

BRADLEY & BROWN
Attorneys at Law
6780 N. West Ave.
Suite 102
Fresno, CA 93711

Peter Sean Bradley, Esq.
SBN #109258
Tel: (559) 960-5613
petersean@aol.com

Laura Elizabeth Brown, Esq.
SBN #306035
Tel: (559) 862-8633
laura@lauraebrown.com

Attorneys for Plaintiffs
Michael STANNARD, Ph.D.,
David RICHARDSON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Case No.: 1:22-cv-01250 – JLT-EPG

MICHAEL STANNARD, Ph.D., DAVID
RICHARDSON,

Plaintiffs,

v.

STATE CENTER COMMUNITY
COLLEGE DISTRICT, CAROLE
GOLDSMITH, Ed.D., Chancellor, State
Center Community College District, in her
official and personal capacity, JULIANNA
D. MOSIER, Vice Chancellor, Human
Resources, sued in her official and personal
capacity, ANGEL REYNA, ED.D. President
– Madera Community College, an
Individual, sued in his personnel capacity,
and DOES 1 through 20, inclusive,

Defendant.

**SECOND AMENDED
COMPLAINT**
[Jury Trial Requested]

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Table of Contents

I. Nature of the Case.....4

II. Venue4

III. Jurisdiction.....4

IV. Parties.....4

V. Academic Freedom5

VI. Background allegations7

 A. Michael Stannard, Ph.D. – First Investigation (2021).....7

 B. Stannard – Second Investigation (2023-2024)11

 C. Instructor David Richardson – First investigation (2021-2022.)14

 D. David Richardson – First Discipline (2022).....24

 E. Pronoun Policy.....26

 F. David Richardson – Second Investigation (2023-2024)28

 G. David Richardson – Second Discipline (2024)35

 H. SCCCD’s Viewpoint Discrimination constitutes a 'pattern of officially sanctioned behavior, violative of the plaintiffs' [federal] rights.'38

 I. SCCCD’s Policies Chill the Exercise of Free Speech.....42

 J. Chilling the Exercise of Free Speech/Continuing adverse effect of SCCCD’s violation of Constitutional Rights48

 1) David Richardson.....49

 2) Michael Stannard.....50

K. Administrative Exhaustion.52

1 VII. First Cause of Action: Violation of the First Amendment (Against Mosier and
2 Goldsmith in their official capacity.)52
3 VIII. Second Cause of Action: Violation of First and Fourteenth Amendments
4 (Against Mosier and Goldsmith in their official capacity.58
5 IX. Third cause of action: Deprivation of Constitutional Right of Free Speech
6 (Against Mosier, Goldsmith and Reyna in their Personal capacity.)59
7 X. Fourth cause of action: Retaliation (Against Mosier, Goldsmith and Reyna in
8 their Personal capacity.).....61
9 XI. Fifth cause of action: Violation of Labor Code §1102.5 (Against SCCCD)..63
10 XII. Sixth cause of action: Violation of Civil Code §51 (Against SCCCD.)66
11 XIII. Seventh Cause of Action: Violation of Civil Code §51.5 (Against SCCCD.)
1267
13 XIV. Eighth Cause of Action: Violation of Government code
14 §12940(a)(Discrimination/Against SCCCD.).....69
15 XV. Ninth Cause of Action: Violation of Government code
16 §12940(j)(Harassment/Against SCCCD.)73
17 XVI. Tenth Cause of Action: Violation of Government code §12940(k)(failure to
18 provide a workplace that is free of discrimination, retaliation and/or
19 harassment/Against SCCCD.).....74
20 XVII. Eleventh Cause of Action: Violation of Government code
21 §12940(j)(Retaliation/Against SCCCD.).....76
22 XVIII. Twelfth cause of action: Violation of Labor Code §1102.5 (Against
23 SCCCD.)77
24
25

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5
6
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I. NATURE OF THE CASE

1. This civil action seeks injunctive relief and damages based on state law and federal law. Plaintiffs are current instructors of employer STATE CENTER COMMUNITY COLLEGE DISTRICT (“SCCCD”). Plaintiff MICHAEL STANNARD, PH.D. (“STANNARD”) is a plaintiff in only the first two causes of action. Plaintiff DAVID RICHARDSON (“RICHARDSON”) is a plaintiff in all fourteen causes of action.

II. VENUE

2. Venue properly lies in this Court under 28 USC §1391(b) in that Defendant State Center Community College District (“SCCCD”) has its headquarters and principal offices in Fresno County, California and many of the acts complained of occurred in the County of Fresno, State of California.

III. JURISDICTION

3. This action was removed from the Superior Court of California, County of Fresno, to the Federal District Court, Eastern District of California by Defendants on the basis of Federal Question Jurisdiction. 28 USC §§1331, 1441, The court has jurisdiction over the non-federal claims pursuant to 28 USC §1367.

IV. PARTIES

4. MICHAEL STANNARD, PH.D., (“STANNARD”) and DAVID RICHARDSON (“RICHARDSON”) are instructors employed by SCCCD. SCCCD is a governmental entity organized as part of the State of California. STANNARD and RICHARDSON will be referred to collectively as “Plaintiffs.”

5. Defendant CAROLE GOLDSMITH, ED.D. (“Goldsmith”), was the Chancellor of State Center Community College District, and responsible for the

1 policies, practices procedures set forth in this complaint. Goldsmith is named in her
2 official capacity. At the times alleged herein Defendant JULIANNA D. MOSIER
3 (“Mosier”) was Vice Chancellor, Human Resources, and responsible for drafting
4 and implementing the policies, practices procedures set forth in this complaint.
5 Mosier is named in her official capacity. ANGEL REYNA, ED.D. is the President
6 of Madera Community College and was responsible for authorizing, drafting and
7 issuing the discipline on DAVID RICHARDSON in retaliation for his exercise of
8 his rights under the First Amendment. GOLDSMITH and MOSIER are sued in their
9 official capacities in the First and Second Causes of Action, and in their personal
10 capacities in the Third and Fourth Causes of Action. REYNA is sued in his personal
11 capacity in the

12 **V. ACADEMIC FREEDOM**

13 6. As instructors and academics at SCCCD, Defendants were subject to, and
14 Plaintiffs were entitled to rely on, principles of academic freedom in their speech
15 activities in interacting with other individuals at SCCCD. Therefore, the Plaintiffs
16 acted with the following precepts in mind.

17 7. "Academic freedom, though not a specifically enumerated constitutional
18 right, long has been viewed as a special concern of the First Amendment."
19 (*University of California Regents v. Bakke*, 438 U.S. 265, 312, 98 S. Ct. 2733, 57 L.
20 Ed. 2d 750 (1978); see also *Keyishian v. Board of Regents*, 385 U.S. 589, 603, 87 S.
21 Ct. 675, 17 L. Ed. 2d 629 (1967) (academic freedom is "a special concern of the First
22 Amendment, which does not tolerate laws that cast a pall of orthodoxy over the
23 classroom"). The roots of academic freedom are found in the first amendment insofar
24 as it protects against infringements on a teacher's freedom concerning classroom
25 content and method." (*Hillis v. Stephen F. Austin State University*, 665 F.2d 547,
553 (5th Cir. 1982))

1 8. The Supreme Court has repeatedly stressed the importance of protecting
2 academic freedom under the First Amendment. It wrote in *Keyishian*:

3 Our Nation is deeply committed to safeguarding academic freedom,
4 which is of transcendent value to all of us and not merely to the
5 teachers concerned. That freedom is therefore a special concern of
6 the First Amendment, which does not tolerate laws that cast a pall of
7 orthodoxy over the classroom. "The vigilant protection of
constitutional freedoms is nowhere more vital than in the community
of American schools."

8 *Id.* at 603 (*quoting Shelton v. Tucker*, 364 U.S. 479, 487, 81 S. Ct. 247, 5 L. Ed. 2d
9 231 (1960)). It had previously written to the same effect in *Sweezy v. New*
10 *Hampshire*:

11 The essentiality of freedom in the community of American
12 universities is almost self-evident. . . . To impose any strait jacket
13 upon the intellectual leaders in our colleges and universities would
14 imperil the future of our Nation. . . . Scholarship cannot flourish in
15 an atmosphere of suspicion and distrust. Teachers and students must
16 always remain free to inquire, to study and to evaluate, to gain new
maturity and understanding; otherwise our civilization will stagnate
and die.

17 354 U.S. 234, 250, 77 S. Ct. 1203, 1 L. Ed. 2d 1311 (1957). More recently, the Court
18 wrote in *Grutter v. Bollinger*, "We have long recognized that, given the important
19 purpose of public education and the expansive freedoms of speech and thought
20 associated with the university environment, universities occupy a special niche in
21 our constitutional tradition." 539 U.S. 306, 329, 123 S. Ct. 2325, 156 L. Ed. 2d 304
22 (2003); see also *Rust v. Sullivan*, 500 U.S. 173, 200, 111 S. Ct. 1759, 114 L. Ed. 2d
23 233 (1991) ("[T]he university is . . . so fundamental to the functioning of our society
24 that the Government's ability to control speech within that sphere by means of
25 conditions attached to the expenditure of Government funds is restricted by the
vagueness and overbreadth doctrines of the First Amendment."); See *Rosenberger*

1 *v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 835, 115 S. Ct. 2510, 132
2 L. Ed. 2d 700 (1995) (stating that the university has a “background and tradition of
3 thought and experiment that is at the center of our intellectual and philosophic
4 tradition”); *Papish v. Bd. of Curators of Univ. of Mo.*, 410 U.S. 667, 671, 93 S. Ct.
5 1197, 35 L. Ed. 2d 618 (1973) (per curiam) (stating that “the First Amendment leaves
6 no room for the operation of a dual standard in the academic community with respect
7 to the content of speech”).

8 9. The Ninth Circuit has held that the envelope of academic freedom is
9 expansive, to wit: “We therefore doubt that a college professor's expression on a
10 matter of public concern, directed to the college community, could ever constitute
11 unlawful harassment and justify the judicial intervention that plaintiffs seek.”
12 (*Rodriguez v. Maricopa County Cmty. College Dist.* (9th Cir. 2009) 605 F.3d 703,
13 710.)

14 VI. BACKGROUND ALLEGATIONS

15 A. MICHAEL STANNARD, PH.D. – FIRST INVESTIGATION (2021).

16 10. STANNARD holds a doctorate in philosophy. He has been an instructor in
17 philosophy at SCCCD for approximately thirty years..

18 11. On approximately March 4, 2021, STANNARD was asked to meet with the
19 SCCCD Human Resources Department investigator, Erica Reyes, about some
20 unspecified claim that had been made against him. On March 9, 2021, STANNARD
21 met with Ms. Reyes as part of that investigation.

22 12. The investigation was purportedly of a claim that STANNARD had engaged
23 in “discrimination” or “harassment” in violation of SCCCD Policy AR 3430 and/or
24 AR 3435. A true and correct copy of AR 3430 is attached hereto as Exhibit A and
25 a true and correct copy of AR 3435 is attached hereto as Exhibit B.

1 13. During the hour-long interview, STANNARD was interrogated about two
2 statements he allegedly made. One statement allegedly occurred during a race-
3 sensitivity training session occurring on the day after the January 6, 2021 protest/riot
4 at the United States Capitol. In connection with points made by another instructor
5 about the Capitol riot of January 6, 2021, STANNARD observed that the riot at the
6 Capitol was “bad” and that the burning of minority-owned businesses during last
7 summer’s riots was “bad.” Another statement was allegedly made in a Justice and
8 Healing Circle that STANNARD regularly attended. STANNARD was reported to
9 have said in connection with a comment about single parent households that studies
10 showed that children do better if they are raised with both biological parents.
11 STANNARD denied making this alleged comment; what he said was that children
12 have a right to be raised by their biological parents, and that there was a
13 philosophical argument for the biological two-parent family based on the “problem
14 of origins,” i.e., children who do not know their parents question their own origins.

15 14. STANNARD was asked if he would have made these comments if there had
16 been no African Americans present and whether he intended to hurt the feelings of
17 other attendees. He was also asked if he was aware that he was invalidating the
18 opinions of others and whether he was aware that his comments had caused someone
19 to “become so angry they started to cry.”

20 15. STANNARD affirmed that his intent was to speak the truth in a public
21 environment where these issues were raised and that while he was sorry that anyone
22 would have an emotional reaction, that did not justify his censoring himself.

23 16. STANNARD also shared that after he had made his brief comment about the
24 “problem of origins,” he was told by the organizer that his remarks were “offensive.”
25 Another participant threatened to leave the group if the group did not move on from
the topic.

1 17. STANNARD's rights were violated in multiple ways. The activities that
2 STANNARD participated in were public activities where the participants were
3 invited to share their insights. STANNARD's insights were responsive to the topics
4 being discussed. STANNARD's demeanor and tone were restrained and respectful.

5 18. STANNARD was exercising his academic freedom. STANNARD's
6 comments were made in the context of a public discussion of public issues, which
7 makes the issues raised, and STANNARD's observations, broadly political,
8 entitling him to the protection of California law as well as the Constitution.

9 19. However, notwithstanding his free speech rights, STANNARD was singled
10 out for an "investigation" because of the content of his speech, and not because of
11 any neutral application of a neutral "time, place, and manner" restriction and/or
12 because of race and age.

13 20. Permitting venues for the discussion of only one side of public issues, and
14 tolerating the intimidation of one side of the debate, as occurred when STANNARD
15 was told his remarks were offensive and that he would be boycotted or cancelled,
16 and then made the subject of an "investigation" created a retaliatory hostile
17 environment for STANNARD in violation of the federal Constitution and California
18 law, including the Unruh Act which extends to "political affiliation." (*Marina Point
19 Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 726 ["Whether the exclusionary policy rests
20 on the alleged undesirable propensities of those of a particular race, nationality,
21 occupation, political affiliation, or age, ... the Unruh Act protects individuals from
22 ... arbitrary discrimination."].) In addition, STANNARD was subjected to
23 viewpoint discrimination which singled out his speech for administrative action and
24 censure, which violates the First Amendment and federal law. (*R.A.V. v. City of St.
25 Paul*, 505 U.S. 377, 120 L. Ed. 2d 305, 112 S. Ct. 2538 (1992); 18 USC §242.)

21. The explanation was offered at the interview that this was not a criminal
proceeding, but "merely" an administrative proceeding. This trivialized the

1 substantial chilling effect of the investigation on STANNARD's legal rights.
2 STANNARD and others were sent a message that they must be very careful about
3 what they say, particularly if what they say runs counter in any way to the prevailing
4 academic orthodoxy, even if the statements are true and spoken in a restrained and
5 respectful manner.

6 22. STANNARD was left on tenterhooks about what his future held. He did not
7 receive a communication about the disposition of the complaints until approximately
8 May 12, 2021. During the period he was kept in suspense, he did not know whether
9 he would keep his job. Even after being told that no further action would be taken,
10 he does not know if there will be any further specious claims against him and he has
11 been forced to censor and suppress his speech in order to avoid a further re-
12 occurrence of another "investigation."

13 23. On May 10, 2021 by Lori Bennett, Ed.D., President, Clovis Community
14 College made a determination on the allegations against STANNARD. The
15 allegations were not described. The finding was "not sustained." STANNARD was
16 advised that "While your comments did not rise to the level of discrimination in
17 violation of District policy, the investigative interviews demonstrated that some
18 employees were offended by your comments." STANNARD was instructed by
19 SCCCD: "I encourage you, and all employees, to demonstrate empathy toward
20 others and to reflect on how statements we make may impact others to ensure that
21 we are creating an inclusive working and learning environment for all employees
22 and students." STANNARD was also told:

23 State Center Community College District does not condone
24 harassment, discrimination, unprofessional conduct, or other
25 misconduct in the workplace or educational environment and takes
such complaints seriously. The District has a strong policy prohibiting
discrimination, harassment, and retaliation and a thorough investigation
has been conducted of this complaint.

1 24. These warnings, admonitions and instructions were nebulous and threatening
2 to STANNARD in that they implied that he had not demonstrated empathy, did not
3 explain what SCCCD meant by “demonstrating empathy,” and further implied that
4 he should reflect on how his statements in the context of the investigation hurt others
5 and undermined an “inclusive working and learning environment,” and concluded
6 with a nebulous threat about “unprofessional conduct.”

7 25. This matter should never have gotten this far. The complainants should have
8 been told about the Constitutional right of free speech and how they cannot subvert
9 the investigative procedures to harass and intimidate those who they perceived as
10 their ideological/career/political adversaries. (See e.g., *White v. Lee* (9th Cir. 2000)
11 227 F.3d 1214, 1230 (“The officials did not need to gather additional information
12 before determining whether these flyers incited imminent lawless action or not. That
13 the First Amendment protected the authors and distributors of the flyers was
14 plain.”).)

15 26. While STANNARD was told in a pro forma manner that he could file his
16 own claim, his statements to that effect should have started an investigation. Further,
17 since STANNARD was not told who the complainants against him were, something
18 known to the investigator, the suggestion that he file a claim was a hollow offer as
19 the investigator was told and knew already. This information is known to SCCCD,
20 which refused to perform any investigation into whether STANNARD was the
21 victim of race/age harassment despite its duty under the Fair Employment and
22 Housing Act to perform such an investigation.

23 **B. STANNARD – SECOND INVESTIGATION (2023-2024)**

24 27. In 2023, STANNARD was on the Executive Committee of the SCCCD. At a
25 meeting of the union in December of 2023, the issue of a male SCCCD instructor
who had gone through a Title IX investigation came up before the general
membership. This person was described as a “rapist” by several female instructors

1 and his presence on campus was referred to as a threat to other instructors by
2 members of the union attending the meeting. As a member of the executive
3 committee, STANNARD suggested that there be a show of restraint in that not all
4 facts about the prior incident were known.

5 28. STANNARD's exercise of his call for restraint and reason became the basis
6 of a second charge to SCCCD that STANNARD had engaged in "harassment,"
7 which has resulted in an uncompleted investigation for harassment.

8 29. On December 15, 2023, the SCCCD Chancellor's Office sent an email to all
9 faculty titled "A message from State Center Community College District
10 Administration":

11 Message from Leadership on Union Issues

12 This week, the District received several complaints about alleged
13 inappropriate behavior that occurred at multiple faculty union
14 meetings this month. Some female union members have reported that
15 these alleged actions have made them feel unsafe. We fully support
16 survivors of violence and harassment, and we find this behavior, if
17 confirmed, unacceptable, as it greatly impacts the faculty in our
18 District and contributes to a toxic work environment.

19 We believe that faculty union leadership needs to take a firm stance
20 against this alleged inappropriate behavior and focus on protecting
21 its members and our community. Everyone in our educational
22 community deserves to feel safe and protected.

23 While the District does not normally become involved in internal
24 faculty union activities as our union is an independent organization,
25 these complaints warrant further investigation by the faculty union,
especially as they impact employees of SCCCD.

We are also pursuing remedies as a District to protect our employees
and for those involved to be held accountable for their words and
behavior. We plan to investigate the complaints and expect that the
faculty union will do the same.

1 We remain committed to our efforts to address these ongoing
2 concerns of emotional and physical safety for those on our campuses.
3 The safety of our students and employees is our number one priority.
4 We must remain steadfast in our mission to create a welcoming,
5 accessible, and student-centered learning environment, designed to
6 bolster our students' social and economic mobility locally,
7 regionally, and globally.

8 With the holiday season upon us, we wish for all of you that the new
9 year brings health and continued success, and ushers in kindness and
10 civility in our work and lives as we collaborate in our shared
11 commitment to education. Be assured that the issue of how we better
12 support survivors of violence will be a focal point of discussion for
13 the District and its colleges in the new year.

14 30. STANNARD received notice of this most recent complaint on January 23,
15 2024. The letter from Christine Phillips, Director of EEO/Diversity & Professional
16 Development for SCCCD, stated that these allegations were subject to Title IX
17 discipline and, if true, violated Board Policies 3430 and 3433, and Administrative
18 Regulation 3434. STANNARD was informed that “if [he was] found responsible
19 for the alleged misconduct, [he might] be subject to corrective action and sanctions
20 up to and including no contact orders, involuntary transfer, termination and/or other
21 disciplinary or corrective measures.”

22 31. The next day (January 24, 2024) STANNARD received a second letter from
23 Christine Phillips. This letter was labeled “REVISED Notice of Allegations.
24 Allegations subject to Title IX,” and stated:

25 The Complainant alleges that Respondent engaged in the following
conduct:

Michael STANNARD made unwelcome and offensive statements
about victims of sexual assault and women in general which were
misogynistic, abusive, intimidating, and denigrating, and created a
hostile work environment, and he threatened to sue any employee
who filed a complaint or grievance against him.

1 32. Violation of AR 3433 was added to the violations of board policies and
2 regulations cited in the letter of the previous day.

3 33. On February 5, 2024 STANNARD received a third letter from Christine
4 Phillips titled “Notification of Mandatory Dismissal of Formal Complaint of Title
5 IX, Sexual Harassment and On-going Obligation” and which stated: “This is
6 intended as written notification that I have dismissed a formal Title IX complaint of
7 sexual harassment in which you were a party as the Respondent.”

8 34. In the same letter STANNARD was informed that the district would
9 (nevertheless) continue its investigation of the allegations against him:

10 Please note that the dismissal of a formal complaint under Title IX
11 does not preclude the District from continuing an investigation or
12 taking action under other District policies, code of conduct or
administrative rules/regulations.

13 However [sic], in this case the District has determined that it does
14 have an obligation to continue an investigation under a different
15 policy or mandated process, specifically under Administrative
Regulation 3435 – Responding to Discrimination, Harassment, and
Retaliation Complaints and Investigation Not Under Title IX.

16 The District has assigned Alison Winter to conduct the investigation.
17 Ms. Winter will contact you to discuss next steps or schedule an
18 interview.

19 35. STANNARD and his attorney met with Alison Winter for an hour-and-a-half
20 at SCCCD headquarters on February 26, 2024. STANNARD has received no further
21 communication from the district concerning the complaint against him. As of the
22 date of filing of this Second Amended Complaint, there has been no determination
of the merits of this second complaint.

23 **C. INSTRUCTOR DAVID RICHARDSON – FIRST INVESTIGATION (2021-2022.)**

24 36. Instructor David RICHARDSON is an instructor at the Madera Community
25 College campus of SCCCD. RICHARDSON has a Master’s degree and teaches

1 history. He has been teaching at SCCCD for approximately three decades.
2 RICHARDSON also publicly identifies as gay and conservative.

3 37. In the fall of 2021, SCCCD mandated that its college faculty attend a “College
4 Hour” on a regular basis. The “College Hour” was attended online by faculty and
5 provided an hour-long forum for SCCCD to instruct faculty on policy or other
6 subjects determined by SCCCD.

7 38. On or about October 15, 2021, SCCCD mandated that instructors attend a
8 “College Hour” on the subject of etiquette in the use of personal pronouns. This
9 instruction consisted of a presentation on “pronoun etiquette.” The presentation was
10 made by Jamie MacArthur Ph.D. (“JM”) who is a male identifying as a female, i.e.,
11 a transsexual or “trans-female.” JM is an instructor at SCCCD

12 39. Attendance at “College Hour” is mandatory. The topics presented at College
13 Hour are selected by SCCCD. SCCCD selects the person who will make the
14 presentation. The views expressed by the speaker are understood to represent the
15 views of SCCCD.

16 40. The October 15, 2021 College Hour was attended on-line by several dozen
17 instructors. The format for the attendees was that the speaker could be seen in a
18 larger window on the computer screen while the other attendees were in small
19 thumbnails with either the live feed of them watching, or, if their camera was shut
20 off, some other image. In addition, the thumbnail had their name and in this case a
21 line was presented for the participants to insert their “preferred gender pronouns.”

22 41. By October 2021, the issue of preferred gender pronouns had become a
23 contentious political and philosophical issue. The issue was pressed by and on behalf
24 of transsexuals and other people claiming other kinds of “sexual identities.” Under
25 this worldview, “sexual identities” are not just limited to “transsexuals,” i.e., those
who identify with the opposite biological sex, and “cisgender,” i.e., those who
identify with their biological sex. Under this worldview, there are people who

1 claimed to identify as one of many other highly nuanced sexual identities based on
 2 a plethora of subjective assessments. Along with transexuals there are abrosexuals,
 3 androgynosexuals, androsexuals, aromantics, and asexuals, which are only an
 4 incomplete listing of the various sexual identities that start with the letter “A.”¹ Such
 5 people insist that other people call them by pronouns that recognize such putative
 6 sexual identities. Since, in many cases the desired pronoun is not apparently
 7 applicable or entirely fictitious, see e.g., the “Cake Sexual”² people having this
 8 philosophical/sociological perspective insist that everyone “announce their
 9 “preferred gender pronouns.” The range of “preferred gender pronouns” (“PGP”) is
 10 potentially limitless, and includes “he/him,” “she/her,” “they/them” (for a single
 11 human being) and “xe/xir” as some examples.³

12 42. RICHARDSON philosophically and intellectually disputes that any person
 13 can change empirical, ontological, or objective reality by a process of
 14 “identification.” For example, he believes that a person will not grow an inch by
 15 identifying himself as “taller.” Likewise, since females and women are not born with
 16 male chromosomes, genitalia, and male secondary sex characteristics, as a matter of
 17 philosophical and intellectual commitment to truth, he disputes that a male can
 18 change sex by a matter of self-identification.

19 43. RICHARDSON also believes as a philosophical and intellectual matter that
 20 the purpose of language is to serve the social function of communicating truth.
 21 Accordingly, he does not believe that certain classes can be privileged with their

22 ¹ “A-Z List of Sexualities” by Unite UK (June 28, 2018) [https://uniteuk1.com/2018/06/a-z-list-of-](https://uniteuk1.com/2018/06/a-z-list-of-sexualities/)
 23 [sexualities/](https://uniteuk1.com/2018/06/a-z-list-of-sexualities/)

24 ² See [https://twitter.com/libsoftiktok/status/1524492898774884353?fbclid=IwAR0SptJpy6ACdpFich4](https://twitter.com/libsoftiktok/status/1524492898774884353?fbclid=IwAR0SptJpy6ACdpFich4b9EdDI_yhfMHY3ccqPV4u_RjtVfpPgXgpigu6UuQ)
 25 [b9EdDI_yhfMHY3ccqPV4u_RjtVfpPgXgpigu6UuQ](https://twitter.com/libsoftiktok/status/1524492898774884353?fbclid=IwAR0SptJpy6ACdpFich4b9EdDI_yhfMHY3ccqPV4u_RjtVfpPgXgpigu6UuQ)

³ See https://en.wikipedia.org/wiki/Preferred_gender_pronoun

1 own special set of “preferred gender pronouns” any more than they can privileged
2 with their own set of “preferred adjectives.”

3 44. At the October 15, 2021, College Hour, RICHARDSON reasoned that it was
4 not intellectually equitable to allow only certain people to pick certain “Preferred
5 Gender Pronouns.” Accordingly, RICHARDSON filled out his “Preferred Gender
6 Pronouns” as “Do, Re, Mi.” In doing this, RICHARDSON was not joking, and he
7 was not mocking anyone. He was making the serious point that if “Preferred Gender
8 Pronouns” should not be mandatory because they were based on an irrational
9 perception of reality and that if they were to be mandated, displayed, or required,
10 then they would frustrate communication for ideological reasons.

11 45. RICHARDSON’s philosophical and intellectual position is that any rule,
12 policy, practice or official pressure mandating that he use PGP contrary to reality is
13 an imposition, burden and violation of his freedom of speech under the First
14 Amendment and therefore a violation of federal law, to wit, 18 USC §242
15 (“Whoever, under color of any law, statute, ordinance, regulation, or custom,
16 willfully subjects any person in any State, Territory, Commonwealth, Possession,
17 or District to the deprivation of any rights, privileges, or immunities secured or
18 protected by the Constitution or laws of the United States....shall be fined under
19 this title or imprisoned not more than one year....”) ; *United States v. Classic*
20 (1941) 313 U.S. 299, 326-329 [61 S.Ct. 1031, 1043-1044, 85 L.Ed. 1368, 1383-
21 1385].) RICHARDSON refused to participate in this violation of his and other
22 faculty members’ First Amendment rights.

23 46. RICHARDSON’s listing of his PGP was not disruptive. RICHARDSON’s
24 PGP themselves were virtually unreadable on the screen with other attendees. No
25 one commented on his PGP. To all appearances at the meeting, no one noticed
RICHARDSON’s PGP at the meeting.

1 47.However, on Monday, October 18, 2021, JM emailed RICHARDSON and
2 said in relevant part:

3 The reason that I am contacting you is because I noticed in the
4 College Hour on Friday that you had what appeared to be a joke
5 shared where someone might normally share their pronouns on zoom
6 (do-re-mi). I wanted to let you know that doing this is considered to
7 be extremely offensive by people in the trans community. It's
8 possible that you didn't know this, so I wanted to take a moment to
9 share some resources related to this with you so that you have a better
10 understanding of how people in the trans community would like to
11 be treated

12 Here is an article: <https://www.washingtonpost.com/outlook/please-stop-making-jokes-about-gender-pronouns-when-people-tell-you-theirs/2019/12/11/8f6a063a-0a4d-11ea-8397-a955Cd542d00-story.html>Also you may have noticed that my email signature has a
13 link to some basic information on pronouns. This was written by
14 someone who did their dissertation on pronoun usage, so they have
15 a lot of rigorous academic expertise in this area. Here is their website
16 if you are interested in learning more about that
17 work: <http://www.kirbyconrod.com/>.

18 I didn't mention anything about this at the time of the meeting, as I
19 wanted to stay focused on the dialogue at hand. Although it was
20 painful for me to not say anything in that moment, I chose to put the
21 good of the community ahead of my own well being. I am choosing
22 to share this information with you directly now instead of with
23 someone else out of respect for the ideals embodied by our union of
24 solidarity within our community of scholars. I hope this message is
25 received with the spirit of good will that I intend and that you would
choose not to use the zoom platform as a way of making a joke that
is harmful to trans people.

48.JM's email conceded that the issue of PGP was a matter of scholarly
discussion, but also insisted that only one side be permitted to engage in a non-
disruptive discussion because JM felt it was "painful" for JM not to say anything

1 immediately. JM dismissed RICHARDSON's speech as not being worthy of any
2 First Amendment protection and as merely a “joke.”

3 49. JM’s communication was threatening to RICHARDSON because
4 RICHARDSON knew that SCCCD could punish him for his speech.
5 RICHARDSON was well-aware that such communications were the first step in
6 the “cancellation” of dissenting voices. RICHARDSON was aware that SCCCD
7 would utilize JM’s complaints as a putative victim in order to coerce
8 RICHARDSON and others to accede to the ideological position that SCCCD had
9 advocated through JM when it had appointed JM as the College Hour presenter on
10 the subject of “PGP etiquette” and mandated that all SCCCD instructors attend and
11 listen to JM presentation on “PGP etiquette.” At all times, RICHARDSON was
12 aware that JM was exercising authority given to him by SCCCD when it had
13 placed JM in charge of training on “PGP etiquette” and permitted JM to define for
14 SCCCD what “PGP etiquette” consisted of.

15 50. RICHARDSON responded to JM’s email as follows:

16 To be blunt, what makes they think it was a joke? Am Do not allowed
17 to identify mi own pronouns as an LGBTQIA2+ individual? Have
18 Do done or said anything to anyone to make they think it was a
19 "joke"? Do think they are making assumptions about mi own thought
20 processes and rationale that is offensive in and of itself. Do don't find
21 anything about the entire debate "funny". If they are uncomfortable
22 with mi choice of pronouns, Do might suggest that the issue is not re
23 although Do would never presume to know what is going on in their
24 mind. Do also find it interesting that they would presume Do is any
25 less educated on the subject of the transgender community than they
is. Do don't question their choice of personal pronouns. Personal
pronouns are personal.⁴

⁴ In this email, Richardson’s references to “they” and “their” are to JM and Richardson’s reference to “Do” is to himself.

1 51. The next contact in this sequence was on November 1, 2021 when James
2 Young the “Employee Relations Coordinator” for SCCCD contacted
3 RICHARDSON about JM and the “concerns they had regarding your use of
4 pronouns in a Zoom meeting.”⁵ Young requested some time to speak to
5 RICHARDSON about “this matter.”

6 52. In response to Young, RICHARDSON wrote:

7 If MacArthur and yourself would like to make an issue of my
8 personal pronouns which as I have told MacArthur are personal, then
9 we are going to be opening a can of worms that I don't believe the
10 District would want to get involved in. Picking and choosing which
11 personal pronouns people can and cannot use would amount to
12 harassment in the workplace and the creation of a toxic work
13 environment. This week is not possible as I have three faculty
14 evaluations that need to be completed. That being said, I would be
15 happy to meet with you in the future as long as any meeting includes
16 a union representative and everyone understands that any attempt to
17 coerce or in any other way change my personal pronouns will be seen
18 on my part as hostility towards an open and proud LGBTQIA2S+
19 individual. Thank you.

20 53. RICHARDSON copied his supervisors and some faculty members because he
21 understood that JM was moving in the direction of “canceling” him. RICHARDSON
22 had observed that STANNARD had been subjected to an investigation for angering
23 leftwing members of the campus community for failing to say things properly
24 supportive of anti-racist ideology. RICHARDSON has observed that leftwing
25 professors had used harassment claims in order to stifle speech that is contrary to
leftwing ideology, such as that human gender is fluid and not determined by biology.
Since there was no policy against speaking or associating with other instructors,
RICHARDSON copied the other instructors on his email. His intent was to exercise

⁵ Again, the use of “they” is a reference to JM.

1 his constitutional right of speech and association. He was not under official
2 investigation at that time. He had not been instructed not to share this information.
3 He did not intend to retaliate but was attempting to protect himself from retaliation
4 for not subscribing to leftwing ideology.

5 54. On November 1, 2021, JM responded by including the administration in his
6 email to RICHARDSON. JM admitted that JM had gotten HR and the relevant union
7 involved. JM expressed JM's purpose as being "to discuss the harm that has been
8 caused and how to mediate a solution to that harm," which assumed that
9 RICHARDSON's exercise of his free speech rights qualified as a "harm." JM said
10 that JM sought a "facilitated discussion" in order to obtain the "consent" of
11 RICHARDSON to create a workplace setting that would be "safe" for everyone. In
12 short, JM invoked the power of SCCCD to compel RICHARDSON to adhere to the
13 speech standards that JM had presented to SCCCD instructors at the College Hour
14 where he had been chosen by SCCCD to present the SCCCD ideology of "PGP
15 etiquette" to instructors who had been mandated by SCCCD to hear that
16 presentation.

16 55. In response, RICHARDSON requested that HR investigate JM's harassment
17 of RICHARDSON. RICHARDSON explained:

18 After finding out that HR had been involved, my preexisting and well
19 documented anxiety and panic disorder has gone through the roof.
20 Having personally experienced firsthand the hate and vitriol that
21 open members of the community were subjected to in the 1980s
22 when I was in college, having been spat on, called "fxxxxx" and other
23 such behavior, I am hypervigilant to use the words of my therapist
24 when I feel that my own safety and livelihood are threatened. I feel
25 that way now which is only heightened by the atmosphere of chaos
and uncertainty surrounding COVID, vaccine mandates and the like.
I'm not looking for anything more than to be left in peace. I thought
MacArthur understood that, but it seems not. I haven't questioned
their choices and I believed that mine would not be questioned. It

1 seems I am wrong. I am not interested in any resolution that would
2 involve the changing of my pronouns until the district is interested
3 in examining everyone's personal pronoun choices and
4 implementing some sort of policy on how pronouns are to be used
and which ones are acceptable. I am willing to let the matter drop if
MacArthur is amenable, but it is their choice.

5 56. Nonetheless there was no investigation of JM's harassment of
6 RICHARDSON. Instead SCCCD began an investigation of RICHARDSON. The
7 "investigation" involved asking RICHARDSON personal questions that intruded on
8 his academic freedom and right of privacy. The alleged investigation lasted for
9 approximately six months. After making several inquiries, RICHARDSON was
10 informed that the allegations and findings were:

11 **Allegations and Findings**

12 Allegation 1: You intentionally misused pronouns in a mocking
13 manner for Jamie MacArthur 8 times in an email exchange on
14 October 18, 2021.

15 Finding: Sustained.

16 Analysis: MacArthur stated that they sent an email to you on
17 October 18, 2021 regarding the pronouns that were displayed on your
18 Zoom profile. MacArthur alleged that you replied to the email on
19 October 18, 2021 using the third person pronouns of "they/them" in
20 place of the second-person "you", and using the third-person
pronouns "Do-Re-Mi" in place of the first-person pronoun "I" 8
different times.

21 The investigator found that it is more likely than not that you sent the
22 email to MacArthur on October 18, 2021 intentionally using second-
and third-person pronouns in a mocking manner.

23 Allegation 2: You retaliated against MacArthur for bringing up
24 concerns related to your use of pronouns in a Zoom meeting, and for
attempting to seek an informal resolution through Human Resources.

25 Finding: Sustained.

1 Analysis: MacArthur alleged that you sent a series of emails to
2 Madera Community College faculty, staff, administrators, and
3 Human Resources representatives as retaliation for seeking an
4 informal resolution through Human Resources, as a way to
intimidate MacArthur into dropping their complaint.

5 The investigator found that it is more likely than not that the emails
6 you sent to Madera Community College faculty, staff,
7 administrators, and Human Resources representatives were sent as
8 retaliation for MacArthur attempting to seek an informal resolution
through Human Resources, as a way to intimidate MacArthur into
dropping their complaint.

9
10 57. The Findings are specious. First, the Findings ignore that RICHARDSON's
11 response came after, and in the context of, JM's email taking RICHARDSON to task
12 for daring to use PGP that JM felt were inappropriate or joking. In his response,
13 RICHARDSON was not mocking JM; he was making the point that the attempt by
14 one group to dictate PGP for other groups based on arbitrary and subjective
15 identifications is absurd and undermines communication. This was an
16 academic/scholarly subject that fell within RICHARDSON's zone of academic
17 freedom and free expression. At no time was RICHARDSON advised that his
18 private *response* to a private email accusing him of ignorance and rudeness would
be vetted for "harassment."

19 58. Likewise, RICHARDSON did not retaliate against JM by sending a copy of
20 his response to James Young to interested faculty members. Upon being contracted
21 by a member of SCCCD's administration, RICHARDSON concluded that the issue
22 involved the SCCCD faculty community. RICHARDSON was not aware of any
23 policy infringing on his right of free speech and association that would have
24 prevented him from sharing his communications with James Young with such
25

1 faculty. RICHARDSON reached out to such interested faculty only after JM had
2 taken the private discussion to the administration.

3 59. In summary, SCCCD found a basis to discipline RICHARDSON for multiple
4 activities that fell within protected First Amendment speech, namely, (a) either not
5 using the words approved by SCCCD for “Pronoun etiquette,” ; (b) using words not
6 approved by SCCCD for “PGP etiquette”; (c) speaking to other people about the
7 “PGP etiquette” dispute with JM; and (d) not refraining from speaking to other
8 people about the “PGP etiquette” dispute with JM.

9 **D. DAVID RICHARDSON – FIRST DISCIPLINE (2022)**

10 60. On May 17, 2022, RICHARDSON was called into a meeting with Vice
11 President of Learning and Student Services Marie Harris (“ Harris.”) Harris gave
12 RICHARDSON a copy of a Letter of Reprimand the “Letter.”) A copy of the Letter
13 of Reprimand was placed in RICHARDSON’s file.

14 61. The Letter advised:

15 This letter is to address concerns regarding your recent
16 unprofessional conduct. State Center Community College District
17 received a Sexual Harassment/Gender Discrimination complaint on
18 December 1, 2021, and the investigation determined that you
19 intentionally misused pronouns in a mocking manner with a
20 colleague and that you retaliated against that colleague for bringing
21 their concerns to the attention of the District and seeking an informal
22 resolution through Human Resources.

23 62. This conclusion was specious in that RICHARDSON had no knowledge that
24 JM had brought the relevant issue to the attention of the District and he had not
25 “intentionally misused pronouns in a mocking manner.”

63. RICHARDSON was instructed:

You are directed to immediately stop using pronouns in a
mocking manner in the workplace. You are to exhibit basic standards

1 of conduct and act professionally when you interact with employees
2 and students of this District, including in written exchanges via
3 email. Further failure of this type or similar unprofessional behavior
4 may result in disciplinary action, and as stated in BP 3430, may lead
5 to termination.

6 64. As discipline, RICHARDSON was directed as follows:

7 In an effort to assist you in overcoming these deficiencies,
8 you will comply with each of the following directives:

9 1) You will communicate with your coworkers and students in
10 accordance with basic standards of professional conduct effective
11 immediately.

12 2) You will adhere to all provisions of the Board Policies and
13 Administrative Procedures of the District, and the SCFT collective
14 bargaining agreement between the District and the State Center
15 Federation of Teachers, Local 1533, particularly the provisions of
16 Article XIII, Section 3, 2, b, which incorporates the ethical standards
17 in of the American Association of University Professors.

18 3) You will complete six (6) hours of Diversity, Equity, and
19 inclusion training by September 9, 2022. Once you complete each
20 training, you must submit proof of completion to me via email. Log
21 in to the Vision Resource Center to access the trainings and then
22 search for the learning module title.

23 a) How to be more inclusive

24 b) Promoting Respect in the Workplace for Employees

25 e) Diversity, Inclusion, and Belonging

d) Creating a Positive and Healthy Work Environment

e) Inclusive Mindset

f) I Don't See Color, I Just See People: Becoming Culturally
Competent

g) Playing Behind the Screen: The Implicit Bias in Our
Colleges

4) You will complete the Equity and the LGBTQIA+
Community Challenge which requires you to read, watch, and
engage provided resources.

1 [https://unitedwaysem.org/equity_ challenge/day-18-equity-](https://unitedwaysem.org/equity_challenge/day-18-equity-and-the-lgbtq-community/)
2 [and-the-lgbtq-community/](https://unitedwaysem.org/equity_challenge/day-18-equity-and-the-lgbtq-community/)

3 Once you complete the directive, you must provide a written
4 response to me via email by September 9, 2022, responding to
5 reflection questions.

6 a) How did the material make you feel? What did you learn
7 from the material?

8 b) What are ways you can create a more inclusive environment
9 that does not center on homophobia or transphobia? Think of your
10 school, workplace, home, religious group, etc.

11 65. This discipline constituted punishment in that it exceeded any reasonable
12 relationship to the alleged offense. In particular, although RICHARDSON was
13 alleged to have frightened a pre-operative transexual and RICHARDSON is
14 homosexual, he was assigned to receive indoctrination on racism and making his
15 environment, including his home and religious group, one “that does not center on
16 homophobia.” The scope of this ideological training impermissibly burdened
17 RICHARDSON’s right of privacy and constituted more viewpoint discrimination in
18 that there was no basis to assume that RICHARDSON was “homophobic” and
19 SCCCD’s remit does not extend to homes and religious groups. RICHARDSON has
20 actually completed a portion of the so-called training assigned to him.

21 66. RICHARDSON was also informed at the meeting with Harris that SCCCD
22 had an unwritten PGP policy and that he could use his own PGP so long as they were
23 not deemed “mocking.” SCCCD’s representatives were unable to provide a
24 definition of mocking that was not subjectively based on the feelings of an objecting
25 person who does not feel that the subject is being treated solemnly enough.

26 **E. PRONOUN POLICY**

27 67. Prior to the Findings, SCCCD had not published a policy on pronouns. The
28 mandatory College Hour was presented as offering tips on “etiquette,” which

1 generally means “the set of conventional rules of personal behavior in polite society,
2 usually in the form of an ethical code that delineates the expected and accepted social
3 behaviors that accord with the conventions and norms observed by a society, a social
4 class, or a social group.” (Wiki - <https://en.wikipedia.org/wiki/Etiquette> .) At the
5 time, RICHARDSON believed that JM was offering his own beliefs about how
6 society should apply the new and untested rules of PGP, albeit as the speaker selected
7 by SCCCD and the speaker that SCCCD required its instructors to listen to at
8 College Hour, JM’s views were the views of SCCCD on “etiquette.”

9 68. In addition, in his meeting with SCCCD to obtain the Findings,
10 RICHARDSON was told by SCCCD that the problem had been that RICHARDSON
11 was “mocking JM” by using the pronouns that RICHARDSON had selected.
12 RICHARDSON was not “mocking JM.” The implication left by SCCCD’s
13 representatives was that if RICHARDSON was not “mocking JM” he could use the
14 pronouns he had selected. When RICHARDSON asked SCCCD’s representatives
15 for how they would determine if someone’s mental state was to “mock” a person,
16 SCCCD’s representatives were unable to provide a definition or mechanism to intuit
17 the subjective mental state of a speaker.

18 69. RICHARDSON did not view “etiquette” as something that he was required to
19 adhere to. He also did not believe that he was “mocking” anyone. RICHARDSON
20 continued to use the “Do, Re, Mi” pronouns on his Zoom profile throughout 2022
21 and into the first part of 2023. However, in light of SCCCD’s second investigation
22 and second discipline of RICHARDSON in 2023 and 2024 (discussed below), he
23 has discontinued his use of those pronouns based on his belief that SCCCD will
24 penalize the use of such pronouns. RICHARDSON would continue to use such
25 pronouns on his Zoom profile if SCCCD did not threaten him with termination for
such use.

1 70. As a result, RICHARDSON and others are chilled in their speech because of
2 the arbitrary and vague nature and application of the pronoun policy.

3 **F. DAVID RICHARDSON – SECOND INVESTIGATION (2023-2024)**

4 71. In 2023, Deanna Calvin (“Calvin”) was Executive Assistant to the Vice
5 President of Learning and Student Success, Marie Harris (“Harris”). Calvin is a
6 male-to-female transexual. In 2023, Harris was the direct supervisor
7 RICHARDSON.

8 72. On April 29, 2023, the Madera Community College campus (“MCC”) of
9 SCCCDC held an “open house.” At the open house, MCC set up table for the various
10 departments to have instructors put out things associated with the discipline they
11 taught. The intent was the potential students, their parents, and community members
12 could walk among the tables, look at the exhibits, and speak to the instructors. These
13 discussions would presumably be on the subject that the instructor taught and
14 involve a discussion of the substance of the course or various issues about the course.
15 For example, RICHARDSON would place items pertaining to the Civil War on the
16 history department table. His discussions with interested people would largely
17 involve the Civil War. In other words, RICHARDSON was engaging in instruction,
18 even though it was informal, unpaid, and not graded. However, RICHARDSON was
19 not speaking for or on behalf of SCCCDC at these Open Houses since it was not part
20 of his contract to attend such Open Houses and he was not being compensated for
21 volunteering.

22 73. RICHARDSON’s practice at open houses was to bring items related to
23 history. He also made it his practice to bring candies, chips, cookies, and other snack
24 items for visitors to take. The snacks were supplied and paid for by RICHARDSON.
25 SCCCDC was aware of his practice and never issued any restrictions or guidelines
concerning his participation at open houses.

1 74. On April 29, 2023, RICHARDSON brought many kinds of snacks to the Open
2 House which he set out on one end of the table. As a small portion of the snacks he
3 brought that day, RICHARDSON brought chocolate bars from Jeremy's Chocolates.
4 Jeremy Chocolates positions itself as "anti-woke." The chocolate bars made by
5 Jeremy's Chocolates and brought by RICHARDSON were of two kinds: there were
6 chocolate bars with nuts and those without nuts. The bars without nuts were labeled
7 "She/her" and the ones with nuts were labeled "He/him." RICHARDSON brought
8 these bars because he had a remaining box and wanted to get rid of this candy before
9 it spoiled. This candy was a small portion of the total snacks he brought. He did not
10 "display" the Jeremy's Chocolate bars so that they would get attention. Rather, the
11 Jeremy's Chocolates were mixed in with, and often obscured by, other candies.

12 75. RICHARDSON did not intend to be provocative in having the Jeremy's
13 Chocolates among the snacks placed on the table.

14 76. Up until the time that Calvin intervened, the Jeremy's Chocolates did not
15 cause any controversy. Some people took the bars and laughed. No one objected
16 prior to Calvin. No supervisor of RICHARDSON expressed any misgivings or
17 concerns. Some SCCCD administrators took the Jeremy's Chocolates and expressed
18 amusement. Harris took one of the Jeremy's chocolate bars from RICHARDSON's
19 table, expressing amusement. Harris did not tell RICHARDSON to remove the
20 chocolate bars or object to the chocolate bars.

21 77. Harris showed Calvin the chocolate bar. Calvin immediately went to confront
22 RICHARDSON about the wrappers on the bar. Calvin began interacting with
23 RICHARDSON by interrogating him about his agenda. Calvin was loud and
24 aggressive and attracted the attention of instructors and administrators who were
25 standing near the history table. One administrator saw the interaction but did not
intervene. RICHARDSON refused to be drawn into the dispute and spoke calmly to
Calvin.

1 78. Calvin's biggest concern was with the back of the wrapper where Jeremy's
2 Chocolates had printed the phrase "Building a Woke Free Economy." Calvin asked
3 RICHARDSON what that expression was supposed to mean. RICHARDSON
4 suggested that Calvin contact the company with her inquiries.

5 79. Calvin eventually left the table. No administrator or representative of SCCCD
6 spoke to RICHARDSON about the incident, the Jeremy's Chocolates, or the
7 language on the wrapper. No administrator or representative told RICHARDSON
8 to remove the Jeremy's Chocolates or told him that he had engaged in any violation
9 of SCCCD regulations.

10 80. On or about April 29, 2023, Calvin filed a Title IX Reporting Form in which
11 she asserted, inter alia:

12 "I then turned the candy bar over to look at the back of the wrapper, and read
13 something about "building a woke-free economy." I pointed that out to David
14 and asked him if he was promoting some type of agenda. He didn't answer."

15 81. The gist of Calvin's Title IX Reporting Form was that she was offended by
16 the candy bar usage and by its purported "mocking" of pronouns and by the reference
17 to "building a woke-free economy."

18 82. On May 8, 2023, a uniformed police officer came to RICHARDSON's home
19 after work hours and delivered a notice saying that he had been placed on
20 administrative leave pending the outcome of Calvin's Title IX complaint.

21 83. The suspension letter falsely accused him of possibly engaging in "serious
22 misconduct." This allegation was false in that the accusation did not involve "serious
23 misconduct" or any "misconduct." RICHARDSON was required to return all district
24 property to SCCCD and his access to email and the electronic system was cut-off.

25 84. The suspension letter was signed by Julianna D. Mosier, Vice Chancellor –
Human Resources and was approved by Carole Goldsmith, Chancellor. Both Mosier

1 and Goldsmith were named as defendants in their official capacity in the original
2 lawsuit filed by RICHARDSON against SCCCD.

3 85. RICHARDSON was two weeks from the end of the semester. By placing him
4 on leave at that time, SCCCD ensured that students and co-workers knew that
5 RICHARDSON had been suspended from work late in the semester, just before final
6 exams, thereby maximizing the disruption to students and co-workers, and, thereby
7 making the suspension memorable and significant. No explanation was provided
8 about why RICHARDSON had been placed on suspension. The suspension
9 communicated that RICHARDSON was somehow too dangerous to allow to remain
10 on campus, which adversely impacted RICHARDSON's reputation. The service of
11 the suspension notice and the suspension also caused RICHARDSON to suffer
12 substantial emotional distress in the form of embarrassment, humiliation, anxiety,
13 and fear. RICHARDSON's ability to do something he loved, namely, teach history,
14 was substantially prevented. There was no good reason for the suspension in that not
15 everyone accused of a Title IX violation is suspended by SCCCD and
16 RICHARDSON was not a physical threat to Calvin or anyone else.

17 86. Title IX regulations require the dismissal of a complaint that does not allege
18 conduct that would meet the definition of "sexual harassment" under Title IX, the
19 regulations require the dismissal of the complaint:

20 If the conduct alleged in the formal complaint would not constitute
21 sexual harassment as defined in § 106.30 even if proved, did not
22 occur in the recipient's education program or activity, or did not
23 occur against a person in the United States, then the recipient must
24 dismiss the formal complaint with regard to that conduct for
25 purposes of sexual harassment under title IX or this part; such a
dismissal does not preclude action under another provision of the
recipient's code of conduct.

1 (34 C.F.R. § 106.45 (b)(3)(i) (Lexis Advance through the Sept. 28, 2023 issue of
2 the Federal Register)(Emphasis added).)

3 87. There was no reasonable basis for a competent college administrator charged
4 with administering Title IX issues to reasonably believe that Calvin had stated a Title
5 IX violation. At no time did Calvin claim that the conduct to which she was objecting
6 was severe, pervasive, or objectively unreasonable. Calvin's complaint was limited
7 to the claim that the Title IX harassment consisted of RICHARDSON having a few
8 Jeremy's Chocolates with a wrapper that offended her which he gave out as part of
9 giving out other snacks. The only interaction that Calvin claimed occurred between
10 herself and RICHARDSON was an interaction that Calvin initiated after she turned
11 down Harris's offer to intervene when Calvin attempted to provoke a public scene
12 with RICHARDSON, and during which RICHARDSON refused to be provoked. In
13 her complaint, and during this interaction, Calvin clearly specified that a substantial
14 cause of her allegedly offended feelings was due, inter alia, to the wrapper's
15 language about "building a woke-free economy."

16 88. After Calvin filed the Title IX complaint, there was an investigation.
17 RICHARDSON was interviewed twice. The focus of the second interview involved
18 media articles on the case and his suspension. The investigation was substantially
19 delayed because SCCCD instructed the investigator to interview RICHARDSON
20 about his communications with the media. These interviews were unreasonably
21 intrusive on RICHARDSON's right to privacy and right to free speech in that they
22 were in a case not supported by a tenable sexual harassment claim under Title IX
23 and/or under vague and ambiguous regulations and in that questions were asked
24 about RICHARDSON's views on social issues that are currently a matter of public
25 interest. RICHARDSON understood from the investigation and the questions asked
that his speech activities were a cause of the continued prosecution of the claim.

1 89. At the end of the Title IX investigation phase in approximately July/August
2 2023, the Title IX investigator concluded as follows:

3 ALLEGATION 4: Did David Richardson continue to provide the
4 chocolate bars on the History Department table after being made
5 aware that they may be offensive to the trans and non-binary
6 community?

7 Finding: No, Not Sustained

8 ALLEGATION 5: Did David Richardson bring the chocolate bars to
9 the District event to intentionally offend the trans and non-binary
10 community?

11 Finding: No, Not Sustained.

12 (Confidential Investigation Report dated July 3, 2023, p. 4 attached hereto as Exhibit
13 H.)

14 90. Richardson requested that the Title IX proceeding be dismissed pursuant to
15 34 C.F.R. § 106.45 (b)(3)(i).

16 91. Nonetheless SCCCD failed and refused to dismiss the complaint. Instead,
17 SCCCD continued to keep RICHARDSON on suspension and continued to pursue
18 the Title IX process.

19 92. In December 2023, the hearing on the Title IX claim occurred.

20 93. At the hearing, RICHARDSON was asked questions about his private views
21 on transgenderism, his relationship with Jeremy's Chocolates, and his "agenda."

22 94. In January 2024, the hearing officer issued her findings which concluded that
23 there was no basis for Calvin's claims. The Title IX hearing officer found that the
24 messaging on the candy bar wrappers were not "objectively offensive," writing:

25 Making statements that mock an individual's gender identity and/or
gender expression typically constitutes conduct that is objectively
offensive. A reasonable person similarly situated to the Complainant
would likely find the words "SheHer Nutless" and "HeHim Nuts" to
be objectively offensive, particularly given the exclusionary and
assumptive nature of the message. However, in this instance, the

1 evidence supports that the messaging on the candy bars was not
2 directed at Complainant or specifically about Complainant.
3 Moreover, the messaging on the candy bars was not directed at
4 LGBTQ+ individuals or any specific group, thus mitigating the
5 objectiveness of any offense that may have resulted. Since the
6 alleged conduct does not satisfy the severe, and pervasive, and
7 objectively offensive policy elements, the preponderance of the
8 evidence does not support a finding that Respondent violated
9 Administrative Regulation 3433 (Prohibition of Sexual Harassment
10 Under Title IX) pertaining to hostile environment.

11 Hearing Determination Letter dated January 3, 2024. A true and correct copy of the
12 Hearing Determination Letter is attached hereto as Exhibit C.

13 95. Calvin was revealed to have lied in her claim. In her claim, Calvin claimed
14 that she had discovered the Jeremy's Chocolates on RICHARDSON's table by
15 surprise as she was walking among the tables. Calvin did not mention that Harris
16 had shown the chocolates to her and offered to intervene with RICHARDSON. The
17 sworn testimony at the hearing established that the latter was true. Plaintiff is
18 informed and believes and thereon alleges that no proceedings have been initiated
19 against Calvin to discipline her for these lies in her Title IX Complaint,
20 notwithstanding the fact that SCCCD has a policy against lying in official
21 proceedings and does attempt to enforce that provision against white female
22 students. RICHARDSON requested that Calvin be investigated concerning this issue
23 and for her behavior in the original incident, but his request was denied without an
24 investigation.

25 96. Because the findings were provided after the start of the school year,
RICHARDSON was kept from teaching for an additional nine weeks.

97. RICHARDSON was suspended for nine months and kept from teaching for
approximately 11 months. The suspension interfered with his ability to teach over
the course of three semesters. The suspension communicated to students and peers
that RICHARDSON must have done something serious, that his job was in jeopardy,

1 that there was a basis for believing he had engaged in a serious breach of SCCCD’s
2 policies. RICHARDSON lost out on professional opportunities including the
3 selection of new instructors, which he would have been involved in as the senior
4 member of the history department. RICHARDSON has suffered shame,
5 mortification, embarrassment, and anxiety. During the time that RICHARDSON
6 was suspended he was banned from coming to “non-public areas” on campus and
7 attending meetings with colleagues and engaging in professional development.
8 Because his email was cut-off, RICHARDSON was prevented or substantially
9 hindered from engaging in professional development and obtaining information
10 about SCCCD.

11 **G. DAVID RICHARDSON – SECOND DISCIPLINE (2024)**

12 98. In March 2024, Mr. RICHARDSON was served a “Ninety Day Notice to
13 Correct Deficiencies (Education Code sections 87732 and 87734.)”

14 99. The service of the Ninety Day Notice was a condition imposing discipline on
15 RICHARDSON required by Education Code §87734, which provides in relevant
16 part:

17 § 87734. Unprofessional conduct or unprofessional conduct

18 The governing board of any community college district shall not act
19 upon any charges of unprofessional conduct or unsatisfactory
20 performance unless during the preceding term or half college year
21 prior to the date of the filing of the charge, and at least 90 days prior
22 to the date of the filing, the board or its authorized representative has
23 given the employee against whom the charge is filed, written notice
24 of the unprofessional conduct or unsatisfactory performance,
25 specifying the nature thereof with specific instances of behavior and
with particularity as to furnish the employee an opportunity to correct
his or her faults and overcome the grounds for the charge.

100. The Notice was purportedly based on Mr. RICHARDSON’s alleged
“unprofessional” behavior on April 29, 2023, but such behavior consisted of pure

1 speech and Mr. RICHARDSON had been previously exonerated by the Title IX
2 determination from having any intent to annoy or mock any person or group. Further,
3 the Notice misrepresented the findings of the Title IX decision. For example, the
4 Notice stated:

5 The Title IX Hearing Officer concluded that your conduct was
6 "mocking, obnoxious, in poor taste, and unprofessional. (See Exhibit
7 "D," at p. 9.)" (Ninety Day Notice, Section 6(a), p. 4)(Exhibit D
8 hereto.)

9 However, the Title IX findings actually said:

10 Severity is a measure of the egregiousness of an incident, either in
11 isolation or in aggregate. The alleged conduct was not severe based
12 on the reasonable person standard because the messaging on the
13 candy bars was not physically threatening, humiliating, lascivious,
14 or invasive. *The message was not directed at a specific person or
15 group of people, did not include a call for violence or threats of
16 violence, and was not inherently abusive, embarrassing, or
17 humiliating. It was mocking, obnoxious, in poor taste, and
18 unprofessional, but that does not mean it was severe.* (January 3,
19 2024 Hearing Determination Letter, p. 9.) (Emphasis added.)
20 (January 3, 2024 Hearing Determination Letter attached as Exhibit
21 C hereto.)

22 101. In other words, the Title IX Hearing Officer's determination did not
23 speak to RICHARDSON's conduct but to the message of the candy bar wrappers
24 that RICHARDSON had innocently brought without an intention of mocking
25 anyone. The Notice was similarly inaccurate in other ways. A true and correct copy
of the Ninety Day Notice is attached hereto as Exhibit D.

 102. Similarly, the Ninety Day Notice found as a basis for disciplining
RICHARDSON on the grounds that "it is more likely than not that you should have
anticipated the chocolate bars did not align with the District's inclusivity vision after
receiving the DEI training." (Ninety Day Notice, p. 4.) In short, a basis for the

1 discipline RICHARDSON was not conforming by either speaking in concordance
2 with the “inclusivity vision” of SCCCD or not refraining from speaking in
3 discordance with that “inclusivity vision.”

4 103. In addition, RICHARDSON was disciplined because of his association
5 with the presumed intention of the seller of the Chocolate bars, to wit:

6 As recognized by the investigator, *the seller of the chocolate bars*
7 *made it clear that the point of the wrappers is to mock gender*
8 *pronouns. Despite knowing the source of and intent behind the*
9 *chocolate bars*, you decided to bring them to the Open House, which
10 you know is an event organized by the District open to whole
11 community. (Ninety Day Notice, p. 3.) (Emphasis added.)

12 104. In short, RICHARDSON was disciplined because of the message on
13 the candy bar wrappers, including a statement about building a “Woke Free
14 Economy.”

15 105. The Ninety Day Notice was placed in RICHARDSON’s personnel file.

16 106. At the time the Notice was served, Angel Reyna, President of Madera
17 Community College, a campus of SCCCD, was advised that Mr. RICHARDSON
18 had filed complaints based on violations of his First Amendment rights. President
19 Reyna nonetheless required Mr. RICHARDSON to comply with the Notice, which
20 included taking courses to re-educate him on “Diversity, Inclusion, and Equity”
21 (“DIE”).

22 107. Because he was compelled to do so, Mr. RICHARDSON complied with
23 this requirement on or about March 15, 2024.

24 108. In addition, because of the Ninety Day Notice, and the threat to his
25 employment, RICHARDSON discontinued the use of his preferred gender pronouns
on Zoom. But for the threat, RICHARDSON would have continued to use those
pronouns.

1 **H. SCCCD’S VIEWPOINT DISCRIMINATION CONSTITUTES A ‘PATTERN OF**
2 **OFFICIALLY SANCTIONED BEHAVIOR, VIOLATIVE OF THE PLAINTIFFS’**
3 **[FEDERAL] RIGHTS.’**

4 109. STANNARD and RICHARDSON have each been individually
5 subjected to investigations for their protected speech under policies and laws that do
6 not apply. Thus, STANNARD has been subjected to two investigations for speech
7 under the rubric of “harassment” and/or “discrimination” and under policies that
8 apply to “harassment” and/or “discrimination,” even though STANNARD’s speech
9 could not have “plausibly [fell] within the purview of “harassment because they
10 would not constitute ‘conduct based on certain protected characteristics.’” (Order
11 Granting Motion to Dismiss with Leave to Amend, Document No. 20 (May 13,
12 2024), p. 19:18-20:5.) Nonetheless, STANNARD was investigated, questioned, and
13 told that he was potentially subject to the sanctions of these inapplicable policies.

14 110. Likewise, RICHARDSON was subjected to a Title IX investigation and
15 hearing, and was suspended for approximately eleven months while the Title IX
16 process unfolded, even though it was patently obvious that the elements of such a
17 claim could not have been made out based on the single interaction between Calvin
18 and himself, as the Title IX hearing officer determined.

19 111. Likewise in the investigations and discipline, RICHARDSON and
20 STANNARD were investigated and/or disciplined, even though their interlocutors
21 were not investigated for their part in the discussions.

22 112. For example, in the first STANNARD investigation, STANNARD was
23 investigated for his statements, but the people who initiated the communication were
24 not investigated, even though they were known to SCCCD inasmuch as those people
25 made complaints to SCCCD. By investigating STANNARD and not investigating
the people he was speaking to, SCCCD engaged in invidious viewpoint
discrimination. Thus, in one of the conversations that led to the first STANNARD

1 investigation, In the conversation at the faculty training session, STANNARD was
2 told that the behavior of Trump supporters on January 6 was execrable.
3 STANNARD’s response was that black store owners during the BLM riots were
4 equally subjected to bad behavior. STANNARD was investigated for
5 “discrimination” and “harassment” under AR 3430 and 3435 – and was interrogated
6 about his racial attitudes – while the other speakers in the conversation were not
7 investigated.

8 113. Likewise, the second conversation as part of the Justice and Healing
9 Circle that resulted in STANNARD’s First Investigation also involved the exchange
10 of different political positions. After the nuclear family had been criticized,
11 STANNARD offered an explanation about why the nuclear family had merit. Again,
12 SCCCD ignored the fact that there were two sides to the discussion and treated the
13 side that STANNARD supported as impermissible or suspect.

14 114. Similarly, with respect to the first RICHARDSON investigation and
15 discipline, SCCCD ignored that there was a conversation with two sides and that
16 RICHARDSON’s position expressed viewpoints that mirrored the position of JM.
17 Thus, after JM chose to speak to third parties, RICHARDSON chose to speak to
18 third parties. In response to JM’s training in “PGP etiquette,” RICHARDSON chose
19 to define his own preferred pronouns. Again, SCCCD ignored JM’s speech actions
20 but chose to punish the mirroring speech of RICHARDSON. Likewise,
21 RICHARDSON was punished for communicating with his colleagues, but JM was
22 not similarly punished.

23 115. In the second STANNARD investigation, STANNARD was punished
24 for things he said in advocating restraint in making judgments concerning the
25 instructor who had been accused of sexual misconduct. The female speakers who
advocated for punishing the male teacher – and even called him a “rapist” - were not
subjected to an investigation concerning whether they had an anti-male animus.

1 STANNARD was described as a “misogynist” for suggesting that final judgment be
2 withheld until the facts were known, but no investigation resulted from those who
3 used this arguably sexist and unprofessional language against STANNARD.

4 116. In the second RICHARDSON investigation, RICHARDSON was
5 eventually given a “Ninety Day Notice to Correct Performance” based on his
6 interaction with Calvin. Calvin was not similarly investigated or given a write-up for
7 her involvement in the incident. Moreover, even though RICHARDSON
8 complained against Calvin for lying in the investigation and for her behavior,
9 RICHARDSON’s complaint against Calvin was dismissed without an investigation.

10 117. In all of these investigations and disciplining, STANNARD and
11 RICHARDSON have been required to hire an attorney and have experienced anxiety
12 from the process.

13 118. SCCCD selectively prosecutes “mockery.” Calvin uses an image on her
14 Zoom icon that shows former President Trump in a long blonde female wig with
15 make-up, thereby giving the impression that Trump is a transexual notwithstanding
16 Trump’s presentation of himself as a cis, heterosexual male. Under the standards
17 used by SCCCD this did create a hostile work environment against cis-gendered
18 people. The mockery of cis-sexual males by this image has been pointed out to
19 SCCCD and a request for appropriate action has been made. SCCCD, however,
20 failed and refused to begin an investigation, suspend Calvin, or take steps to preclude
21 this mocking of cis-gender males.

22 119. Based on their individual and collective experience with SCCCD,
23 STANNARD and RICHARDSON have come to the conclusion that SCCCD has
24 engaged in viewpoint discrimination against their positions and will continue to do
25 so in the future. *Armstrong v. Davis* (9th Cir. 2001) 275 F.3d 849, 861 (“Thus, where
the defendants have repeatedly engaged in the injurious acts in the past, there is a
sufficient possibility that they will engage in them in the near future to satisfy the

1 "realistic repetition" requirement.) As a result, given their experience, in light of the
2 risk that SCCCD's discriminatory viewpoint discrimination that STANNARD and
3 RICHARDSON run with respect to their employment and their financial and
4 personal well-being, STANNARD and RICHARDSON have been deterred or
5 chilled from engaging in speech that they have previously engaged in and would
6 continue to engage but for the viewpoint discrimination that they have experienced
7 and reasonably believe that they will continue to experience based on their actual
8 experience.

9 120. A restriction on speech is viewpoint-based if (1) on its face, it
10 distinguishes between types of speech or speakers based on the viewpoint expressed;
11 or (2) though neutral on its face, the regulation is motivated by the desire to suppress
12 a particular viewpoint. (See *Berger v. City of Seattle*, 569 F.3d 1029, 1051 (9th Cir.
13 2009) (en banc) (citing *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642-43, 114
14 S. Ct. 2445, 129 L. Ed. 2d 497 (1994); *ACLU v. City of Las Vegas*, 466 F.3d 784,
15 793 (9th Cir. 2006) (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.
16 Ct. 2746, 105 L. Ed. 2d 661 (1989); *Moss v. United States Secret Serv.* (9th Cir.
2012) 675 F.3d 1213, 1224.)

17 121. Viewpoint discrimination by the government is impermissible. When
18 the government targets not subject matter, but particular views taken by speakers on
19 a subject, the violation of the First Amendment is all the more blatant." (*Rosenberger*
20 *v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829, 115 S. Ct. 2510, 132 L.
21 Ed. 2d 700 (1995) "Viewpoint discrimination is thus an egregious form of content
22 discrimination," one from which "[t]he government must abstain." *Id.* The
23 government may not regulate speech based on "the specific motivating ideology or
24 the opinion or perspective of the speaker," *id.*; nor may it "favor some viewpoints or
25 ideas at the expense of others," (*Members of City Council v. Taxpayers for Vincent*,
466 U.S. 789, 804, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (1984). The Ninth Circuit

1 recognizes the longstanding principles that instruct that "government may not favor
2 speakers on one side of a public debate." (*Hoye v. City of Oakland*, 653 F.3d 835,
3 849 (9th. Cir. 2011); *Moss v. United States Secret Serv.* (9th Cir. 2012) 675 F.3d
4 1213, 1223.)

5 **I. SCCCD'S POLICIES CHILL THE EXERCISE OF FREE SPEECH.**

6 122. The chilling effect on plaintiffs' free speech arising from the 'pattern of
7 officially sanctioned behavior, violative of the plaintiffs' [federal] rights" is
8 exacerbated by the vagueness and ambiguity of the policies that SCCCD has used to
9 investigate and discipline RICHARDSON and STANNARD.

10 123. STANNARD and RICHARDSON were investigated and/or disciplined
under the provisions of AR 3430 (Prohibition of Harassment.)

11 124. AR 3430 prohibits harassment. The relevant language provides:

12
13 The District is committed to providing an academic and workplace
14 environment free of unlawful harassment. This regulation defines all
15 forms of harassment on campus including sexual harassment, and
16 sets forth a regulation for the investigation and resolution of
complaints of harassment by or against any staff or faculty member
or student within the District.

17 125. AR 3430 defines "General Harassment" as follows:

18 General Harassment: Harassment based on race, religious creed,
19 color, national origin, immigration status, ancestry, physical
20 disability, mental disability, medical condition, pregnancy, genetic
21 information, marital status, sex, gender, gender identity, gender
22 expression, age, sexual orientation, or any person, military and
23 veteran status, or the perception that a person has one or more of
24 these characteristics is illegal and violates District policy.
25 Harassment shall be found were, in aggregate, the incidents are
sufficiently pervasive persistent, or severe that a reasonable person
with the same characteristics would be adversely affected to a degree
that interfere with their ability to participate in or to realize the

1 intended benefits or an institutional activity, employment or
2 resource.”

3 126. The investigation of STANNARD and/or RICHARDSON and the
4 serving of the Letter of Reprimand and Ninety Day Notice on RICHARDSON
5 pursuant to AR 3430 shows that SCCCD has interpreted AR 3430 in a way that
6 encompasses protected speech.

7 127. After discussing “Gender-based harassment,” AR 3430 discusses
8 “Academic Freedom” on page 3. The section on “Academic Freedom” says:

9 No provision of this Administrative Regulation shall be interpreted
10 to prohibit conduct that is legitimately related to the course content,
11 teaching methods, scholarship or public commentary of an individual
12 faculty member or the educational, political, artistic, or literary
13 expression of students in classroom or public forums. Freedom of
14 speech and academic freedom are, however, not limitless and this
15 regulation will not protect speech or expressive conduct that violates
16 federal or California anti-discrimination laws. To the extent the
17 harassment policies and regulations are in conflict with the District’s
18 policy on academic freedom, the harassment policies shall prevail.
19 If the faculty member wishes to use sexually explicit materials in the
20 classroom s a teaching technique, the faculty member must review
21 the use of that material with an administrator to determine whether
22 or not the materials or teaching technique violates the sexual
23 harassment policy.

24 128. The statement in this section that “harassment policies shall prevail”
25 over academic freedom shows that protected speech is unconstitutionally limited by
harassment claims rather than the other way around. *Speech First, Inc. v. Fenves* (5th
Cir. 2020) 979 F.3d 319, 334 (“The Residence Hall Manual and Acceptable Use
Policy clearly delimit the freedom of speech by their prohibitions, not the other way
around.”); *Rodriguez v. Maricopa County Cmty. College Dist.* (9th Cir. 2009) 605
F.3d 703, 708 (“There is no categorical ‘harassment exception’ to the First
Amendment’s free speech clause.”); *United States v. Yung* (3d Cir. 2022) 37 F.4th

1 70, 78; *Saxe v. State College Area Sch. Dist.* (3d Cir. 2001) 240 F.3d 200, 204 (Alito,
2 J).

3 129. RICHARDSON and STANNARD were likewise investigated under
4 AR 3435 (Responding to Discrimination, Harassment, and Retaliation Complaints
5 and Investigations Not Under Title IX.) AR 3435 has been used by SCCCD to sweep
6 up protected speech in the same way that as AR 3430. Thus, for example, AR 3435
7 includes the following definition of “discrimination”:

8 "Discrimination" includes the unfair or unjust treatment of an
9 individual based on certain protected characteristics that adversely
10 affects their employment or academic experience. An adverse action
11 for discrimination purposes is any action taken or pattern of conduct
12 that, taken as a whole, materially and adversely affected the terms,
13 conditions, privileges, benefits of or the ability to fully participate in
14 activities or events associated with an individual's employment or
15 academic environment. An adverse action includes conduct that is
16 reasonably likely to impair a reasonable individual's work or
17 academic performance or prospects for advancement or promotion.
18 However, minor or trivial actions or conduct that are not reasonably
19 likely to do more than anger or upset an individual cannot constitute
20 an adverse action.

16 130. “Protected Characteristics” are defined in AR 3435 as:

18 "Protected Characteristics" include race, color, ethnicity, national
19 origin, ancestry, religious creed, age, sex/gender, gender identity,
20 gender expression, medical condition, pregnancy, sexual orientation,
21 marital status, physical/mental disability, genetic information,
22 military/ veteran status, or opposition to unlawful discrimination or
23 harassment, or because they are perceived to have one or more of
24 those foregoing characteristics.

23 131. AR 3435 includes the following definition of “harassment”:

24 "Harassment" includes conduct based on certain protected
25 characteristics that creates a hostile, offensive, oppressive, or
intimidating work or educational environment and deprives a person

1 of their statutory right to work or learn in an environment free from
2 harassment. In the workplace, harassment also includes conduct
3 based on certain protected classes that sufficiently offends,
4 humiliates, distresses, or intrudes upon a person, so as to disrupt the
5 person's emotional tranquility in the workplace, affect their ability to
6 perform the job as usual, or otherwise interfere with and undermine
7 their personal sense of well-being. (Refer to AR 3430 - Prohibition
8 of Harassment for specific examples of harassment).

9 132. The definition of “harassment” is vague and inaccurate in that it
10 includes a partial legal definition of “harassment.” The definition of “harassment”
11 has always included a subjective and an objective element. The harassment must
12 satisfy an objective and a subjective standard. (*Ortiz v. Dameron Hospital Assn.*
13 (2019) 37 Cal.App.5th 568, 582-583.) (“[T]he objective severity of harassment
14 should be judged from the perspective of a reasonable person in the plaintiff's
15 position, considering ‘all the circumstances.’ ...” (*Miller v. Department of*
16 *Corrections*, supra, 36 Cal.4th at p. 462.) And, subjectively, an employee must
17 perceive the work environment to be hostile. [Citation.] Put another way, “[t]he
18 plaintiff must prove that the defendant's conduct would have interfered with a
19 reasonable employee's work performance and would have seriously affected the
20 psychological well-being of a reasonable employee and that [she] was actually
21 offended.” [Citation.]” (*Hope v. California Youth Authority* (2005) 134 Cal.App.4th
22 577, 588.”) While the legislature endorses a subjective definition of “harassment that
23 “includes conduct based on certain protected classes that sufficiently offends,
24 humiliates, distresses, or intrudes upon a person, so as to disrupt the person's
25 emotional tranquility in the workplace, affect their ability to perform the job as usual,
or otherwise interfere with and undermine their personal sense of well-being”
(Government Code §12933), this subjective definition has always been paired with
an objective element requiring that the harassing conduct be persistent, pervasive,
and/or severe from the perspective of a person with the same protected

1 characteristics as the complaining party. (*Caldera v. Department of Corrections &*
2 *Rehabilitation* (2018) 25 Cal.App.5th 31, 38 (“All harassment claims require severe
3 or pervasive conduct.”); 4 California Forms of Jury Instruction 2523 (2022); 4
4 California Forms of Jury Instruction 2524 (2022).)

5 133. AR 3435 equates “harassment” with subjectively “unwelcome”
6 conduct, as can be seen in the following language:

7 **Communicating that the Conduct is Unwelcome**

8 When a person experiences unwelcome conduct, the District
9 encourages employees, students, and third parties to let the offending
10 person know immediately and clearly that the conduct or behavior is
unwelcome, offensive, in poor taste and/or inappropriate.

11 134. On its face, AR 3435 is vague and overbroad for the following reasons.

12 135. First AR 3435 is vague because it purports to provide a definition of
13 harassment that ignores elements that substantially qualify the language of the
14 policy.

15 136. Second, it is overbroad because by providing only the subjective
16 element that defines harassment as “conduct” that is “unwelcome” or “offends” the
17 complainer, it extends to speech that is protected by the First Amendment even
18 though such speech might be unwelcome or offend the hearer.

19 137. Third, the conduct complained of could not have been pervasive,
20 persistent, or severe since the alleged conduct was a single verbal statement that
21 shared information. The only way that the conduct could have been deemed
22 “pervasive, persistent or severe” is if SCCCD employed a subjective standard
23 whereby the subjective experience of the alleged harassed person defined
24 harassment. This is consistent with the questions STANNARD was asked about
25 whether he was aware of someone crying with rage at one of his statements.

1 138. A final factor is that SCCCD’s policy on Academic Freedom is vague.
2 AR 4030 states:

3 The District is unequivocally and unalterably committed to the
4 principle of academic freedom in its true sense which includes
5 freedom to study, freedom to learn and freedom to teach and provide
6 educational professional services to students...Faculty must,
7 however, accept the responsibility that accompanies academic
8 freedom. The right to exercise any liberty implies a duty to use it
9 responsibly. Academic freedom does not give faculty freedom to
10 engage in indoctrination. Nor can faculty invoke the principle of
11 academic freedom to justify non-professional conduct.

12 139. SCCCD does not define professional conduct or where academic
13 freedom ends and “responsibility that accompanies academic freedom” begins.
14 Terms like “unprofessional” are inherently vague in the abstract. (See *Bronney v.*
15 *California Com. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 473.)

16 140. As a result of this vagueness, SCCCD has unconstitutionally applied
17 AR 3430 and AR 3435 to speech protected by the First Amendment.

18 141. RICHARDSON was suspended for approximately eleven months,
19 forced to hire an attorney, and went through a Title IX hearing on a claim that that
20 was rejected by the Title IX hearing officer. This proceeding against RICHARDSON
21 was pursued by SCCCD under AR 3433 (Prohibition of Sexual Harassment under
22 Title IX) and AR 3434 (Responding to Harassment based on Sex under Title IX.) A
23 true and correct copy of AR 3433 is attached hereto as Exhibit E. A true and correct
24 copy of AR 3434 is attached hereto as Exhibit F. For the reasons previously stated,
25 SCCCD has applied these provisions to protected speech.

142. After the failure of the Title IX proceeding against RICHARDSON,
SCCCD then gave RICHARDSON a “Ninety Day Notice” pursuant to Education
Code §87732 (Grounds for Dismissal) and §87734 (Unprofessional Conduct) for
“unprofessional conduct relative to his bringing the chocolate bars to the open house.

1 143. The term “unprofessional” is inherently vague and ambiguous. (See
2 *Broney v. California Com. on Teacher Credentialing* (2010) 184 Cal.App.4th 462,
3 473 (“The terms such as ‘immoral,’ ‘unprofessional,’ or ‘involving moral turpitude’
4 are too broad and amorphous to be used as a basis for the termination of a
5 professional license.”) The term “unprofessional” was only becomes sufficiently
6 specific when "applied to a specific occupation and given content by reference to
7 fitness for the performance of that vocation." (*Cranston v. City of Richmond* (1985)
8 40 Cal.3d 755, 766.)

9 144. In order to avoid the inherent ambiguity of the term “unprofessional”
10 the Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214
11 required education employers to consider seven specific factors. SCCCD failed to
12 apply these factors despite the demand that it do so before issuing the Ninety Day
13 Notice. (See March 14, 2024 Letter of Peter Sean Bradley, attached hereto as Exhibit
14 G.) In failing to apply the *Morrison* factors, SCCCD unconstitutionally applied
15 Education Code §§87732, 87734 to speech protected by the First Amendment.

16 **J. CHILLING THE EXERCISE OF FREE SPEECH/CONTINUING ADVERSE
17 EFFECT OF SCCCD’S VIOLATION OF CONSTITUTIONAL RIGHTS**

18 145. “The Ninth Circuit has described two ways in which a plaintiff may
19 demonstrate that an injury is likely to recur: "First, a plaintiff may show that the
20 defendant had, at the time of the injury, a written policy, and that the injury 'stems
21 from' that policy. Second, the plaintiff may demonstrate that the harm is part of a
22 'pattern of officially sanctioned . . . behavior, violative of the plaintiffs' [federal]
23 rights.'" *Melendres v. Arpaio*, 695 F.3d 990, 998 (9th Cir. 2012) (quoting *Armstrong*
24 *v. Davis*, 275 F.3d 849, 861 (9th Cir. 2001). (alterations in original).” *Prison Legal*
25 *News v. Columbia County* (D.Or. 2013) 942 F.Supp.2d 1068, 1079-1080.)

146. "[T]he possibility of recurring injury ceases to be speculative when
actual repeated incidents are documented." *Thomas v. Cnty. of Los Angeles*, 978

1 F.2d 504, 507 (9th Cir. 1992) (internal quotation marks omitted). *Index Newspapers*
2 *LLC v. United States Marshals Serv.*(9th Cir. 2020) 977 F.3d 817, 826.

3
4 **1) DAVID RICHARDSON**

5 147. RICHARDSON has suffered injury in fact in the form of completed
6 deprivations of his constitutional rights. As outlined previously, RICHARDSON,
7 inter alia, has been (a) suspended from work for approximately eleven months, with
8 the concomitant loss of social and professional relationships and professional
9 development, (b) threatened with termination (if the Title IX hearing went against
10 him), (d) written up with a Ninety Day Notice, (e) had the Ninety Day Notice placed
11 in his employee file, (f) threatened by SCCCD with discipline up to termination if
12 he violated the Ninety Day Notice, (g) had his reputation adversely affected by
13 SCCCD’s public suspension of him two weeks before the end of the spring 2023
14 semester, and (h) being required by SCCCD to spend his private time on taking DEI
15 courses.

16 148. RICHARDSON also continues to experience continuing, present
17 adverse effects from the past violations of his constitutional rights. *O’Shea v.*
18 *Littleton* (1974) 414 U.S. 488, 495-496 [94 S.Ct. 669, 676, 38 L.Ed.2d 674, 683]
19 (“Past exposure to illegal conduct does not in itself show a present case or
20 controversy regarding injunctive relief, however, if unaccompanied by any
21 continuing, present adverse effects.) As explained previously, such continuing
22 present adverse effects include both the Letter of Reprimand and the Ninety Day
23 Notice that clears the way for imposing discipline on RICHARDSON for
24 “unprofessional conduct,” including termination. Likewise, the Ninety Day Notice
25 has been placed in RICHARDSON’s personnel file where it can be used for future
evaluations. future disciplinary action, future determination of assignments, and

1 other future employment decisions to support future adverse employment action
2 against RICHARDSON.

3 149. RICHARDSON also continues to experience continuing, present
4 adverse effects from his suspension 2023 in that he suffered a loss in reputation
5 which continues to the present and will continue into the future because of the belief
6 that RICHARDSON did something wrong as opposed to exercising his
7 constitutionally protected rights under the First Amendment.

8 150. RICHARDSON has also been deterred from engaging in speech that he
9 would otherwise engage in. Thus, RICHARDSON would intend to continue
10 dialoguing about the issue of inclusivity, the use of gender pronouns, the desirability
11 of building a “woke-free economy” as demonstrated by his past conduct, he has been
12 deterred by the actual experience of a threat to his employment to refrain from such
13 speech, such as by removing his “preferred gender pronouns” from his Zoom.
14 RICHARDSON has further been deterred from speaking on these subjects as he has
15 in the past – as demonstrated by his actual conduct – because of the uncertainty and
16 ambiguities about the SCCCD’s policies and the application of its policies. Thus, he
17 has been punished SCCCD for engaging in “mocking” speech, despite the fact that
18 (a) he was exonerated by the Title IX hearing officer for mocking anyone and (b)
19 the putative mockery was putatively intended by a third party. RICHARDSON
20 intends to prepare a glossary of DEI terms that will be humorous and biting and
21 distribute it to his fellow instructors, but he has been deterred from engaging in this
22 project because if it is determined to be “mocking” to any protected group or
23 individual, he will be further disciplined and, perhaps, terminated from employment.

24 ***2) MICHAEL STANNARD***

25 151. Like RICHARDSON, STANNARD has actually engaged in free
speech activities which have resulted in two separate investigations, one of which

1 has not been completed. These investigations have been lengthy, have resulted in
2 inquiries into STANNARD's private beliefs, have disrupted STANNARD's
3 personal and professional life, and have caused him to suffer anxiety as a result of
4 the threat to his employment. Because of these actual proceedings arising from his
5 exercise of his First Amendment rights, STANNARD has decided to withdraw from
6 circumstances where he might have to speak on issues that might get him accused
7 of "harassment" and, therefore, might risk his employment. Thus, STANNARD has
8 withdrawn from social justice circles and other forms of social interaction on his
9 own time because of his actual experiences of being investigated for the intent
10 behind his innocuous philosophical statements. Similarly, his observations of the
11 treatment of RICHARDSON by SCCCD have also deterred him from speaking out
12 of a concern that he might also find his job in jeopardy. Likewise, he has censored
13 himself during activities related to mandatory trainings, although he hears constant
14 attacks on conservatives, religious, traditional and, in general, non-leftist
viewpoints.

15 152. STANNARD would otherwise engage in such speech as circumstances
16 allowed. His past conduct in actually engaging in such speech, which occasions have
17 resulted in him being investigated by SCCCD to determine the intent behind his
18 statements, is evidence that his intent to engage in such speech is not speculative.

19 153. In addition, STANNARD will be retiring in 2024. His plan is to
20 continue to work for SCCCD by teaching philosophy courses when they become
21 available. However, because his past experience with SCCCD, consisting of several
22 investigations for implausible violations of "harassment" and "discrimination"
23 policies, has made him conclude that he will be given the same treatment if he
24 continues his practice of speaking the truth as he has in the past, and that he might
25 again be interrogated about whether he is a racist, sexist, or transphobe, he has
decided not to seek such part-time teaching work with SCCCD in the future. Cf. *Civ.*

1 *Rights Educ. & Enf't Ctr. v. Hosp. Props. Trust*, 867 F.3d 1093, 1098 (9th Cir. 2017)
2 ("A plaintiff experiences continuing adverse effects where a defendant's failure to
3 comply with the ADA deters her from making use of the defendant's facility.").

4 154. The non-determination of the pending second complaint against
5 STANNARD is a continuing harm which calls for prospective injunctive relief.

6 **K. ADMINISTRATIVE EXHAUSTION.**

7 155. RICHARDSON has exhausted all required administrative steps. He has
8 filed a Government Claim against SCCCD which has been rejected within 6 months
9 of filing the action for damages against SCCCD. He has also obtained a right to sue
10 against SCCCD from the Department of Fair Employment and Housing.

11
12 **VII. FIRST CAUSE OF ACTION: VIOLATION OF THE FIRST**
13 **AMENDMENT (AGAINST MOSIER AND GOLDSMITH IN THEIR**
14 **OFFICIAL CAPACITY.)**

15 156. Plaintiffs incorporate each and every allegation contained in paragraphs
1 through 155 of this Second Amended Complaint.

16 157. "The Constitution embraces such a heated exchange of views, even
17 (perhaps especially) when they concern sensitive topics like race, where the risk of
18 conflict and insult is high. (See *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391, 112 S.
19 Ct. 2538, 120 L. Ed. 2d 305 (1992). Without the right to stand against society's most
20 strongly held convictions, the marketplace of ideas would decline into a boutique of
21 the banal, as the urge to censor is greatest where debate is most disquieting and
22 orthodoxy most entrenched. See, e.g., *Gitlow v. New York*, 268 U.S. 652, 667, 45 S.
23 Ct. 625, 69 L. Ed. 1138 (1925); *id.* at 673 (Holmes, J., dissenting). The right to
24 provoke, offend and shock lies at the core of the First Amendment." (*Rodriguez v.*
25 *Maricopa County Cmty. College Dist.* (9th Cir. 2009) 605 F.3d 703, 708.)

1 158. “This is particularly so on college campuses. Intellectual advancement
2 has traditionally progressed through discord and dissent, as a diversity of views
3 ensures that ideas survive because they are correct, not because they are popular.
4 Colleges and universities--sheltered from the currents of popular opinion by
5 tradition, geography, tenure and monetary endowments--have historically fostered
6 that exchange. But that role in our society will not survive if certain points of view
7 may be declared beyond the pale. "Teachers and students must always remain free
8 to inquire, to study and to evaluate, to gain new maturity and understanding;
9 otherwise our civilization will stagnate and die." (*Keyishian v. Bd. of Regents of the*
10 *Univ. of the State of N.Y.*, 385 U.S. 589, 603, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967))
11 (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 250, 77 S. Ct. 1203, 1 L. Ed. 2d
12 1311 (1957)). We have therefore said that "[t]he desire to maintain a sedate academic
13 environment . . . [does not] justify limitations on a teacher's freedom to express
14 himself on political issues in vigorous, argumentative, unmeasured, and even
15 distinctly unpleasant terms." (*Adamian v. Jacobsen*, 523 F.2d 929, 934 (9th Cir.
16 1975).” (*Rodriguez v. Maricopa County Cmty. College Dist.* (9th Cir. 2009) 605
F.3d 703, 708-709.)

17 159. “There is no categorical ‘harassment exception’ to the First
18 Amendment’s free speech clause.” (*Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200,
19 204 (3d Cir. 2001) (Alito, J.). Rather, “[t]he right to provoke, offend and shock lies
20 at the core of the First Amendment. This is particularly so on college campuses.
21 Intellectual advancement has traditionally progressed through discord and dissent,
22 as a diversity of views ensures that ideas survive because they are correct, not
23 because they are popular.” (*Rodriguez v. Maricopa Cty. Cmty. Coll. Dist.*, 605 F.3d
24 703, 708 (9th Cir. 2010). “[I]f it is the speaker’s opinion that gives offense, that
25 consequence is a reason for according it constitutional protection.” (*Hustler*
Magazine, Inc. v. Falwell, 485 U.S. 46, 55 (1988).

1 160. In *Rodriguez v. Maricopa County Cmty. College Dist.* (9th Cir. 2009)
2 605 F.3d 703, 710, the Ninth Circuit held:

3 We therefore doubt that a college professor's expression on a matter
4 of public concern, directed to the college community, could ever
5 constitute unlawful harassment and justify the judicial intervention
6 that plaintiffs seek. See Eugene Volokh, Comment, Freedom of
7 Speech and Workplace Harassment, 39 UCLA L. Rev. 1791, 1849-
8 55 (1992). Harassment law generally targets conduct, and it sweeps
9 in speech as harassment only when consistent with the First
10 Amendment. See *R.A.V.*, 505 U.S. at 389-90. For instance, racial
11 insults or sexual advances directed at particular individuals in the
12 workplace may be prohibited on the basis of their non-expressive
13 qualities, *Saxe*, 240 F.3d at 208, as they do not "seek to disseminate
14 a message to the general public, but to intrude upon the targeted
15 [listener], and to do so in an especially offensive way," *Frisby v.*
16 *Schultz*, 487 U.S. 474, 486, 108 S. Ct. 2495, 101 L. Ed. 2d 420
(1988). See, e.g., *Flores*, 324 F.3d at 1133, 1135; *Meritor Sav. Bank,*
FSB v. Vinson, 477 U.S. 57, 60, 73, 106 S. Ct. 2399, 91 L. Ed. 2d 49
(1986). But *Kehowski's* website and emails were pure speech; they
were the effective equivalent of standing on a soap box in a campus
quadrangle and speaking to all within earshot. Their offensive
quality was based entirely on their meaning, and not on any conduct
or implicit threat of conduct that they contained. (.)

17 161. SCCCD's discriminatory harassment policy is unconstitutionally
18 overbroad. By its terms, the policy plainly applies to protected speech. And
19 virtually any opinion or political belief—as well as any use of humor, satire, or
20 parody—could be perceived as “harassing” or “humiliating.”

21 162. While a university might be able to prohibit harassment that amounts
22 to “discrimination” against a protected class that is “so severe, pervasive, and
23 objectively offensive that it can be said to deprive the victims of access to the
24 educational opportunities or benefits provided by the school,” (*Davis ex rel.*
25 *LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 650 (1999)), as applied,

1 the SCCCD’s verbal-harassment rule goes far beyond that to censor speech
2 protected by the First Amendment.

3 163. The Supreme Court has also consistently recognized the “substantial
4 and expansive threats to free expression posed by content-based restrictions.”
5 (*United States v. Alvarez*, 567 U.S. 709, 717 (2012)). “Content-based regulations
6 are” therefore “presumptively invalid.” (*R.A.V. v. City of St. Paul*, 505 U.S. 377,
7 382 (1992)). “[A]ny restriction based on the content of the speech must satisfy strict
8 scrutiny, that is, the restriction must be narrowly tailored to serve a compelling
9 government interest.” (*Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009).)

10 164. “The First Amendment’s hostility to content-based regulation
11 extends” to “restrictions on particular viewpoints.” (*Reed v. Town of Gilbert*, 135
12 S. Ct. 2218, 2230 (2015)). Policies cannot “suppress disfavored speech.” (*Id.* at
13 2229.) Viewpoint discrimination is flatly prohibited. (See *Iancu v. Brunetti*, 139 S.
14 Ct. 2294, 2302 (2019).)

15 165. By restricting speech about academic subjects that might be
16 interpreted as involving personal characteristics such as race, ethnicity, or gender,
17 SCCCD’s discriminatory-harassment policy and practices are content-based and
18 viewpoint-based restriction on protected speech. SCCCD has no compelling
19 interest in suppressing the unfettered exchange of viewpoints. Even if SCCCD
20 could identify a compelling interest, its viewpoint-discriminatory ban is not
21 narrowly tailored to further that interest.

22 166. SCCCD’s policies and practices also violated the rights of Plaintiffs
23 and other instructors under the First and Fourteenth Amendments by burdening
24 their speech on the basis of the viewpoints expressed with lengthy investigations
25 during which Plaintiffs’ ability to freely express themselves was chilled by the
prospect that if they said anything inconsistent with the viewpoints allowed by
SCCCD or leftwing instructors such statements would be used against them. Both

1 of plaintiffs’ academic freedom and right of free speech was also burdened on the
2 basis of viewpoint discrimination in that in both cases, in that they received either
3 a warning or a discipline based on speech that fell within Plaintiffs’ First
4 Amendment/Academic Freedom rights, while those who made equivalent
5 statements with viewpoints that were supported by SCCCD were not warned or
6 disciplined. Hence, RICHARDSON was subjected to discipline and STANNARD
7 was told by Lori Bennett, President of Clovis Community College:

8 While your comments did not rise to the level of discrimination in
9 violation of District policy, the investigative interviews
10 demonstrated that some employees were offended by your
11 comments. I encourage you, and all employees, to demonstrate
12 empathy toward others and to reflect on how statements we make
may impact others to ensure that we are creating an inclusive
working and learning environment for all employees and students.

13 167. STANNARD was also warned that if he “retaliated” against the
14 unknown complainants, he would be subject to discipline and that:

15 “State Center Community College District does not condone
16 harassment, discrimination, unprofessional conduct, or other
17 misconduct in the workplace or educational environment and takes
18 such complaints seriously. The District has a strong policy
prohibiting discrimination, harassment, and retaliation and a
thorough investigation has been conducted of this complaint.”

19 168. Plaintiff is informed and believes that the other people participating in
20 the discussions with Plaintiff were not accused of harassment, that they were not
21 investigated, that they were not interviewed and asked questions that assumed they
22 were racist based on the color of their skin, and were not told that their statements
23 “did not rise to the level of a discrimination in violation of District policy” without
24 providing context for how such statement could ever rise to that level, and were not
25 thereafter told that their statement “offended” other people – as if that were a

1 relevant criteria in an academic discussion – or told to “demonstrate empathy.” A
2 reasonable person would believe – and STANNARD did believe – that he was
3 being singled out because of the contents of his statement for disparate treatment
4 designed to warn, threaten and chill his speech with threats that some future
5 statement made in an academic discussion to some other person making a statement
6 might “rise to the level of a discrimination in violation of District policy” and result
7 in the threatened sanctions being imposed on him.

8 169. In addition, the application of SCCCD’s policies, including AR 3430,
9 AR 3432, AR 3434 and AR 3435, and its practices of engaging in viewpoint
10 discrimination has been applied in the case of the Plaintiffs to speech that is
11 constitutionally protected. As such SCCCD’s harassment-discrimination policies
12 are unconstitutional as applied.

13 170. In addition, the discipline imposed on RICHARDSON violated the
14 First and Fourteenth Amendments to the United States Constitution in that they
15 bore no reasonable relationship to any constitutionally permitted objective or
16 condition of the employment relationship but instead unconstitutionally burdened
17 RICHARDSON’s academic freedom and right to free speech by, inter alia,
18 imposing viewpoint discrimination on RICHARDSON and forcing him to mouth
19 and/or accept the tenets of a sectarian political position.

20 171. Defendant adopted their unconstitutional policies, and have engaged
21 in their unconstitutional pattern of conduct, under color of state law. This action is
22 brought pursuant to 42 USC §1983 for prospective relief, injunctive relief and
23 declaratory relief. Plaintiffs are entitled to attorney’s fees pursuant to 42 USC
24 §1988(b).
25

1 **VIII. SECOND CAUSE OF ACTION: VIOLATION OF FIRST AND**
2 **FOURTEENTH AMENDMENTS (AGAINST MOSIER AND**
3 **GOLDSMITH IN THEIR OFFICIAL CAPACITY.**

4 172. Plaintiffs incorporate each and every allegation contained in paragraphs
5 1 through 171 of this Second Amended Complaint.

6 173. “It is a basic principle of due process that an enactment is void for
7 vagueness if its prohibitions are not clearly defined.” (*Grayned v. City of Rockford*,
8 408 U.S. 104, 108 (1972)). “[T]he vagueness doctrine has two primary goals: (1) to
9 ensure fair notice to the citizenry and (2) to provide standards for enforcement [by
10 officials].” (*Ass’n of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 551
11 (6th Cir. 2007); see also *In re Hunt*, 835 F.3d 1277, 1279 (11th Cir. 2016) (An
12 “impossibly vague” law or regulation “guarantees arbitrary enforcement of the law
13 and denial of fair notice to the public.”).)

14 174. With respect to the first goal, ... “[a] statute which either forbids or
15 requires the doing of an act in terms so vague that [individuals] of common
16 intelligence must necessarily guess at its meaning and differ as to its application,
17 violates the first essential of due process of law.” (Id. (quoting *Connally v. Gen.*
18 *Constr. Co.*, 269 U.S. 385, 391 (1925).) “With respect to the second goal, ... ‘if
19 arbitrary and discriminatory enforcement is to be prevented, laws must provide
20 explicit standards for those who apply them. A vague law impermissibly delegates
21 basic policy matters to [officials] for resolution on an ad hoc and subjective basis.’”
(Id. (quoting *Grayned*, supra, 408 U.S., at 108-09).)

22 175. This principle of clarity is especially demanding when First
23 Amendment freedoms are at stake. If the challenged law “interferes with the right of
24 free speech or of association, a more stringent vagueness test should apply.” (*Village*
25 *of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982).
“Certainty is all the more essential when vagueness might induce individuals to

1 forego their rights of speech, press, and association for fear of violating an unclear
2 law.” (*Scull v. Va. ex rel. Comm. on Law Reform & Racial Activities*, 359 U.S. 344,
3 353 (1959).)

4 176. SCCCD discrimination-harassment policy lacks any definitions, detail,
5 context, or notice to faculty about what sorts of language the University views as
6 “harassing,” “invasive,” or “unwanted.” The only clue the policy provides is that the
7 acceptability of certain communications turns on what an observer or recipient
8 subjectively perceives as “unwelcome.” This provision is “impossibly vague” and
9 therefore unconstitutional.”

10 177. In addition, the application of SCCCD’s policies, including AR 3435,
11 has been applied in the case of the Plaintiffs to speech that is constitutionally
12 protected. As such SCCCD’s harassment-discrimination policies are
13 unconstitutional as applied.

14 178. Defendant adopted this unconstitutional policy under color of state
15 law. This action is brought pursuant to 42 USC §1983 for prospective relief,
16 injunctive relief, and declaratory relief. Plaintiffs are entitled to attorney’s fees
17 pursuant to 42 USC §1988(b).

18 **IX. THIRD CAUSE OF ACTION: DEPRIVATION OF**
19 **CONSTITUTIONAL RIGHT OF FREE SPEECH (AGAINST**
20 **MOSIER, GOLDSMITH AND REYNA IN THEIR PERSONAL**
21 **CAPACITY.)**

22 179. Plaintiff RICHARDSON incorporates every allegation contained in
23 paragraphs 1 through 178 of this Second Amended Complaint.

24 180. A person’s constitutional right of free speech is violated when the
25 government penalizes protected speech.

181. In handing out candy bars with a message about “building a woke-
free economy” and “stating He/him” for chocolates with nuts and “She/Her” for

1 chocolates without nuts, RICHARDSON was engaging in speech on a matter of
2 public interest, viz. the phenomenon of “woke capitalism” and the issue of gender
3 and biology.

4 182. RICHARDSON’s speech was engaged in as a private citizen. He was
5 not acting pursuant to his formal job duties. He had purchased the snacks with his
6 own money. He was not directed to be at the Open House or to hand out the snacks.

7 183. Defendants Mosier, Goldsmith and Reyna personally participated in
8 and directed SCCCD to penalize RICHARDSON’s speech by directing that
9 RICHARDSON would be suspended, that he would be banned from non-public
10 spaces at SCCCD, that his email and computer access would be cut-off, that he
11 would be suspended in a way that prevented him from completing the semester and
12 thereby compounded the stigmatization he would suffer in the minds of his students
13 and colleagues, and that the Title IX claim would not be dismissed for lack of merit
14 as required by the Title IX regulations.

15 184. In taking these steps, Mosier and Goldsmith were acting under color
16 of state law.

17 185. Mosier, Goldsmith and Reyna’s purpose was to chill or punish
18 RICHARDSON’s speech and/or speech like RICHARDSON’s. Mosier, Goldsmith
19 and Reyna’s actions constituted an adverse employment action under the Ninth
20 Circuit's liberal interpretation of the term "adverse employment action." (Hodge v.
21 Antelope Valley Cmty. College Dist. (C.D.Cal. Feb. 14, 2014, No. CV 12-780 PSG
22 (Ex)) 2014 U.S.Dist.LEXIS 199656, at *40-41.) According to the Ninth Circuit, an
23 adverse employment action is one that is "reasonably likely to deter" an employee
24 from engaging in constitutionally protected speech. (See *Blair v. Bethel Sch. Dist.*,
25 608 F.3d 540, 543 n.1 (9th Cir 2010); accord *Coszalter v. City of Salem* (9th Cir.
2003) 320 F.3d 968, 976; See e.g., *McKee v. Hart*, 436 F.3d 165, 170 (Suspension
with pay); *Butczynski v. Luzerne County*(M.D.Pa. Jan. 26, 2007, No. 3:05cv645)

1 2007 U.S.Dist.LEXIS 6172, at *8-10 (Suspension with pay.); *Arenal v. City of*
2 *Punta Gorda* (M.D.Fla. 1996) 932 F.Supp. 1406, 1413 (Suspension with pay.);
3 *Michael v. Quaker Valley Sch. Dist.* (W.D.Pa. Feb. 16, 2017, Civil Action No. 2:16-
4 cv-00473) 2017 U.S.Dist.LEXIS 21664, at *19-21 (Suspension with pay.); *Eng v.*
5 *County of L.A.* (C.D.Cal. 2010) 737 F.Supp.2d 1078, 1093-1094 (Reassignment to
6 another position and investigation and filing of an adverse employment report.);
7 *Burlington Northern & Santa Fe Ry. v. White*(2006) 548 U.S. 53, 70-71 [126 S.Ct.
8 2405, 2416-2417, 165 L.Ed.2d 345, 361-362] (Reassignment of job duties.)

9 186. As a proximate result of Defendants' retaliation, Plaintiff has been
10 caused to suffer anxiety, depression and other emotional distress in an amount to
11 be proven at trial. Plaintiff is further entitled to attorney's fees under 42 USC
12 §1983. Plaintiff is informed and believes and thereon alleges that Mosier and
13 Goldsmith's conduct was fraudulent, oppressive and malicious entitling Plaintiff to
14 an award of punitive damages.

15 **X. FOURTH CAUSE OF ACTION: RETALIATION (AGAINST**
16 **MOSIER, GOLDSMITH AND REYNA IN THEIR PERSONAL**
17 **CAPACITY.)**

18 187. Plaintiff RICHARDSON incorporates every allegation contained in
19 paragraphs 1 through 186 of this Second Amended Complaint.

20 188. The right of access to the courts is subsumed under the first
21 amendment right to petition the government for redress of grievances. See, e.g.,
22 *California Motor Transp. Co. v. Trucking Unltd.*, 404 U.S. 508, 510, 92 S. Ct. 609,
23 30 L. Ed. 2d 642 (1972); *Harrison v. Springdale Water & Sewer Comm'n*, 780 F.2d
24 1422, 1427-28 (8th Cir. 1986). Deliberate retaliation by state actors against an
25 individual's exercise of this right is actionable under section 1983. *Franco v. Kelly*,
854 F.2d 584, 589 (2d Cir. 1988) (intentional obstruction of the right to seek redress
"is precisely the sort of oppression that . . . section 1983 [is] intended to remedy")

1 (quoting *Morello v. James*, 810 F.2d 344, 347 (2d Cir. 1987) (brackets in original));
2 Harrison, 780 F.2d at 1428.” (*Soranno's Gasco v. Morgan* (9th Cir. 1989) 874 F.2d
3 1310, 1314.); *Lutge v. Eskanos & Adler, P.C.* (N.D.Cal. May 23, 2007, No. C 06-
4 07128 JSW) 2007 U.S.Dist.LEXIS 40570, at *6 (“The constitutional right to
5 petition includes the basic act of filing litigation or otherwise seeking
6 administrative action.”)

7 189. In or about 2022, Plaintiff filed a legal action against SCCCD,
8 Goldsmith and Mosier alleging violation of his First Amendment rights.

9 190. Defendants Mosier, Goldsmith, and Reyna personally participated in
10 and directed SCCCD to penalize RICHARDSON’s First Amendment protected
11 activity by directing that RICHARDSON would be suspended, that he would be
12 banned from non-public spaces at SCCCD, that his email and computer access
13 would be cut-off, that he would be suspended in a way that prevented him from
14 completing the semester and thereby compounded the stigmatization he would
15 suffer in the minds of his students and colleagues, and that the Title IX claim would
16 not be dismissed for lack of merit as required by the Title IX regulations.

17 191. In taking these steps, Defendants Mosier, Goldsmith, and Reyna were
18 acting under color of state law.

19 192. Defendants Mosier, Goldsmith, and Reyna’s purpose was to chill or
20 punish RICHARDSON’s speech and/or speech like RICHARDSON’s. Defendants
21 Mosier, Goldsmith, and Reyna’s actions constituted an adverse employment action
22 under the Ninth Circuit's liberal interpretation of the term "adverse employment
23 action." (*Hodge v. Antelope Valley Cmty. College Dist.* (C.D.Cal. Feb. 14, 2014,
24 No. CV 12-780 PSG (Ex)) 2014 U.S.Dist.LEXIS 199656, at *40-41.) According
25 to the Ninth Circuit, an adverse employment action is one that is "reasonably likely
to deter" an employee from engaging in constitutionally protected speech. (See
Blair v. Bethel Sch. Dist., 608 F.3d 540, 543 n.1 (9th Cir 2010); accord *Coszalter*

1 v. *City of Salem* (9th Cir. 2003) 320 F.3d 968, 976; See e.g., *McKee v. Hart*, 436
2 F.3d 165, 170 (Suspension with pay); *Butczynski v. Luzerne County* (M.D.Pa. Jan.
3 26, 2007, No. 3:05cv645) 2007 U.S. Dist. LEXIS 6172, at *8-10 (Suspension with
4 pay.); *Arenal v. City of Punta Gorda* (M.D.Fla. 1996) 932 F.Supp. 1406, 1413
5 (Suspension with pay.); *Michael v. Quaker Valley Sch. Dist.* (W.D.Pa. Feb. 16,
6 2017, Civil Action No. 2:16-cv-00473) 2017 U.S. Dist. LEXIS 21664, at *19-21
7 (Suspension with pay.); *Eng v. County of L.A.* (C.D.Cal. 2010) 737 F.Supp.2d
8 1078, 1093-1094 (Reassignment to another position and investigation and filing of
9 an adverse employment report.); *Burlington Northern & Santa Fe Ry. v.*
10 *White* (2006) 548 U.S. 53, 70-71 [126 S.Ct. 2405, 2416-2417, 165 L.Ed.2d 345,
361-362] (Reassignment of job duties.)

11 193. As a proximate result of Defendants' retaliation, Plaintiff has been
12 caused to suffer anxiety, depression and other emotional distress in an amount to
13 be proven at trial. Plaintiff is further entitled to attorney's fees under 42 USC
14 §1983. Plaintiff is informed and believes and thereon alleges that Mosier and
15 Goldsmith's conduct was fraudulent, oppressive and malicious entitling Plaintiff to
16 an award of punitive damages.

17 **XI. FIFTH CAUSE OF ACTION: VIOLATION OF LABOR CODE**
18 **§1102.5 (AGAINST SCCCD.)**

19 194. Plaintiff RICHARDSON incorporates every allegation contained in
20 paragraphs 1 through 193 of this Second Amended Complaint.

21 195. Labor Code Section 1102.5 provides in relevant part:

22 a. An employer, or any person acting on behalf of the employer,
23 shall not make, adopt, or enforce any rule, regulation, or policy
24 preventing an employee from disclosing information to a
25 government or law enforcement agency, to a person with authority
over the employee, or to another employee who has authority to
investigate, discover, or correct the violation or noncompliance, or

1 from providing information to, or testifying before, any public body
2 conducting an investigation, hearing, or inquiry, if the employee has
3 reasonable cause to believe that the information discloses a violation
4 of state or federal statute, or a violation of or noncompliance with a
5 local, state, or federal rule or regulation, regardless of whether
6 disclosing the information is part of the employee's job duties.

7 b. An employer, or any person acting on behalf of the employer, shall
8 not retaliate against an employee for disclosing information, or
9 because the employer believes that the employee disclosed or may
10 disclose information, to a government or law enforcement agency, to
11 a person with authority over the employee or another employee who
12 has the authority to investigate, discover, or correct the violation or
13 noncompliance, or for providing information to, or testifying before,
14 any public body conducting an investigation, hearing, or inquiry, if
15 the employee has reasonable cause to believe that the information
16 discloses a violation of state or federal statute, or a violation of or
17 noncompliance with a local, state, or federal rule or regulation,
18 regardless of whether disclosing the information is part of the
19 employee's job duties.

20 c. An employer, or any person acting on behalf of the employer, shall
21 not retaliate against an employee for refusing to participate in an
22 activity that would result in a violation of state or federal statute, or
23 a violation of or noncompliance with a local, state, or federal rule or
24 regulation.

25 196. The First Amendment to the United States Constitution states in
relevant part: “Congress shall make no law...abridging the freedom of speech....”

197. 18 USC §242 states in relevant part: “Whoever, under color of any
law, statute, ordinance, regulation, or custom, willfully subjects any person in any
State, Territory, Commonwealth, Possession, or District to the deprivation of any
rights, privileges, or immunities secured or protected by the Constitution or laws
of the United States...shall be fined under this title or imprisoned not more than
one year, or both....”

1 198. SCCCD retaliated against RICHARDSON for exercising his
2 constitutional rights under the First Amendment. In retaliating against
3 RICHARDSON for exercising his constitutional rights under the First Amendment,
4 SCCCD retaliated against RICHARDSON for refusing to participate in the
5 abridgment or denial of his constitutional rights and it further retaliated against
6 him for refusing to participate in a violation of federal statute, to wit 18 USC §242,
7 in that Richards was retaliated against for refusing to participate in a deprivation of
8 his “rights, privileges, and immunities secured or protected by the Constitution or
9 laws of the United States,” namely the First Amendment, by persons acting “under
10 color of law, statute, ordinance, regulation or custom.” Specifically, SCCCD
11 attempted to chill or deter RICHARDSON’s constitutionally protected speech as
12 set forth in this complaint. In addition, Plaintiff reported such efforts to persons
13 with “the authority to investigate, discover, or correct the violation or
14 noncompliance” of such laws, but instead of protection of his rights,
15 RICHARDSON was subjected to materially adverse employment action as set
16 forth in this complaint.

17 199. Plaintiff exercised his constitutional right to speak under the First
18 Amendment Government Code §12940 et seq. and was thereafter retaliated against
19 when he was sanctioned with extra work consisting of forced speech where he was
20 required to submit to ideological indoctrination, threatened with further sanctions,
21 and had the negative write-up placed in his personnel file.

22 200. As a proximate result of Defendants’ retaliation, Plaintiff has been
23 caused to suffer anxiety, depression and other emotional distress in an amount to
24 be proven at trial. Plaintiff is further entitled to attorney’s fees under Labor Code
25 §1102.5.

1 **XII. SIXTH CAUSE OF ACTION: VIOLATION OF CIVIL CODE §51**
2 **(AGAINST SCCCD.)**

3 201. Plaintiff RICHARDSON incorporates every allegation contained in
4 paragraphs 1 through 200 of this Second Amended Complaint.

5 202. Civil Code section 51(b) states: "All persons within the jurisdiction of
6 this state are free and equal, and no matter what their sex, race, color, religion,
7 ancestry, national origin, disability, medical condition, genetic information, marital
8 status, sexual orientation, citizenship, primary language, or immigration status are
9 entitled to the full and equal accommodations, advantages, facilities, privileges, or
10 services in all business establishments of every kind whatsoever." The California
11 Legislature has stated that "[t]he enumerated characteristics are illustrative rather
12 than restrictive." (Cal. Civ. Code. §51, Historical Notes -- Historical and Statutory
13 Notes.) Under the Unruh Act, a business establishment may not discriminate
14 against any person based on a personal characteristic representing a trait, condition,
15 decision, or choice fundamental to a person's identity, beliefs and self-definition as
16 that factor has been applied in previous cases. *Semler v. General Electric Capital*
17 *Corp.* (2011) 196 Cal.App.4th 1380, 1395; *Koebke Bernardo Heights Country*
18 *Club* (2005) 36 Cal.4th 824, 842; *Curran v. Mount Diablo Council of the Boy*
19 *Scouts* (1998) 17 Cal. 4th 670,705.) The protection of the Unruh Act extends to
20 political affiliation. (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721,726
21 ["Whether the exclusionary policy rests on the alleged undesirable propensities of
22 those of a particular race, nationality, occupation, political affiliation, or age, ... the
23 Unruh Act protects individuals from . . . arbitrary discrimination."].)

24 203. SCCCD is a business establishment with respect to providing
25 secondary education in that it holds itself out as open to the public without
restrictions and issuing public facilities and engaging in public commerce.

1 204. RICHARDSON was singled out for discrimination as set forth in this
2 complaint based upon his political affiliation in that he is a conservative and is
3 identified by his supervisors and the administration of SCCCD as a conservative.
4 As such, he was subjected to disparate treatment for conduct that would not have
5 resulted in the same treatment if he was not a conservative.

6 205. Civil Code section 52 provides: "[w]hoever denies, aids or incites a
7 denial, or makes any discrimination or distinction contrary to Section 51,51.5, or
8 51.6, is liable for each and every offense for the actual damages, and any amount
9 that may be determined by a jury, or a court sitting without a jury, up to a maximum
10 of three times the amount of actual damage but in no case less than four thousand
11 dollars (\$4,000), and any attorney's fees that may be determined by the court in
12 addition thereto, suffered by any person denied the rights provided in section 51,
13 51.5, or 51.6."

14 206. As a proximate result of Defendants', and each of their, conduct,
15 RICHARDSON has suffered emotional distress, including embarrassment,
16 humiliation, anguish, stress and depression as a result of defendants' unlawful and
17 unfair treatment.

18 207. RICHARDSON is entitled to treble the actual damages he proves at
19 trial but is entitled to no less than \$4,000 pursuant to Civil Code §52. Plaintiff is
20 also entitled to attorney's fees pursuant to Civil Code §52.

21 **XIII. SEVENTH CAUSE OF ACTION: VIOLATION OF CIVIL CODE**
22 **§51.5 (AGAINST SCCCD.)**

23 208. Plaintiff RICHARDSON incorporates every allegation contained in
24 paragraphs 1 through 208 of this Second Amended Complaint.

25 209. Civil Code section 51.5(a) provides: "No business establishment of
any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to

1 buy from, contract with, sell to, or trade with any person in this state on account of
2 any characteristic listed or defined in subdivision (b) or (e) of section 51, or of the
3 person's partners, members, stockholders, directors, officers, managers,
4 superintendents, agents, employees, business associates, suppliers, or customers,
5 because the person is perceived to have one or more of those characteristics, or
6 because the person is associated with a person who has, or is perceived to have,
7 any of those characteristics." The characteristics listed or defined by Civil Code
8 section 51.5 include "political affiliation." (*Marina Point, Ltd. v. Wolfson* (1982)
9 30 Cal.3d 721, 726 ("Whether the exclusionary policy rests on the alleged
10 undesirable propensities of those of a particular race, nationality, occupation,
11 political affiliation, or age... the Unruh Act protects individuals from arbitrary
discrimination.").)

12 210. SCCCD is a business establishment with respect to providing
13 secondary education in that it holds itself out as open to the public without
14 restrictions and issuing public facilities and engaging in public commerce.

15 211. SCCCD has discriminated against RICHARDSON by penalizing him
16 for exercising his constitutional rights based upon his political affiliation in that he
17 is a conservative and is identified by his supervisors and the administration of
18 SCCCD as a conservative. As such, he was subjected to disparate treatment for
19 conduct that would not have resulted in the same treatment if he was not a
20 conservative.

21 212. Civil Code section 52 provides: "[w]hoever denies, aids or incites a
22 denial, or makes any discrimination or distinction contrary to Section 51,51.5, or
23 51.6, is liable for each and every offense for the actual damages, and any amount
24 that may be determined by a jury, or a court sitting without a jury, up to a maximum
25 of three times the amount of actual damage but in no case less than four thousand
dollars (\$4,000), and any attorney's fees that may be determined by the court in

1 addition thereto, suffered by any person denied the rights provided in section 51,
2 51.5, or 51.6."

3 213. As a proximate result of Defendants', and each of their, conduct,
4 RICHARDSON has suffered emotional distress, including embarrassment,
5 humiliation, anguish, stress and depression as a result of defendants' unlawful and
6 unfair treatment.

7 214. RICHARDSON is entitled to treble the actual damages he proves at
8 trial but is entitled to no less than \$4,000 pursuant to Civil Code §52. Plaintiff is
9 also entitled to attorney's fees pursuant to Civil Code §52.

10 **XIV. EIGHTH CAUSE OF ACTION: VIOLATION OF GOVERNMENT**
11 **CODE §12940(A)(DISCRIMINATION/AGAINST SCCCD.)**

12 215. Plaintiff RICHARDSON incorporates every allegation contained in
13 paragraphs 1 through 214 of this Second Amended Complaint.

14 216. Government Code Section 12940(a) states that it is an "unlawful
15 employment practice" for "an employer...because of ...race... gender, gender
16 identity, gender expression, age, sexual orientation
17 ...to discriminate against ...an employee."

18 217. RICHARDSON is over fifty years of age, white, and "cis-gender." He
19 was subjected to disparate treatment because of his race, age, and gender identity
20 than people who are not white, old, and/or trans. Such disparate treatment included,
21 as alleged above, the use of preferred gender pronouns, being harassed because of
22 the use of preferred gender pronouns, being disciplined for the use of preferred
23 gender pronouns, being stigmatized because of the use of preferred gender
24 pronouns, and being subjected to sanctions for the use of preferred gender
25 pronouns. RICHARDSON was discriminated against with respect to the use of
preferred gender pronouns, due process rights, and being free from arbitrary and

1 capricious punishments because it was presumed that since he was an older, white,
2 cis male that he must have been engaged in dangerous and mocking behavior
3 against a fellow instructor. RICHARDSON is informed and believes and thereon
4 alleges that the substantial motivation for this treatment was because of his
5 disability.

6 218. This selectivity and bias is an outgrowth of SCCCD's Diversity,
7 Inclusion, and Equity ("DIE") regulations. CCR 5360 requires "Educational and
8 other Administrators" to include "DEIA and anti-racist principles into existing
9 policies and practices, funding allocations, decision-making, planning and program
10 review processes." "DEIA" principles include: (a) "'Inclusion" which "refers to
11 bringing traditionally excluded individuals or groups into processes, activities, and
12 decision and policy making in a way that shares power." (CCR §52510(n)); (b)
13 "Diversity" includes "the myriad of ways in which people differ, including
14 psychological, physical, cognitive, and social differences...based on sex [and]
15 gender." (CCR §52510(j)); (c) "Cultural Competency," which "refers to the
16 practice of acquiring and utilizing knowledge of the intersectionality of social
17 identities and the multiple axes of oppression that people from different racial,
18 ethnic, and other minoritized groups face." (CCR §52510(h)) and (d) "anti-racism,"
19 which means "policies and actions that lead to racial equity." "Minoritize" refers to
20 the subordination of a person or group's status to a more dominant group or its
21 members based on social identities such as race or ethnicity. (CCR §52510(o))

21 219. In short, the regulations pertaining to community college
22 administrators require administrators to assume that there are "minoritized groups"
23 subordinated to "dominant groups" who interact by on some "axis of oppression."
24 Administrators are required to implement policy in a way that allows such
25 "traditionally excluded individual or groups" to "share power."

1 220. These regulations exist in an intellectual environment where
2 “whiteness” is criticized, and the concept of decentering “whiteness” is endorsed.
3 SCCCD communicates to its faculty and students the idea that white males are the
4 dominant group in society and that racism is not possible against whites because
5 racism cannot be suffered by those with power. For example, SCCCD had
6 endorsed, and required faculty and students to read, Ibrahim X. Kendi’s “How to
7 be an Anti-Racist” where these concepts are expressed. In “How to be an Anti-
8 Racist,” Kendi advises:

9 The only remedy to racist discrimination is antiracist discrimination.
10 The only remedy to past discrimination is present discrimination.
11 The only remedy to present discrimination is future discrimination.

12 Kendi, Ibram X.. How to Be an Antiracist (p. 19). Random House
13 Publishing Group. Kindle Edition.

14 221. On or about December 12, 2023, SCCCD’s Trustees and Chief
15 Executive Officers issued Resolution No. 2023.61 condemning the United States
16 Supreme Court’s decision in Students for Fair Admissions, Inc. as undermining
17 four decades of precedents that had legally recognized as compelling interest the
18 educational benefits of racially diverse student populations in higher education.
19 The resolution expressed the fear that administrators might “overinterpret” the
20 decision “out of fear and take actions beyond the laws’ requirements.” The
21 resolution affirmed SCCCD’s commitment to “racial equity” notwithstanding
22 Proposition 209 which like the Supreme Court’s decision in Students had affirmed
23 that racial discrimination by colleges and universities was unconstitutional
24 discrimination. The resolution condemned “repressive legalism” and instructed
25 administrators not to “overreact or overinterpret the SCOTUS decision to the
detriment of students of color and their equitable access and success.” The

1 resolution affirmed SCCCD’s “unyielding commitment to racial diversity and
2 racial equity at our college campuses.”

3 222. This resolution reflects the pre-existing attitude of administrators of
4 SCCCD. The resolution also affirmed SCCCD’s rhetorical opposition to colorblind
5 treatment of students and faculty and its commitment to using race and other
6 “minoritized” classifications in its policy, even when such use was unconstitutional
7 discrimination. This resolution also contributed to the hostile work environment
8 that Plaintiff experienced in that SCCCD announced its rhetorical opposition to
9 equal treatment of all employees and commitment to racial and other discrimination
10 notwithstanding the Supreme Court and state law prohibition of such policies.

11 223. Plaintiff is informed and believes and thereon alleges that Defendants
12 and each of them interpreted the applicable policies to give preference to
13 “minoritized individual and groups” and to discriminate against him because he
14 was a white male and therefore pursuant to the understandings of those
15 implementing “DEIA principles,” in the “dominant group” that oppressed
16 “minoritized groups.”

17 224. As a proximate result of this violation of the FEHA, RICHARDSON
18 suffered emotional distress from the harassment, including pain, suffering, anxiety,
19 embarrassment, fear, depression and other forms of emotional distress, in an
20 amount which will be proven at trial. In addition, Plaintiff was forced to spend his
21 time without compensation undergoing indoctrination into the anti-free speech
22 ideology that SCCCD is promoting to his pecuniary damage and emotional distress.
23 Plaintiff is entitled to recover the attorney’s fees and costs he incurs in this action
24 pursuant to the FEHA.
25

1 **XV. NINTH CAUSE OF ACTION: VIOLATION OF GOVERNMENT**
2 **CODE §12940(J)(HARASSMENT/AGAINST SCCCD.)**

3 225. Plaintiff RICHARDSON incorporates every allegation contained in
4 paragraphs 1 through 224 of this Second Amended Complaint.

5 226. Government Code Section 12940(j)(1) states that it is an “unlawful
6 employment practice” for “an employer...because of ...race, age, gender, sexual
7 identity ...to harass an employee.” Government Code Section 12940(j)1) further
8 provides that “Harassment of an employee...by an employee, other than an agent
9 or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or
10 should have known of this conduct and fails to take immediate and appropriate
11 corrective action.”

12 227. RICHARDSON is over fifty years of age, white, and “cis-gender.” He
13 was subjected to disparate treatment because of his race, age, and gender identity
14 than people who are not white, old, and/or trans. Such disparate treatment included,
15 as alleged above, the use of preferred gender pronouns, being harassed because of
16 the use of preferred gender pronouns, being disciplined for the use of preferred
17 gender pronouns, being stigmatized because of the use of preferred gender
18 pronouns, and being subjected to sanctions for the use of preferred gender
19 pronouns. RICHARDSON was discriminated against with respect to the use of
20 preferred gender pronouns, due process rights, and being free from arbitrary and
21 capricious punishments because it was presumed that since he was an older, white,
22 cis male that he must have been engaged in dangerous and mocking behavior
23 against a fellow instructor. RICHARDSON is informed and believes and thereon
24 alleges that the substantial motivation for this treatment was because of his
25 disability. In addition, Defendant SCCCD has made the workplace a hostile
environment for RICHARDSON by its frequent derogatory comments about “older
white men,” its instructions that “older white men” should remain silent, and its

1 disciplinary material that depict “older white men” as the invariable offenders
2 against other employees. SCCCD has also assigned reading from Ibrahim X. Kendi
3 and others which is racist and derogatory concerning older white males in teaching
4 that “whiteness,” and people in whom “whiteness” subsists, such as older white
5 males, are racist and have an affirmative obligation not shared by members of other
6 races/genders to affirmatively prove that they are “anti-racist.” Thus, “older white
7 men” are presumed guilty with scant hope of a presumption of innocence.

8 228. As a proximate result of this violation of the FEHA, RICHARDSON
9 suffered emotional distress from the harassment, including pain, suffering, anxiety,
10 embarrassment, fear, depression and other forms of emotional distress, in an
11 amount which will be proven at trial. In addition, Plaintiff was forced to spend his
12 time without compensation undergoing indoctrination into the anti-free speech
13 ideology that SCCCD is promoting to his pecuniary damage and emotional distress.
14 Plaintiff is entitled to recover the attorney’s fees and costs he incurs in this action
15 pursuant to the FEHA.

16 **XVI. TENTH CAUSE OF ACTION: VIOLATION OF GOVERNMENT**
17 **CODE §12940(K)(FAILURE TO PROVIDE A WORKPLACE THAT**
18 **IS FREE OF DISCRIMINATION, RETALIATION AND/OR**
19 **HARASSMENT/AGAINST SCCCD.)**

20 229. Plaintiff RICHARDSON incorporates every allegation contained in
21 paragraphs 1 through 229 of this Second Amended Complaint.

22 230. Under Government Code section 12940 (k), it is an unlawful
23 employment practice for any employer to fail to provide a workplace that is free of
24 discrimination, retaliation and/or harassment.

25 231. RICHARDSON is over fifty years of age, white, and “cis-gender.” He
was subjected to disparate treatment because of his race, age, and gender identity
than people who are not white, old, and/or trans. Such disparate treatment included,

1 as alleged above, the use of preferred gender pronouns, being harassed because of
2 the use of preferred gender pronouns, being disciplined for the use of preferred
3 gender pronouns, being stigmatized because of the use of preferred gender
4 pronouns, and being subjected to sanctions for the use of preferred gender
5 pronouns. RICHARDSON was discriminated against with respect to the use of
6 preferred gender pronouns, due process rights, and being free from arbitrary and
7 capricious punishments because it was presumed that since he was an older, white,
8 cis male that he must have been engaged in dangerous and mocking behavior
9 against a fellow instructor. RICHARDSON is informed and believes and thereon
10 alleges that the substantial motivation for this treatment was because of his
11 disability. In addition, Defendant SCCCD has made the workplace a hostile
12 environment for RICHARDSON by its frequent derogatory comments about “older
13 white men,” its instructions that “older white men” should remain silent, and its
14 disciplinary material that depict “older white men” as the invariable offenders
15 against other employees.

16 As a proximate result of this violation of the FEHA, RICHARDSON suffered
17 emotional distress from the harassment, including pain, suffering, anxiety,
18 embarrassment, fear, depression and other forms of emotional distress, in an amount
19 which will be proven at trial. In addition, Plaintiff was forced to spend his time
20 without compensation undergoing indoctrination into the anti-free speech ideology
21 that SCCCD is promoting to his pecuniary damage and emotional distress. Plaintiff
22 is entitled to recover the attorney’s fees and costs he incurs in this action pursuant to
23 the FEHA.
24
25

1 **XVII. ELEVENTH CAUSE OF ACTION: VIOLATION OF**
2 **GOVERNMENT CODE §12940(J)(RETALIATION/AGAINST**
3 **SCCCD.)**

4 232. Plaintiff RICHARDSON incorporates every allegation contained in
5 paragraphs 1 through 231 of this Second Amended Complaint.

6 233. Government Code Section 12940(h) states that it is an “unlawful
7 employment practice” for “For any employer, labor organization, employment
8 agency, or person to discharge, expel, or otherwise discriminate against any person
9 because the person has opposed any practices forbidden under this part or because
10 the person has filed a complaint, testified, or assisted in any proceeding under this
11 part.”

12 234. RICHARDSON is over fifty years of age, white, and “cis-gender.”

13 235. Deanna Calvin is an African-American trans-woman. Calvin has a
14 publicly disclosed animus against people she describes as “old white men.”

15 236. On April 29, 2023, Calvin publicly confronted RICHARDSON about
16 some of the candy he was handing out at SCCCD’s Madera campus. Calvin created
17 a scene by interrogating RICHARDSON about his intent with respect to a candy
18 bar wrapper that said, inter alia, “building a woke free economy.”

19 237. RICHARDSON was subjected to a Title IX hearing process. Calvin
20 was not, even though she had provoked the incident.

21 238. During the course of the Title IX investigation, RICHARDSON shred
22 with the Title IX investigator, the Title IX hearing officer, and SCCCD that Calvin
23 had spoken derogatorily about “old white men” in a public presentation.

24 239. In doing this, RICHARDSON was opposing the racial, gender, and
25 sexual identity he was being subjected to in the form of the Title IX investigation
and hearing process.

1 240. After the Title IX process had concluded, RICHARDSON asked for
2 an investigation into whether Calvin had lied in her complaint against him. SCCCD
3 refused to perform such an investigation.

4 241. After RICHARDSON was exonerated from the Title IX claim,
5 SCCCD presented RICHARDSON with a Ninety Day Notice to Correct
6 Unprofessional Conduct. The alleged unprofessional conduct was his bringing
7 candy bars that contained a message disapproved of by SCCCD.

8 242. RICHARDSON is informed and believes, and thereon alleges, that the
9 Ninety Day Notice and the accompanying punishment was given to him in
10 retaliation for his opposing discrimination as set forth in this cause of action.

11 243. As a proximate result of this violation of the FEHA, RICHARDSON
12 suffered emotional distress from the harassment, including pain, suffering, anxiety,
13 embarrassment, fear, depression and other forms of emotional distress, in an
14 amount which will be proven at trial. In addition, Plaintiff was forced to spend his
15 time without compensation undergoing indoctrination into the anti-free speech
16 ideology that SCCCD is promoting to his pecuniary damage and emotional distress.
17 Plaintiff is entitled to recover the attorney's fees and costs he incurs in this action
18 pursuant to the FEHA.

19 **XVIII. TWELFTH CAUSE OF ACTION: VIOLATION OF LABOR CODE**
20 **§1102.5 (AGAINST SCCCD.)**

21 244. Plaintiff RICHARDSON incorporates every allegation contained in
22 paragraphs 1 through 243 of this Second Amended Complaint.

23 245. Labor Code Section 1102.5 provides in relevant part:

24 a. An employer, or any person acting on behalf of the employer,
25 shall not make, adopt, or enforce any rule, regulation, or policy
preventing an employee from disclosing information to a
government or law enforcement agency, to a person with authority

1 over the employee, or to another employee who has authority to
2 investigate, discover, or correct the violation or noncompliance, or
3 from providing information to, or testifying before, any public body
4 conducting an investigation, hearing, or inquiry, if the employee has
5 reasonable cause to believe that the information discloses a violation
6 of state or federal statute, or a violation of or noncompliance with a
7 local, state, or federal rule or regulation, regardless of whether
8 disclosing the information is part of the employee's job duties.

9 b. An employer, or any person acting on behalf of the employer, shall
10 not retaliate against an employee for disclosing information, or
11 because the employer believes that the employee disclosed or may
12 disclose information, to a government or law enforcement agency, to
13 a person with authority over the employee or another employee who
14 has the authority to investigate, discover, or correct the violation or
15 noncompliance, or for providing information to, or testifying before,
16 any public body conducting an investigation, hearing, or inquiry, if
17 the employee has reasonable cause to believe that the information
18 discloses a violation of state or federal statute, or a violation of or
19 noncompliance with a local, state, or federal rule or regulation,
20 regardless of whether disclosing the information is part of the
21 employee's job duties.

22 c. An employer, or any person acting on behalf of the employer, shall
23 not retaliate against an employee for refusing to participate in an
24 activity that would result in a violation of state or federal statute, or
25 a violation of or noncompliance with a local, state, or federal rule or
regulation.

246. Government Code Section 12940(h) states that it is an “unlawful
employment practice” for “For any employer, labor organization, employment
agency, or person to discharge, expel, or otherwise discriminate against any person
because the person has opposed any practices forbidden under this part or because
the person has filed a complaint, testified, or assisted in any proceeding under this
part.”

247. Making a false statement is a violation of 34 CFR 106.45(b)(2)(i)(B)
which provides:

1 (B) Notice of the allegations of sexual harassment potentially
2 constituting sexual harassment as defined in § 106.30, including
3 sufficient details known at the time and with sufficient time to
4 prepare a response before any initial interview. Sufficient details
5 include the identities of the parties involved in the incident, if known,
6 the conduct allegedly constituting sexual harassment under § 106.30,
7 and the date and location of the alleged incident, if known. The
8 written notice must include a statement that the respondent is
9 presumed not responsible for the alleged conduct and that a
10 determination regarding responsibility is made at the conclusion of
11 the grievance process. The written notice must inform the parties that
12 they may have an advisor of their choice, who may be, but is not
13 required to be, an attorney, under paragraph (b)(5)(iv) of this section,
14 and may inspect and review evidence under paragraph (b)(5)(vi) of
15 this section. The written notice must inform the parties of any
16 provision in the recipient's code of conduct that prohibits knowingly
17 making false statements or knowingly submitting false information
18 during the grievance process.

19 248. On April 29, 2023, Calvin publicly confronted RICHARDSON about
20 some of the candy he was handing out at SCCCD's Madera campus. Calvin created
21 a scene by interrogating RICHARDSON about his intent with respect to a candy
22 bar wrapper that said, inter alia, "building a woke free economy."

23 249. RICHARDSON was subjected to a Title IX hearing process. Calvin
24 was not subjected to an investigation, even though she had provoked the incident.

25 250. During the course of the Title IX investigation, RICHARDSON shred
with the Title IX investigator, the Title IX hearing officer, and SCCCD that Calvin
had spoken derogatorily about "old white men" in a public presentation.

250. During the Title IX investigation and hearing process,
RICHARDSON informed the Title IX investigator, the Title IX hearing officer,
and SCCCD that Calvin had lied in her complaint against him. After the Title IX
process had concluded, RICHARDSON asked for an investigation into whether

1 Calvin had lied in her complaint against him. SCCCD refused to perform such an
2 investigation.

3 252. After RICHARDSON was exonerated from the Title IX claim,
4 SCCCD presented RICHARDSON with a Ninety Day Notice to Correct
5 Unprofessional Conduct. The alleged unprofessional conduct was his bringing
6 candy bars that contained a message disapproved of by SCCCD.

7 253. RICHARDSON is informed and believes, and thereon alleges, that the
8 Ninety Day Notice and the accompanying punishment was given to him in
9 retaliation for informing SCCCD of the violation of Government Code §12940 and
10 34 CFR 106.45(b)(2)(i)(B).

11 254. As a proximate result of this violation of the FEHA, RICHARDSON
12 suffered emotional distress from the harassment, including pain, suffering, anxiety,
13 embarrassment, fear, depression and other forms of emotional distress, in an
14 amount which will be proven at trial. In addition, Plaintiff was forced to spend his
15 time without compensation undergoing indoctrination into the anti-free speech
16 ideology that SCCCD is promoting to his pecuniary damage and emotional distress.
17 Plaintiff is further entitled to attorney's fees under Labor Code §1102.5.

18
19 Wherefore, Plaintiffs pray judgment as follows:

- 20 1. For Declaratory Judgment that AR 34235 is unconstitutional on its
21 face and/or as applied in this case because it violates the First and
22 Fourteenth Amendments to the United States Constitution.
- 23 2. For Declaratory Judgment that SCCCD's PGP policy is on its face
24 and/or as applied in this case unconstitutional because it violates the
25 First and Fourteenth Amendments to the United States Constitution.

- 1 3. For Declaratory Judgment that SCCCD's Discrimination-Harassment
2 policy is unconstitutional on its face and/or as applied in this case
3 because it violates the First and Fourteenth Amendments to the United
4 States Constitution.
- 5 4. For Declaratory Judgment that the discipline imposed by SCCCD on
6 RICHARDSON was unconstitutional as applied in this case because
7 it violates the First and Fourteenth Amendments to the United States
8 Constitution.
- 9 5. For Injunctive Relief prohibiting SCCCD from enforcing the policies
10 that violated the First and Fourteenth Amendments to the United
11 States Constitution as alleged herein.
- 12 6. For injunctive relief requiring the removal and destruction of the
13 Ninety Day Notice and Letter of Reprimand placed in
14 RICHARDSON's personnel file.
- 15 7. For injunctive relief requiring that SCCCD train its management and
16 human resources in First Amendment law.
- 17 8. For compensatory damages according to proof.
- 18 9. For attorney's fees as pled.
- 19 10. For costs of suit herein incurred; and
- 20 21. For such other and further relief as the court deems proper.

Jury Trial Requested

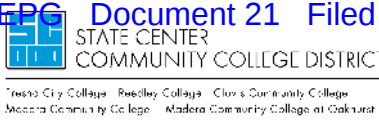
Dated: June 3, 2024.

Bradley & Brown.

Peter Sean Bradley
By _____
Peter Sean Bradley
Attorney for Plaintiffs

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EXHIBIT A



Book	Admin Regulations
Section	Chapter 3 General Institution
Title	Prohibition of Harassment
Code	AR 3430
Status	Active
Legal	Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e.; Title 5 Sections 59320 et seq.; Title IX, Education Amendments of 1972; Title 2 Sections 10500 et seq.; Government Code Section 12923; 12940; Education Code Sections 212.5; 44100; 66281.5; Americans with Disabilities Act of 1990 (ADA); Civil Code 51.9
Cross References	Administrative Regulations 3433, 3434, and 7348 Board Policy 3430
Adopted	August 28, 2018
Last Revised	May 2, 2022
Prior Revised Dates	03/17/19; 07/27/20

Prohibition of Harassment

The District is committed to providing an academic and workplace environment free of unlawful harassment. This regulation defines all forms of harassment on campus including sexual harassment, and sets forth a regulation for the investigation and resolution of complaints of harassment by or against any staff or faculty member or student within the District.

For sexual harassment, sexual misconduct, or sexual assault under Title IX, Complainants must proceed under Board Policy (BP) and Administrative Regulation (AR) 3433 "Prohibition of Sexual Harassment under Title IX" and Administrative Regulation (AR) 3434 "Responding to Harassment Based on Sex under Title IX".

Definitions

General Harassment. Harassment based on race, religious creed, color, national origin, immigration status, ancestry, physical disability, mental disability, medical condition, pregnancy, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation or any person, military and veteran status, or the perception that a person has one or more of these characteristics is illegal and violates District policy. Harassment shall be found where, in aggregate, the incidents are sufficiently pervasive, persistent, or severe that a reasonable person with the same characteristics as the victim of the harassing conduct would be adversely affected to a degree that interferes with their ability to participate in or to realize the intended benefits or an institutional activity, employment or resource.

Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment if it meets the definition above. For example, repeated derisive comments

about a person's competence to do the job, which is based on that person's gender, could constitute gender-based harassment. Harassment comes in many forms, including, but not limited to the following conduct that could, depending on the circumstances, meet the definition above, or could contribute to a set of circumstances that meets the definition:

- *Verbal:* Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race, gender, sexual orientation, or other protected status. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats or intimidation; or sexist, patronizing or ridiculing statements that convey derogatory attitudes based on gender, race, national origin, sexual orientation, or other protected status.
- *Physical:* Inappropriate or offensive touching, assault, or physical interference with free movement. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, pinching, leering, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's gender, race, national origin, sexual orientation or other protected status. Physical sexual harassment includes acts of sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability.
- *Visual or Written:* The display or circulation of visual or written material that degrades an individual or group based on gender, race, national origin, sexual orientation or other protected status. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions.
- *Environmental:* A hostile academic or work environment exists where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, race, sexual orientation, or other protected status; or gratuitous comments regarding gender, race, sexual orientation, or other protected status that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment. It can also be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, genders or other protected statuses. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in his/her/their immediate surroundings, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work.

Sexual Harassment. In addition to the above, sexual harassment consists of 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 when:

- submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, progress, internship, or volunteer activity;
- submission to, or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual;
- 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; or
- 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 community college.

This definition encompasses two kinds of sexual harassment:

- **"Quid pro quo"** sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.
- **"Hostile environment"** sexual harassment occurs when unwelcome conduct based on a person's gender is sufficiently severe or pervasive so as to alter the conditions of an individual's learning or work environment, unreasonably interfere with an individual's academic or work performance, or create an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile. A single isolated incident of sexual harassment may be sufficient to create a hostile environment if it is severe, i.e. a sexual assault.

Case 1:22-cv-01250-JLT-EPG Document 21 Filed 06/03/24 Page 86 of 167

Sexually harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the victim would perceive the conduct as harassment based on sex.

Academic Freedom

No provision of this Administrative Regulation shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational political, artistic, or literary expression of students in classrooms or public forums. Freedom of speech and academic freedom are, however, not limitless and this regulation will not protect speech or expressive conduct that violates federal or California anti-discrimination laws. To the extent the harassment policies and regulations are in conflict with the District's policy on academic freedom, the harassment policies and regulations shall prevail. If the faculty member wishes to use sexually explicit materials in the classroom as a teaching technique, the faculty member must review the use of that material with an administrator to determine whether or not the materials or teaching technique violates the sexual harassment policy.

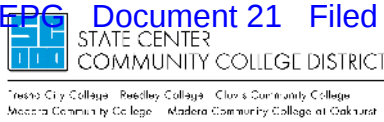
Accommodations

An employee who is a victim of domestic violence, sexual assault, or stalking may request time off for any of the following reasons:

- To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking;
- To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking;
- To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking;
- To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

To request an accommodation, see AR 7348 – Employment Disability Accommodations.

EXHIBIT B



Book	Admin Regulations
Section	Chapter 3 General Institution
Title	Discrimination, Harassment, and Retaliation, Complaints and Investigations
Code	AR 3435
Status	Active
Legal	20 U.S. Code Sections 1232g and 1681 et seq.; Education Code Section 212.5., 231.5, 66281.5, and 67380 et seq.; Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et seq.; Title 2 Sections 11023 and 11024 34 C.F.R. Part 99.15 and Section 106.8 (b) Government Code Section 12950.1
Cross References	Board Policy 3410, 3430, 3433, 3434, 3540, and 5500; Administrative Regulation 34310, 3430, 3433, 3434, 3540, 5500, and 7348
Adopted	August 18, 2008
Last Revised	May 2, 2022
Last Reviewed	May 2, 2022
Prior Revised Dates	10/14/19, 10/12/20

Discrimination, Harassment, and Retaliation, Complaints and Investigations

The law prohibits students, coworkers, supervisors, managers, and third parties with whom an employee or student comes into contact with during the course of their employment or academic pursuits from engaging in harassment discrimination, or retaliation. Any person who has suffered from or has learned of harassment, discrimination, or retaliation may file a complaint of harassment, discrimination, or retaliation.

For sexual harassment, sexual misconduct, or sexual assault under Title IX, Complainants must proceed under Board Policy (BP) and Administrative Regulation (AR) 3433 "Prohibition of Sexual Harassment under Title IX" and Administrative Regulation (AR) 3434 "Responding to Harassment Based on Sex under Title IX". For other forms of sexual harassment, gender-based harassment, or other harassment and discrimination, Complainants should use this procedure.

Definitions

"Discrimination" includes the unfair or unjust treatment of an individual based on certain protected characteristics that adversely affects their employment or academic experience. An adverse action for discrimination purposes is any action taken or pattern of conduct that, taken as a whole, materially and adversely affected the terms, conditions, privileges, benefits of or the ability to fully participate in activities or events associated with an individual's employment or academic environment. An adverse action includes conduct that is reasonably likely to impair a reasonable individual's work or academic performance or prospects for advancement or promotion. However, minor or trivial actions or conduct that is not reasonably likely to do more than anger or upset an individual cannot constitute an adverse action.

"Harassment" means conduct based on certain protected characteristics that creates a hostile, offensive, oppressive, or intimidating work or educational environment and deprives a person of their statutory right to work or learn in an environment free from harassment. In the workplace, harassment also includes conduct based on certain protected classes that sufficiently offends, humiliates, distresses, or intrudes upon a person, so as to disrupt the person's emotional tranquility in the workplace, affect their ability to perform the job as usual, or otherwise interfere with and undermine their personal sense of well-being. (Refer to AR 3430 – Prohibition of Harassment for specific examples of harassment).

"Protected Characteristics" include race, color, ethnicity, national origin, ancestry, religious creed, age, sex/gender, gender identity, gender expression, medical condition, pregnancy, sexual orientation, marital status, physical/mental disability, genetic information, military/ veteran status, immigration status, or opposition to unlawful discrimination or harassment, or because they are perceived to have one or more of those foregoing characteristics.

"Responsible District Officer" is (a) the Vice Chancellor, Human Resources, for all complaints involving employees, prospective employees, and third parties; and (b) the College Vice President, Students Services or designee for all complaints involving students.

"Retaliation" is any materially adverse employment or academic action taken against an individual in response to their participation in or submission of a discrimination or harassment complaint or investigation, or their opposition to other conduct covered by this regulation. An action is a "materially adverse" for retaliation purposes if a reasonable person would have found that the action taken would have dissuaded a reasonable person from making, supporting, or participating in a discrimination, harassment, retaliation, or sexual misconduct complaint or investigation, or opposing discrimination, harassment, retaliation or sexual misconduct.

"Sexual Misconduct" includes conduct of a sexual nature or conduct based on sex or gender that is unwelcome, non-consensual, or has the effect of threatening, intimidating, or coercing a person. Sexual misconduct includes sexual harassment, sexual violence, dating or domestic violence, stalking, and sexual exploitation. Sexual misconduct is a form of sex and gender-based discrimination.

"Title 5 Complaint" means a complaint filed with the Responsible District Officer, or designee, on a form prescribed by the Chancellor of the California Community Colleges (CCCCO) that meets the requirements set forth in Title 5, section 59328.

Responsibilities and Duties

The CHRO is responsible for receiving complaints of discrimination, harassment, and retaliation involving employees and coordinating their investigation.

The College Vice President, Student Services or designee is responsible for receiving complaints of discrimination, harassment, and retaliation involving students and coordinating their investigation. If the respondent of a complaint is an employee, the College Vice President will forward the complaint to the CHRO.

All district employees will promptly report suspected incidents of discrimination, harassment, and retaliation to their immediate supervisor or the Responsible District Officer, or designee.

Communicating that the Conduct is Unwelcome

When a person experiences unwelcome conduct, the District encourages employees, students, and third parties to let the offending person know immediately and clearly that the conduct or behavior is unwelcome, offensive, in poor taste and/or inappropriate.

Complaints

A Complaint is a written or verbal statement filed with the District that alleges harassment, discrimination, or retaliation in violation of the District's Board Policies, Administrative Procedures, or in violation of state or federal law. Complaints must be filed with the Responsible District Officer, or designee, unless the Party submitting the Complaint alleges discrimination, harassment, or retaliation against the responsible district officer, in which case it should be submitted directly to the Chancellor.

The District may request, but shall not require the Complainant to submit a Complaint on the form prescribed by the Chancellor of the California Community Colleges. A copy of the form will be available on the [District's EEO website](#). A Complainant shall report a verbal Complaint to the Responsible District Officer, or designee. The Responsible District Officer, or designee, shall record the verbal Complaint in writing. The Responsible District Officer, or designee, will take steps to ensure the writing accurately reflects the facts alleged by the Complainant.

A Complaint must meet **each of the following** criteria:

- It must state with enough specificity to show that the allegation(s), if true, would constitute a violation of District policies or procedures prohibiting discrimination, harassment, or retaliation;
- The Complainant must file any Complaint not involving employment within one year of the date of the alleged discriminatory, harassing, or retaliatory conduct or within one year of the date on which the Complainant knew or should have known of the facts underlying the allegation(s) of discrimination, harassment, or retaliation; and
- The Complainant must file any Complaint alleging discrimination, harassment, or retaliation in employment within 180 days of the date of the alleged discriminatory, harassing, or retaliatory conduct, except that this period shall be extended by no more than 90 days following the expiration of the 180 days if the Complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

If the Complaint does not meet the requirements set forth above, the Responsible District Officer, or designee, will promptly contact the Complainant and specify the defect. If the Complainant is unable to fix the defect in the Complaint, the Responsible District Officer, or designee, shall consider the allegations contained in the Complaint and determine the appropriate course of action. This may include efforts to informally resolve the matter or a fact-finding investigation.

Filing Timely Complaints

Persons who believe they have been subjected to discrimination, harassment, or retaliation may file a complaint with the College, or District.

Failure to timely report harassment, discrimination, or retaliation impedes the District's ability to stop the behavior. The District strongly encourages employees, students, and third parties who believe that they have been subjected to impermissible behavior to file a complaint as soon as possible and within 30 days of the alleged behavior.

Complaints for employment matters must be filed within 180 days of the alleged misconduct, except that this period may be extended by 90 days if the complainant first learned of the misconduct after the expiration of the 180-day period. The District has the discretion to investigate complaints filed after this deadline.

Complaints for non-employment matters must be filed within one year of the alleged misconduct, or within one year of the date which the complainant knew or should have known of the facts underlying the alleged behavior. The District has the discretion to investigate complaints filed after this deadline.

Filing a District Complaint

Any person may file a complaint of discrimination, harassment, or retaliation with the District. The allegations do not need to be communicated in a particular manner or on a particular form. Complaints may be made directly to the Responsible District Officer, or designee, or may be completed using the District's complaint form located on the District's EEO webpage at:

<https://www.sccd.edu/about/diversity-equal-employment-opportunity-and-non-discrimination.html>

Upon receiving a complaint, the Responsible District Officer, or their designee will:

1. Undertake efforts to informally resolve the complaint;
2. Advise the complainant that they need not participate in an informal resolution;
3. Notify the person bringing the complaint of their right to file a complaint on a form prescribed by the California Community College Chancellor's Office (CCCCO).
4. For student matters, advise the complainant that they may file their complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction;
5. For employment matters, advise the complainant that they may file their complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies;
6. Advise the complainant that they may file a complaint with local law enforcement, if the allegations are also criminal in nature;
7. Advise the complainant that they may request that a Timely Warning be issued if it is determined that there is a substantial threat to the campus community;
8. Work collaboratively with District and College administration to provide the complainant and responding party(s) with interim measures deemed necessary to protect their health and safety. These interim measures may include,

but are not limited to, police reports, a change in academic or honor status, changing grades, tutoring, or no-contact directives. Steps taken to resolve the complaint need not include an investigation, unless the Responsible District Officer, or designee determines that an investigation is warranted based on the allegations. However, an investigation may be required to comply with state or federal laws. The Responsible District Officer or designee may authorize a fact-finding investigation if it appears that the allegation(s), if proven true, would constitute a violation of the District policy prohibiting harassment, discrimination, or retaliation. The Responsible District Officer, or designee should advise the complainant that the District may initiate an investigation, even if the complainant does not wish the District to do so. Where the parties opt for informal resolution, the Responsible District Officer or designee will determine whether further investigation is necessary to ensure resolution of the matter.

Jurisdiction over Parties

The District has jurisdiction to address complaints involving students, employees, and third parties for alleged violations of this regulation that occur on District property. The District has jurisdiction to address complaints involving employees and students for alleged violations of this regulation that occur at District activities or events. The District may exercise jurisdiction over events that occur off-campus to determine if the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

Investigation of the Complaint

The District will promptly review every complaint of harassment, discrimination, or retaliation. No complaint will remain unexamined. This includes complaints involving activities that occur off District property and in connection with all the academic, education, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, on a District bus, or at a class or training program sponsored by the District at another location. The District will promptly review all complaints of harassment, discrimination, or retaliation that occur off District property if the alleged conduct creates a hostile environment on District property, interferes with or limits a student's or employee's ability to participate in or benefit from the District programs or activities, or adversely affects the working environment. Following the review of each complaint, the District will determine the most appropriate course of action, which may include an informal resolution or an investigation.

The actual investigation of complaints may be assigned by the Responsible District Officer to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the Responsible District Officer is named in the Complaint or implicated by the allegations in the Complaint.

As set forth above, where the parties opt for an informal resolution, the designated District officer may limit the scope of the investigation, as appropriate. The District will keep all investigations confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on an as "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged misconduct; the complainant's age; whether there have been other harassment complaints about the same individual; and the responding party's rights to receive information about the allegations if the information is maintained by the District as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. The District will inform the complainant that it cannot guarantee complete confidentiality, but will maintain the privacy of individuals involved in any investigation to the fullest extent possible.

Investigation Process: The District will fairly and objectively investigate discrimination, harassment, and retaliation complaints. Employees designated to serve as investigators under this regulation will have adequate training on what constitutes harassment, discrimination, and sexual misconduct including sexual violence, and they will understand how the District's complaint procedures operate. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

The District will provide the complainant and the responding party(s) equal opportunity to present relevant witnesses and other evidence to the District investigator. If one party is permitted to have a lawyer or other advisor present, the other party is also permitted to have a lawyer or other advisor present. Any District imposed restrictions on the ability of a lawyer or other advisor to speak or participate in the interview will apply equally to both parties.

Investigators will use the following process, not in any particular order: interviewing the complainant(s); interviewing the responding party(s); identifying and interviewing witnesses and evidence identified by each party, identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; and determine a finding as to the allegations.

The investigator will review the factual information gathered throughout the investigation to make findings on whether the alleged discrimination, harassment, or retaliation more likely than not occurred.

Coordination of Investigation when a criminal complaint is filed

Where the Complainant has filed a criminal complaint with local or District law enforcement, the District will work in collaboration with that entity on the investigation and will consider what information can be shared, pursuant to state and federal law, to ensure that involved parties are not unnecessarily required to give multiple statements about a traumatic event. The District will continue to conduct its own thorough, reliable, prompt, and impartial investigation.

Timeline for Completion: The District will undertake its investigation as promptly and swiftly as possible. To that end, the investigator will complete the above process, and prepare a written report, normally within ninety (90) days of the District receiving the complaint. In the event that it is deemed necessary by the investigator to extend the deadline of the investigation, the investigator will notify the Designated Officer of the need for a necessary extension at least 10 days prior to the deadline along with the reason(s) for the extension and the new date by which the investigation is expected to be completed. This notification will be copied to all involved parties.

Cooperation In Investigations: All employee respondents, or witnesses are required to cooperate and all employee complainants are encouraged to cooperate with a District investigation into allegations of discrimination, harassment, or retaliation. Student complainants, respondents, and witnesses should cooperate with a District investigation and may be required to meet with Student Services personnel. Employees who refuse to cooperate with a District investigation may be subject to discipline. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the District of its obligation to investigate. The District may conduct an investigation if it suspects that discrimination, harassment, or retaliation has occurred, or may be occurring, with or without the cooperation of the complainant(s) and regardless of whether a complaint is filed. No person will be retaliated against as a result of lodging a complaint or participating in any District investigation.

Standard of Proof

The investigator will evaluate the complaint using a preponderance of evidence standard. Thus, after considering all the evidence gathered, the investigator will decide whether it is more likely than not that specific behaviors and incidents supporting a report of discrimination, harassment, or retaliation, have occurred. The investigator will then submit an investigation report to the appropriate District or College administrator for a final determination to be made regarding any violation of College or District policy, regulation, code of conduct, rule, or other expectation. This determination may also include appropriate disciplinary and remedial action to be taken.

Written Report

The results of the investigation of a complaint will be set forth in a written report that will include at least all of the following information:

1. A description of the circumstances giving rise to the complaint;
2. An interview summary of each investigation interview conducted by the investigator;
3. An analysis of relevant evidence collected during the course of the investigation;
4. A specific finding as to whether it is more likely than not that the specific allegations, behaviors, and incidents reported in support of an allegation of discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint (preponderance of evidence standard); and
5. Any other information deemed appropriate by the District.

Administrative Determination

The investigator will forward the written investigation report and all evidence collected to the appropriate District official for an administrative determination. The official issuing the administrative determination may adopt or reject the investigator's findings. The administrative determination will be provided to the parties and will contain the following:

1. A determination as to whether it is more likely than not that discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint;
2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
3. The proposed resolution of the complaint; and
4. Any right to appeal.

If the administrative determination concludes that harassment, discrimination, or retaliation has occurred, the administrative determination will be forwarded to the District official with authority to impose appropriate disciplinary

action. In cases involving students, any disciplinary action or sanctions imposed may be appealed to the Administrative Determination.

Discipline and Corrective Action

Disciplinary action against faculty, staff and students will conform to all relevant statutes, regulations, personnel policies and regulations, including the provisions of any applicable collective bargaining agreement. The action will be prompt, effective, and commensurate with the severity of the offense and calculated to end any discriminatory or harassing conduct. If discipline is imposed, the nature of the discipline will not be communicated to the Complainant, unless the sanction imposed directly relates to the Complainant.

The District will also take reasonable steps to protect the Complainant from further harassment or discrimination and to protect the Complainant and witnesses from retaliation as a result of communicating the complaint or assisting in the investigation. The District will take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the maximum extent possible without impeding the District's ability to investigate and respond effectively to the complaint.

If the District cannot take disciplinary action against the responding party, it should pursue other steps to limit the effects of the alleged harassment and prevent its reoccurrence.

Appeals

If the District imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the procedure for appealing a disciplinary decision.

If the Complainant is not satisfied with the findings of the administrative determination, they may submit a written appeal to the Board of Trustees within thirty (30) days of receipt of the administrative determination. The appeal must be in writing.

In a Complaint involving student sexual misconduct not subject to Title IX, a Respondent who is not satisfied with the results of the administrative determination may submit a written appeal to the District's Board of Trustees within 30 days.

The Board will review the original complaint, the investigative report, the administrative determination, and the written appeal. The Board will issue a final District decision in the matter within forty-five (45) days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the Complainant and the Respondent. The Complainant shall also be notified of his/her/their right to appeal this decision.

If the Board does not act within forty-five (45) days, the administrative determination will be deemed approved on the 46th day and will become the final decision of the District in the matter. The District shall promptly notify the Complainant and the Respondent of the Board's action, or if the Board took no action, that the administrative determination is deemed approved.

In any case not involving workplace discrimination, harassment, or retaliation, the Complainant shall have the right to file a written appeal with the California Community Colleges Chancellor's Office within 30 days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Title 5 Section 59350.

In any case involving employment discrimination, including workplace harassment, the Complainant may, at any time before or after the issuance of the final decision of the District, file a Complaint with the Department of Fair Employment and Housing.

Remand

The California Community College Chancellor's Office may remand any matter to the District for any of the following reasons: to cure defects in the investigation or in procedural compliance; to consider new evidence not available during the investigation despite the Complainant's due diligence that would substantially impact the outcome of the investigation; or to modify or reverse a decision of the District's Board of Trustees based upon misapplication of an applicable legal standard or an abuse of discretion.

If the California Community College Chancellor's Office remands a matter to the District, the District shall take necessary action and issue a decision after remand within 60 days. In any case not involving employment discrimination, the Complainant may appeal the District's amended determination to the California Community College Chancellor's Office within 30 days by following the appeal procedures above.

Extension of Time

If the District is unable to comply with the 90-day deadline, the District may extend the time to respond by up to 45 additional days. An extension may be taken only once without permission from the California Community Colleges Chancellor's Office, and must be necessary for one of the following reasons:

- a need to interview a party or witness who has been unavailable;
- a need to review or analyze additional evidence, new allegations, or new complaints related to the matter; or
- to prepare and finalize an administrative determination.

The District shall send a written notice to the Complainant and to a Respondent who is aware of an investigation indicating the necessity of an extension, the justification for the extension, and the number of days the deadline will be extended. The District shall send this notice no later than 10 days prior to the initial time to respond.

The District may request additional extensions from the California Community Colleges Chancellor's Office after the initial 45-day extension. The District shall send a copy of the extension request to the Complainant and to a Respondent who is aware of an investigation. The Complainant and Respondent may each file a written objection with the California Community Colleges Chancellor's Office within 5 days of receipt.

Student Workers

For the purposes of this regulation, when a student worker is a complainant or a respondent, they will be treated as either a student or an employee dependent on what their primary role was when the harassment or discrimination allegedly occurred.

File Retention

The District will retain on file for a period of at least five years after closing the case copies of:

1. the original complaint;
2. the investigatory report;
3. the summary of the report if one is prepared;
4. the notice provided to the parties, of the District's administrative determination and the right to appeal;
5. any appeal; and
6. the District's final decision.

The District will make such documents available to the Chancellor of the California Community Colleges upon request.

Dissemination of Policy and Regulations

District Policy and Regulations related to harassment will include information that specifically addresses sexual violence, District policies and regulations, will be made available to all students, faculty members, members of the administrative staff and members of the support staff, and will be posted on campus and on the District's website.

When hired, employees are required to sign that they have received the policy and regulations, and the signed acknowledgment of receipt is maintained in each employee's personnel file.

Training

Training of all staff will be conducted. All new employees will be provided with sexual harassment and discrimination training and education within six months of their employment with the District. Thereafter, the District will provide sexual harassment prevention training and education to each employee once every two years.

Seasonal and temporary employees, or any employee that is hired to work for less than six months, will be provided sexual harassment prevention training within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first.

The training and education required by this regulation will include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education will also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation. Harassment prevention training must also address potential exposure and liability for employers and individuals, prevention of abusive conduct, and a supervisor's obligation to report sexual harassment, discrimination, and retaliation when they become aware of it, appropriate remedial measures to correct harassing behavior.

In addition, the training provided should be inclusive of harassment based on gender identity, gender expression, and sexual orientation as a component and will include practical examples of harassment based on gender identity, gender expression, and sexual orientation, and will be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

The District will maintain appropriate records of the training provided.

Education and Prevention for Students

In order to take proactive measures to prevent sexual harassment and violence toward students, the College will provide preventive education programs and make victim resources, available to students. The College will include such programs in orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, the District's policies, regulations, and disciplinary procedures, and the consequences of violating these policies or regulations. A training program or informational services will be made available to all students at least once annually.

The education programs will also include information aimed at encouraging students to report incidents of sexual violence to the appropriate College, District and law enforcement authorities, and about alcohol education, and bystander intervention.

Accommodations

An employee who is a victim of domestic violence, sexual assault, or stalking may request time off for any of the following reasons:

- To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking;
- To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking;
- To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking;
- To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

To request an accommodation, see AR 7348 – Employment Disability Accommodations.

Annual Complaint Reporting

The Vice Chancellor, Human Resources shall provide the Board of Trustees, upon request but not more than once per year, a report of complaints filed pursuant to Administrative Regulation 3435. This report must disaggregate the complaints by complaint type (Student Complainant and Student Respondent, Student Complainant and Employee Respondent, Employee Complainant and Student Respondent, Employee Respondent and Employee Respondent, etc.). This report must also disaggregate the complaints by the Complainant's race, age, gender, religion, or any other characteristic identified by the Board.

EXHIBIT C

STATE CENTER COMMUNITY COLLEGE DISTRICT

Hearing Determination Letter: Calvin_Richardson

January 3, 2024

This letter constitutes the written determination in the above-referenced matter addressed by State Center Community College District (hereinafter the “College”) involving Deanna Calvin (hereinafter “Complainant”), and David Richardson (hereinafter “Respondent”). The College worked to conduct a thorough, neutral, fact-finding investigation, followed by a formal hearing on December 1, 2023, before an impartial Hearing Officer and Decision-Maker (hereinafter “Decision-Maker”) regarding allegations by Complainant of discrimination against LGBTQ+ students and staff, creating a hostile work environment, in violation of the following policies:

1. Administrative Regulation 3430 – Prohibition of Harassment
2. Administrative Regulation 34333 – Prohibition of Sexual Harassment Under Title IX
3. Administrative Regulation 3435 – Discrimination, Harassment, and Retaliation, Complaints and Investigations

These findings come after reviewing all available evidence, including interviews, evidence provided by the parties, witness statements and testimony, and testimony presented at the hearing. In considering the allegations, the Decision-Maker applied the presumption that Respondent is not responsible, and then applied the preponderance of the evidence as the standard in determining all findings.

1. The preponderance of the evidence **does not support** a finding that Respondent violated Administrative Regulation 3430 – Prohibition of Harassment

Respondent is therefore found not responsible for the alleged violation.

2. The preponderance of the evidence **does not support** a finding that Respondent violated Administrative Regulation 34333 – Prohibition of Sexual Harassment Under Title IX

Respondent is therefore found not responsible for the alleged violation.

3. The preponderance of the evidence **does not support** a finding that Respondent violated Administrative Regulation 34335 – Discrimination, Harassment, and Retaliation, Complaints and Investigations

Respondent is therefore found not responsible for the alleged violation.

PROCEDURAL STEPS

On May 1, 2023, the College received a formal complaint of discrimination from the Complainant alleging that Respondent discriminated against LGBTQ+ students and staff, creating a hostile work environment. Complainant filed a formal report with the College on May 10, 2023, alleging that Respondent purchased and distributed chocolate bars with offensive language.

On May 10, 2023, the College issued both parties a written Notice of Formal Complaint providing notice of the alleged incidents and intent to investigate. Specifically, the Notice of Formal Complaint alleged that:

- Respondent discriminated against LGBTQ+ students and staff, creating a hostile work environment, specifically by purchasing and distributing chocolate bars with offensive language.

On May 10, 2023, the College commenced an investigation into the alleged violation of its *Administrative Regulation 3430 (Prohibition of Harassment)*, *Administrative Regulation 34333 (Prohibition of Sexual Harassment Under Title IX)* and *Administrative Regulation 3435 (Discrimination, Harassment, and Retaliation, Complaints and Investigations)*. The College hired investigator Jeffrey Hollis of Oliver, Thomas & Hollis Investigations (the "Investigator") to conduct an investigation of this matter pursuant to the applicable policies.

After collecting all available evidence and interviewing the Complainant, Respondent, and additional witnesses, the Investigator made available to both parties a copy of the initial investigation report and all evidence that was obtained during the investigation. The College provided both parties at least ten days to submit a written response to the evidence.

The investigation report was finalized on July 3, 2023. Both parties were provided access to the comments made in response to the initial investigation report along with a copy of the final investigation report and all evidence collected. Complainant provided a written response on October 3, 2023. Respondent provided a written response on October 2, 2023.

On October 26, 2023, both parties were issued a Notice of Hearing, informing them that I had been appointed as the Decision-Maker, and stating that the parties could object to the appointment. Neither party challenged the appointment. The Notice of Hearing also informed them that a hearing in this matter had been scheduled for November 17, 2023, with a pre-hearing meeting on November 13, 2023. The parties were notified that all witness statements and exhibits included in the Investigation Report would be considered as part of the hearing.

On November 2, 2023, Complainant requested the hearing be changed to a later date to allow for more time to prepare. The Title IX Coordinator approved Complainant's request and rescheduled the hearing for December 1, 2023.

On November 12, 2023, Respondent submitted a written response. Complainant did not submit a written response.

On November 13, 2023, the parties and their advisors attended the pre-hearing meeting. The parties also received an updated Notice of Hearing indicating the new hearing date of December 1, 2023.

The parties had a fair opportunity to review and respond to all evidence prior to the hearing, which commenced on December 1, 2023. As the sole Decision-Maker, I hold no biases for or against complainants or respondents, generally, or for or against this Complainant or Respondent, in particular.

APPLICABLE POLICIES

As noted in the Notice of Allegation dated May 10, 2023, the allegation implicates the College's applicable policies as outlined in *Administrative Regulation 3430 (Prohibition of Harassment)*, *Administrative Regulation 3433 (Prohibition of Sexual Harassment Under Title IX)* and *Administrative Regulation 3435 (Discrimination, Harassment, and Retaliation, Complaints and Investigations)*.

Administrative Regulation 3433 (Prohibition of Sexual Harassment Under Title IX)

Sexual Harassment under Title IX:

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity (Hostile Environment)

Administrative Regulation 3430 (Prohibition of Harassment)

General harassment. Harassment based on race, religious creed, color, national origin, immigration status, ancestry, physical disability, mental disability, medical condition, pregnancy, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation or any person [sic], military and veteran status, or the perception that a person has one or more of these characteristics is illegal and violates District policy. Harassment will be found where, in aggregate, the incidents are sufficiently pervasive, persistent, or severe that a reasonable person with the same characteristics as the victim of the harassing conduct would be adversely affected to a degree that interferes with their ability to participate in or to realize the intended benefits or an institutional activity, employment or resource.

Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment if it meets the definition above. For example, repeated derisive comments about a person's compensatory [sic] to do the job, when based on that person's gender could constitute gender-based harassment. Harassment comes in many forms, including, but not limited to the following conduct that could, depending on the circumstances, meet the definition above, or could contribute to a set of circumstances that meets the definition:

- *Visual or Written*: The display or circulation of visual or written material that degrades an individual or group based on gender, race, national origin, sexual orientation or other protected

status. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions.

- *Environmental*: a hostile academic or work environment exists where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, ... or other protected status; or gratuitous comments regarding gender, ... or other protected status that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from an unwanted focus on sexual topics or sexually suggestive statements in the classroom or work environment. It can also be created by an unwarranted focus on, or stereotyping of, ... genders or other protected statuses. An environment may also be hostile towards anyone who merely witnesses unlawful harassment in their immediate surroundings, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work.

Administrative Regulation 3435 (Discrimination, Harassment, and Retaliation, Complaints and Investigations)

“Harassment” includes conduct based on certain protected characteristics that creates a hostile, offensive, oppressive, or intimidating work or educational environment and deprives a person of their statutory right to work or learn in an environment free from harassment. In the workplace, harassment also includes conduct based on certain protected classes that sufficiently offends, humiliates, distresses, or intrudes upon a person, so as to disrupt the person's emotional tranquility in the workplace, affect their ability to perform the job as usual, or otherwise interfere with and undermine their personal sense of well-being.

THE HEARING

The hearing was held on December 1, 2023, via Zoom and was recorded.

Complainant participated in the hearing with advisor Renée Garcia. Respondent participated in the hearing with advisor Peter Bradley. Investigator Jeff Hollis did not attend the hearing as the result of an illness. District Director of EEO/Diversity & Professional Development, Christine Phillips, served as the Hearing Facilitator. Witnesses Dr. Lucia Robles, Dr. Marie Harris, and Mr. William “Bill” Mask appeared during the hearing.

Complainant provided an opening statement and closing statement. Respondent provided an opening statement and closing statement. Both Parties were provided with the opportunity to submit an impact statement to be considered by the Decision-Maker as it pertains to sanctioning and remedies. Both Complainant’s and Respondent’s Advisors had the opportunity to cross-examine the Parties as well as to

ask any follow-up questions prior to the conclusion of each person's testimony. Both Complainant and Respondent's Advisors had the opportunity to cross-examine the Witnesses, as well as to ask any follow-up questions prior to the conclusion of each Witnesses' testimony. Participants were provided with enough flexibility in their responses, which allowed them to provide additional, relevant contextual information.

The testimony of the Parties and Witnesses as reflected in the investigation materials was determined by the Decision-Maker to be credible and relevant. The Decision-Maker considered and relied upon the testimony provided by the Parties and Witnesses as reflected in the investigation materials and as provided by Complainant, Respondent, and Witnesses during the hearing.

The hearing concluded on the same day after approximately three hours and forty-five minutes of proceedings.

Participants

- Mikiba W. Morehead, Decision-Maker (She/Her)
- Deanna Calvin, Complainant (She/Her)
- Renée Garcia, Complainant's Advisor (She/Her)
- David Richardson, Respondent (He/Him)
- Peter Bradley, Respondent's Advisor (He/Him)
- Julie Moore, Investigator (She/Her)
- Dr. Lucia Robles, Witness (She/Her)
- Dr. Marie Harris, Witness (She/Her)
- Mr. Bill Mask, Witness (He/Him)
- Christine Phillips, Hearing Facilitator (She/Her)

Irrelevant Questions During Cross-examination

The following question posed by Complainant's advisor during cross-examination of Complainant was determined to be irrelevant:

- How do you feel faculty members have the responsibility to protect nonbinary and transgender students? Why do they have the responsibility?

The following question posed by Respondent's advisor during cross-examination of Complainant was determined to be irrelevant:

- How would you describe your duties as Executive Assistant to the Vice President of Learning & Student Success?

The following questions posed by Complainant's advisor during cross-examination of Respondent were determined to be irrelevant:

- Did you seek out these specific candy bars?
- Do you care about how people feel regardless of gender identity?
- Are you respectful of others who may not identify as you do?

The following question posed by Respondent's advisor during cross-examination of Respondent was determined to be irrelevant:

- When you're off duty, do you just...turn off your teaching function and stop teaching?

The following question posed by Respondent's advisor during cross-examination of Witness Harris was determined to be irrelevant:

- ...in 2022, you gave Mr. Richardson a letter of reprimand for his use of personal pronouns in a mocking manner. Correct?

THE ALLEGATIONS AND FINDINGS

On April 29, 2023, Madera Community College held its first Open House event. Departments and Offices across the College were encouraged to participate by hosting a table to showcase their area. Complainant is the Executive Assistant to the Vice President of Learning and Student Success and attended the event to help wherever needed. Respondent is a faculty member in the History Department. Respondent and Mr. Mask¹ co-hosted a table at the event on behalf of the History Department. The History Department's table displayed historical memorabilia from Respondent's and Mr. Mask's personal collections and an assortment of candy and snack bags for passersby to take. Complainant described that included among the candy and snacks available on the table hosted by the History Department, were chocolate candy bars with pronouns printed on the front external wrapper. Specifically, the candy bars had either SheHer or HeHim printed on the wrapper. Complainant stated that upon further inspection, she noticed that the candy bars with pronouns SheHer included the word "Nutless" in a smaller font size and the candy bars with pronouns HeHim included the word "Nuts" in a smaller font size. Complainant interpreted the candy bars to imply that individuals who use the pronouns SheHer would be someone without testicles and that individuals who use the pronouns HeHim would be someone with testicles. Complainant stated that she then inspected the candy bar wrapper closer and found the phrase "building a woke-free economy" printed on the back of the wrapper. Complainant shared that she identifies as a member of the Trans/Nonbinary community and found the candy bars to be offensive.

¹ William "Bill" Mask is a faculty member in the History Department.

Complainant stated that she returned to the table hosted by the History Department to inquire about the meaning of the words written on the candy bars. Complainant asked Respondent directly, "What does this mean?" Respondent stated that he did not know and encouraged Complainant to contact the company who made the candy bars. Complainant stated that she told Respondent that she found the candy bars to be highly offensive. Complainant stated that Respondent did not respond to her statement. Complainant stated that Respondent did not remove the candy bars from the History Department's table after being informed that the candy bars were offensive. Complainant believes that Respondent's action of offering candy bars with words that mock pronouns was intentional and created a hostile environment for students and employees who identify as members of the LGBTQ+ community.

Respondent denied Complainant's allegation that his actions were intentional or resulted in the creation of a hostile environment. Respondent stated that he has a long-standing tradition of providing snacks as a way to get people to pay attention to historical material, and at events like the Open House. Respondent stated that he found the wording on the candy bars to be humorous and purchased a box of twenty-four candy bars two months prior to the Open House event as a way to support a new small business. Respondent stated that over that time he ate some of the candy bars and gave some away. Respondent stated that he still had several candy bars leftover and did not want them to go to waste. Respondent stated that his only intention was not to waste the candy bars.

Respondent described that Complainant approached the History Department's table in an aggressive manner and that he realized immediately that their interaction was not going to be a collegial conversation. Respondent described Complainant as having aggressive body language, speaking in a raised voice, and having her cell phone out taking pictures of the table. Respondent stated that Complainant's anger seems to be more directed toward the wording on the back of the wrapper (...building a woke-free economy) than the front labeled with the SheHer and HeHim pronouns. Respondent stated that he chose not to engage with Complainant so as not to cause a scene. Respondent stated that when Complainant realized that he was not going to engage, she walked away from the table without stating that she was offended or requesting that he remove the candy bars. Respondent stated that if he knew someone was offended by the candy bars, he would have removed them from the table.

Witness Robles was present at the Open House. Witness Robles stated that she did not see the candy bars or witness the interaction between Complainant and Respondent. Witness Robles stated that she heard about what happened after the fact.

Witness Harris was present at the Open House. Witness Harris deferred to the statement she gave during the investigation, which is included in the investigation report. Witness Harris affirmed that she picked up a candy bar with the pronouns SheHer and took the candy bar to the table hosted by her department to show Complainant. Witness Harris stated that she initially thought the pronouns were positive. Witness Harris stated that when she showed the candy bar to Complainant, Complainant pointed out the word "Nutless" below the pronouns and explained her interpretation of the message.

Witness Harris stated that once Complainant offered this explanation, she found the candy bars to be offensive. Witness Harris stated that she asked Complainant if she wanted Witness Harris to request for the candy bars to be removed from the History Department's table. Witness Harris stated that Complainant declined her offer and responded that she would instead go talk to Respondent as a peer/colleague.

Witness Harris stated that if the candy bars only had the pronouns displayed, she would not have found the wording to be offensive. Witness Harris indicated that she felt that the addition of the words "Nutless" and "Nuts" would be offensive to the Trans/Nonbinary community, therefore she viewed the candy bars as offensive.

Witness Mask was present at the Open House and co-hosted the History Department's table with Respondent. Witness Mask deferred to the statement he gave during the investigation, which is included in the investigation report. Witness Mask confirmed that Respondent has a history of providing snacks for Department-related events.

Witness Mask was present during the interaction between Complainant and Respondent. Witness Mask stated that he knew the interaction was not going to go well because he has close relationships with both Complainant and Respondent. Witness Mask stated that once the interaction ended, he removed the remaining candy bars from the table. Witness Mask stated that he did not hear Complainant tell Respondent that she was offended by the candy bars, but that he knew Complainant would be offended by the candy bars if she saw them.

Analysis

Before evaluating the circumstances in light of the College's policy prohibitions, a determination is necessary regarding whether the events described within the allegation occurred by a preponderance of the evidence. If the reliability of the allegations is established by a preponderance, the circumstances can then be analyzed in light of the College's Administrative Regulation prohibitions to determine whether they were violated by Respondent.

It is undisputed that Respondent participated in the Madera Community College Open House event as a representative of the History Department. It is undisputed that Respondent provided the assorted candy and snacks offered as part of the items displayed on the table. It is undisputed that among the candy and snacks displayed on the table were several chocolate candy bars with wrappers that read "SheHer Nutless" and "HeHim Nuts". Therefore, the preponderance of the evidence is met.

What remains in dispute is whether Respondent's action of including chocolate candy bars with wrappers that read "SheHer Nutless", "HeHim Nuts" created a hostile environment for LGBTQ+ students and employees of the College. The analysis now turns to a determination regarding whether Respondent's action constitutes a violation of College policy. While it is disputed whether Respondent's

actions were intentional, intent is not an element required as part of a hostile environment analysis either under Title IX or the applicable policy provision outlined in the Administrative Regulations. Therefore, an analysis of Respondent's intent is not included in the analysis below.

Administrative Regulation 3433 (Prohibition of Sexual Harassment Under Title IX)

Administrative Regulations 3433 regarding Sexual Harassment under Title IX defines a hostile environment as unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity. For Respondent's conduct to have created a hostile environment, each of the policy elements must be met by a preponderance of the evidence standard.

Unwelcomeness is a subjective standard, and that policy element was satisfied when Complainant filed a formal complaint. The alleged conduct was on the basis of sex because the messaging on the candy bars included the binary pronouns she/her and he/him, which are often used to reflect an individual's gender identity and/or gender expression.

Severity is a measure of the egregiousness of an incident, either in isolation or in aggregate. The alleged conduct was not severe based on the reasonable person standard because the messaging on the candy bars was not physically threatening, humiliating, lascivious, or invasive. The message was not directed at a specific person or group of people, did not include a call for violence or threats of violence, and was not inherently abusive, embarrassing, or humiliating. It was mocking, obnoxious, in poor taste, and unprofessional, but that does not mean it was severe.

Pervasiveness is a measure of the widespread nature of the conduct or its impact. The alleged conduct does not meet the pervasive element of the policy definition. Although the candy bars were present at a public Open House event, they were included among several other items on the table, they were not prominently displayed, and the conduct only occurred on April 29th. Additionally, testimony from the parties and witnesses indicated that the confrontation between the parties happened early into the Open House. Therefore, the candy bars were only present for a short amount of time before Witness Mask removed them from the table.

Making statements that mock an individual's gender identity and/or gender expression typically constitutes conduct that is objectively offensive. A reasonable person similarly situated to the Complainant would likely find the words "SheHer Nutless" and "HeHim Nuts" to be objectively offensive, particularly given the exclusionary and assumptive nature of the message. However, in this instance, the evidence supports that the messaging on the candy bars was not directed at Complainant or specifically about Complainant. Moreover, the messaging on the candy bars was not directed at LGBTQ+ individuals or any specific group, thus mitigating the objectiveness of any offense that may have resulted. Since the alleged conduct does not satisfy the severe, and pervasive, and objectively offensive policy elements,

the preponderance of the evidence **does not support** a finding that Respondent violated Administrative Regulation 3433 (Prohibition of Sexual Harassment Under Title IX) pertaining to hostile environment.

Administrative Regulation 3430 (Prohibition of Harassment)

Administrative Regulations 3430 prohibiting harassment defines general harassment as, in relevant part, as harassment based on... sex, gender, gender identity, gender expression, ...or the perception that a person has one or more of these characteristics is illegal and violates District policy. Harassment will be found where, in aggregate, the incidents are sufficiently pervasive, persistent, or severe that a reasonable person with the same characteristics as the victim of the harassing conduct would be adversely affected to a degree that interferes with their ability to participate in or to realize the intended benefits or an institutional activity, employment or resource.

Administrative Regulations 3430 goes on to define gender-based harassment as a subset of general harassment where hostile or offensive conduct based on gender can constitute prohibited harassment, if it meets the definition above. The policy then identifies forms of gender-based harassment that could, depending on the circumstances, be:

- *Visual or Written*: The display or circulation of visual or written material that degrades an individual or group based on gender, race, national origin, sexual orientation or other protected status. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions.
- *Environmental*: a hostile academic or work environment exists where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, ... or gratuitous comments regarding gender, ... or other protected status that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from an unwanted focus on sexual topics or sexually suggestive statements in the classroom or work environment. It can also be created by an unwarranted focus on, or stereotyping of, ... genders or other protected statuses. An environment may also be hostile towards anyone who merely witnesses unlawful harassment in their immediate surroundings, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work.

The alleged conduct was on the basis of sex because the messaging on the candy bars included the binary pronouns she/her and he/him, which are often used to reflect an individual's gender identity and/or gender expression.

Pervasiveness is a measure of the widespread nature of the conduct or its impact. The alleged conduct does not meet the pervasive element of the policy definition. Although the candy bars were present at a public Open House event, they were included among several other items on the table and were not prominently displayed or had undue attention drawn to their presence. Additionally, testimony from the parties and witnesses indicated that the confrontation between the parties happened early into the Open House. Therefore, the candy bars were present for only a short amount of time before Witness Mask removed them from the table.

Persistent is a measure of how frequently the conduct occurs. The alleged conduct does not meet the persistent element of the policy definition because the conduct is described to have occurred on only one occasion, during the Open House event on April 29th.

Severity is a measure of the egregiousness of an incident, either in isolation or in aggregate. The alleged conduct was not severe based on the reasonable person standard because the messaging on the candy bars was not physically threatening, humiliating, lascivious, or invasive. The message was not directed at a specific person or group of people, did not include a call for violence or threats of violence, and was not inherently abusive, embarrassing, or humiliating.

Lastly, the alleged conduct would not meet the reasonable person standard of adverse affect. The level of adverse affect required by the policy is to a degree that interferes with a person's ability to participate in or benefit from the College's activity, or in this case, the Open House event. Complainant did not identify any ways in which the candy bars in questions adversely affected, limited, or interfered with her ability to participate in the Open House event. In fact, after Complainant engaged Respondent in conversation about the meaning of the message on the candy bars, Complainant remained at the Open House event and continued to participate in the main aspects of the event. Since the alleged conduct does not satisfy any of the policy elements required for general harassment, the allegation fails to meet the threshold for gender-based harassment as well. Therefore, the preponderance of the evidence **does not support** a finding that Respondent violated Administrative Regulation 3430 (Prohibition of Harassment) pertaining to general harassment or gender-based harassment (visual or Written, or Environmental).

Administrative Regulation 3435 (Discrimination, Harassment, and Retaliation, Complaints and Investigations)

Administrative Regulation 3435 defines harassment as conduct based on certain protected characteristics that creates a hostile, offensive, oppressive, or intimidating work or educational environment and deprives a person of their statutory right to work or learn in an environment free from harassment. In the workplace, harassment also includes conduct based on certain protected classes that sufficiently offends, humiliates, distresses, or intrudes upon a person, so as to disrupt the person's emotional tranquility in the workplace, affect their ability to perform the job as usual, or otherwise

interfere with and undermine their personal sense of well-being.

This is not a stand-alone allegation, but an overlapping charge. Because the preponderance of the evidence **does not support** Complainant's allegation that Respondent subjected Complainant to gender-based harassment or general harassment prohibited by Administrative Regulations 3430, the preponderance of the evidence does not support a finding that Respondent violated Administrative Regulation 3435 pertaining to harassment, for the same reasons.

Findings and Determinations

Considering the totality of the evidence provided, the preponderance of the evidence does not support a determination that Respondent discriminated against LGBTQ+ students and staff, creating a hostile work environment, specifically by purchasing and distributing chocolate bars with offensive language. Therefore, the preponderance of the evidence does not support that Respondent violated College policy. Respondent is reminded that the purpose of the event was to draw students to the History Department, not to repel them, and that conduct that might be acceptable in his personal life and off-campus is not necessarily appropriate in a workplace or academic environment where maturity and professionalism are expected.

APPEAL RIGHTS

Both parties have the right to appeal the outcome outlined in this hearing determination letter as detailed in College Policy below:

Appeal Rights

Either Party may contest this outcome.

Grounds for Appeal

The Appellate Officer will serve as the Hearing Officer on Appeal. In filing an appeal of the District's determination regarding responsibility or the District's dismissal of a formal complaint, the Party must state the grounds for appeal and a statement of facts supporting those grounds.

The grounds for appeal are as follows:

- A procedural irregularity affected the outcome;
- New evidence was not reasonably available at the time the District's determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome; or

- The District’s Title IX Coordinator, investigator, or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

Appeal Procedure

- If the Complainant or Respondent submit an appeal to the District, the District will:
- Notify the other Party in writing within five (5) business days of receiving a Party’s appeal.
- Allow the non-appealing Parties at least ten (10) business days from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome.

The Appellate Officer will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 45 business days after the Appellate Officer receives the response to the appeal or the last day to provide a response. The District will provide the written decision simultaneously to both Parties.

The Appellate Officer may extend or otherwise modify the deadlines provided above. Either Party may seek an extension by submitting a written request to the Appellate Officer explaining the need for the extension and the proposed length of the extension.

The Appellate Officer will respond to the request within 48 hours in writing and will inform the Parties simultaneously whether the extension is granted.

Please contact Christine Phillips, District Director of EEO/Diversity & Professional Development at christine.phillips@scccd.edu for additional information.

Sincerely,



Mikiba W. Morehead, Ed.D.
Decision-Maker

EXHIBIT D



MADERA
COMMUNITY
COLLEGE

February 29, 2024

VIA EMAIL & U.S. MAIL

drichal059@gmail.com

David Richardson
6411 N Carnegie
Fresno, CA 93722

Re: *Notice to Correct Deficiencies (Education Code sections 87732 and 87734)*

Dear Mr. Richardson:

Pursuant to Education Code sections 87732 and 87734, this letter constitutes notice to correct your performance deficiencies involving unprofessional conduct or unsatisfactory performance. The Education Code requires the State Center Community College District to provide an employee with such notice at least 90 days prior to initiating formal disciplinary proceedings on the grounds of unprofessional conduct or unsatisfactory performance. Please be advised that Sections 87732 and 87734 does not preclude initiation of formal disciplinary proceedings for causes other than unprofessional conduct or unsatisfactory performance.

This formal notice, though not exhaustive, provides you with sufficient information to understand the nature of your unprofessional conduct or unsatisfactory performance. The following are examples to illustrate some specific instances of your behavior to provide you with an opportunity to correct these faults and overcome the grounds for charges based on unprofessional conduct or unsatisfactory performance.

Please be advised that the 90-day remedial period specified by Education Code section 87734 will take effect upon the date the District serves you this notice. The following events describe your unprofessional conduct or unsatisfactory performance:

1. You are a tenured faculty member of the State Center Community College District, currently assigned to Madera Community College in the History Department.
2. Education Code section 87732 governs the conduct for which the District may discipline a faculty member.

Main campus: 30277 Ave. 12, Madera, CA 93638 • (559) 675-4800 • www.maderacollege.edu

Oakhurst campus: 40241 Hwy. 41, Oakhurst, CA 93644 • (559) 683-3940 • www.oakhurstcenter.com

3. The collective bargaining agreement between the District and the State Center Federation of Teachers, Article 13, Section 3, Evaluation Criteria, provides that faculty members are responsible to:
 - a. Be responsive to the educational needs of students by exhibiting awareness and sensitivity to the following: (i) Diversity of cultural backgrounds, gender, age, and lifestyles;
 - b. Maintain of ethical standards in accordance with American Association of University Professors (AAUP) ethical standards statement; and
 - c. Maintain of workable relationships with colleagues.

(Attached, as Exhibit "A," is a true and correct copy of Article 13 of the Collective Bargaining Agreement between the District and the State Center Federation of Teachers.)

4. On April 29, 2023, Madera Community College held its Open House event.
 - a. You co-hosted the History Department's table, displaying items from your personal collection.
 - b. You also brought chocolate bars that displayed "SheHer" or "HeHim" on the wrappers. (Attached, as Exhibit "B," are true and correct copies of the April 29, 2023 Photographs of the Chocolate Bars at the Open House Event.)
 - i. Under the "SheHer" labels, the wrappers also said "NUTLESS."
 - ii. Under the "HeHim" labels, the wrappers also said "NUTS."
 - iii. On the back of chocolate bars, the wrappers said, "ENJOY THE SWEET TASTE OF BUILDING A WOKE-FREE ECONOMY."
 - iv. You purchased the chocolate bars from "Jeremy's Razors," which launched "Jeremy's Chocolate" for the following reasons: "For International Women's Day, Hershey's hired a biological male to be the spokesperson for their Women's Day campaign. It's humiliating. That's why we launched Jeremy's Chocolate. We have two kinds: SheHer and HeHim. One of them got nuts. You know which is which." (Attached, as Exhibit "C," is a true and correct copy of the July 3, 2023 Confidential Investigation Report, David Richardson Investigation.)
 - c. During the Open House Event, another District employee walked to the History Department's table and noticed the chocolate bars. Deanna Calvin, the Executive Assistant to the Vice President of Learning and Student Success, noted the chocolate bars had pronouns printed on them.
 - d. Calvin asked you what the language on the chocolate bars meant, but you did not directly respond. You claimed ignorance and told Calvin to ask the company that made the chocolate bars.

- e. Calvin told you that she found your chocolate bars to be offensive and it intentionally mocked pronouns. You denied that Calvin told you that she was offended.
- f. You claimed that Calvin had “aggressive body language” and was “speaking in a raised voice.” Your description of the events makes it clear that Calvin was offended. Even if Calvin did not tell you expressly that she was offended, you have the interpersonal experience gained from your years of interacting with people to recognize that you caused offense.
 - i. Bill Mask, another faculty member at the History Department’s table, removed the remaining candy bars from the table. According to Mask, he knew that the chocolate bars would offend Calvin if she saw them.
 - ii. Dr. Marie Harris, Vice President of Learning and Student Success, also saw the chocolate bars and viewed the chocolate bars as offensive to the Trans/Nonbinary community. Dr. Harris recognized that the lines “Nutless” and “Nuts” would be offensive to the Trans/Non-binary community.

(Attached, as Exhibit “D,” is a true and correct copy of January 3, 2024 Hearing Determination Letter Re Calvin and Richardson.)

5. Calvin filed a Title IX complaint against you. During the investigation and hearing process, you claimed that you would have removed the chocolate bars if you knew that they offended anyone. (See Exhibit “D,” at p. 7.) You were aware that the chocolate bars offended Calvin based on how you described her demeanor. (See Exhibit “C,” at p. 15.) Yet you did not remove them.
 - a. The third-party investigator concluded, based on the preponderance of the evidence, it is more likely than not that you should have anticipated the chocolate bars did not align with the District’s inclusivity vision after receiving the DEI training. Further, if you did not anticipate the chocolate bars being offensive to some people, Ms. Calvin’s demeanor and comments during their interaction would have likely drawn your attention to the potentially offensive language on the chocolate bars, but you did not immediately remove them. (See Exhibit “C,” at p.15.)
 - b. As recognized by the investigator, the seller of the chocolate bars made it clear that the point of the wrappers is to mock gender pronouns. Despite knowing the source of and intent behind the chocolate bars, you decided to bring them to the Open House, which you know is an event organized by the District open to whole community.
6. During the course of the Title IX investigation and the Title IX hearing, it became apparent that your conduct was unprofessional.¹

¹ The Title IX Hearing Officer ultimately concluded that your misconduct did not rise to the level of sexual harassment or discrimination, but that it was nevertheless unprofessional and offensive.

- a. The Title IX Hearing Officer concluded that your conduct was “mocking, obnoxious, in poor taste, and unprofessional.” (See Exhibit “D,” at p. 9.)
- b. The Title IX Hearing Officer noted that “[m]aking statements that mock an individual’s gender identity and/or gender expression typically constitutes conduct that is objectively offensive. A reasonable person similarly situated to the Complainant would likely find the words “SheHer Nutless” and “HeHim Nuts” to be objectively offensive, particularly given the exclusionary and assumptive nature of the message.” (See Exhibit “D,” at p. 9.)
- c. Although your misconduct did not rise to the level of sexual harassment, it was nevertheless unprofessional.

As indicated above, your conduct as an employee of the State Center Community College District has been unprofessional and your performance has been unsatisfactory. Your conduct is in violation of the Faculty CBA and your job duties.

In an effort to assist you in overcoming these deficiencies, you will comply with each of the following directives:

- A. You will treat all students and staff fairly and equitably. You will provide every student and District staff member with respect. You will not denigrate or belittle students or employees or make inappropriate comments regarding his, her, or their gender, gender identity, gender expression, pronouns, or any other protected characteristic.
- B. You will adhere to all provisions of the collective bargaining agreement between the District and State Center Federation of Teachers, Local 1533, particularly the provisions of Article 13, Section 3, subsection (2)(b) which incorporates the ethical standards of the American Association of University Professors. You will comply with all the provisions of the District’s Board Policies and Administrative Regulations. (See Exhibit “A.” Attached, as Exhibit “E” is a true and correct copy of the American Association of University Professors Statement on Professional Ethics.)
- C. You will comply with all lawful directives of your supervisors and all administrators. You will not substitute your own judgment for the judgment of your supervisor or other administrators.
- D. You will comply with all Board Policies and Administrative Procedures.
- E. You will communicate with all individuals respectfully and professionally. You will cease all unprofessional, unsatisfactory, and dishonest conduct.
- F. You will engage in ten hours of additional professional development in the areas of diversity, equity, inclusion, access, and effective communication. You are responsible to locate the professional development provider and obtain approval of your choice from the President or his designee. You must complete the training as soon as possible but in no event later than May 15, 2024. You will be paid for time spent on the training, and the District will pay for the course.

The Administration is willing to assist you in overcoming your deficiencies. However, please be advised that the undersigned insists that you correct these deficiencies immediately. Your failure to do so may result in your dismissal in accordance with the provisions of the Education Code.

Finally, please note that the undersigned reserves the right to proceed with disciplinary action prior to the expiration of the periods described in Education Code section 87734 in connection with any incidents or misconduct which may be considered other than unsatisfactory performance or unprofessional conduct.

Pursuant to Education Code section 87031, the District will place a copy of this notice in your personnel file. You have the right to prepare a written response to this notice within 10 working days following receipt of the notice. The District will attach any response or comment hereto prior to placement of this notice in your file.

Also enclosed is a copy of Education Code sections 87732 and 87734, and your last performance evaluation dated July 17, 2023.

Very truly yours,



Ángel Reyna, Ed.D.

President, Madera Community College

Enclosures:

Performance Evaluation Dated July 17, 2023

Education Code sections 87732 and 87734

Exhibits:

- Exhibit A Article 13 of the Collective Bargaining Agreement between the District and the State Center Federation of Teachers
- Exhibit B April 29, 2023 Photographs of the Chocolate Bars at the Open House Event
- Exhibit C July 3, 2023 Confidential Investigation Report, David Richardson Investigation
- Exhibit D January 3, 2024 Hearing Determination Letter Re Calvin and Richardson
- Exhibit E American Association of University Professors Statement on Professional Ethics

cc: Julianna D. Mosier
Personnel File

EXHIBIT E



Book	Admin Regulations
Section	Chapter 3 General Institution
Title	Prohibition of Sexual Harassment Under Title IX
Code	AR 3433
Status	Active
Legal	Title 5 Sections 59320 et seq; Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e; Title IX of the Education Amendments Act of 1972
Cross References	Board Policy 3410, 3430, 3433, 3435, 3540, and 5520 Administrative Regulation 3410, 3430, 3434, 3435, 3540, 5520, and 7348
Adopted	October 12, 2020
Last Revised	August 21, 2023
Last Reviewed	August 21, 2023
Prior Revised Dates	05/02/22, 10/17/22

Prohibition of Sexual Harassment under Title IX

The District is committed to providing an academic and work environment free of unlawful sexual harassment. This regulation defines sexual harassment on campus under Title IX and is related to the procedure for responding to corresponding allegations as outlined in Administrative Regulation 3434, "Responding to Harassment Based on Sex Under Title IX".

This regulation and the related policy protects students and employees, in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, a District bus, or at a class, event, or training program sponsored by the District at another location.

Definitions

Sexual Harassment under Title IX: Conduct that satisfies one or more of the following:

- A District employee conditions the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (*quid pro quo* harassment);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity;
- Sexual assault, including the following:
 - **Sex Offenses.** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - **Rape** (except Statutory Rape). The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the genital or anal opening of the body of another person or oral or anal sexual intercourse.

- **Sexual Assault with an Object.** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything the offender uses other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.
- **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- **Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse.**
 - **Incest.** Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - **Statutory Rape.** Non-Forcible. Sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
- **Dating violence.** Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a relationship will be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- **Domestic Violence.** Violence committed:
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; or
 - By any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws of California.
- **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

Accommodations

An employee who is a victim of domestic violence, sexual assault, or stalking may request time off for any of the following reasons:

- To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking;
- To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking;
- To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking;
- To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

To request an accommodation, see AR 7348 – Employment Disability Accommodations.

EXHIBIT F



Book	Admin Regulations
Section	Chapter 3 General Institution
Title	Responding to Harassment Based on Sex Under Title IX
Code	AR 3434
Status	Active
Legal	20 U.S. Code Sections 1681 et seq.; 34 Code of Federal Regulation (C.F.R.) Section 106.1 et seq.; Education Code Sections 67380 et seq.
Cross References	Board Policy 3410, 3430, 3433, 3540, and 5500 Administrative Regulation 3410, 3430, 3433, 3435, 3540, 5500, and 7348
Adopted	October 12, 2020
Last Revised	August 21, 2023
Last Reviewed	August 21, 2023
Prior Revised Dates	05/02/22, 10/17/22

Responding to Harassment Based Sex under Title IX

State Center Community College District (SCCCD) encourages all members of District community to report sexual harassment. This procedure only applies to conduct defined as sexual harassment under Title IX and applicable federal regulations and that meet Title IX jurisdictional requirements. The District will respond to sexual harassment and sexual misconduct that falls outside that definition and outside the jurisdiction of the Title IX federal regulations using California law and applicable District policies and procedures included in Board Policies and Administrative Regulations 3430, 3435, 3540, 5500, and 5520. In implementing the procedures discussed below, the District will also provide supportive measures, training, and resources in compliance with California law, unless they are preempted by the Title IX regulations.

These Title IX sexual harassment procedures and the related policy protect students, employees, applicants for employment, applicants for admission, and alumni participating in a District or College controlled event or activity.

Title IX Coordinator

Questions concerning Title IX may be referred to the District Title IX Coordinator whose contact information is below.

The District's Title IX Coordinator is Christine Phillips and the Title IX Coordinator's contact information is:

State Center Community College District
1171 Fulton Street, Fresno, CA 93721
(559)243-7171
christine.phillips@sccd.edu

Each District campus also has a designated Title IX Coordinator and contact information can be found on the District's Title IX webpage at <https://www.scccd.edu/about/title-ix/index.html>.

The District or College Title IX Coordinator is responsible for receiving and responding to reports of harassment based on sex under Title IX and misconduct and carrying out the District's Title IX responsibilities. The Title IX Coordinator will handle information received with the utmost discretion and will share information with others on a need-to-know basis. For example, the Title IX Coordinator may need to address public safety concerns on campus, comply with state and federal legal requirements, or share information to implement supportive measures.

A report of sexual harassment to the Title IX Coordinator does not necessarily lead to a full investigation, as discussed more fully below. However, the Title IX Coordinator will make an assessment to determine if there is a safety risk to the campus. If the Title IX Coordinator finds there is a continued risk, the Title IX Coordinator will file the formal complaint without the Complainant's consent or cooperation.

Title IX Harassment Complaints, Investigations, and Hearings

These Title IX sexual harassment procedures and the related policy protect students, employees, applicants for employment, and applicants for admission.

The investigation and adjudication of alleged sexual harassment under this procedure is not an adversarial process between the Complainant, the Respondent, and the witnesses, but rather a process for the District to comply with its obligations under existing law. The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

Jurisdictional Requirements – Application of Procedures

These procedures apply if the conduct meets the following three jurisdictional requirements:

- The conduct took place in the United States;
- The conduct took place in a District "education program or activity." This includes locations, events, or circumstances over which the District exercised substantial control over both the Respondent and the context in which the harassment occurred, including on-campus and off-campus property and buildings the District owns or controls or student organizations officially recognized by the District.
- The conduct meets the definition of Title IX "sexual harassment."

Definitions

Advisor: Throughout the grievance process, both the Complainant and Respondent have a right to an Advisor of their choice. If a Party does not have an Advisor at the time of the hearing, the District must provide the Party an Advisor of the District's choice, free of charge. The District may establish restrictions regarding the extent to which the Advisor may participate in the proceedings as long as the restrictions apply equally to both Parties.

Parties have the right to consult with an attorney, at their own expense, at any stage of the complaint process if they wish to do so. An attorney may serve as an advisor.

Complainant: A Complainant is an individual who alleges they are the victim of conduct that could constitute sexual harassment.

Consent: Consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. Both Parties must give affirmative consent to 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 or others to engage in the sexual activity. Lack of protest, lack of resistance, or silence does not indicate consent. Affirmative consent must be ongoing throughout a sexual activity and one can revoke their consent at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, is not an indicator of consent.

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable, based on the facts and circumstances the Respondent knew, or reasonably should have known, at the time of the incident. A Respondent's belief is not a valid defense where:

1. The Respondent's belief arose from the Respondent's own intoxication or recklessness;
2. The Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented; or

3. The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
- asleep or unconscious;
 - unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
 - unable to communicate due to a mental or physical condition.

Decision-Maker (Hearing Officer/Panel): The person, or group of people, who will oversee the live hearing and make a determination of responsibility. The District may have one Decision-Maker determine whether the Respondent is responsible, and another Decision-Maker determine the appropriate level of penalty for the conduct. The Hearing Officer(s) cannot be the Title IX Coordinator or the investigator.

Formal Complaint: A written complaint signed by the Complainant or Title IX Coordinator, alleging sexual harassment and requesting an investigation. If the Title IX Coordinator signs the formal complaint, they will not become a Party to the complaint.

Parties: As used in this procedure, this means the Complainant and Respondent.

Respondent: A Respondent is an individual reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual Harassment under Title IX: Conduct that satisfies one or more of the following:

- A District employee conditions the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (quid pro quo harassment);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity;
- Sexual assault, including the following:
 - **Sex Offenses:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent;
 - **Rape (except Statutory Rape):** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the genital or anal opening of the body of another person or anal or oral sexual intercourse;
 - **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything the offender uses other than the offender's genitalia, e.g., a finger, bottle, handgun, stick;
 - **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
 - **Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse:**
 - Incest: Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape: Non-Forcible. Sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape, the act is not an attack;
 - **Dating violence:** Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a relationship will be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship;
 - **Domestic Violence:** Violence committed:
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; or
 - By any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws of California;

- **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

Communicating that the Conduct is Unwelcome

When a person experiences unwelcome conduct, the District encourages employees, students, and third parties to let the offending person know immediately and clearly that the conduct or behavior is unwelcome, offensive, in poor taste and/or inappropriate.

District Employees and Officials with Authority

All district employees are required to and will promptly report suspected incidents of discrimination based on sex under Title IX to the Title IX Coordinator in a timely manner.

District Officials with Authority are not confidential resources and are required to report allegations of sexual harassment to the Title IX Coordinator promptly. All other employees are encouraged to report allegations to the Title IX Coordinator but are not required to do so.

The District has designated all employees as Officials with Authority. Officials with Authority are required to report all relevant information they know about sexual harassment including the name of the Respondent, the Complainant, any other witnesses, and the date, time, and location of the alleged incident.

Psychological Services Counselors in Psychological Services Centers and medical providers working under a license, and working in their capacity under that license at the District, will not disclose confidential information, including allegations of sexual misconduct, to anyone without the complainant's express permission.

Filing Timely Complaints

The District strongly encourages prompt reporting of sexual discrimination or misconduct. Prompt reporting allows for the collection and preservation of evidence, including physical evidence, digital media, and witness statements. A delay may limit the District's ability to effectively investigate and respond.

Filing a Complaint

Any person may report a complaint of sexual discrimination, harassment, or misconduct to the District or College Title IX Coordinator. The Title IX Coordinator will handle information received with the utmost discretion and will share information with others only on a need-to-know basis. For example, the Title IX Coordinator may need to address public safety concerns on campus, comply with state and federal legal requirements, or share information to implement supportive measures.

Individuals have the opportunity to decide whether they want to pursue a formal Title IX complaint. Reporting sexual harassment to the Title IX Coordinator does not automatically initiate an investigation under these procedures. A report allows the District to provide a wide variety of support and resources to impacted individuals and to prevent the reoccurrence of the conduct. A Complainant or the Title IX Coordinator filing a formal complaint will initiate an investigation.

If there are parallel criminal and Title IX investigations, the District will cooperate with the external law enforcement agency and will coordinate to ensure that the Title IX process does not hinder legal process or proceedings. The District will work in collaboration with that entity on the investigation and will consider what information can be shared, pursuant to state and federal law, to ensure that involved parties are not unnecessarily required to give multiple statements about a traumatic event. The District will continue to conduct its own thorough, reliable, prompt, and impartial investigation

The District will document reports of sexual harassment in compliance with the Clery Act, a federal law requiring data collection of crime within the campus geography. Under the Clery Act, the District does not document personal information; the District reports the type of conduct, and the time, date, and location. (Also see BP/AR 3540 "Sexual and Other Assaults on Campus".)

Confidential Reporting for Sexual Misconduct

Except for medical and mental health providers working under a license and working in that capacity at the District, all employees are required to promptly report suspected sexual misconduct to a Title IX Coordinator.

A District employee receiving a complaint should, whenever possible, before an individual reveals information that they may wish to keep confidential, ensure that the person making the report understands the employee's obligation to report to the Title IX Coordinator, the person's option to request confidentiality (which the District will take into consideration), and the person's ability to share the information confidentially with designated District employees.

All available reporting options can be found on the District's Title IX website found by following this link:

<https://www.sccd.edu/about/title-ix/how-to-report.html>

Amnesty for Student Reports of Sexual Misconduct

Because student complainants may be deterred from reporting incidents of sexual misconduct if alcohol, drugs, or other violations of District or campus rules were involved, the District will inform student complainants that the primary concern is for student safety and that a complainant or witness who participates in a sexual misconduct investigation, including sexual harassment, violence, assault, or discrimination, will not be subjected to disciplinary sanctions for a violation of the District's student conduct policy that occurred at or near the time of the 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.

Bias or Conflict of Interest

The District's Title IX Team or any person designated by the District to facilitate an informal resolution process, will not have potential or actual bias or conflict of interest in the investigatory, hearing, sanctioning, or appeal process or bias for or against Complainants or Respondents generally. Actual bias is an articulated prejudice in favor of or against one Party or position; it is not a generalized concern about the personal or professional backgrounds, positions, beliefs, or interests of the Title IX Team Member in the process. The District will ensure that all Title IX Team Members receive training on:

- The definition of sexual harassment in this procedure;
- The scope of the District's education program or activity;
- How to conduct an investigation;
- The grievance process including conducting hearings, appeals, and informal resolution processes; and
- How to serve impartially, including avoiding:
 - prejudgment of the facts at issue;
 - conflicts of interest; and
 - bias.

Intake of Complaint and Processing of Report

The District will promptly review every complaint of sexual discrimination, harassment, and misconduct. No complaint will remain unexamined. Following the review of each complaint, the District will determine the most appropriate course of action.

Receipt of Report

After receiving a report of sexual harassment, the Title IX Coordinator will contact the Complainant and Reporting Party to explain rights under this policy and procedure and invite the Complainant to an in-person meeting. The Title IX Coordinator will discuss supportive measures with the Parties.

Timeframe for Reporting

To promote timely and effective review, the District strongly encourages individuals to report sexual harassment as soon possible because a delay in reporting may affect the ability to collect relevant evidence and may affect remedies the District can offer.

Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a formal complaint has been filed. The District will provide the Complainant and Respondent with written notice of options for, available assistance in, and how to request available supportive measures. The District will provide such measures to Complainant and Respondent as appropriate and as reasonably available to restore or preserve equal access to the District's education program or activities. These measures are designed to protect the safety of all Parties, protect the District's educational environment, or deter sexual harassment. The District will provide supportive measures on a confidential basis

and will not disclose that the District is providing supportive measures except to those with a need to know to enable the District to provide the service. Supportive measures may include changes to academic, living, transportation, and working situation or protective measures such as counseling, extensions of deadlines, other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

When requested by a Complainant or otherwise determined to be appropriate, the District shall issue a no-contact directive prohibiting the parties from contacting each other during the pendency of the investigation. The District shall not issue a mutual no-contact directive automatically, but instead shall consider the specific circumstances of each report of sexual harassment to determine whether a mutual no-contact directive is necessary or justifiable to protect a Party's safety or well-being, or to respond to interference with an investigation. If the District issues any no-contact directive, the District shall provide the Parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action. If the District issues a mutual no-contact directive, the District shall also provide the Parties with a written justification for the directive.

Removal of Respondent Pending Final Determination

Upon receiving a report regarding sexual harassment, the Title IX Coordinator will make an immediate assessment concerning the health and safety of the Complainant and campus community as a whole. The District has the right to order emergency removal of a Respondent, or if the Respondent is an employee, place the employee on administrative leave.

Emergency removal

The District may remove a non-employee Respondent from the District's education program or activity on an emergency basis after it conducts an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.

The District may not use emergency removal to address a Respondent's threat of obstructing the sexual harassment investigation or destroying relevant evidence. Emergency removal is only available to address health or safety risks against individuals arising out of sexual harassment allegations, not to address other forms of misconduct that a Respondent might commit pending the processing of a complaint.

The District's Title IX Coordinator, College President, or designee, will conduct the individualized safety and risk analysis.

If the Title IX Coordinator, College President, or designee, determines emergency removal is appropriate, the person being removed from campus on an emergency basis will be provided with a notice and opportunity to attend a meeting and challenge the basis of their removal. The Title IX Coordinator, College President, or designee, will determine whether the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal.

Administrative leave

The District may place a non-student employee Respondent on administrative leave during the pendency of a process described in the formal complaint process below. The District will follow any relevant policies, procedures, collective bargaining agreements, or state law in placing an employee on administrative leave.

Upon receiving a complaint, the Responsible District Officer, or their designee will:

- Undertake efforts to informally resolve the complaint.
- Advise the complainant that they need not participate in an informal resolution.
- For student matters, advise the complainant that they may file their complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction;
- For employment matters, advise the complainant that they may file their complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies.
- Advise the complainant that they may file a complaint with local law enforcement, if the allegations are also criminal in nature.
- Advise the complainant that they may request that a Timely Warning be issued if it is determined that there is a substantial threat to the campus community.

- Work to provide the complainant and responding party(s) with non-disciplinary, non-punitive individualized supportive measures and services as appropriate and reasonably available to restore or preserve equal access to the District's education program or activities. The District will provide the Complainant and Respondent with written notice of options for, available assistance in, and how to request available supportive measures.

Informal Resolution Process

If the Title IX Coordinator determines that a complaint is appropriate for informal resolution, it may provide the Parties with the opportunity to participate in an informal resolution process, including mediation, at any time prior to reaching a determination regarding responsibility.

The District will provide the Complainant and Respondent written disclosure of the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or that could be shared.

The District must obtain the Parties' voluntary, written consent to participate in the informal resolution process and accept the outcome and sanctions offered. If the Parties reach an agreement, the District does not have to complete a full investigation and adjudication of a report of sexual harassment. At any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and resume the formal complaint process.

The informal resolution process is not available to resolve allegations that an employee sexually harassed a student or any allegations of sexual assault.

The District will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, the District will not require the parties to participate in an informal resolution process.

If the Informal Resolution process fails, a formal resolution will take place thereafter. No evidence elicited within the "safe space" of the Informal Resolution facilitation is later admissible in the formal resolution process unless all parties consent.

Formal Complaint Process

Notice to Parties

Upon receipt of a formal complaint, the Title IX Coordinator will provide the following notice in writing, to the Parties:

- Notice of the District's Title IX complaint process;
- Notice of the allegations of alleged sexual harassment with sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- 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 grievance process;
- Notice that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney;
- Notice that the Parties may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a Party or other source; and
- Inform the Parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the investigation or complaint process.
- For student parties, notice regarding appropriate counseling resources the District has developed and maintains.

If, in the course of an investigation, the District decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided above, the Title IX Coordinator will provide notice in writing of the additional allegations to the Parties.

Dismissal of Formal Complaint

The District must investigate the allegations in a formal complaint. However, the District must dismiss the formal complaint and will not process the complaint under these procedures if any of the following three circumstances exist:

- If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in this procedure;
- If the conduct alleged did not occur in the District's education program or activity;
- If the conduct alleged did not occur against a person in the United States.

The District has discretion to dismiss a formal complaint or any allegation under the following circumstances:

- If at any time during the investigation or hearing: a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations;
- If the Respondent is no longer enrolled in or employed by the District; or
- If there are specific circumstances that prevent the District from gathering evidence sufficient to reach a determination regarding responsibility as to the formal complaint or allegations.

If the District dismissed the formal complaint or any allegations, the Title IX Coordinator will simultaneously provide the Parties with written notice of the dismissal and reason. The District will also notify the Parties of their right to appeal.

The District may commence proceedings under other policies and procedures after dismissing a formal complaint.

Consolidation of Formal Complaints

The District may, but is not required to, consolidate formal complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of sexual harassment arise out of the same facts or circumstances.

Equitable Treatment of the Parties

The District's determination of responsibility is a neutral, fact-finding process. The District will treat Complainants and Respondents equitably. The procedures will apply equally to both Parties. The District will not discipline a Respondent unless it determines the Respondent was responsible for sexual harassment at the conclusion of the grievance process.

Statement of Presumption of Non-Responsibility

The investigation is a neutral, fact-finding process. The District presumes all reports are in good faith. Further, the District presumes the Respondent is not responsible for the alleged conduct. The District makes its determination regarding responsibility at the conclusion of the grievance process.

Timeline for Completion

The District will undertake its grievance process promptly and as swiftly as possible. The District will complete the investigation and its determination regarding responsibility or the informal resolution process within 180 calendar days.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the 180-calendar day period to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the unavailability of witnesses or delays by the Parties, to account for District breaks or vacations, or due to the complexity of the investigation. The District will provide notice of this extension to the Complainant and Respondent in writing and include the reason for the delay and anticipated timing of completion.

A Party may request an extension from the Title IX Coordinator in writing by explaining the reason for the delay and the length of the continuance requested. The Title IX Coordinator will notify the Parties and document the grant or denial of a request for extension or delay as part of the case recordkeeping. The District shall grant a student Party's reasonable request for an extension of a deadline related to a Complaint during periods of examinations or school closures.

Role of Advisor

The role of the Advisor is to provide support and assistance in understanding and navigating the investigation process.

The Advisor may not testify in or obstruct an interview or disrupt the process. The Title IX Coordinator has the right to determine what constitutes appropriate behavior of an Advisor and take reasonable steps to ensure compliance with this procedure.

A Party does not have a right to self-representation at the hearing; an Advisor must conduct any cross-examination. The District must provide an Advisor of its choice, free of charge to any Party without an Advisor in order to conduct cross-examination. If an Advisor fails to appear at the hearing, the hearing will be rescheduled and the District will provide an Advisor to appear on behalf of the non-appearing Advisor. To limit the number of individuals with confidential information about the issues, each Party may identify one Advisor.

The District cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the Recipient is not obligated to provide an attorney.

Privacy: Advisors are expected to maintain the privacy of the records shared with them. [These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the District. The District may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the District's privacy expectations.] This expectation of privacy does not restrict the ability of either Party to discuss the allegations under investigation.

Use of Privileged Information

The District's formal complaint procedure does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally-recognized privilege (e.g., attorney-client privilege, doctor-patient privilege, spousal privilege, etc.), unless the person holding the privilege provides voluntary, written consent to waive the privilege.

Student Complainant Requests for Confidentiality

If a student Complainant requests confidentiality when reporting sexual harassment, which could preclude a meaningful investigation or potential discipline of the Respondent, if found responsible, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the District shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the Complainant. The District shall normally grant the request when possible. In determining whether to disclose a Complainant's identity or proceed to an investigation over the objection of the Complainant, the District may consider whether any of the following apply:

- There are multiple or prior reports of sexual misconduct against the Respondent;
- The Respondent reportedly used a weapon, physical restraints, or engaged in battery;
- The Respondent is a faculty or staff member with oversight of students;
- There is a power imbalance between the Complainant and Respondent;
- The Complainant believes that the Complainant will be less safe if the Complainant's name is disclosed or an investigation is conducted; and
- The District is able to conduct a thorough investigation and obtain relevant evidence in the absence of the Complainant's cooperation.

If the District determines that it can honor the student-Complainant's request for confidentiality, it shall still take reasonable steps to respond to the Complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating an investigation or revealing the identity of the Complainant. The District shall also take immediate steps to provide for the safety of the Complainant while keeping the Complainant's identity confidential as appropriate. The District shall notify the Complainant that the request for confidentiality will limit the steps the District will take to respond to the report of sexual harassment.

If the District determines that it must disclose the student-Complainant's identity to the Respondent or proceed with a Formal Complaint, it shall inform the Complainant prior to making this disclosure or initiating the investigation. The District shall also take immediate steps to provide for the safety of the Complainant where appropriate. In the event the Complainant requests that the District inform the Respondent that the Complainant asked the District not to investigate or seek discipline, the District shall honor this request.

Trained Investigators

The District will fairly and objectively investigate complaints of sexual discrimination, harassment, and misconduct. Employees designated to serve as investigators under this procedure will have adequate training on what constitutes sexual harassment and how the District's complaint procedures operate. The District will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence and complies with this procedure. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigation

The Title IX Coordinator is responsible to oversee investigations to ensure timely resolution and compliance with Title IX and this procedure.

Both Parties have the right to have an Advisor present at every meeting described in this section. If either Party needs an Advisor, the District will provide one to them.

Notice of Investigative Interview

The District will provide written notice of the date, time, location, participants, and purpose of all investigative interviews to a Party whose participation is invited or expected, with sufficient time for the Party to prepare to participate.

Gathering Evidence and Burden of Proof

The District, not the Parties, has the responsibility to gather information and interview witnesses. However, the District will provide the complainant and the responding party(s) equal opportunity to present relevant witnesses and other evidence to the District investigator. As part of the District's burden of gathering evidence, the District's investigator will create an investigative report that fairly summarizes relevant evidence, whether it is inculpatory or exculpatory. The investigator shall not make findings or determinations of law or fact.

Student Complainants should be aware that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing, if a hearing is required under this procedure.

When the investigator evaluates the evidence, they will do so using the preponderance of the evidence standard. After considering all the evidence gathered, the investigator will decide whether it is more likely than not that reported conduct occurred.

Evidence of Past Sexual History

An investigator or Decision-Maker shall not consider the past sexual history of the Complainant except in the limited circumstances described below:

- The investigator or Decision-Maker shall not consider the Complainant's prior sexual history unless such questions or evidence is offered to prove that someone other than the Respondent committed the alleged conduct; or
- The investigator or Decision-Maker shall not consider the Complainant's prior sexual behavior unless the questions or evidence concern specific incidents of the Complaint's prior sexual behavior with respect to the Respondent and are offered to prove consent.
 - Where the investigator or Decision-Maker allows consideration of questions or evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent pursuant to this circumstance, the mere fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

Before allowing the consideration of any evidence proffered pursuant to this section, the investigator or Decision-Maker shall provide a written explanation to the Parties as to why consideration of the evidence is consistent with this procedure.

Evidence Review

Both Parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a Party or other source.

Prior to the investigator preparing an investigative report, the District will send to each Party and the Party's Advisor the evidence subject to inspection and review in an electronic format or a hard copy. The Parties will have at least ten (10) business days to submit a written response. The investigator must consider this written response prior to completing the investigative report.

Investigation Report

The results of the investigation of a formal complaint will be set forth in a written report that will include at least all of the following information:

- A description of the circumstances giving rise to the formal complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;

- An interview summary of each investigation interview conducted by the investigator;
- An analysis of relevant evidence collected during the course of the investigation, including a list of relevant documents;
- A specific finding as to whether it is more likely than not that the specific allegations, behaviors, and incidents reported in support of an allegation of sexual discrimination, harassment, or misconduct occurred with respect to each allegation in the complaint (preponderance of evidence standard);
- A table of contents if the report exceeds ten (10) pages; and
- Any other information deemed appropriate by the District.

The investigator will not make a determination regarding responsibility.

The investigator may redact information not directly related to the allegations or privileged information. However, the investigator will keep a log of information they do not produce to the Parties. The investigator will provide this log only to the Title IX Coordinator. The Title IX Coordinator will not disclose the log to the Parties, but will maintain the log in the Title IX Coordinator's file, in the event it later becomes relevant.

At least ten (10) business days prior to a hearing or other time of determination regarding responsibility, the District will send the investigative report to each Party and their Advisors in an electronic format or a hard copy, for review and written response. The Parties will have at least ten (10) business days to submit a written response.

Live Hearing

After completing an investigation and prior to completing a determination regarding responsibility, a live hearing will be scheduled by the Title IX Coordinator to provide the Complainant and Respondent an opportunity to respond to the evidence gathered before a Decision-Maker. Neither Party may choose to waive the right to a live hearing, but the Parties and witnesses can choose whether to participate in the hearing or answer some or all of cross-examination questions posed to them at the hearing.

A Hearing Officer/Panelists cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer questions.

If a party disagrees with a relevance determination made by the Hearing Officer/Panelists, they can either abide by the decision and answer the question posed or refuse to answer.

Notice

If the District proceeds to a hearing, the District will provide all Parties written notice of the date, time, location, participants, and purpose of the hearing with sufficient time for the Party to prepare to participate.

Hearing Format

The live hearing is conducted either in-person or virtually at the discretion of the Title IX Coordinator. If in-person, the parties may request to be located in separate, but connected rooms. In these cases, technology will be provided to accommodate a live audio and video connection between rooms.

The District will make the information reviewed during the Evidence Review available at the hearing for reference and consultation. The District will not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence.

All hearings will be recorded and the District will make an audio, audiovisual recording, or transcript available to the Parties for inspection and review.

Each party is allowed to have one advisor present during the hearing. If a party does not have their own advisor, one will be appointed to them by the Title IX Coordinator. If requested, multiple advisors may be allowed at the discretion of Title IX Coordinator. If permitted, each party will be allowed the same number of advisors.

Participants at the hearing will include the Decision-Maker, any additional panelists, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services.

The Decision-Maker shall provide an explanation of the meaning of the preponderance of the evidence standard and affirm that it shall apply to adjudications under this procedure. The preponderance of the evidence standard is met if the District determines that it is more likely than not that the alleged misconduct occurred, based on the facts available at the time of the decision.

Decision-Maker

A single Decision-Maker or Hearing Panel will facilitate the hearing and will be free from conflict of interest or bias. In cases where the Complainant or Respondent objects to the Decision-Maker or member of the Hearing Panel based on a conflict of interest, the Complainant or Respondent may request that the Title IX Coordinator select a different Decision-Maker. The Complainant or Respondent must make this request to the Title IX Coordinator in writing at least five (5) business days prior to the hearing.

The Decision-Maker may ask the Parties and the witnesses questions during the hearing. The Decision-Maker must objectively evaluate all relevant evidence both inculpatory and exculpatory and must independently reach a determination regarding responsibility without giving deference to the investigative report. The Decision-Maker will be trained on issues of relevance, how to apply the rape-shield protections for Complainants, and any technology to be used at the hearing.

Presenting Witnesses

The District will provide the Parties an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Witnesses, like Parties, are not required to participate in the live hearing process.

Only relevant evidence will be admissible during the hearing. Relevant evidence means evidence, including evidence relevant to the credibility of a Party or witness, having any tendency in reason to prove or disprove any disputed fact material to the allegations under investigation.

Generally, the Parties may not introduce evidence, including witness testimony, at the hearing that the Party did not identify during the investigation and that was available at the time of the investigation. However, the Decision-Maker has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

Cross-Examination

The District shall permit each Party's Advisor to ask the other Party and any witness relevant questions, including questions challenging credibility. Cross-examination of the Parties and witnesses will be done by advisors utilizing prepared questions developed in collaboration with the party they are assisting. The Advisors must question directly, orally, and in real time. A Party may never personally conduct cross-examination. The other Party shall have an opportunity to object to a question posed. The District may limit such objections to written form, and neither the Decision-Maker nor the District are obligated to respond, other than to include any objection in the record. The Decision-Maker shall have the authority and obligation to discard or rephrase any question that the Decision-Maker deems to be irrelevant. In making these determinations, the Decision-Maker is not bound by, but may take guidance from, the formal rules of evidence. Follow-up questions are allowed, including those that challenge credibility.

Before a Complainant, Respondent, or witness answers a question, the Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-Maker need not provide a lengthy or complicated explanation in support of a relevance determination.

If a Party or witness disagrees with a relevance determination, that individual has the choice of either (1) abiding by the Decision-Maker's determination and answering the question or (2) refusing to answer the question.

If a Party or witness does not submit to cross-examination at the live hearing, the Decision-Maker may admit any statement of that Party or witness in reaching a determination regarding responsibility. The Decision-Maker will give the statements whatever weight the Decision-Maker determines appropriate, bearing in mind that the statements have not been tested by cross-examination. In doing so, the Decision-Maker should consider, and if possible determine, whether the witness or Party made the statement and what the statement proves.

The Decision-Maker cannot draw an inference about the determination of responsibility based solely on a Party's or witness's absence from the live hearing or refusal to submit to cross-examination or to answer any question.

The Decision-Maker may also ask any Party or witness questions. If a Party or witness refuses to respond to a Decision-Maker's questions, the Decision-Maker is not precluded from relying on that Party or witness' statements.

The Decision-Maker will:

- Review the investigation report and all evidence gathered by the investigator in its entirety prior to the hearing;
- Meet with each party and their advisor(s) separately prior to the hearing to go over the process and hearing guidelines with them;
- Determine what evidence is excluded from questioning;

- Determine when a question is relevant and appropriate to the case prior to a party answering;
- Objectively evaluate all relevant evidence both inculpatory and exculpatory and must independently reach a determination regarding responsibility without giving deference to the investigative report.

An advisor is not be permitted to challenge the Hearing Officer or Panel's final ruling on relevance, appropriateness, or exclusion of evidence or questions.

Determination of Responsibility

When the Hearing Officer/Panelists makes a determination of responsibility or non-responsibility, they will issue a written determination regarding responsibility, not later than twenty (20) business days after the date that the hearing ends. If a panel is used, a simple majority vote is required to determine the finding.

When making a determination regarding responsibility, the Decision-Maker will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. They may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness. In evaluating the evidence, the Hearing Officer/Panelists will use the preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that sexual harassment occurred.

The written determination will include:

1. Identification of the allegations potentially constituting Title IX sexual harassment as defined in these procedures;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including who conducted the investigation, who gave notifications to the Parties, dates and how the Parties were provided the opportunity to review and inspect evidence, the date of any hearings held, and who attended the hearing;
3. When, where, and the date the investigator interviewed the Parties and witnesses, conducted site visits, and the methods used to gather other evidence;
4. The findings of fact supporting the determination of responsibility or non-responsibility;
5. Conclusions regarding the application of the District's code of conduct to the facts;
6. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
7. A statement of, and rationale for, any disciplinary sanctions the District imposes on the Respondent;
8. A statement of whether the District will provide the Complainant with remedies designed to restore or preserve equal access to the District's education program or activity.
9. The District need not disclose to the Respondent remedies that do not affect them as part of the written determination. The District can inform the Respondent that it will provide remedies to the Complainant. However, the District will inform the Complainant of the sanctions against the Respondent;
10. The District's procedures and permissible bases for the Complainant and Respondent to appeal.

The District will provide the written administrative determination to the Parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the Parties with the written determination of the result of the appeal, if the Parties file an appeal, or if the Parties do not file an appeal, the date on which an appeal would no longer be timely.

Disciplinary Sanctions and Remedies

The District must have completed the complaint or investigation procedures (investigation, hearing, and any appeal, if applicable) before imposing disciplinary sanctions or any other actions that are not supportive measures against a Respondent. If the Decision-Maker determines the Respondent was responsible for conduct that constitutes sexual harassment, the District will take disciplinary action against the Respondent and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense.

Remedies for the Complainant might include, but are not limited to:

- Providing an escort to ensure that the Complainant can move safely between classes and activities;
- Ensuring that the Complainant and Respondent do not attend the same classes or work in the same work area;
- Providing counseling services or a referral to counseling services;
- Providing medical services or a referral to medical services;
- Providing academic support services, such as tutoring;

- Arranging for a Complainant, if a student, to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and
- Reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant's discipline.

Possible disciplinary sanctions for student Respondents include, but are not limited to:

- Written or verbal reprimand;
- Required training or counseling;
- Non-academic probation;
- Suspension; and
- Expulsion.

Possible disciplinary sanctions for employee Respondents include:

- Written or verbal reprimand;
- Required training or counseling;
- Reduction in pay;
- Demotion;
- Suspension; or
- Termination.

Appeal of Dismissal of a Formal Complaint or of the Determination of Responsibility

A Complainant or Respondent may appeal the District's determination regarding responsibility or the dismissal of a formal complaint or any allegations. A Complainant or Respondent must submit a written appeal within five (5) business days from the date of the notice of determination regarding responsibility or from the date of the District's notice of dismissal of a formal complaint or any allegations.

Grounds for Appeal

The Vice Chancellor, Human Resources will serve as the Decision-Maker on Appeal. In filing an appeal of the District's determination regarding responsibility or the District's dismissal of a formal complaint, the Party must state the grounds for appeal and a statement of facts supporting those grounds. The grounds for appeal are as follows:

1. A procedural irregularity affected the outcome;
2. New evidence was not reasonably available at the time the District's determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome; or
3. The District's Title IX Coordinator, investigator, or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

Appeal Procedure

If the Complainant or Respondent submit an appeal to the District, the District will:

1. Notify the other Party in writing within five (5) business days of receiving a Party's appeal;
2. Allow the non-appealing Parties at least ten (10) business days from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome.

The Decision-Maker will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 45 business days after the Decision-Maker receives the response to the appeal or the last day to provide a response. The District will provide the written decision simultaneously to both Parties.

The Decision-Maker may extend or otherwise modify the deadlines provided above. Either Party may seek an extension by submitting a written request to the Appellate Officer explaining the need for the extension and the proposed length of the extension. The Appellate Officer will respond to the request within 48 hours in writing and will inform the Parties simultaneously whether the extension is granted.

Student Workers

For the purposes of this regulation, when a student worker is a complainant or a respondent, they will be treated as either a student or an employee dependent on what their primary role was when the harassment or discrimination allegedly occurred.

Retaliation prohibited

The District prohibits any intimidation, threats, coercion, or discrimination against any individual who made a report or complaint of sexual harassment, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Individuals who experience retaliation may file a complaint using the formal complaint process described above.

False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation can be subject to disciplinary action.

Dissemination of Policy and Procedures

The District will provide its policy and procedures related to Title IX on its website and in each handbook or catalog provided to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining with the District. The District will also provide its policy and procedures related to Title IX to all volunteers who will regularly interact with students and each individual or entity under contract with the District to perform any service involving regular interaction with students.

When hired, employees are required to sign acknowledging that they have received the policy and procedures. The District will place the signed acknowledgment of receipt in each employee's personnel file.

Training

The District will provide a comprehensive trauma-informed training program to Title IX Coordinators, investigators, Decision-Makers, and any individual who facilitates an informal resolution process, on the definition of sexual harassment, the scope of the District's education program or activities, best practices for assessment of a sexual harassment complaint, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, bias, and implicit bias and racial inequities, both broadly and in school disciplinary proceedings. Any materials used to train the District's Title IX Coordinator, investigators, Decision-Makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment. Materials for this training must include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity.

The District shall ensure that residential life student and nonstudent staff, or their equivalent, annually receive training on how to handle, in a trauma-informed manner, reports made to them of sexual harassment and situations in which they are aware of sexual harassment in student residential facilities.

The District will provide Officials with Authority with training regarding his/her/their obligation to report sexual harassment and instruction on how to report sexual harassment to the Title IX Coordinator.

Education and Prevention for Students

In order to take proactive measures to prevent sexual harassment and violence toward students, the College will provide preventive education programs and make victim resources, available to students. The College will include such programs in orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, the District's policies, regulations, and disciplinary procedures, and the consequences of violating these policies or regulations. A training program or informational services will be made available to all students at least once annually.

The education programs will also include information aimed at encouraging students to report incidents of sexual violence to the appropriate College, District and law enforcement authorities, and about alcohol education, and bystander intervention

File Retention

The District will retain on file for a period of at least seven years after closing the case copies of:

- The original report or complaint;
- Any actions taken in response to the complaint, including supportive measures;
- The investigative report including all evidence gathered and any responses from the Parties;
- The District's determination regarding responsibility;
- Audio or audiovisual recording or transcript from a hearing;
- Records of any disciplinary sanctions imposed on the Respondent;
- Records of any remedies provided to the Complainant;
- Any appeal and the result;
- Any informal resolution and the result; and
- All materials used to train Title IX Coordinators, investigators, Hearing Officer/Panelists, and any person who facilitates an informal resolution process. The District will make these training materials publicly available on its website.

The District will make these documents available to the U.S. Department of Education Office for Civil Rights upon request.

Accommodations

An employee who is a victim of domestic violence, sexual assault, or stalking may request time off for any of the following reasons:

1. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking;
2. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking;
3. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking;
4. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

To request an accommodation, see AR 7348 – Employment Disability Accommodations.

Complaint Reporting

The Title IX Coordinator shall provide the Board of Trustees, upon request but not more than once per year, a report of complaints filed pursuant to Administrative Regulation 3434. This report must disaggregate the complaints by complaint type (Student Complainant and Student Respondent, Student Complainant and Employee Respondent, Employee Complainant and Student Respondent, Employee Respondent and Employee Respondent, etc.). This report must also disaggregate the complaints by the Complainant's race, age, gender, religion, or any other characteristic identified by the Board.

EXHIBIT G

**PETER SEAN
BRADLEY**

Attorney at Law

Peter Sean Bradley

6780 N. West Ave.

Telephone (559) 960-
5613

Fresno, California 93711

Petersean@AOL.com

March 14, 2024

Angel Reyna, Ed.D.
Madera Community College
30277 Ave. 12
Madera CA 93638

Re: David Richardson – Notice to Correct Deficiencies (Education Code section 87732 and 87734.)

Dear President Reyna,

This letter constitutes David Richardson’s response to “Notice to Correct Deficiencies (Education Code 87732 and 87734.)” (hereinafter “the Notice.”)

As will be explained below, the Notice fails to apply the proper legal analysis and thus fails to consider or address the relevant factors necessary for a determination that the Notice is appropriate. Most significantly, the Notice reaches a conclusion that denies what its own independent investigation found, namely that Mr. Richardson had no intent to offend anyone in bringing Jeremy’s Chocolate Bars to the Open House on April 29, 2023.

I. INTRODUCTION

You will recall that during the meeting where you served the Notice on Mr. Richardson, I confirmed with you and your counsel that you were aware of the fact that Mr. Richardson is the plaintiff in two actions pending in federal court against the State Center Community College District (“SCCCD”) and that these two actions involved (a) an action for retaliation against Mr. Richardson’s exercise of his First Amendment rights and (b) an action to enjoin SCCC’s DEI regulations on the grounds of “compelled speech.”

Your affirmative response to my questions establishes that the Notice is part of a policy to further retaliate against Mr. Richardson in violation of his First Amendment rights. Given the fact that Mr. Richardson was exonerated of the claims that SCCC was pressing against him and that no action has been taken to investigate or remediate Deanna Calvin’s (“DC”) conduct on the day of the Open suspension, ch was found to have been intended to provoke Mr.

Richardson, and which conduct was colluded in by SCCCD’s management, Mr. Richardson intends to amend his complaints to add the prior suspension and this continued harassment to his federal First Amendment case. You are notified that since you have materially participated in this retaliation with knowledge of the relevant facts, you will be named as a defendant.

The charges against Mr. Richardson are specious and violate his First Amendment rights. The evidence presented in the prior proceeding establishes that DC was acting pursuant to an animus against “older white men.” The Notice fails to comply with the relevant law. The Notice is based on vague and ambiguous claims and fails to specify the conduct that will constitute violation in the future, thereby demonstrating that the purpose of the Notice is to serve as a “paper trail” for termination of Mr. Richardson. The factual claims are specious as demonstrated by the evidence presented to the Title IX hearing officer. The effect and reasonably deduced intent of the Notice is to chill the speech of employees at SCCCD in the service of an ideological agenda.

II. RELEVANT LEGAL AUTHORITY

It is worthwhile to review the law that you are accusing Mr. Richardson of violating.

Education Code §87732 provides:

No regular employee or academic employee shall be dismissed except for one or more of the following causes:

- (a) Immoral or unprofessional conduct.
- (b) Dishonesty.
- (c) Unsatisfactory performance.
- (d) Evident unfitness for service.
- (e) Physical or mental condition that makes him or her unfit to instruct or associate with students.
- (f) Persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed for the government of the community colleges by the board of governors or by the governing board of the community college district employing him or her.
- (g) Conviction of a felony or of any crime involving moral turpitude.
- (h) Conduct specified in Section 1028 of the Government Code.

(Ed. Code, § 87732 (Deering, Lexis Advance through the 2024 Regular Session Ch 1).)

These are very serious charges to make against an employee. It is significant that the ground that SCCCDC is accusing Mr. Richardson of violating, i.e., “unprofessional,” is paired with “immoral.” Under normal rules of statutory interpretation, the implication is that conduct that is “unprofessional” is very serious and something far beyond a single employee being “offended” about another employee’s viewpoints.

Courts applying Section 87732(a) have acknowledged that it is inherently vague and is only triggered when the conduct implicates an “unfitness to teach”:

Terms such as immoral conduct, unprofessional conduct, or moral turpitude, are so general that they must be given meaning by relation to the particular profession involved. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 220 [82 Cal.Rptr. 175, 461 P.2d 375].) In other words, a teacher may have committed an immoral act, but unless it indicates his unfitness to teach, it is not an appropriate basis for discharge. (*Id.* at p. 225.)

West Valley-Mission Community College Dist. v. Concepcion (1993) 16 Cal.App.4th 1766, 1773-1774.

This standard applies to the Notice. (See Education Code §87734 (“Unprofessional conduct” and “unsatisfactory performance,” as used in this section, means, and refers only to, the unprofessional conduct and unsatisfactory performance particularly specified as a cause for dismissal in Section 87732 and does not include any other cause for dismissal specified in Section 87732.)

In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230, the California Supreme Court held that the term “unprofessional conduct” is unconstitutionally vague unless it is applied to the specific conduct under a multipart test, none of which have been considered in the Notice.¹ The *Morrison* court wrote:

We therefore conclude that the Board of Education cannot abstractly characterize the conduct in this case as “immoral,” “unprofessional,” or “involving moral turpitude” within the meaning of section 13202 of the Education Code unless that conduct indicates that the petitioner is unfit to teach. In determining whether the teacher’s conduct thus indicates unfitness to teach the board may consider such matters as the likelihood that the conduct may have adversely affected students or fellow teachers, the degree of such adversity anticipated, the proximity or remoteness in time of the conduct, the type of teaching certificate held by the party involved, the extenuating or aggravating circumstances, if any, surrounding the conduct, the praiseworthiness or blameworthiness of the motives resulting in the conduct, the likelihood of the recurrence of the questioned conduct, and the extent to which disciplinary action

¹ “[T]he word “unprofessional” is a relative expression without technical meaning, and the phrase “unprofessional conduct” as used in the Education Code has been given no legislative definition.” (*Board of Education v. Swan*, 41 Cal.2d 546 [261 P.2d 261].)” (*Board of Trustees v. Owens* (1962) 206 Cal.App.2d 147, 157.)

may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. These factors are relevant to the extent that they assist the board in determining whether the teacher's fitness to teach, i.e., in determining whether the teacher's future classroom performance and overall impact on his students are likely to meet the board's standards.

Morrison v. State Board of Education (1969) 1 Cal.3d 214, 229-230.

The focus of these criteria is on “fitness to teach.” (*Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384 (“The determinative test of a charge of immoral or unprofessional conduct is fitness to teach.”).) It is not on whether the person has or shares ideas that are considered ideologically questionable. Courts have repeatedly stated that in making a decision as to whether Education Code §87732(a) applies, the administrator must apply the “Morrison factors.” (See *Crawford v. Commission on Professional Competence of Jurupa Unified School Dist.* (2020) 53 Cal.App.5th 327, 340.)

The Notice fails to consider any of these criteria and pointedly ignores some, specifically, the last criteria regarding “the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.”²

It is also worth noting what conduct has not been held to constitute grounds for discipline under Education Code §87732(a), e.g. alleged sale of cocaine on campus, a homosexual relationship, falsely calling in a bomb threat to shorten a teachers’ strike, and solicitation of a police officer for homosexual sex. (*West Valley-Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766 (Cocaine); *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (Homosexual relationship); *Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 560 (Bomb Threat); *Board of Education v. Jack M.* (1977) 19 Cal.3d 691 (Solicitation.)) In contrast, repeated acts of sexual harassment directed at a minor child were considered grounds for a finding of immoral conduct or unfitness to teach in *Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384-385.

² These factors were also identified in *West Valley-Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1774:

In other words, a teacher may have committed an immoral act, but unless it indicates his unfitness to teach, it is not an appropriate basis for discharge. (*Id.* at p. 225.) The court suggested that in determining whether a teacher's conduct indicates unfitness, the fact finder may take into account the following factors: 1) the likelihood that the conduct adversely affected students or fellow teachers; 2) the proximity or remoteness in time of the conduct; 3) the type of teaching certificate; 4) the extenuating or aggravating circumstances; 5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; 6) the likelihood of recurrence of the conduct; and 7) the extent to which disciplinary action would have a chilling effect on the constitutional rights of teachers. (*Id.* at p. 229.)

It is obvious to any reasonable person, i.e., to someone without an ideological axe to grind, that bringing candy bars with words on the wrapper do not come close to the kinds of things that have been the subject of actual or potential discipline under Education Code §87732(a).

SCCCD’s failure to consider the Morrison factors makes the Notice incoherent and unconstitutionally vague and ambiguous. SCCCD makes the situation worse – intruding into academic freedom and First Amendment rights – by compounding the incoherence and unconstitutional vagueness with a notice that is far broader than what was at issue in the event. Mr. Richardson is left to guess about what SCCCD is referring to about when it talks about complying with all Board Policies and Administrative Procedures and acting “equitably” and complying with lawful directives of superiors. SCCCD has failed to specify with reasonable particularity the behavior that SCCCD is referring to that constitutes a failure to “comply with the lawful directives of superiors.” There has never been a claim that Mr. Richardson failed to comply with the lawful directives of superiors.” In fact, at the Open House, the superiors – including DC’s supervisor, Vice President of Learning and Student Success Marie Harris - either saw nothing wrong with the candy bars or they acted in a way that approved of the candy bars.

Education Code §87734 provides in relevant part:

The governing board of any community college district shall not act upon any charges of unprofessional conduct or unsatisfactory performance unless during the preceding term or half college year prior to the date of the filing of the charge, and at least 90 days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct or unsatisfactory performance, specifying the nature thereof with specific instances of behavior and with particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge.

The only “specific instance of behavior” identified “with particularity” is that Mr. Richardson brought Jeremy’s Chocolates Bars (the “Chocolate Bars”) to the open house along with other snacks, which he then allowed people to take. Nonetheless the Notice goes on about things on the Jeremy’s website that Mr. Richardson did not know. Attention is given to the language on the Chocolate Bars’ wrappers about building a “woke free economy” but there is nothing that describes how this language offended any policy or direction of a supervisor. Mr. Richardson has no way of knowing what language is permitted to be on food items he brings on campus. Is he permitted to bring things that discuss “woke free economies” or not? No guidance is given, just as there is no guidance as to what he did that makes the recommendations about following directives and policies germane to any part of the incident.³

SCCCD compounds the problem by finding that an element of Mr. Richardson’s offense was his “intent to mock” some unspecified person or group. Like “unprofessional” the term “mock” is a

³ Mr. Richardson invites you to share the board policy or instruction he was given that prevented him from sharing food items with conservative, liberal, or Communist messages.

“relative expression lacking a technical meaning.” What is “mocking” to one person may be respectful discourse to another.

The purpose of providing the Notice is to give Mr. Richardson an opportunity to correct alleged unprofessional deficiencies. The only deficiency identified by SCCCD is that Mr. Richardson shared Chocolate Bars from a company that had a message that an employee of SCCCD disapproves of. Since Mr. Richardson does not have a time machine, he cannot go back in time to change what happened. SCCCD points to no other alleged unprofessional deficiency, which leads Mr. Richardson into a state of confusion. What is he supposed to correct? Purchasing commodities from conservative companies? Does SCCCD have a blacklist it wishes to share? Sharing treats at Open Houses? Perhaps SCCCD should issue a policy defining what treats can be shared and what messages can be communicated? Perhaps, the conduct that Mr. Richardson should avoid is being rudely and unprofessionally interrogated by the assistant to a Vice President who has openly expressed an animus against “old white men.”

Perhaps, SCCCD wants Mr. Richardson to cure himself from the state of being an “old white man.” This may be the case in that SCCCD has known of DC’s animus and unprofessional conduct for months but has taken no action against DC.

Worse still from the standpoint of confusion is the fact that the Notice is based on claims that were “not sustained” in the investigation. As SCCCD knows, the investigator it hired reached the following conclusions:

ALLEGATION 4: Did David Richardson continue to provide the chocolate bars on the History Department table after being made aware that they may be offensive to the trans and non-binary community?

Finding: No, Not Sustained

ALLEGATION 5: Did David Richardson bring the chocolate bars to the District event to intentionally offend the trans and non-binary community?

Finding: No, Not Sustained.

(Confidential Investigation Report dated July 3, 2023, p. 4.)

Similarly, the Title IX officer found that the message on the Chocolate Bar wrappers were NOT directed at LGBTQ+ individuals or any specific group:

Making statements that mock an individual’s gender identity and/or gender expression typically constitutes conduct that is objectively offensive. A reasonable person similarly situated to the Complainant would likely find the words “SheHer Nutless” and “HeHim Nuts” to be objectively offensive, particularly given the exclusionary and assumptive nature of the message. However, in this instance, the evidence supports that the messaging on the candy bars was not directed at Complainant or specifically about Complainant. ***Moreover, the messaging on the candy bars was not directed at LGBTQ+ individuals or any specific group,*** thus mitigating the objectiveness of any offense that may have resulted. Since the alleged conduct does not satisfy the severe, and pervasive, and objectively offensive policy elements, the preponderance of the evidence does not support a finding that Respondent violated Administrative Regulation 3433 (Prohibition of Sexual Harassment Under Title IX) pertaining to hostile environment.

Calvin-Richardson Determination Letter, p. 9-10.

These findings negate the Notice’s claim of “mocking.” These findings should have ended the Title IX proceedings in that there was no basis to move forward. Nonetheless, SCCCD continued to harass and retaliate against Mr. Richardson by continuing a specious, unfounded proceeding. Now, SCCCD is doubling down by denying the findings of its own investigation. The findings of SCCCD’s independent investigator are the opposite of SCCCD’s present claim that Richardson intended to “mock” someone; namely, the undisputed finding was that Mr. Richardson did not intend to bring the Chocolate Bars to the Open House to offend anyone and that he did not continue to provide the Chocolate Bars after DC’s unprofessional conduct.⁴

All of which leaves Mr. Richardson with no guidance on what SCCCD means by “mocking.” Obviously, the investigator didn’t find any mocking. Nor did any of the administrators on the scene who shared the Chocolate find mocking. But in order to further harass Mr. Richardson and threaten him with employment termination in the event that he does not kneel to some invisible line that prohibits mentioning the word “woke” on SCCCD’s campus, SCCCD is now willing to redefine what was found by its investigator.

In short, the Notice fails to comply with the law and is obviously intended to create confusion and fear and thereby intrude on the academic freedom of teachers.

⁴ It is undisputed that the Chocolate Bars were taken off the table at that point. There is no evidence that Mr. Richardson objected to their removal or attempted to put them back on the table. This obviously is the relevant fact that pertains to the Morrison Factor (discussed below) about “likelihood to re-engage in conduct.” The Notice does not address this issue because, as will be discussed, it doesn’t acknowledge or apply the proper legal analysis.

III. MORRISON FACTORS.

A. THE LIKELIHOOD THAT THE CONDUCT ADVERSELY AFFECTED STUDENTS OR FELLOW TEACHERS;

The undisputed evidence on this factor is that the only person who objected to the Chocolate Bars was DC. The undisputed evidence was that the administrators, students, and visitors who noticed the Chocolate Bars either took no notice of the words on the wrappers or were amused by the words on the wrapper of the Chocolate Bars. Mr. Richardson never mentioned those words to any student, administrator, or visitor. Dr. Harris admitted that she shared a Chocolate Bar, that she thought it was humorous and affirming of “personal gender pronouns,” and that she never said anything to Mr. Richardson about the “unprofessionalism” of the Chocolate Bars. Administrator Dr. Robles likewise said nothing Mr. Richardson about the Chocolate Bars and her testimony shows that Mr. Richardson was not trying to provoke any confrontation or send a message, rather he was sharing a lot of treats of which the Chocolate Bars were a small part.

The only evidence of anyone being offended was DC’s own testimony, but DC notoriously lied about what happened. DC initially claim that DC just happened upon the Chocolate Bars and then was surprised to discover them, but the truth was that DC was shown the Chocolate Bars by Dr. Harris and that DC then stormed off in an angry manner to confront and provoke Mr. Richardson. The testimony of everyone agrees that DC came to the history table seeking a fight, wagging her fingers, and already angered.

In contrast, Mr. Richardson de-escalated the situation by not reacting to DC’s provocations. SCCCD now wants to treat Mr. Richardson’s de-escalation as evidence of his intent to “mock,” but that wasn’t the testimony at the hearing, and it was not the way it was understood by any of the participants.

Further, SCCCD mischaracterizes the testimony and the findings of fact about DC being “offended.” Mr. Richardson understood that DC was angry – DC was shouting, wagging her fingers at him and interrogating him in a rude and unprofessional manner. However, DC was talking about the language of “woke free economy” on the back of the Chocolate Bar wrapper. Mr. Richardson did not know with any certainty at the time that DC was transsexual. He didn’t assume that she was transsexual.

That was Mr. Richardson’s un rebutted testimony which SCCCD is now choosing to ignore.

SCCCD also ignores the un rebutted agist/racist/sexist animus that DC has admitted when she publicly discussed her contempt for “older white men” as represented in the “One on One” webpage.

In short, there was no evidence of a likelihood that Richardson’s conduct adversely affected students or fellow teachers. DC claims to have been adversely affected, but that could easily have been the result of her bias and animus against Mr. Richardson as an “old white man.” (See Exhibit A, DC Interview, p. 9-10.) Further, there is no evidence that the words concerning “He/She” was what made DC upset. She was apparently offended by the comment about “woke

free economy” which has nothing to do with any protected class.

Thus, this Morrison Factor does not justify a finding of “unprofessional conduct” for which Mr. Richardson may be served the Notice.

B. THE PROXIMITY OR REMOTENESS IN TIME OF THE CONDUCT.

The incident happened on April 29, 2023. After preferring Title IX charges and other charges against Mr. Richardson, SCCCD waited until February 29, 2024 to serve the Notice. SCCCD could have included the claim of “unprofessional conduct” as a matter for an independent evaluator to address, but chose not to, perhaps because having an independent evaluation of its claim would not have met with the outcome it wanted.

Thus, after letting a full semester go by, plus parts of two additional semesters, SCCCD brought the present charge only after its Title IX claim had failed, and after it began receiving bad publicity about the failure to win its Title IX case. It is noteworthy that SCCCD delayed the Title IX proceeding to have its interviewer re-interview Mr. Richardson about the bad publicity it was getting. SCCCD clearly pays attention to the news.

Thus, this Morrison Factor does not justify a finding of “unprofessional conduct” for which SCCCD could properly serve the Notice.

C. THE TYPE OF TEACHING CERTIFICATE.

It is noteworthy that as a Community College instructor, Mr. Richardson teaches adults. He does not teach children. Adults are supposed to be exposed to different ideas. Part of the recognized mission of education – and the reason for academic freedom – is that adults are supposed to be presented with different ideas, including ideas that they may not like or that may upset them.

One such idea might well be the idea that males produce sperm and females produce eggs.

This may be offensive to some, but it is a perspective embraced by many scientists. (See Colin Wright Testimony, Exhibit B; See also https://www.realityslaststand.com/p/defending-reality-my-expert-testimony?publication_id=225618&post_id=137024614&isFreemail=false&r=28veq ; See also <https://www.realityslaststand.com/p/the-sex-binary-what-it-is-and-why> .)

When SCCCD writes the following in the Notice, it sows confusion:

iv. You purchased the chocolate bars from "Jeremy's Razors," which launched "Jeremy's Chocolate" for the following reasons: "For International Women's Day, Hershey's hired a biological male to be the spokesperson for their Women's Day campaign. It's humiliating. That's why we launched Jeremy's Chocolate. We have two kinds: SheHer and HeHim. One of them got nuts. You know which is which."

(Notice to Cure, p. 2.)

Is Mr. Richardson supposed to understand that science is wrong? That no one may be embarrassed about

a man being used as the spokeswoman for International Women’s Day? What was SCCCD’s point in quoting this viewpoint from a third party?

This is the confusing world that adults must navigate. Mr. Richardson was engaging in teaching at the Open House. He was talking to visitors about the Civil War. As a teacher, he cannot be required to conform to an orthodoxy or to a subject.

This is a factor that does not justify a finding of “unprofessional conduct” for which Mr. Richardson may be told to cure his conduct.

D. THE EXTENUATING OR AGGRAVATING CIRCUMSTANCES.

Mr. Richardson volunteered to work at the Open House. He brought the “treats” as an attraction for visitors with his own money. There were administrators at the Open House who knew about the Chocolate Bars. Not one administrator said anything about those Chocolate Bars being unprofessional.

What happened instead is that administrator Harris permitted her subordinate to storm off angrily to confront Mr. Richardson, yell at him, and bully him. Discovery will establish whether Dr. Harris knew or shared DC’s animus against “old white men,” but it is uncommonly poor management for her to have allowed DC to act the way she did.

This is also a factor that does not justify the Notice.

E. THE PRAISEWORTHINESS OR BLAMEWORTHINESS OF THE MOTIVES RESULTING IN THE CONDUCT.

Mr. Richardson deserves some gratitude for volunteering his time to the open house. He deserves some gratitude for bringing “treats” that people enjoyed. He did not know that DC was transexual. He de-escalated the incident. He was not the one who stormed over to confront the Other. He was not shouting. He is not the one who has made biased statements, such as mocking “old white men.” The investigator found that he had no intent to offend anyone.

The bad behavior was all on the side of one person – DC. Mr. Richardson deserves credit for not allowing DC’s bad conduct become more disruptive.

This is another Morrison Factor that demonstrates that Mr. Richardson has not engaged in conduct that was “unprofessional” as that term relates to “fitness to teach.” In fact, his conduct affirmatively demonstrates his fitness to teach in that it shows his commitment, passion, and integrity.

F. THE LIKELIHOOD OF RECURRENCE OF THE CONDUCT.

If the issue is whether Mr. Richardson will bring the Chocolate Bars to campus again, there is no likelihood of recurrence since that will not happen.

However, it seems that the real purpose of the Notice is to address more than a particular incident that no

administrator considered to be “unprofessional” at the time. It is obvious that the real purpose is to chill Mr. Richardson’s speech, and the speech of other instructors, by making them wonder what they are supposed to do in order to avoid having some person with an animus against “old white men” come and accuse them of mocking them when no one else can see the “mocking” without a thorough re-education in DEI-think.

That is the reason that the Notice is deficient. It is also another Morrison Factor that shows that the Notice may not properly serve as a basis for a future finding on “unprofessional conduct.”

G. THE EXTENT TO WHICH DISCIPLINARY ACTION WOULD HAVE A CHILLING EFFECT ON THE CONSTITUTIONAL RIGHTS OF TEACHERS.

This is the heart of the matter.

SCCCD has already been sued under the First Amendment for violating Mr. Richardson’s rights, as well as the rights of teachers. SCCCDCD knows that Mr. Richardson has a broad right to speak as a matter of academic freedom.

SCCCD and DC both made an issue of the statement that Jeremy’s was building a “woke free economy.” That statement was the statement that offended and upset DC based on the unrebutted testimony of DC, Mr. Richardson, and Mr. Mask. That statement does not implicate any protected group or any issue of harassment, diversity, inclusion, or equity, unless SCCCDCD wants to argue that a form of socialism is normative to be a good citizen. Perhaps that is what SCCCDCD is saying. SCCCDCD should make that clear by stating what regulation or instruction, Mr. Richardson was given on that subject.

The United States Supreme Court has observed:

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. . . . Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Sweezy v. New Hampshire. 354 U.S. 234, 250, 1 L. Ed. 2d 1311, 77 S. Ct. 1203 (1957)

Mr. Richardson’s purportedly “unprofessional” conduct is nowhere near the conduct described in cases that have found a violation of First Amendment rights. (See *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 705 (9th Cir. 2009) (the First Amendment “embraces such a heated exchange of views,” especially when they “concern sensitive topics like race, where the risk of conflict and insult is high.”); see also *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (holding that a public university violated the First Amendment when it investigated a professor’s offensive writings on race and intelligence as “conduct unbecoming of a member of the faculty”) Nonetheless, SCCCDCD has issued a sweeping statement about the things that Mr. Richardson must do in order to not be deemed “unprofessional” - most of which are nebulous and unspecific –

based on conduct that amounted to nothing more than that a single person with a bias against “old white men” found a reason to feel aggrieved.

This final Morrison Factor is the key reason that the Notice fails to identify with specificity any conduct that might be defined as “unprofessional.”

IV. CONCLUSION

It is apparent that SCCCD has no basis for the Notice. SCCCD failed to perform a proper legal analysis of the issues. This is consistent with SCCCD ignoring the findings of its own investigator and its manufacturing of findings that never existed.

SCCCD is violating Mr. Richardson’s legal rights. SCCCD should cease and desist from such violations, remove the Notice from Mr. Richardson’s file, and make an effort to send its administrators to courses on the First Amendment.

Thank you for your attention to this matter.

Very truly yours,

Peter Sean Bradley

PETER SEAN BRADLEY

EXHIBIT H



O L I V E R , T H O M A S & H O L L I S

I N V E S T I G A T I O N S

CONFIDENTIAL INVESTIGATION REPORT

CONTAINS CONFIDENTIAL PERSONNEL INFORMATION

State Center Community College District

Madera Community College

David Richardson Investigation

July 3, 2023

Prepared by: Jeffrey Hollis

CONFIDENTIAL INVESTIGATION REPORT

I. INTRODUCTION

On May 9, 2023, State Center Community College District ("District") retained me, Jeffrey Hollis, a licensed private investigator with Oliver, Thomas & Hollis Investigations, Inc. ("OTH"), to conduct a neutral workplace investigation into allegations reported by Deanna Calvin, Executive Assistant to the Vice President of Learning and Student Services, against David Richardson, a Professor in the History Department, for creating a hostile work environment for students and staff by purchasing and distributing chocolate bars with offensive language. **(Exhibit 1)**

This is the Confidential Investigation Report ("Report") of my findings. This Report contains detailed information, complainant and respondent accounts, witness accounts, relevant documentation, and findings relating to the allegations.

It is anticipated that this Report will be maintained confidentially by the decision-makers and will not be disseminated except as required by law or as determined by the District.

II. INVESTIGATIVE METHODOLOGY

The following information provides details as to the methodology I adopted while conducting this investigation.

A. Independence

The District allowed me discretion to conduct the investigation as determined to be necessary. The District did not attempt to influence or direct the outcome of the investigation, but instead appropriately deferred to this investigator in all respects, including in granting access to witnesses and documents.

B. Investigative Standard

I reviewed, compared, and analyzed the evidence to determine whether the concerns were with or without merit under the preponderance of the evidence standard. Preponderance of the evidence, for the purposes of this Report, means that the evidence on one side outweighs, or is more than, the evidence on the other side.

CONFIDENTIAL INVESTIGATION REPORT

I considered and weighed the rights of all parties to ensure both fairness and vigilance in the event that corrective action results from the investigation. Nonetheless, the investigation proceeded under the good faith expectation that witnesses would answer truthfully. The conclusions in this Report were drawn from the totality of the evidence and a thorough analysis of all the facts, and where necessary, credibility determinations were made.

(Note: The information given in this Report is not intended to constitute a legal finding of policy violations or advice, but is the Report of the findings and analysis of the investigation, which is based on the facts collected and the knowledge and experience of the investigator.)

C. Witnesses

I interviewed directly involved witnesses or witnesses found to have relevant information. I did not interview other individuals mentioned in the course of the investigation if, in my assessment, they did not have direct, significant, and relevant information related to the specific incidents within the scope of the investigation; or if I already obtained the information the witnesses would have provided; or if the information would not affect the outcome of the investigation.

I interviewed Ms. Calvin on May 18, 2023, at her office. She was notified prior to the interview that she was entitled to have a representative or advisor present during her interview. **(Exhibit 2)** Ms. Calvin declined the opportunity to have another individual present during her interview.

I sent Mr. Richardson an email on May 22, 2023, to coordinate his interview, but he did not respond. **(Exhibit 3)** Mr. Richardson was also unresponsive to attempts to contact him via telephone. The investigation was delayed due to Mr. Richardson's failure to respond. The District sent Mr. Richardson a directive to attend an investigative interview. **(Exhibit 4)** I interviewed Mr. Richardson on June 21, 2023, via Zoom in the presence of his attorney, Peter Bradley, Esq. I spoke to Mr. Richardson via telephone on August 31, 2023, in the presence of Mr. Bradley, to ask him follow up questions.

CONFIDENTIAL INVESTIGATION REPORT

At his request, I interviewed Bill Mask, a Professor in the History Department, on July 20, 2023 via Zoom, in the presence of his union representative Jeff Ragan. Mr. Mask has worked for the District for approximately 10 years.

I interviewed Dr. Marie Harris, Vice President of Learning and Student Success, on July 17, 2023 via Zoom. Dr. Harris has worked for the District for approximately 14 years. Dr. Harris did not request to have a representative present during her interview.

Dr. Lucia Robles, Vice President of Equity and Institutional Effectiveness, was interviewed on July 21, 2023 via Zoom. Dr. Robles was hired by the District in March 2022. She did not request to have a representative present during her interview.

III. FACTUAL BACKGROUND

Ms. Calvin has worked for the District for approximately three years. She is the Executive Assistant to the Vice President of Learning and Student Success.

Mr. Richardson has worked for the District for approximately 33 years. He is currently assigned to Madera Community College. Mr. Richardson has held positions at every college in the District except Fresno City College. Mr. Richardson teaches classes in the History Department.

Mr. Richardson volunteered to attend an open house event at Madera Community College and represent the History Department at a table with Mr. Mask. Mr. Richardson and Mr. Mask were responsible for setting up the table to represent their department. One of the items brought by Mr. Richardson to hand out were chocolate bars with wrappers that read, "HeHim" and "SheHer" with additional smaller print referring to pronouns. Ms. Calvin is a transgender woman and felt the wrappers on the chocolate bars were offensive which prompted her to file a complaint.

IV. ALLEGATIONS, FINDINGS & ANALYSIS

Because the individual allegations are closely intertwined to one event, the analysis will be combined.

CONFIDENTIAL INVESTIGATION REPORT

ALLEGATION 1: Did David Richardson purchase and give away chocolate bars at a District event with labels saying "SheHer Nutless" and "HeHim Nuts" that people found offensive?

Finding: Yes, Sustained

ALLEGATION 2: Has David Richardson received Diversity, Equity, and Inclusion training from the District?

Finding: Yes, Sustained

ALLEGATION 3: Were the labels on the chocolate bars displayed by David Richardson on the History Department table contrary to the inclusivity caption in the District's Mission, Vision & Values?

Finding: Yes, Sustained

ALLEGATION 4: Did David Richardson continue to provide the chocolate bars on the History Department table after being made aware that they may be offensive to the trans and non-binary community?

Finding: No, Not Sustained

ALLEGATION 5: Did David Richardson bring the chocolate bars to the District event to intentionally offend the trans and non-binary community?

Finding: No, Not Sustained

Deanna Calvin's Allegations

Ms. Calvin arrived at the open house event at approximately 10:30 am. Ms. Calvin attended to assist and support Ms. Robles. Ms. Calvin stood at the booth for basic needs. When Ms. Calvin arrived, she walked past the History Department's table. She saw that there were a lot of treats displayed on the table. Ms. Calvin continued to her booth.

After Ms. Calvin settled in, she walked around to look at all of the tables and socialize with people. There were food trucks, drinks and multiple booths. Ms. Calvin walked around alone.

CONFIDENTIAL INVESTIGATION REPORT

Mr. Richardson and Mr. Mask were standing at the History Department's table. There may have been a third person nearby, but Ms. Calvin is not certain. Ms. Calvin looked at what they had to offer. She noticed some chocolate bars that said, "HeHim" and "SheHer." Ms. Calvin initially thought the pronouns on the wrapper were a good thing. She was under the impression the chocolate bars were recognizing multiple pronouns.

Ms. Calvin started asking questions about the pronouns on the wrapper. Mr. Mask said something along the lines of "leave it to David." Mr. Mask's demeanor was "jovial."

Ms. Calvin looked at the wrappers closer and noticed the smaller print. The HeHim chocolate bar had the word "Nuts" below it and the SheHer wrapper read "Nutless" below it. On the back of the wrapper it stated, "Enjoy the sweet taste of building a woke-free economy." Ms. Calvin started taking photographs of the table and the language printed on the wrappers of the chocolate bars.
(Exhibit 5)

Ms. Calvin then started asking direct questions to Mr. Richardson. Mr. Richardson replied by saying it is just a chocolate bar. Ms. Calvin asked Mr. Richardson if he had an agenda by displaying the chocolate bars.

Ms. Calvin believes Mr. Richardson appeared to be nervous because he seemed uncomfortable and he was stammering. Mr. Mask kept interjecting to defend Mr. Richardson. Ms. Calvin told Mr. Mask that she was not talking to him. Mr. Mask backed up from the table. Ms. Calvin explained she was not mad, but she just wanted to try to understand the meaning behind the language on the chocolate bars.

Ms. Calvin explained what the language meant to her when she read it. Mr. Richardson did not have much of a response other than saying that it was not offensive. Mr. Richardson asked who was offended by the language. Ms. Calvin said that she was offended and walked away.

Approximately 20 minutes later, Ms. Calvin saw Mr. Mask walk over to Dr. Robles. Ms. Calvin walked over to Mr. Mask to apologize for snapping at him. Mr. Mask told Ms. Calvin that she did not have to apologize. He added that Mr. Richardson is harmless and that people

CONFIDENTIAL INVESTIGATION REPORT

misunderstand him. Dr. Robles was nearby but did not participate in the conversation.

Ms. Calvin later told Dr. Harris about the incident with Mr. Richardson. Dr. Harris asked Ms. Calvin if she wanted Dr. Harris to direct Mr. Richardson to take the chocolate bars off the table. Ms. Calvin said no and that she felt Mr. Richardson should have taken the chocolate bars off the table on his own after Ms. Calvin objected to the offensive language.

Ms. Calvin took photographs of the chocolate bars and the offensive language. Mr. Richardson did not object to Ms. Calvin taking photographs. Ms. Calvin felt Mr. Richardson appeared agitated by Ms. Calvin's questions about the chocolate bars.

Ms. Calvin later looked up the website where the chocolate bars can be purchased. The language on the chocolate bars is a right-wing response to a Hershey's commercial that included a transgender woman. The chocolate bars are very expensive and are only available online.

Ms. Calvin feels the chocolate bars go against the culture of the campus. It is unwelcoming for transgender students and staff. Ms. Calvin was concerned that if Mr. Richardson was willing to put those chocolate bars on display during a public event, then what would he be willing to teach or say in the classroom.

Summary of Witness Evidence

Bill Mask's Perspective

The Open House event was the first of its kind for the District. Mr. Mask graduated from Madera Community College and is proud of being part of the community. Dr. Robles asked each department to participate and set up a table. Participation was voluntary. Mr. Mask spoke to Mr. Richardson about attending the event and he volunteered. Mr. Mask and Mr. Richardson attend three to four events each year where they promote the History Department.

Mr. Mask and Mr. Richardson both have collections of historical memorabilia. At other events, Mr. Mask and Mr. Richardson bring pieces from their personal collections to display and discuss history. Mr. Richardson always brings candy and snacks to give

CONFIDENTIAL INVESTIGATION REPORT

away. They recently had a movie night where Mr. Richardson had a table set up to give away candy and snacks.

The administration did not need to approve of the items that were displayed on the table or given away to community members. It was up to each department to "decorate" their table. Mr. Mask felt he and Mr. Richardson were representatives of Madera Community College and the District while working at the event.

Mr. Mask did not initially notice the pronoun labels on the chocolate bars. He made a comment to Mr. Richardson about bringing sweet treats because he (Mask) has been trying to avoid treats. Mr. Mask set up his side of the table and Mr. Richardson set up the other side.

Mr. Mask noticed the pronouns at some point but did not read the smaller print. He did not have any discussions with Mr. Richardson about the chocolate bars or the pronoun labels. Mr. Richardson is Mr. Mask's mentor and friend. He did not want to question him or his intentions.

The event started and crowds walked around to the various tables. Mr. Mask and Mr. Richardson were standing two to three feet behind their table in the shade. Ms. Calvin approached the table and waved her finger back and forth in a manner similar to an adult telling a child not to do something.

Mr. Richardson walked to the table. Ms. Calvin's facial expression made Mr. Mask feel that she was not in a communicative mood. Ms. Calvin started asking questions about the language on the chocolate bars. She asked about the pronouns and the with or without nuts language. Ms. Calvin asked if the "She/Her" meant a woman cannot have nuts. Mr. Richardson said he did not know and referred Ms. Calvin to contact the company for any questions.

Ms. Calvin was not using a friendly tone of voice. Mr. Mask tried to intervene and said it was not the proper time or place to have that type of discussion. Ms. Calvin told Mr. Mask to "stay out of it." Ms. Calvin did most of the talking during the interaction. Mr. Richardson appeared dumbfounded because Ms. Calvin was making a scene. Mr. Mask felt Ms. Calvin walked up to the table with the purpose of provoking a confrontation and appeared to be "on fire." Ms. Calvin walked away after Mr. Richardson continued to not

CONFIDENTIAL INVESTIGATION REPORT

engage. Mr. Mask does not remember Ms. Calvin saying she was "offended."

Mr. Mask saw Ms. Calvin approximately 30 minutes later. Ms. Calvin told Mr. Mask that she could not believe he was going to defend Mr. Richardson. Mr. Mask said he was not going to necessarily defend him, but he did not feel it was a proper environment to make a scene.

Mr. Mask also met with Dr. Robles to report what happened between Ms. Calvin and Mr. Richardson. Dr. Robles started to walk toward the table, but Ms. Calvin left before she got there.

Mr. Mask recalls there being three chocolate bars on the table at the time Ms. Calvin confronted Mr. Richardson. Mr. Mask does not believe Ms. Calvin took one of the chocolate bars. Dr. Harris took one of the chocolate bars earlier in the day and Mr. Mask believes she showed it to Ms. Calvin. Mr. Mask does not recall Ms. Calvin taking pictures of the table or chocolate bars. Mr. Mask took the remaining chocolate bars off the table after Ms. Calvin raised her concerns to prevent any further conflict. Mr. Mask does not remember anyone else commenting on the pronouns.

Approximately one week after the incident, Mr. Mask sat down with Ms. Calvin. Ms. Calvin is Mr. Mask's friend and he wanted to be sure she did not have any issues with him personally. Mr. Mask spoke with Mr. Richardson briefly about the incident. Mr. Richardson said he did not expect a confrontation and that he was shocked by Ms. Calvin's behavior. Mr. Mask was put in an awkward situation between two of his friends.

As an employee of the District, Mr. Mask has attended DEI training and seminars. Mr. Mask would have never brought the chocolate bars with the pronoun labels to a District event because they could be seen as offensive to some people. Mr. Mask does not have an opinion on Mr. Richardson's perspective or reasoning for bringing the chocolate bars. Mr. Richardson has the right to defend his lifestyle. Mr. Mask feels everyone should be open to all perspectives.

Dr. Lucia Robles' Perspective

Dr. Robles organized the Open House event at Madera Community College. The District received a grant related to the

CONFIDENTIAL INVESTIGATION REPORT

Lumina Foundation. The purpose of the event was to make the community aware that Madera Community College is there, and they are open to providing services. The event was scheduled to start from 11:00 am and end at 3:00 pm.

District staff were invited to attend the event to promote their department. Dr. Robles sent emails to every department inviting them to set up a table to promote their department. Mr. Mask responded to notify Dr. Robles that he was going to attend, and Mr. Richardson was going to join him.

Each department that attended was asked to set up a table to engage community members on their subject matter. It was up to the faculty of each department to set up their table. Dr. Robles and her staff were only involved in providing tables and chairs to whoever needed them. Dr. Robles was not involved with authorizing items displayed at each table. Dr. Robles believes that each District employee that attended the event would be considered a representative of the college while at the event.

Dr. Robles took pictures of each table while walking around the event. Dr. Robles did not notice the language on the chocolate bars when taking pictures of the History Department's table. She was more focused on the memorabilia.

Toward the end of the event, Mr. Mask approached Dr. Robles and told her that Ms. Calvin and Mr. Richardson had engaged in a dialogue about the chocolate bars. Mr. Mask said Ms. Calvin objected to the pronouns printed on the chocolate bars. Mr. Mask told Dr. Robles that Ms. Calvin was "really upset" and that she had yelled at Mr. Richardson. Dr. Robles cannot recall if Mr. Mask said Ms. Calvin was offended.

Dr. Robles did not speak with Ms. Calvin or Mr. Richardson about the incident. Shortly after speaking with Mr. Mask, Ms. Calvin approached them. Dr. Robles was called to another area of the event to address a separate issue before speaking to Ms. Calvin.

Ms. Calvin reports to Dr. Harris. Neither Ms. Calvin nor Mr. Richardson report to Dr. Robles. Dr. Robles did not walk past the table after learning of the incident to see if the chocolate bars were still on the table. After the event, Dr. Robles spoke with Dr. Harris, but there was no mention of the incident between Ms. Calvin and Mr. Richardson.

CONFIDENTIAL INVESTIGATION REPORT

Dr. Marie Harris' Perspective

The Open House event was planned to celebrate the grant the District received from the Lumina Foundation. It was the first community event at Madera Community College. Dr. Harris attended the event, but she is not sure how District staff were recruited to attend.

During the event, Dr. Harris walked by each table. She noticed the pronoun labels on the chocolate bars displayed on the History Department's table. She picked up one of the chocolate bars not knowing what it was. At first, she thought it was inclusive, but then read the smaller print. Dr. Harris found the chocolate bars offensive to the transgender community. Dr. Harris did not speak with Mr. Richardson or Mr. Mask. Dr. Harris is not sure what Mr. Richardson's intent was on bringing the chocolate bars to a District event.

Dr. Harris took one of the chocolate bars and continued walking. She met with Ms. Calvin and two other District employees. Dr. Harris cannot recall who else was standing there. Ms. Calvin said that the chocolate bars were offensive because the language discriminated against the transgender community. Dr. Harris never spoke to Mr. Richardson about the chocolate bars. She asked Ms. Calvin if Ms. Calvin wanted her to pull the chocolate bars from the table and speak to Mr. Richardson. Ms. Calvin said no and that she was going to approach Mr. Richardson as a peer. Dr. Harris has not had any conversations with District staff about the chocolate bars.

Dr. Harris feels that Mr. Richardson should have known the chocolate bars were inappropriate. He has attended District training seminars that cover inclusion and DEI. Dr. Harris assigned Mr. Richardson additional trainings last summer as a result of a separate investigation in which he used mocking pronouns during a Zoom meeting. Those training courses included inclusion and DEI. Mr. Richardson is also aware Ms. Calvin is a transgender woman.

David Richardson's Response

Mr. Richardson was asked by a colleague, Bill Mask, to volunteer at the open house event at Madera Community College. The event was held to open the campus to potential students. Mr.

CONFIDENTIAL INVESTIGATION REPORT

Richardson did not have any duties or responsibilities assigned to him for the event. Mr. Richardson was not given any directives by the administration related to his presence at the open house event.

Mr. Richardson arrived at the campus a little before 10:00 am. Mr. Richardson and Mr. Mask set up a table to display memorabilia from their personal collections. They did not have promotional pamphlets or advertisements. They discussed history with anyone that visited the table. Mr. Richardson brought snacks to give away. None of the items on the table were for sale.

The District did not purchase any of the items displayed on the table. Mr. Richardson brought the snacks on his own. It is a common practice for Mr. Richardson to bring giveaways.

There were multiple tables scattered along a breezeway. Ms. Calvin walked by the table and looked at the items on display. She continued walking. Ms. Calvin returned to the table after about an hour near the end of the open house. She had her phone out and it appeared she was recording or taking photographs.

Ms. Calvin asked about the wrappers on some chocolate bars. She wanted to know what the language on the wrappers meant. Mr. Richardson responded by saying Ms. Calvin should contact the manufacturer. Ms. Calvin kept pressing Mr. Richardson on what the meaning of the language was on the chocolate bar wrappers. It seemed to Mr. Richardson that Ms. Calvin was trying to provoke a confrontation. Mr. Richardson did not engage.

After Ms. Calvin continued to press Mr. Richardson on the chocolate bars, Mr. Mask jumped in to resolve the issue. Ms. Calvin turned to Mr. Mask and said, "I am not talking to you." Ms. Calvin wanted to discuss the "anti-woke" and "nut and nutless" messages on the chocolate bars. Ms. Calvin had a raised voice during the conversation. Ms. Calvin eventually walked away.

The chocolate bars were made by "Jeremy's Razors" (which also sells the chocolate bars) and Mr. Richardson purchased them approximately two months before the open house. He purchased the chocolate bars to support a new company. Mr. Richardson had leftover chocolate bars from when he purchased them in the past. Mr. Richardson did not purchase the chocolate bars specifically for the District event.

CONFIDENTIAL INVESTIGATION REPORT

Mr. Richardson brought the chocolate bars with the intent of giving them away to get rid of them. He was able to get rid of all of the chocolate bars. A few people commented on the chocolate bar wrappers and thought they were humorous. There were no other objections to the language on the wrappers.

There were multiple online news articles and radio shows that discussed Mr. Richardson's chocolate bars and the District event. Some of those articles and radio shows stated Mr. Richardson was joking or trying to make a political statement. Mr. Richardson denied making these comments to reporters and that their descriptions of his intent were speculative. Mr. Richardson's only intent was to get rid of the chocolate bars that he had at his house.

Mr. Richardson did not have any further interactions with Ms. Calvin. Mr. Richardson was not asked to remove the chocolate bars. Mr. Mask received a text message from someone asking him if the chocolate bars were still being displayed on the table, but all of them had been given away.

Attendance at the open house event was voluntary. Mr. Richardson's only intention in bringing the chocolate bars was to get rid of them. Administration did not approve or inspect the items on the tables.

Analysis

Based on the preponderance of the evidence, including Mr. Richardson's admission, he purchased and gave away chocolate bars with language on the label saying "SheHer Nutless" and "HeHim Nuts" at a District event. Mr. Richardson stated he purchased the chocolate bars months before the District event and that he did not purchase them specifically for the District event.

The chocolate bars were purchased online from "Jeremy's Razors" (which also sells chocolate) and Mr. Richardson stated that he did not intend to offend anyone at the District event. The price of the chocolate bars fluctuates based on various packages on the website, but they seem to be more expensive than a chocolate bar without the pronoun labels at a grocery store. According to the Jeremy's Razors website where the items were purchased, the language on the labels of the chocolate bars was created for the following reasons:

CONFIDENTIAL INVESTIGATION REPORT

"For International Women's Day, Hershey's hired a biological male to be the spokesperson for their Women's Day campaign. It's humiliating. That's why we launched Jeremy's Chocolate. We have two kinds: SheHer and HeHim. One of them's got nuts. You know which is which."

Mr. Richardson stated that his intent to bring the chocolate bars to give away was to get rid of the rest that he had at his house. There was no evidence to refute that Mr. Richardson did not purchase the chocolate bars specifically for the District event and that his statement is believable. The photograph provided by Ms. Calvin shows 8 chocolate bars on the table. The website offers packs of 4, 12 and 24 for purchase. During Mr. Richardson's second interview, he stated he had purchased a box of 24 chocolate bars months prior and that he had some left over. He included them with the various other snacks that he brought to give away.

According to Mr. Mask, it is common for Mr. Richardson to give candy and snacks away for free at District events. The snacks are not related to the History Department curriculum. The chocolate bars were mixed in among the other snacks toward the back of the table. Ms. Calvin's pictures of the chocolate bars show half of them underneath bags of chips. Outside of providing the chocolate bars, none of the witnesses stated Mr. Richardson was promoting the chocolate bars or making any efforts to draw attention to them over the other snacks.

There was conflicting evidence regarding Mr. Richardson's motives for bringing the chocolate bars to the District event. Mr. Richardson stated in both of his interviews that his intentions were to get rid of excess chocolate bars. He denied that he had any intent on offending anyone. There were multiple online articles and radio shows that discussed the chocolate bars and the District event. Some of those articles stated Mr. Richardson's motive for bringing the chocolate bars was a joke and a political statement. **(Exhibit 6)** Mr. Richardson denied making these comments related to the chocolate bars and that the comments about his motives by the media were speculation. The online articles and radio shows did not have direct quotes from Mr. Richardson, so it is plausible the additional motives discussed were speculation. In addition to discussing the chocolate bars, the articles also discussed and mixed information with the details of a prior investigation involving Mr. Richardson and his use of pronouns. Mr. Richardson

CONFIDENTIAL INVESTIGATION REPORT

remained consistent during his second interview that his only intent was to get rid of excess chocolate bars. This explanation was also consistently included in online articles and radio shows.

Mr. Mask set up his side of the table and Mr. Richardson set up the other side. None of the witnesses that were interviewed had prior knowledge that Mr. Richardson planned on giving out the chocolate bars with the pronoun language on the labels. Mr. Mask noticed the chocolate bars on the table after the event started but did not speak to Mr. Richardson about them. Mr. Mask stated he did not want to question Mr. Richardson because Mr. Richardson is his friend and mentor. Mr. Mask would later say that he would not have brought the chocolate bars to a District event because it could offend someone.

Ms. Calvin asked Mr. Richardson about the language on the chocolate bars and Mr. Richardson did not provide much of a response. This was corroborated by Mr. Mask. Ms. Calvin and Mr. Richardson provided consistent versions of the conversation they had about the chocolate bars. Ms. Calvin said Mr. Richardson seemed like he did not want to answer her questions. Mr. Richardson stated he did not want to engage in the conversation because he felt Ms. Calvin was trying to provoke a confrontation. Mr. Mask agreed with Mr. Richardson that Ms. Calvin wanted to provoke a confrontation. Mr. Richardson and Ms. Calvin only had one discussion about the language printed on the labels of the chocolate bars displayed at the History Department's table.

Although Mr. Mask cannot recall if Ms. Calvin made the comment that she was offended, it is more likely than not that Mr. Richardson and Mr. Mask could reasonably assume Ms. Calvin was offended based on their descriptions of her demeanor while discussing the chocolate bars.

Based on information collected to date, there were no other complaints reported to the District about the chocolate bars being offensive outside of Ms. Calvin. Dr. Harris picked up one of the chocolate bars and stated she was offended by the language on the label. However, Dr. Harris did not ask Mr. Richardson any questions and she did not suggest he remove the chocolate bars from the table.

It is also worth noting, Dr. Harris saw the chocolate bars on the table and stated she felt offended. Dr. Harris assigned Mr.

CONFIDENTIAL INVESTIGATION REPORT

Richardson additional DEI training around his prior use of pronouns and did not take any measures to engage Mr. Richardson about the chocolate bars or ask him to remove them from the table. Instead, Dr. Harris stated she gave the chocolate bar to Ms. Calvin for her to read, which likely contributed to Ms. Calvin confronting Mr. Richardson.

Dr. Harris assigned Mr. Richardson DEI training last summer so she is aware Mr. Richardson has received recent training on inclusion and pronouns. **(Exhibit 7)** Dr. Harris assigned Mr. Richardson additional DEI training because he used mocking pronouns during a Zoom meeting. Dr. Harris believes, based on the additional DEI training, Mr. Richardson is aware the District has trans/non-binary students and staff and certain language can be seen as offensive or non-inclusive. According to the District's Mission, Vision & Values "Inclusivity: is a commitment to intentionally create an environment that cultivates, embraces, and celebrates diversity." **(Exhibit 8)**

Based on the preponderance of the evidence, it is more likely than not that Mr. Richardson should have anticipated the chocolate bars did not align with the District's inclusivity vision after receiving the DEI training. Mr. Mask felt the chocolate bars could offend someone after he saw them on the table. Even if Mr. Richardson's only intent was to get rid of excess chocolate bars, he purchased the chocolate bars from a website promoting the labels that contained pronouns and he voluntarily brought them to give out with other snacks. Further, if Mr. Richardson did not anticipate the chocolate bars being offensive to some people, Ms. Calvin's demeanor and comments during their interaction would have likely drawn his attention to the potentially offensive language on the chocolate bars, but he did not immediately remove them.

Mr. Richardson did not remove the chocolate bars from the table after Ms. Calvin's objection to them being distributed. He said he gave away the remaining chocolate bars. Mr. Mask gave a conflicting version of events. Mr. Mask stated he removed the three remaining chocolate bars from the table after Ms. Calvin objected to them being displayed. Regardless of who or how the chocolate bars were removed from the table, Mr. Richardson was never directed or asked to remove the chocolate bars from the table by the administration. There was insufficient evidence to suggest the chocolate bars were on the table for an extended period of time after Ms. Calvin confronted Mr. Richardson.

CONFIDENTIAL INVESTIGATION REPORT

Based on District records, Mr. Richardson has received DEI training. All of the witnesses provided consistent statements that Mr. Richardson, based on District training, should have anticipated the pronoun language on the chocolate bars did not align with the District's stance on inclusion. Additionally, the witnesses provided consistent statements that any faculty member that voluntarily attended the open house event was a representative of Madera Community College. Dr. Robles invited District staff to attend the event. Mr. Mask invited Mr. Richardson to the event and their purpose at the event was to promote the History Department. Based on Mr. Mask's perspective, the purpose of the event and the event being located on campus, it is more likely than not that Mr. Richardson was aware he was a representative of the college while standing behind the History Department table displaying historical memorabilia.

V. RESPONSES TO EVIDENCE

Deanna Calvin's Response

I received and reviewed Ms. Calvin's responses to the evidence. **(Exhibit 9)** In response to Ms. Calvin's concerns regarding Mr. Mask's perspective, his relationship to Mr. Richardson was considered when evaluating credibility. Ultimately, Mr. Mask came across as a credible witness on his own behalf. He was the only witness to the incident between Mr. Richardson and Ms. Calvin.

The media articles were not searched out as part of the investigation. The articles were provided by the District and were evaluated to determine if Mr. Richardson made inconsistent statements to the media than he did during the investigation.

David Richardson's Response

I received and reviewed the response to the evidence prepared by Mr. Bradley. **(Exhibit 10)** Many of Mr. Bradley's responses are directed at the District.

After review of Mr. Richardson's statements during his first interview, Mr. Richardson stated that he was not aware of Ms. Calvin being transgender at the time of the incident.

CONFIDENTIAL INVESTIGATION REPORT

Mr. Bradley did request the investigation include Mr. Richardson's action that was filed alleging that his civil rights were violated by the District. Mr. Bradley also requested Mr. Richardson's views that this investigation is retaliation against him for that legal action. Mr. Bradley's requests were considered, but this investigator felt it was outside the scope of this investigation.

The articles that were reviewed during the course of the investigation were only considered to determine the consistency of Mr. Richardson's statements during the investigation.

VI. CONCLUSION

This concludes my investigation. Please do not hesitate to contact me with any questions you might have. Thank you for the opportunity to assist with this matter.