Title IX Coordinator or a Responsible Employee, but requests that their name not be used, that the institution not pursue an investigation, or that no disciplinary action be taken, SJVC must weigh the request against its obligation to provide a safe, non-discriminatory environment. The Title IX Coordinator will weigh the request for confidentiality against factors including, but not limited to:

- The seriousness of the conduct;
- Circumstances that suggest there is a significant risk that the accused will commit further acts of Prohibited Conduct;
- Whether SJVC can undertake any action without the participation of the Complainant;

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- The existence of independent evidence;
- The extent of prior remedial methods taken with a Respondent; and
- Any legal obligation to proceed based on the nature of the conduct, whether there was a weapon involved, and the age of a student victim.

The Title IX Coordinator will determine the appropriate manner of resolution in accordance with Title IX. The Title IX Coordinator will attempt to address the conduct consistent with the Complainant's request not to use their name or their request not to pursue an investigation or that no disciplinary action be taken, while also protecting the health and safety of the Complainant and the SJVC community.

SJVC's ability to fully investigate and respond may be limited if the Complainant requests anonymity or declines to participate in an investigation. For example, if a Complainant requests that their name or other identifiable information not be shared with the Respondent or that no formal action be taken, SJVC may be limited in its ability to fully respond to the complaint. To the extent possible, SJVC will, however, take other action to limit the effects of the Prohibited Conduct and prevent its recurrence.

In those instances where the Title IX Coordinator determines that SJVC must proceed with an investigation despite the request of the Complainant, the Title IX Coordinator will inform the Complainant of SJVC's intention to initiate an investigation and that their identity will be disclosed as part of the written notice of allegations.

In all cases, the final decision on whether, how, and to what extent SJVC will conduct an investigation, and whether other measures will be taken in connection with the report of Prohibited Conduct, rests solely with the Title IX Coordinator.

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### **Section 9.0 – Contacting Government Agencies**

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Employees, students and others participating in SJVC's educational programs or activities may direct questions regarding Title IX or file complaints with the U.S. Department of Education Office for Civil Rights, (800) 421-3481, [www2.ed.gov/about/offices/list/ocr/index.html](http://www2.ed.gov/about/offices/list/ocr/index.html). Filing a complaint with a federal agency under Title IX must be done within 180 days after an alleged discriminatory or harassing event and there is no requirement to exhaust remedies through SJVC's internal procedures before filing directly with a federal agency. Participants in programs funded by other federal agencies providing federal financial assistance to SJVC may file directly with those agencies.

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### **Section 10.0 – Informational Resources**

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Information on Prohibited Conduct, as well as copies of this Policy and attached procedures (Appendix A) are available from the Title IX Coordinator assigned to the SJVC or SBBC campuses and the InfoZone website.

## **Appendix A - Procedures for Investigating and Resolving Complaints of Prohibited Conduct**

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### **I. Introduction and Scope of Procedures**

These procedures are for the benefit of current members of the SJVC community. SJVC will take prompt and appropriate action to address all reports of Prohibited Conduct in a fair and impartial manner. SJVC's policy reflects its commitment to support and encourage individuals who have been subjected to Prohibited Conduct to come forward. SJVC takes all allegations of Prohibited Conduct seriously. SJVC's policy is also intended to ensure that: individuals accused of engaging in Prohibited Conduct are not prejudged and are presumed not responsible; they have notice and a full and fair opportunity to respond to allegations before findings and conclusions are reached; and decisions are based on the evidence gathered in a process that is fair to both Complainants and Respondents. SJVC will conduct a fair, impartial, timely and thorough investigation.

When a complaint of Prohibited Conduct involves a third party who is not affiliated with the institution, SJVC's ability to investigate and take action against the person accused of Prohibited Conduct may be limited. However, in all cases SJVC will conduct an inquiry into what occurred and take prompt action as is practicable to provide for the protection and well-being of the Complainant and the SJVC community.

### **II. Reporting to SJVC**

A member of the SJVC community who wishes to report Prohibited Conduct should file a Formal Complaint as soon as possible after the incident, although complaints may be made at any time. Formal Complaints must be made in writing and must be brought to the attention of the Title IX Coordinator or a Responsible Employee listed Section 7.0 of the attached Sexual Harassment and Sexual Assault Prevention Policy (the "Policy"). Please see the Policy for instructions how to make a complaint of Prohibited Conduct. Complainants are encouraged, but not required, to submit complaints through Maxient.

### **III. Initial Assessment, Supportive Measures, and Dismissals**

For reports of Prohibited Conduct covered by Title IX, SJVC's Title IX Coordinator will make an initial assessment of the complaint which will include: (1) an immediate assessment of any risk of harm to individuals or to the campus community; (2) taking steps necessary to address those risks; and (3) an assessment whether the allegations meet the definition of "Prohibited Conduct" under the Policy and applicable Title IX regulations.

Complainants will be provided with information on his/her rights and options under the Policy and these procedures, written materials about the availability of, and contact information for, resources and services, and coordination with law enforcement. The need for, and types of, supportive measures (see below) also will be discussed. The Title IX Coordinator will also meet with the Respondent, who will be provided with information on the Respondent's rights under the Policy and these procedures, and written materials about the availability of supportive measures, and contact information for campus resources and

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services.

SJVC's Title IX Coordinator will also determine whether the Formal Complaint contains sufficient facts to pursue a claim under the Policy and Title IX regulations. To conform to applicable law, the Title IX Coordinator is required to dismiss a complaint if: the conduct alleged in the Formal Complaint would not constitute sexual harassment under Title IX even if proved, the alleged conduct did not occur in SJVC's education program or activity or did not occur against a person in the United States. The Title IX Coordinator has the discretion to dismiss the complaint if: (1) the Complainant submits a written request to withdraw the complaint or specific allegations; (2) the Respondent is no longer enrolled or employed by SJVC; or (3) specific circumstances prevent SJVC from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

For all dismissals, the Title IX Coordinator will provide the parties with a written notice explaining his/her decision. Although a Formal Complaint may be dismissed from under this Policy, a complaint may constitute a violation of other SJVC policies and may be processed accordingly.

Thereafter, if the Formal Complaint is not dismissed, the Title IX Coordinator will refer the matter for Formal Resolution, which calls for an investigation and hearing.

## **IV. Alternative Resolution**

After an initial assessment of the alleged facts, the Title IX Coordinator may—if all parties to the Formal Complaint voluntarily agree in writing—begin an Alternative Resolution process. Alternative Resolution is not available for incidents in which an employee is accused of sexually harassing a student.

Alternative Resolution may include, among other responses:

- Referral for disciplinary action;
- An agreement between the parties;
- Referring the Respondent to targeted preventive educational and training programs; and/or
- Conducting a follow-up review to ensure that the resolution has been carried out effectively.

Except for the limitations stated above, the Title IX Coordinator has sole discretion to determine whether the Formal Complaint is appropriate for Alternative Resolution, to determine the type of resolution to pursue, and to stop the process at any time before its conclusion and move to Formal Resolution. Participation in Alternative Resolution is voluntary, meaning both the Reporting and the Responding Parties must mutually agree to participate. If Alternative Resolution is selected, the Title IX Coordinator will provide timely written notice to the parties that discloses the allegations and that:

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- The Title IX Coordinator has begun the process;
- The process is voluntary and will end upon either party's request, provided the request is made prior to mutual agreement of a resolution;
- Termination of Alternative Resolution may result in the matter moving to Formal Resolution, which involves an investigation and hearing;
- They may be accompanied by an advisor throughout the process (however, the advisor may attend, but not participate in, the resolution meetings or speak for the party);
- The Title IX Coordinator will notify both parties of the process's outcome;
- Completion of the Alternative Resolution process will preclude the parties from resuming a Formal Complaint arising from the same allegations unless the parties failed to satisfy the terms of the agreement; and
- Records of the process will be maintained and shared.

The Title IX Coordinator generally will conduct the Alternative Resolution. The Title IX Coordinator will endeavor to complete the Alternative Resolution process promptly, typically within thirty (30) calendar days of notifying the parties in writing of starting the process. However, the Title IX Coordinator may extend the Alternative Resolution process past 30 days for good cause. The Title IX Coordinator will notify the parties in writing of the reason for any extension and the projected new timeline. The actual time required will depend on the specific circumstances, including the complexity of the allegations and the nature of the alleged conduct.

Once the parties have agreed to the terms of an Alternative Resolution, SJVC will not refer the matter to Final Resolution unless the Title IX Coordinator determines that the Respondent failed to satisfy the terms of the Alternative Resolution.

The Title IX Coordinator will keep records of all reports and conduct addressed through Alternative Resolution.

### **V. Supportive Measures**

As described in the Policy, supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge SJVC in response to a report of Prohibited Conduct and will be made available to both parties as appropriate. These steps may include, but are not limited to:

- Interim security measures
- Academic accommodations
- Mutual "no contact" orders between individuals
- Restrictions on access to SJVC or to specific SJVC areas or activities
- Limitations on extracurricular activities
- Changes to class or work schedules or locations
- Leave of absence (including administrative leave)
- Transfer of supervisory or evaluative responsibility regarding grading or supervision



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- Any other remedy that can be tailored to the involved individuals to achieve the goals of the Policy.

When taking steps to separate a Complainant and Respondent, SJVC will engage in an individualized and appropriate evaluation based on the information gathered by the Title IX Coordinator, making every effort to avoid depriving any student of their education. Care will be taken to protect both parties with the greatest degree of privacy possible. If a Complainant wishes to seek a temporary restraining order or similar judicial order, SJVC will provide the Complainant with information to initiate that process.

The imposition of supportive measures is not indicative of a determination of responsibility or any other outcome. These measures may be modified at any time and may be kept in place after a final decision is reached.

All parties are expected to comply with any supportive measures that may be imposed until the formal resolution process concludes. Failure to comply with supportive measure directives may be separate grounds for disciplinary action.

## **VI. Formal Resolution Process and Appeals**

The Formal Resolution Process consists of an investigation and hearing. The following procedures apply to the investigation and hearing of Formal Complaints.

### **A. Investigation Procedures**

For complaints that have not been dismissed or resolved informally, the Title IX Coordinator will refer the matter to a Title IX Investigator. The purpose of the investigation is to determine the facts and assess credibility relating to the Formal Complaint. Evidence may include the testimony of any involved parties and/or witnesses, and any documents relating to the complaint. Consistent with federal and state law, the Investigators will ask questions or seek evidence that is relevant and not protected by law. Furthermore, evidence of a prior consensual sexual, romantic, or intimate relationship between the Complainant and Respondent itself does not by itself imply consent or preclude a finding of Prohibited Conduct. The investigation will occur independently from any legal/criminal proceedings that may take place. SJVC may defer fact-gathering for an appropriate time during a criminal investigation.

Investigators will be trained on issues related to Prohibited Conduct, trauma-informed responses, and investigation processes that protect the safety of all involved and promote accountability. The Investigators must be impartial and free of any conflict of interest.

Below are the procedures and processes related to Title IX investigations:

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- (1) The investigation begins when the Title IX Coordinator refers the matter to the Title IX Investigator.
- (2) Within a reasonable length of time after the matter has been referred, the Title IX Coordinator will notify both parties in writing that the investigation has commenced. This notification will: summarize the allegations and underlying reported behavior known at the time; identify the assigned Title IX Investigator; identify the parties involved (if known); the specific section of the Policy allegedly violated; the precise conduct allegedly constituting the potential violation; and the date and location of the alleged incident (if known); warn against retaliation and knowingly making false statements or submitting false information; include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Formal Resolution process; provide notice that the parties may have an advisor of their choice and that they can inspect and review evidence; advise the parties to review the Policy and these procedures; and set forth any supportive measures and other directives. The notification shall also include the date, time, and purpose of all investigative and other meetings, with sufficient time for the party to participate.
- (3) Either party may object to a Title IX Investigator if they believe that Title IX Investigator has a conflict or cannot be impartial. A conflict of interest occurs where an individual's personal interests or relationships conflict with their ability to be a neutral fact finder in a particular case. The objection must be in writing, explain the bias or conflict of interest, and be sent to the Title IX Coordinator no later than five (5) calendar days after the date of the notice of investigation. The Title IX Coordinator will consider any objections and notify the parties of the decision related to the assigned Title IX Investigator.
- (4) After a reasonable amount of time to review the notice of investigation and applicable policies, the parties will be given equal opportunity to meet with the Title IX Investigator. In those meetings, the Title IX Investigator will gather evidence about the allegations, including any documents or written statements submitted by either party. The Complainant and Respondent may have an advisor of their choice accompany them throughout the investigation process. An advisor may be a family member, friend, or attorney but cannot be someone who may be a potential witness. The advisor may attend, but shall not participate in, meetings with the party they are advising. This includes writing or speaking on behalf of a party. An advisor may not be present for, or participate in, any other meetings unless expressly permitted by this Appendix.

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- (5) The parties may suggest witnesses and documents to the Title IX Investigator, as well as questions for the Title IX Investigator to ask the other party and any witnesses. The Title IX Investigator will determine whether the suggestions are relevant and appropriate. SJVC asks the parties to keep the investigation private but cannot prohibit the parties from discussing the investigation with others in connection with identifying evidence for the Title IX Investigator to gather.
- (6) The Title IX Investigator will interview relevant witnesses and gather other evidence related to the allegations. Witnesses may also submit documents or written statements to the Title IX Investigator(s).
- (7) The Complainant and Respondent will be given equal opportunity to review and respond to all the evidence gathered by the Title IX Investigator.
- (8) The Title IX Investigator will prepare a written report that includes: the factual allegations; the alleged policy violations; statements of the parties; a summary of relevant evidence; an explanation of why any evidence was not considered (if applicable); and credibility assessments, when appropriate. Prior to completion of the investigative report, the Title IX Investigator must 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, and the parties must have at least 10 calendar days to submit a written response, of no more than 10 pages (double-spaced and 12 point font), which the Title IX Investigator will consider prior to completion of the investigation report.
- (9) After the report has been finalized, the matter will be referred for a hearing. No less than ten (10) business days before any hearing, a copy of the investigation report will be provided to the Hearing Officer, the parties, and their advisors, if any, and the Title IX Coordinator for their review. The parties may submit a written response, of no more than 10 pages (double-spaced and 12-point font), to the Title IX Investigator, Title IX Coordinator, and Hearing Officer no later than five (5) business days prior to the hearing.
- (10) After reviewing the investigation report, the Title IX Coordinator shall have the authority to dismiss any Formal Complaint in accordance with the attached Policy any time before commencement of the hearing, and, if appropriate, refer the matter for resolution under another SJVC policy.

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## **B. Hearing Procedures**

Once the investigation has concluded, there will be a fact-finding hearing before a single Hearing Officer. The hearing is to determine whether a violation of the Policy occurred. Through the Hearing Officer, the institution will consider the relevant evidence available. To the extent permitted by law, the Title IX Coordinator may determine that the hearing procedures would be unduly time-consuming or costly and dismiss the Formal Complaint and then refer the investigation report and matter to a different decision-maker within the institution, such as Ember Education's Director of HR Operations, Ember Education's Vice President of Human Resources, or SJVC's Vice President of Administration, for a determination and sanctions under applicable SJVC policies.

### (1) Hearing Officer

The Hearing Officer will be an outside contractor appointed by the Title IX Coordinator. Regardless, they will be appropriately trained, including on how to make a trauma-informed response. The Title IX Coordinator will inform the parties of the Hearing Officer's identity. Within five (5) calendar days after the notification, the parties may request the Hearing Officer's disqualification because of bias or conflict of interest. The Title IX Coordinator shall have sole discretion to decide whether an actual bias or conflict of interest exists. Employment or affiliation with the institution, or prior work as a contractor, on its own, does not warrant disqualification. Similarly, the Hearing Officer's gender, gender identity, race, ethnicity, religion, sexual orientation or similar identifying characteristic, or the fact that they differ from those of any party, do not, on their own, warrant disqualification.

### (2) Pre-Hearing Meeting

The Hearing Officer will hold a separate pre-hearing meeting with each party and their advisors, if any, to explain the hearing process, address questions, begin to define the scope of the hearing, and address other issues to promote an orderly, productive and fair hearing.

- a. Each party should also come to the pre-hearing meeting prepared to schedule dates for the hearing. If the parties fail to agree, the Hearing Officer shall unilaterally set the date and time.
- b. If a party has an advisor, the advisor may attend the pre-hearing meeting but cannot speak on the party's behalf.
- c. The Hearing Officer will explain what to expect at the hearing.
- d. The Hearing Officer will discuss with each party which witnesses they intend to bring to the hearing, the scope of issues, and disputed facts. The Hearing Officer has sole discretion to grant or deny, in whole or part, the parties' requests for witnesses.

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- e. The Hearing Officer will discuss measures available to protect the well-being of parties and witnesses at the hearing, as appropriate.
- f. To the extent required by law, the Hearing Officer shall inform any party without an advisor that SJVC will provide one without fee or charge. To the extent a party requires the appointment of an advisor, the Hearing Officer shall promptly inform the Title IX Coordinator.
- g. A reasonable time after the pre-hearing meeting, the Hearing Officer will determine: the scope of the hearing; identify material disputed facts; whether to reasonably allow or exclude evidence including witness testimony; and/or make any other determinations necessary to promote an orderly, productive, and fair hearing.
- h. The Hearing Officer will request the attendance of all witnesses whose testimony is determined to be within the scope of the hearing. The institution cannot compel parties or witnesses to testify in the hearing and their decision not to testify will not be a reason to cancel or postpone a hearing. However, the Hearing Officer shall inform the parties of the potential consequences of non-participation, including, but not limited to, the inability of the Hearing Officer to rely on any pre-hearing statements made by a party or witness who does not submit to cross-examination at the hearing.
- i. If a party submits a written response to the investigation report at least five (5) business days prior to the hearing, the parties may also provide additional information for potential consideration by the Hearing Officer at the hearing.
- j. At least three (3) business days prior to the hearing, the parties will receive the Hearing Officer's written confirmation of scope and evidence; copies of all the evidence that will be considered at the hearing, including, without limitation, the investigation file; and the names of expected witnesses and a summary of their expected testimony. If the Hearing Officer has excluded evidence (including witness testimony) that a party has requested to present, they will explain why in writing. The Hearing Officer will also notify the parties of any procedural determinations they have made regarding the hearing, including whether the Hearing Officer is ordering a new investigation due to a material procedural error committed by the Title IX Investigator and continuing the hearing to a later date.

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## (3) Hearing Procedures

- a. The hearing will be live and recorded. For the convenience of the parties, Hearing Officer, and/or witnesses, the entire hearing, or portions of it, may be conducted over videoconference. All parties, witnesses and other participants must be able to simultaneously hear (or if deaf or hard of hearing, to access through auxiliary aids for services) and see each other.
- b. The parties and witnesses will address only the Hearing Officer and the parties' advisors.
- c. Courtroom rules of evidence and procedure will not apply. The Hearing Officer will generally consider all evidence he/she determines to be relevant and credible. The Hearing Officer may determine and weigh the relevance of any witness testimony or other evidence.
- d. During the hearing, the Hearing Officer may: reasonably exclude evidence, including witness testimony; decide any procedural issues for the hearing; and/or make any other determinations necessary to promote an orderly, productive, and fair hearing.
- e. The Title IX Investigator shall make himself/herself available for the hearing.
- f. Witnesses will attend the hearing only to provide their testimony and will not be permitted to sit in attendance for any other part of the proceedings.
- g. The investigation file will be entered as evidence at the hearing. The Hearing Officer may rely on any facts or credibility assessments in the report that are undisputed.
- h. If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer shall not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Officer may not draw an inference about responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- i. The Hearing Officer will allow the parties and/or witnesses to be visually or physically separated during the hearing. This may include, but is not limited to, the use of a physical partition, a separate physical location, videoconference, and/or any other appropriate technology.
- j. The parties will have the opportunity to present the evidence they submitted at the pre-hearing meeting or pre-hearing

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submission deadline, subject to any permissible exclusions determined by the Hearing Officer. Unless good cause is shown, such as, evidence was genuinely unavailable and could not have been made available through the party's diligent efforts, the parties may not introduce evidence, including witness testimony, at the hearing that they did not identify during the pre-hearing meeting or at the time of the pre-hearing submission deadline.

- k. The Hearing Officer will determine the order of questioning. The Hearing Officer may exclude questions that are unduly repetitive, irrelevant, harassing, or seek privileged or protected information. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are generally not relevant unless such questions and evidence are authorized by applicable law and permitted by the Hearing Officer. The Hearing Officer will briefly explain his or her reasons for excluding questions as not relevant.
- l. Only the Hearing Officer and parties' advisors may ask questions of the parties and witnesses. All questions must be relevant, and the Hearing Officer shall make a determination of relevancy before the witness or party answers. Relevancy determinations may not be challenged by the party's advisor. In the event the use of advisors at the hearing are no longer required by law, the parties may submit questions to the Hearing Officer to ask questions of the opposing party and witnesses.
- m. To the extent required by law, if a party does not have an advisor present at the live hearing, SJVC will provide one without fee or charge. Advisors who are disruptive will receive one warning to refrain from disrupting the proceedings. After the first warning, any additional disruption may result in removal from the hearing.
- n. The Hearing Officer will decide whether the Respondent was responsible for misconduct under the Policy based on a *preponderance of evidence* standard. The Hearing Officer will take into account the investigation file and report, as well as the other evidence presented and accepted at the hearing. On any disputed issue of significance, the Hearing Officer will make his/her own reasonable findings and credibility determinations based on all the evidence before them.
- o. The Hearing Officer will adjourn the hearing after he/she has determined that each side has had an opportunity to present their respective case and no other evidence is required to form reasonable conclusions.

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## (4) Determination of Responsibility and Sanctions

Once the Hearing Officer has adjourned the hearing, the Hearing Officer will render a decision based on the *preponderance of evidence* standard. The Hearing Officer may reach any one of the conclusions below:

- Respondent was responsible for misconduct under the Policy
- Respondent was not responsible for misconduct under the Policy

If the Hearing Officer found that the Respondent was responsible for misconduct under the Policy, the Hearing Officer must sanction the Respondent but has discretion as to which of the applicable sanctions below will be imposed, understanding that the Hearing Officer may choose more than one sanction:

- Verbal warning
- Training
- Mandatory counseling/coaching
- A formal written warning placed in the Respondent's file
- Exclusion from participation in certain activities for specified period
- Suspension (from campus and/or employment)
- Termination
- Revocation of admission
- Other appropriate remedies or corrective action

SJVC will take appropriate measures to prevent the reoccurrence of any Prohibited Conduct, and to correct any discriminatory effects on the Complainant and others, as appropriate. The Title IX Coordinator will be responsible for effective implementation of any sanctions.

Results of disciplinary proceedings may be disclosed in a manner consistent with applicable law, including Family Educational Rights and Privacy Act (FERPA), Title IX, and the Clery Act.

### (A) *Notification of Decision and Sanctions*

The Hearing Officer will send written notice to the Complainant, Respondent, and Title IX Coordinator, setting forth his or her determination and the sanctions to be imposed (if any) no later than thirty (30) calendar days after the conclusion of the hearing. The written notice will include:



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- Identification of the allegations;
- 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;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether the sanctions or other remedies are designed to restore or preserve equal access to SJVC's education program or activity; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

### **C. Appeals**

Appeals of a Hearing Officer's final, written decision of responsibility, or a Title IX Coordinator's dismissal of the Formal Complaint, are strictly limited to: (1) procedural irregularity that affected the matter's outcome; (2) new evidence that was not reasonably available when the determination of responsibility was made that could affect the matter's outcome; and/or (3) the Title IX Coordinator, Title IX Investigator, or Hearing Officer had a conflict of interest or bias that affected the matter's outcome. There are no other grounds for an appeal. Appeals may be made by either the Respondent or Complainant and must be in writing and submitted to the Title IX Coordinator within ten (10) calendar days of notification of the Hearing Officer's final, written decision of responsibility or of the Title IX Coordinator's dismissal (mandatory or discretionary) of a Formal Complaint.

The process begins with submitting a Petition for Appeal to the Title IX Coordinator which must contain a brief statement that identifies the party bringing the appeal and its basis (see above). The Title IX Coordinator will refer only timely and appealable matters to an Appeal Officer, who may be an employee or an outside contractor. If the Title IX Coordinator determines that the matter cannot be appealed, he or she will provide written notice to both requesting parties. If the matter is referred to an Appeal Officer, the Title IX Coordinator will provide written notice of the appeal to

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both parties, and disclose, in writing, the Appeal Officer's identity. Either party will have three (3) business days after being notified of the Appeal Officer's identity to request, in writing, that the Title IX Coordinator appoint a new Appeal Officer and identify the alleged conflict of interest. The Title IX Coordinator, or designee, has the sole discretion to appoint another Appeal Officer or deny the appealing party's request for a new Appeal Officer.

After the Appeal Officer has been selected and the matter is assigned, the Appeal Officer will notify both parties in writing and set a schedule for each party to submit statements supporting or challenging the appeal. Both parties may submit written statements of no more than 10 pages (double-spaced and 12-point font). Although the Appeal Officer will set deadlines for submissions, all appeals generally should be conclude within thirty (30) calendar days from the Petition for Appeal.

After reviewing the written statements, the Appeal Officer has the sole discretion to deny or grant the appeal, and, if granted, order a new hearing, or refer the case back to the Hearing Officer with instructions. The Appeal Officer, if he or she grants the appeal, may order the Title IX Coordinator to reopen a dismissed case. The Appeal Officer may only rely on the evidence presented at the hearing; no other evidence may be considered. However, the Appeal Officer may consider new evidence for the limited purpose of determining whether the new evidence was not reasonably available when the determination of responsibility was made that could affect the matter's outcome. Within a reasonable amount of time after rendering a decision, the Appeals Officer will send a copy of the decision to both parties and the Title IX Coordinator. The written notice shall include reasons supporting the granting or denial of the appeal and the remedy chosen. All appeal decisions are final.

### **D. Additional Complaints**

If the corrective action does not end the Prohibited Conduct, the Complainant should immediately notify the Title IX Coordinator. In such cases, the Complainant has the right to file another complaint.