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## **STUDENT SEXUAL MISCONDUCT, INCLUDING SEXUAL VIOLENCE**

### **1.0 Introduction**

The Redwoods Community College District is committed to creating and maintaining an educational community where all individuals who participate in District programs and activities can work and learn together in an atmosphere free of unlawful discrimination, harassment, exploitation, or intimidation. Board Policy 5500 prohibits student conduct that constitutes gender discrimination, sexual harassment, sexual assault and sexual misconduct as defined herein. The District is committed to preventing student sexual misconduct from occurring or recurring, to responding to reports or complaints about prohibited student sexual misconduct by taking prompt and effective steps to end student sexual misconduct, to eliminating hostile educational environments, and to providing remedies if improper conduct is found to have occurred.

The District will respond promptly and effectively to reports of unlawful student gender discrimination, sexual harassment, sexual assault and sexual misconduct, and when necessary will discipline student behavior that violates BP 5500 related to gender discrimination, sexual harassment, sexual assault and sexual misconduct. Student conduct that constitutes such prohibited behaviors may lead to discipline, up to and including expulsion from the District. Such conduct may also lead to criminal prosecution.

When any student is suspended or expelled following a hearing for disrupting the orderly operation of a District campus or facility, or both, the student shall also be denied access to the campus or facility, or both, for a period of one year or the term of the suspension, whichever is shorter.

### **2.0 Scope and Timeliness**

This process is intended to provide prompt and equitable means to respond to allegations of student unlawful gender discrimination, sexual harassment and assault, and sexual misconduct in accordance with federal and state due process requirements. This process is intended to comply with Title IX of the Education Amendments of 1972 which is a federal civil rights law that prohibits discrimination on the basis of gender in the District's educational programs and activities, including all District classes and services and in its residence program. All procedures, from initial investigation to a final disciplinary result, are intended to be prompt, fair, and impartial.

Allegations of student sexual misconduct are subject to this procedure. Allegations or complaints may be filed by students or others affected by student sexual misconduct, or by others on their behalf. If the District receives a credible report of sexual misconduct against a student(s), it will investigate even in the absence of an allegation or complaint from an individual.

Any allegation or complaint subject to this process must be presented to the District within one year of the date of the alleged misconduct or within one year of the date on which the Affected Party knew or should have known of the facts underlying the allegations of misconduct.

Although specific timeframes are identified in these processes, any of the timeframes may be extended by the District for good cause upon written notice to the Affected Party and the Responding Student, providing such notice includes the reason(s) for the extension.

Alleged sexual misconduct will be evaluated from the perspective of a reasonable person in the Affected Party's position, considering all the circumstances.

This administrative procedure is not intended to substitute for criminal or civil complaints that may be initiated simultaneously.

This administrative procedure is specifically not intended to infringe in any way on the rights of students to engage in free expression as protected by the state and federal constitutions, and by Education Code sections 66301 and 76120, and will not be used to punish protected expression.

### 3.0 Title IX Coordinator

The District's Title IX Coordinator is its Director of Human Resources who is responsible for managing the District's Title IX compliance, including coordinating the investigation of allegations of sexual misconduct and addressing problems revealed by such allegations or investigations. Questions regarding gender discrimination and sexual misconduct can be directed to the Title IX Coordinator or to the United States Department of Education, Office for Civil Rights (OCR) ([www2.ed.gov/about/offices/list/ocr/index.html](http://www2.ed.gov/about/offices/list/ocr/index.html)).

Allegations of gender discrimination or sexual misconduct by students may be filed with the District's Title IX Coordinator. Such allegations may also be filed with the OCR or with the Chancellor of the California Community Colleges at <http://extranet.cccco.edu/Divisions/Legal/Discrimination.aspx> or Chancellor's Office, California Community Colleges, 1102 Q Street, Sacramento, CA 95811-6549, Attention: Legal Affairs Division.

The Office of the Title IX Coordinator is located at 7351 Tompkins Hill Road, Eureka, CA 95501 and can be contacted at (707) 476-4140.

District employees who have information regarding sexual misconduct against a student(s) should immediately contact the Title IX Coordinator. The District may identify

appropriate employees as confidential sources to whom students may report sexual misconduct. Such employees may notify the Title IX Coordinator of reported incidents of sexual misconduct in a way that does not identify the victim, unless the victim provides consent for such disclosures.

Confidentiality considerations are more fully described at Section 5.0 below.

Resident assistants in the District's student residential facilities are required to report incidents of student sexual misconduct among students to the Title IX Coordinator.

The Title IX Coordinator may assign the internal investigation of allegations of student sexual misconduct for purposes of determining a violation of District policies potentially affecting student discipline to other staff or to outside persons or organizations under contract with the District. At any time in the investigative or disciplinary processes, the Title IX Coordinator may take appropriate interim measures to protect an Affected Party from alleged sexual misconduct, including, but not limited to changing class schedules, living arrangements, or providing specific supportive services.

#### 4.0 General Student Rights

The District will widely distribute information about resources that are available to Affected Parties, including information about victim advocacy, housing assistance, academic and counseling support, disability and/or mental health services, and the right to file a police report.

The Affected Party and the Responding Student may each choose an advisor to be present during investigative and disciplinary processes to provide support, guidance, or advice. The District may remove or dismiss any advisor who becomes disruptive or who does not abide by the restrictions on his/her participation. Advisors may not be present in the absence of their advisees.

The District ensures that the Responding Student is given due process. Both parties will be notified of the final results of the complaint and of any disciplinary action taken to the extent permitted by applicable law.

In accordance with California law, no student may be removed, suspended, or expelled unless the conduct for which the student is disciplined is related to college activity or college attendance or unless the conduct involves sexual assault or sexual exploitation.

The standard of review for the disciplinary process is a preponderance of the evidence, meaning that it is more likely than not that the alleged misconduct occurred.

#### 5.0 Confidentiality and Reporting

The District preserves individual privacy and the confidentiality of sensitive information to the extent reasonable and appropriate, recognizing that it cannot ensure that reported information can be completely protected from disclosure. If an Affected Party requests that his/her allegations of student sexual misconduct be confidential, the District may be limited in its ability to respond to such allegations. In such cases, the District's ability to investigate, to take remedial actions, or to take disciplinary action against a Responding Student may be impeded. Although the District seriously considers requests for confidentiality, it must consider such requests in light of its obligations to provide a nondiscriminatory environment and District safety concerns.

The Title IX Coordinator, or designee, shall advise Affected Parties about requesting confidentiality from the District and evaluate such requests. The Title IX Coordinator shall ensure that employees who are required to report student sexual misconduct are trained in advising students about confidential reporting.

Students are encouraged to report conduct that they, in good faith, believe violates the Standards of Conduct. An Affected Party or witness to alleged student sexual misconduct will not be subject to disciplinary sanctions for a violation of the District's student conduct rules at or near the time of the alleged incident, unless the District determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

The District's program of supportive services shall identify options for Affected Parties to maintain confidentiality. These options shall include resources where students can report sexual misconduct confidentially to individuals who are not required to notify the Title IX Coordinator. The options shall also include reporting that an incident has occurred without revealing personally identifying information.

## 6.0 Retaliation

It is unlawful under Title IX and California law for anyone to retaliate against persons who file unlawful discrimination or sexual misconduct allegations or complaints, who refer a matter for investigation, or who participate in an investigative or disciplinary process.

Retaliation may include, but is not limited to intimidating, threatening, coercive, or discriminatory behavior.

Persons who engage in retaliatory conduct are subject to discipline.

## 7.1 Definitions

7.2 Affected Party: the student(s), employee(s), or other person(s) who is the victim of alleged student sexual misconduct.

- 7.3 Appeal: a challenge to findings or disciplinary recommendations resulting from a student disciplinary hearing.
- 7.4 Consent: Consent is an affirmative, unambiguous, conscious and voluntary decision by each participant to engage in mutually agreed-upon sexual activity. Consent is voluntary. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will. Consent is revocable. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately. Consent cannot be given when a person is incapacitated. A person cannot consent if he or she is unconscious or coming in and out of consciousness. A person cannot consent if he or she is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if his/her understanding of the act is affected by a physical or mental impairment.

For purposes of this process, the age of consent is eighteen (18). Sexual activity with a minor shall be considered nonconsensual.

- 7.5 Dating Violence: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Affected Party.
- 7.6 Day: Any day during which the District is open for business. Should the final day of a required process fall on a Saturday or Sunday, the following Monday shall be considered the final day. A final day falling on a holiday shall be considered the first weekday following the holiday.
- 7.7 Disciplinary Process: formal fact-finding processes, including recommendations for, or imposition of disciplinary penalties.
- 7.8 District: Redwoods Community College District.
- 7.9 Domestic Violence: a felony or misdemeanor crime of violence committed by a spouse or former spouse or intimate or domestic partner, cohabitant or former cohabitant of the victim, or someone with whom the accused shares a child, has an existing dating or engagement relationship, or has had a former dating or engagement relationship, or abuse perpetrated against any persons described in Family Code, section 6211.
- 7.10 Gender: "Gender" means sex, and includes a person's sexual orientation, gender identity, gender expression, and gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

- 7.11 Hate Crime Based on Gender: a crime committed in relationship to District educational programs or activities that manifests evidence that the Affected Party was intentionally selected because of the Responding Student's gender bias against the Affected party.
- 7.12 Incapacitation: the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, but are not limited to, unconsciousness, sleep, and blackouts. Where alcohol or drugs are involved, incapacitation is defined with respect to how the alcohol or other drugs consumed affects a person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments. Being intoxicated by drugs or alcohol does not diminish one's responsibility to obtain consent for sexual activity. The factors to be considered when determining whether consent was given include whether the Responding Student knew, or whether a reasonable person should have known, that the Affected Party was incapacitated.
- 7.13 Investigative Process: review of allegations, including formal complaints, that misconduct subject to this process has occurred.
- 7.14 Responding Student: the student(s) who is accused of engaging in prohibited sexual misconduct.
- 7.15 Sexual Assault: sexual activity without the consent of the other person or when the other person is unable to consent to the activity. The activity may include physical force, violence, threats, intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol, or taking advantage of the other person's incapacitation (including voluntary intoxication). Sexual assault includes, but is not limited to rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, fondling, incest, statutory rape, or threat of sexual assault. Sexual assault includes any of the crimes set forth in Penal Code sections 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4.
- 7.16 Sexual Harassment: "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:
- 7.16.1 Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
- 7.16.2 Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decision affecting the individual.

- 7.16.3 The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance or of creating an intimidating, hostile, or offensive work or educational environment.
- 7.16.4 Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.
- 7.17 Sexual Misconduct: Sexual misconduct includes discrimination based on gender, sexual harassment, dating violence, domestic violence, sexual assault, stalking, and hate crimes based on gender.
- 7.18 Sexual Orientation: heterosexuality, homosexuality, or bi-sexuality.
- 7.19 Stalking: a course of conduct in which a person repeatedly engages in actions directed at a specific person that places that person in reasonable fear of his or her safety or the safety of others or causes substantial emotional distress. A 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 method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about an Affected Party, or interferes with the property of the Affected Party. Stalking includes conduct described in Penal Code, section 646.9.
- 7.20 Student: any person currently enrolled as a student in a credit or noncredit class, or in community services offerings of the District, or who was enrolled at the time of an alleged violation of the student Standards of Conduct.

## 8.1 Sanctions

Students who are found to have engaged in sexual misconduct may be given a variety of sanctions, including but not limited to the following:

- 8.2 Written or Verbal Reprimand: An admonition to the student to cease and desist from conduct which violates the Standards of Conduct.
- 8.3 Administrative Removal: Removal of a student from some or all courses and/or activities by the Vice President of Instruction and Student Development (VPISD) for a period of no more than two days. (See definition of "day.")
- 8.4 Interim Suspension: Immediate suspension, pending a hearing, required to protect lives or property and to ensure the maintenance of order.
- 8.5 Short-Term Suspension: Exclusion of the student by the President/Superintendent or his/her designee for good cause from one or more classes for a period of up to ten (10) days of instruction and/or District activities for a period of time designed to eliminate recurrence of a misconduct issue within that activity.

8.6 Long-Term Suspension: Exclusion of the student by the President/Superintendent or his/her designee for good cause from one or more classes and/or District activities for the remainder of the college term, or from all classes and activities of the District for one or more terms.

8.7 Expulsion: Permanent exclusion of the student by the Board of Trustees from all courses and activities offered by the District.

8.8 Withdrawal of Consent to Remain on Campus: Withdrawal of consent by the President/Superintendent or assigned administrator for any person to remain on campus or at a District facility in accordance with California Penal Code Section 626.4 where reasonable cause exists to believe that such person has willfully disrupted the orderly operation of the campus or facility. Nothing in the withdrawal of consent process precludes the imposition of other sanctions.

## 9.1 Initiation of the Investigative Process

Allegations or complaints of student sexual misconduct that are brought to the attention of the Title IX Coordinator shall first be analyzed to determine whether the alleged conduct, if true, would constitute a violation of District policies and whether the allegations or complaints are time-barred.

The District may investigate and take actions regarding allegations or complaints that fall outside of the usual time-limit for the filing of allegations or complaints and may take appropriate action as a matter of District interest even if the District declines a complaint as time-barred.

Upon a determination that alleged student misconduct, if true, would constitute a violation of District policies and that the alleged sexual misconduct occurred within the time limit established herein, the Title IX Coordinator, or his/her designee, shall promptly and thoroughly investigate the matter. The Affected Party shall be given the opportunity to request confidentiality. If an Affected Party requests confidentiality, it is recognized that the ability of the District to promptly and thoroughly investigate may be impeded.

The Affected Party and the Responding Student shall each be given an opportunity to have an advisor accompany him/her during the investigative process and disciplinary process (if applicable). An advisor must be available at the necessary times; the unavailability of an advisor is not sufficient reason to delay District processes. An advisor may assist the Affected Party or the Responding Student in interviews and disciplinary processes by communicating directly with the student, but the advisor is not permitted to speak on behalf of the student. Advisors are required to maintain the confidentiality of the process.

The Affected Party and the Responding Student shall each be given the opportunity to identify witnesses or other evidence, however, the investigator may require a statement of

the relevance of offered information and may decline information that is irrelevant or repetitive.

In any situation where an issue of the proceeding is whether an Affected Party gave consent to sexual activity, it shall not be a valid excuse to alleged lack of affirmative consent by the Affected Party that the Responding Student believed that the Affected Party consented to sexual activity under either of the following circumstances: (1) the Responding Student's belief in affirmative consent arose from the intoxication or recklessness of the Responding Student or (2) the Responding Student did not take reasonable steps, in the circumstances known to the Responding Student at the time of the alleged incident, to ascertain whether the Affected Party affirmatively consented.

Similarly, it shall not be a valid excuse that the Responding Student believed the Affected Party affirmatively consented to sexual activity if the Responding Student knew or should have known that the Affected Party could not give affirmative consent because the Affected Party was (1) asleep or unconscious, (2) was incapacitated due to the influence of drugs, alcohol, or medication or that the Affected Party could not understand the fact, nature, or extent of the sexual activity, or (3) was unable to communicate due to a mental or physical condition.

To the extent permitted by law, parties and witnesses must maintain the confidentiality of the investigative and disciplinary processes.

In appropriate instances, the District's investigator may coordinate with on-going criminal investigations regarding the same or similar allegations. The District will not defer action under its policies until the conclusion of related criminal processes.

An investigative process should, to the extent possible, be concluded within thirty (30) days of the initiation of the investigation. (See definition of "day.") An investigative report shall be prepared that includes the following:

- 9.2 A description of the circumstances giving rise to the complaint.
- 9.3 A summary of the testimony provided by each witness.
- 9.4 An analysis of relevant data.
- 9.5 A finding of whether there is probable cause to believe that sexual misconduct occurred.
- 9.6 Any other information considered appropriate by the District.

If the investigation reveals probable cause to believe that student sexual misconduct occurred that warrants the imposition of disciplinary sanctions, the Title IX Coordinator shall notify the Vice President of Instruction and Student Development (VPISD) for the consideration of disciplinary processes.

## 10.0 Informal Resolution

At the conclusion of the investigation, the Vice President of Instruction and Student Development (VPISD) shall review the investigation findings and determine whether the matter is appropriate for mediation between the District, the Affected Party, and the Responding Student. An Affected Party is not required to participate in mediation. No mediation process shall be permitted that allows a student who has engaged in significant sexual misconduct to avoid the initiation of disciplinary action unless he/she voluntarily agrees to accept the disciplinary action.

If the VPISD, the Affected Party and the Responding Student are able to resolve the matter through informal resolution, a written resolution agreement shall be prepared and signed by the District and the parties. Any material violation of a resolution agreement will result in disciplinary action.

### 11.1 Initiation of The Disciplinary Process: Hearing

#### 11.2 Scope of the Hearing

The Vice President of Instruction and Student Development (VPISD) shall hold an initial hearing to determine the facts of the situation and what sanctions are appropriate, if any.

The President/Superintendent or the VPISD may at any time designate another District employee or contractor to perform the tasks assigned to the VPISD under this procedure. An alternate hearing officer shall be assigned if, for any reason, the VPISD cannot be an impartial fact-finder.

#### 11.3 Notice of Hearing

Written notice of the hearing shall be provided simultaneously to the Affected Party and the Responding Student and shall include the following:

- 11.3.1 The specific alleged student sexual misconduct (accusation).
- 11.3.2 A summary of the investigation and/or a short written statement of the facts supporting an accusation of student sexual misconduct.
- 11.3.3 The right of the Affected Party and the Responding Student to attend a hearing with the VPISD to respond in writing regarding the party's position concerning the matter.
- 11.3.4 The nature of the discipline that is being considered.

Notices described in this process may be personally served on a party or, in the case of students, mailed to the most recent official student address on file with the District admissions and records office.

Nothing prohibits the District from amending the notice as deemed appropriate. The VPISD may request the production of relevant evidence that was not part of the investigative process for consideration in the hearing process.

#### 11.4 Waiver of Hearing and Appeal Rights

An Affected Party or a Responding Student who fails to attend or to participate at the hearing or alternatively to provide a written response by the date set by the VPISD waives the right to continue in this process and may not appeal the VPISD's decision or recommended disciplinary action. When an Affected Party or a Responding Student fails to attend or participate in the hearing with the VPISD or provide a written response, the VPISD may consider all allegations set out in the notice and supported by the investigation and any additional information secured by the VPISD in connection with the hearing.

If a Responding Student waives his/her hearing and appeal rights and the VPISD determines that discipline is appropriate, the VPISD shall notify the Responding Student of the discipline to be imposed. If expulsion is recommended, the VPISD shall refer the matter for Board of Trustee consideration.

#### 11.5 Conduct of Hearing

11.5.1 The VPISD shall determine how the hearing will be conducted, taking into consideration the goals of Title IX and the safety of parties and witnesses. For example, the Affected Party and Responding Student may not be required to be present in the same room during the hearing. The VPISD may call and question witnesses he/she believes have relevant information.

11.5.2 The Affected Party and the Responding Student may recommend witnesses to be called. To avoid unnecessarily duplicative or irrelevant testimony, the VPISD may require a party to indicate the nature of the proposed testimony as a condition to calling witnesses. The VPISD cannot compel the attendance of witnesses recommended by the parties.

The VPISD shall determine on a case-by-case basis how the questioning of parties and witnesses shall be conducted, given the nature of the allegations and the safety of parties and witnesses. If the VPISD does not permit direct questioning by the parties, he/she may consider permitting an Affected Party and the Responding Student to submit questions for the VPISD to ask parties and witnesses.

- 11.5.3 Formal rules of evidence shall not apply. Any relevant, non-duplicative evidence may be admitted as determined by the VPISD. Questions about an Affected Party's sexual history is permitted only by a Responding Student who is claiming a current or previous consensual sexual relationship with the Affected Party.
- 11.5.4 The District may provide an attorney to assist the VPISD. If the District intends to use an attorney, it will notify the Affected Party and the Responding Student not less than five (5) days prior to the date of the hearing so that the parties may consider whether to retain their own legal representative at their own expense. (See definition of "day.") Attorneys who are assisting an Affected Party or a Responding Student may not examine or cross-examine witnesses, submit or object to evidence or documents, or directly address the VPISD.

If criminal charges related to the alleged misconduct are pending against the Responding Student, the student may retain an attorney at his/her own expense to accompany him/her to the hearing, but the attorney may not participate by examining or cross-examining witnesses, submitting or objecting to evidence or documents, or addressing the VPISD. The Responding Student must notify the District not less than five (5) days prior to the date of the hearing that he/she will be accompanied by an attorney under this paragraph. (See definition of "day.")

Any person licensed to practice law is considered an attorney for this purpose.

- 11.5.5 The hearing shall be closed and confidential.
- 11.5.6 The findings of the VPISD shall be based upon a preponderance of evidence relevant to the charges adduced at the hearing.
- 11.5.7 The hearing shall be recorded either by tape/digital recording or stenographic recording, and shall be the only recording made. No party or witness who refuses to be recorded may be permitted to give testimony. Tape/digital recordings shall remain in the custody of the District at all times, unless released to a professional transcribing service.

## 11.6 Notice of Decision

Within fifteen (15) days following the hearing, the VPISD shall prepare and send a written decision simultaneously to the Affected Party and the Responding Student. (See definition of "day.") The Notice of Decision shall include factual findings regarding the accusation and determinations as to whether any specific section(s) of the Standards of Student Conduct were violated. The Notice of Decision shall also include a specific decision regarding the disciplinary action to be imposed, if any, unless expulsion is recommended. The Notice of Decision shall be based only on the

record of the hearing, and not on matters outside of that record. The record includes the investigative report, any written notices or student statements, and oral and written evidence produced for, or at, the hearing.

If expulsion is recommended, the Notice of Decision shall verify that expulsions require Board of Trustee action.

## 12.1 Appeal Rights

At the same time the Vice President of Instruction and Student Development (VPISD) provides the written Notice of Decision, he/she shall provide written notice of appeal rights simultaneously to parties who did not waive their appeal rights.

Appeal requests are available to the Affected Party and the Responding Student only on the following bases:

- 12.2 A claim that the initial hearing included a material procedural error. The appeal request must identify the specific procedural error(s) and how that claimed error disadvantaged the appealing party.
- 12.3 Relevant evidence that was previously unavailable has been discovered, and that evidence could significantly impact the outcome of the case. The appeal request must identify the specific evidence, how the evidence is relevant, why the evidence was previously unavailable, and how the newly discovered relevant evidence could impact the outcome of the case.
- 12.4 The proposed discipline is substantially unreasonable in light of the findings. The appeal request must indicate the claimed unreasonableness of the proposed discipline and indicate what discipline the appealing student believes would be appropriate.

Written appeals by students must be submitted in writing to the President/Superintendent within 5 days of the delivery of the VPISD's Notice of Decision to the parties. (See definition of "day.") If no appeal is received within 5 days, the decision of the VPISD, including the proposed discipline, will take immediate effect. The exception is if expulsion is recommended; an expulsion recommendation shall be presented to the Board of Trustees for action.

Any timely appeal shall be reviewed by the President/Superintendent who shall determine whether a proper basis for appeal has been identified by the Affected Party or the Responding Student.

If the standards for an appeal have been met, the President/Superintendent shall send a Notice of Appeal Hearing to the Affected Party and the Responding Student and shall arrange for an appeal hearing. The Notice of Appeal Hearing shall state the issues on appeal.

If the President/Superintendent determines that an appeal was not timely or that it did not state a proper basis for appeal, the President/Superintendent shall send the appealing student a Notice of Denial of Appeal and any recommended discipline shall take effect. If expulsion was recommended, the Board of Trustees shall have final review of the matter.

### 13.1 Appeal Hearings

#### 13.2 Scope of Appeal Hearing

Upon approval of a timely appeal from an Affected Party or a Responding Student that meets the appeal standards, the appeal hearing will be initiated. The District shall prepare the necessary documentation related to the appeal.

#### 13.3 Schedule of Appeal Hearing

The appeal hearing shall be held within fifteen (15) days after the issuance of the Notice of Appeal Hearing. (See definition of “day.”)

#### 13.4 Impartial Hearing

The District shall assign the appeal hearing to a Student Conduct Panel, to a neutral District administrative hearing officer, or to an impartial third party hearing officer so as to provide a prompt review. Person(s) hearing appeals shall receive training in issues related to sexual misconduct.

##### 13.4.1 Student Conduct Panel

If the District assigns the matter to a Student Conduct Panel, the hearing panel shall be composed of one administrator appointed by the President/Superintendent, one faculty member, and one classified employee. Each academic year, the president of the Academic Senate shall provide a list of at least five (5) faculty members who can be called upon to serve on the Student Conduct Panel. The

President/Superintendent shall select a faculty member from the Academic Senate’s list and one volunteer classified employee to serve when a hearing panel is needed. No administrator, faculty member or classified employee who has any personal involvement in the matter to be decided, who is a necessary witness, or who could not otherwise act in a neutral manner shall serve on a hearing panel.

The President/Superintendent shall appoint one member of the Student Conduct Panel to serve as chair. The decision of the panel chair shall be final on all matters relating to the conduct of the hearing unless there is an opposing vote by the other two voting panel members.

#### 13.4.2 Impartial District Administrative Hearing Officer or Impartial Third-Party Hearing Officer

Any proposed Hearing Officer may hear the matter only upon providing a written verification to the President/Superintendent that he/she has had no personal involvement in the matter to be decided and that he/she is prepared to provide an unbiased consideration of the matter.

#### 14.1 Conduct of Appeal Hearing

14.2 The Vice President of Instruction and Student Development (VPISD) shall provide the members of the Student Conduct Panel or the assigned Hearing Officer with a written background statement describing the allegations or complaint, the investigation or a summary of the investigation, and information regarding the initial hearing including the Notice of Decision, and the Notice of Appeal.

14.3 The Student Conduct Panel or the assigned Hearing Officer shall determine how the appeal hearing will be conducted. Only information relevant to the specific basis for appeal may be presented. Depending on the nature of the appeal, additional evidence, including testimony, or the presence of the parties, may or may not be necessary. If additional evidence or the presence of the parties is necessary, the Student Conduct Panel or the assigned Hearing Officer shall determine how the questioning of parties and/or witnesses shall be conducted.

The Student Conduct Panel or Hearing Officer cannot compel the attendance of witnesses recommended by the parties.

14.4 Formal rules of evidence shall not apply. Any relevant, nonduplicative evidence related to a proper appeal may be admitted as determined by the Student Conduct Panel or assigned Hearing Officer.

14.5 To assist the Student Conduct Panel or the Hearing Officer, the VPISD may address the issue(s) that are on appeal, including the merit of the appeal.

14.6 If criminal charges related to the alleged misconduct are pending against the Responding Student, the student may retain an attorney to accompany him/her to the appeal hearing, but the attorney may not participate by examining or cross-examining witnesses, submitting or objecting to documents, or addressing the Student Conduct Panel or Hearing Officer. The student must notify the District not less than five (5) days prior to the date of the appeal hearing that he/she will be accompanied by an attorney under this paragraph. (See definition of “day.”)

The Student Conduct Panel or Hearing Officer may have legal assistance without entitling any student to have the assistance of an attorney. Any legal advisor to the Student Conduct Panel or Hearing Officer shall sit in an advisory capacity.

Any person licensed to practice law is considered an attorney for this purpose.

14.7 The hearing shall be closed and confidential. Any finding that might be necessary for the Student Conduct Panel or Hearing Officer to make must be based upon a preponderance of evidence.

14.8 The appeal hearing shall be recorded by the District either by tape/digital recording or stenographic recording, and shall be the only recording made. No witness who refuses to be recorded may be permitted to give testimony. Tape/digital recordings shall remain in the custody of the District at all times, unless released to a professional transcribing service.

14.9 Within ten (10) days following the close of the appeal hearing, the Student Conduct Panel or Hearing Officer shall prepare and send a written appeal decision to the President/Superintendent and simultaneously to the Affected Party and the Responding Student. (See definition of “day.”) The appeal decision shall state whether the Appeal is affirmed or dismissed. If an appeal is affirmed, the Student Conduct Panel or Hearing Officer shall recommend steps needed to remedy any identified material defect. If an Appeal is dismissed, the decision from the initial hearing shall immediately take effect.

14.10 If a recommendation for expulsion is upheld by the Student Conduct Panel or Hearing Officer, the matter shall be forwarded to the Board of Trustees.

## 15.0 Expulsions

The Board of Trustees shall consider any recommendation for expulsion at the next regularly scheduled meeting of the Board after receipt of the recommendation or at a special meeting. The Board shall consider an expulsion recommendation in closed session, unless a Responding Student who participated in a hearing requests that the matter be considered in a public meeting.

A Responding Student who waived his/her right to participate in the District’s hearing and appeal processes may not participate in any Board review of an expulsion recommendation so long as expulsion was included in the initial notice of hearing as a potential disciplinary option.

The Affected Party and the Responding Student shall be notified in writing, by registered or certified mail or by personal service, at least four (4) days prior to the meeting, of the date, time, and place of the Board’s meeting. (See definition of “day.”)

The Responding Student may, within forty-eight (48) hours after receipt of the written notice of the Board meeting, file with the President/Superintendent a written request that the meeting be held as a public meeting. The Affected Party and the Responding Student shall be permitted to provide a written statement to the Board in support of or opposition to the expulsion not less than 24 hours prior to the scheduled Board meeting.

Even if a Responding Student requests that the Board consider an expulsion recommendation in a public meeting, the Board will hold any meeting that might conflict with the privacy rights of others and/or consider the student records of another student in closed session.

The Board may accept, modify or reject the findings, decisions, or recommendations of the Student Conduct Panel or Hearing Officer for expulsion. Prior to modifying or rejecting an expulsion recommendation, the Board shall review the record of the initial hearing and any appeal hearing and shall prepare a new written decision which contains specific factual findings and conclusions. If a student recommended for expulsion waived his/her right to a hearing by failing to participate in an initial District hearing, the Board shall consider expulsion based on the available information. The decision of the Board regarding expulsion shall be final.

The final action of the Board on the expulsion shall be taken at a public meeting, and the result of the action shall be a public record of the District.

#### 16.0 Notice of Final Decision

The Affected Party and the Responding Student shall be provided with simultaneous written notice of the final outcome of any complaint and of any appeal, including the rationale for the results and the sanctions if applicable.

If state regulations provide appeal rights to the Chancellor of the California Community Colleges, notice of such rights shall be provided.

#### 17.0 Student Right to Submit Statement Regarding Discipline

If a student's record includes information concerning any disciplinary action taken by the District, the student may include in the record a written statement or response concerning the disciplinary action.

Approved: April 7, 2015