

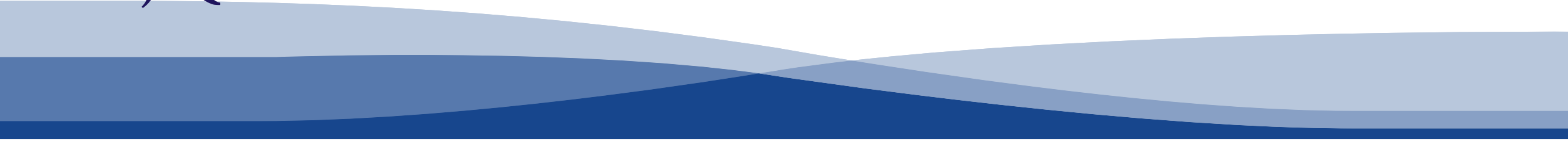
# Title IX: Sexual Misconduct Training for Faculty

**Dr. Mike McCandless: Vice President of Student Services**

**Kelly Underwood: Associate Vice President, Human Resources**



# AGENDA

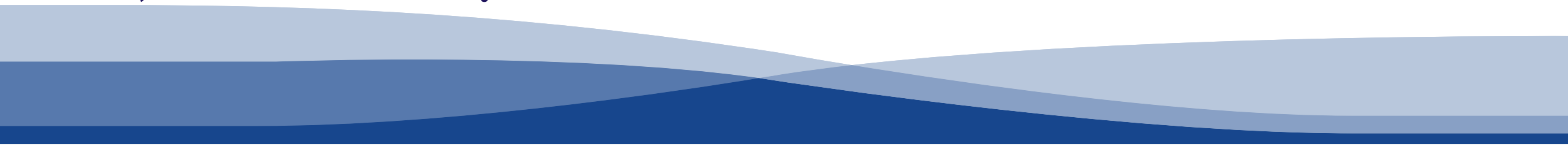
- 1) **Overview of applicable Federal and State Laws**
  - 2) **What is Sexual Misconduct?**
  - 3) **Overview of applicable MCCD Policies and Procedures**
  - 4) **College Related Sexual Misconduct**
  - 5) **Title IX Investigations Overview**
  - 6) **Supportive Measures**
  - 7) **Discipline**
  - 8) **Questions**
- 

# Our Roles

**VP McCandless is MCCD's designated Student Discipline Officer.**

**AVPHR Kelly Underwood is currently MCCD's designated Title IX Coordinator. The new HR Director/Title IX Officer will take on that role upon hire.**

# Responsibilities of the Title IX Coordinator & Investigators

- 1) **Accepts and Documents Reports of Sexual Misconduct**
  - 2) **Oversees Responses to Complaints**
  - 3) **Coordinates with Concurrent Investigations (i.e. Law Enforcement)**
  - 4) **Evaluates Requests for Confidentiality**
  - 5) **Addresses Patterns or Problems**
  - 6) **Provides Training to Campus Community**
  - 7) **Investigations**
  - 8) **Implements Supportive Measures**
  - 9) **Provides Remedy and Sanction Information**
- 

# Where can I find Title IX information?

The screenshot shows a web browser window with the URL [www.mccd.edu/offices/hr/title-ix/index.html](http://www.mccd.edu/offices/hr/title-ix/index.html). The page features a left-hand navigation menu with the following items: Human Resources Department, EEO/Diversity, Employment Opportunities, Equivalency Forms, FAQs, HR Staff, Harassment/Discrimination/Sexual Misconduct (Title IX), > Harassment/Discrimination/Sexual Misconduct (Title IX), > How to Report or Make a Complaint of Unlawful Discrimination, > Formal Complaint Process, > Informal Complaint Process, > Retaliation, > Title IX Resources and other Reporting Rights, > Unlawful Discrimination, Job Descriptions, Professional Development, Resources for Employees, and Salary Schedules. The main content area is titled "Title IX" and includes a breadcrumb trail: Home / Departments & Offices / Human Resources / Title IX. Below the title, there is a section "What is Title IX?" which explains that Title IX of the Education Amendments of 1972 is a federal civil rights law prohibiting sex discrimination in education programs or activities that receive federal funding, including athletic programs. It also states that Title IX holds schools liable for sex discrimination, including sexual harassment and sexual assault. A quote is provided: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." Below this, it notes that under Title IX, discrimination on the basis of sex can include sexual harassment, rape, and sexual assault. A section titled "To file a complaint, please contact:" is followed by the "Title IX Coordinator for Merced Community College District" information: Kelly Underwood, Associate Vice President of Human Resources, (209) 384-6102, and [kelly.underwood@mccd.edu](mailto:kelly.underwood@mccd.edu). At the bottom of the page, there is a video player with the title "Tea Consent (Clean)" and a play button icon over a yellow teacup illustration.

# Overview of Federal and State Law



# Agencies Responsible for Enforcing T9 Laws

Agency	Students Only	Employees Only
OCR: Department of Education Office for Civil Rights	X	
CCCCO: California Community Colleges Chancellor's Office	X	X
DFEH: CA Department of Fair Employment and Housing		X
EEOC: Equal Employment Opportunity Commission		X

# What is Title IX?

**“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”**

**20 U.S.C. §1681 & 34 C.F.R. PART 106 (1972)**





# The History and the Myth





<https://youtu.be/fGoWLWS4-kU>

# California Education Code

66270.

**No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any characteristic listed or defined in Section 11135 of the Government Code or any other characteristic that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, including immigration status, in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.**

# Title 5 Regulations (Definitions)

## § 59311. Definitions.

For purposes of this subchapter, the following definitions shall apply:

(a) “Appeal” means a request by a complainant made in writing to a community college district governing board pursuant to section 59338 and/or to the Chancellor’s Office pursuant to section 59339 to review the administrative determination of a community college district regarding a complaint of discrimination.

(b) “Complaint” means a written or verbal statement meeting the requirements of section 59328 that alleges unlawful discrimination in violation of this subchapter.

(c) “Days” means calendar days.

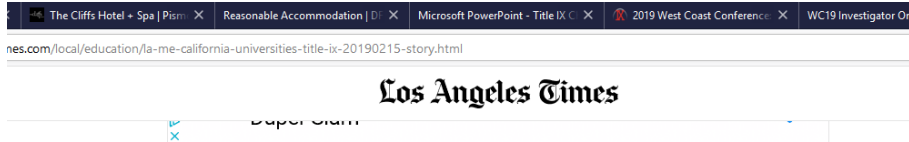
(d) “Unlawful discrimination” means unfair or unequal treatment of an individual (or group) based upon an actual or perceived characteristic related to ethnic group identification, national origin, immigration status, religion, age, sex, gender, gender identification, gender expression, military and veteran status, marital status, medical condition, race, color, ancestry, sexual orientation, physical or mental disability, or any other characteristic protected under applicable federal or state law.

# Title 5 Regulations (District Responsibility)

## § 59320. District Responsibility.

Community college districts must ensure that their programs and activities are available to all persons without unlawful discrimination. Community college districts shall investigate complaints of unlawful discrimination in their programs and activities, in accordance with the provisions of this subchapter.

# California Cases



## Ruling affirming the rights of students accused of sexual misconduct roils California colleges



Pedestrians walk on the USC campus in Los Angeles. A case involving Bryce Dixon, a former USC football player accused of sexual assault triggered a ruling that's causing California college campuses to overhaul their Title IX procedures. (Patrick T. Fallon/ For The Times)

By TERESA WATANABE, SUHAUNA HUSSAIN FEB. 14, 2019 | 5:05 PM

Colleges and universities across California are scrambling to revise the way they handle sexual misconduct cases after a state appellate court ruled that "fundamental fairness" requires that accused students have a right to a hearing and to cross-

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## Fallout from Fresno State's Multi-Million Dollar Case(s)

Just five months ago, a \$5.85 million verdict in favor of Linda L. Vivas, the former California State University at Fresno women's volleyball coach, set a record for Title IX verdicts. On Thursday, a second Fresno jury blew that mark away, ordering the university to pay \$19.1 million to Stacy Johnson-Klein in a case that involved alleged sex discrimination and retaliation for the former women's basketball coach's advocacy for female athletes.

By Elizabeth Redden // December 10, 2007

11 COMMENTS

Just five months ago, a \$5.85 million verdict in favor of Linda L. Vivas, the former California State University at Fresno women's volleyball coach, set a record for Title IX verdicts. On Thursday, a second Fresno jury blew that mark away, ordering the university to pay \$19.1 million to Stacy Johnson-Klein in a case that involved alleged sex discrimination and retaliation for the former women's basketball coach's advocacy for female athletes. In between the two verdicts, Fresno State settled a similar case with its former associate athletics director, Diane Milutinovich, for \$3.5 million.

Meanwhile, elsewhere in the country in 2007, appeals courts reinstated two high-profile sexual

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Los Angeles Times

## Students accused of sexual harassment sue California universities

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Mario Rodriguez

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Jan. 3, 2019 | 9 AM

a graduate student who said he dated another student she accused him of stalking and sexual harassment in

# Overall Intent

**“To ensure that all students and employees, regardless of sex or gender, have an equal opportunity to participate and receive the benefit of an education.**

**To protect people associated with educational institutions from sexual violence, harassment and discrimination and to prevent and eliminate sexual abuses from America’s education system.”**

**From AALRR Title IX Presentation to MCCD Managers, May 17, 2019**

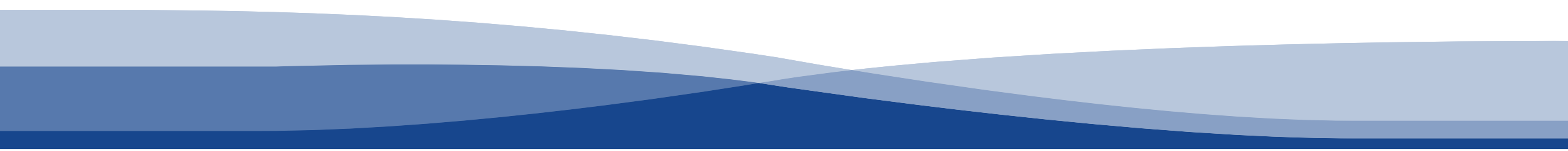


# Sexual Misconduct that Violates Law

- 1) **Sexual Harassment**
  - 2) **Sexual Violence**
  - 3) **Sex/Gender Discrimination**
  - 4) **Unequal Pay**
  - 5) **Pregnancy Discrimination**
  - 6) **Unequal Distribution of Athletic Funds**
  - 7) **Unequal Admissions**
  - 8) **Unequal Financial Aid Practices**
  - 9) **Marital or Family Status**
- 



# What is Sexual Harassment Under Title IX?



# AP 3433

The District is committed to providing an academic and work environment free of unlawful sex harassment under Title IX. This procedure defines sexual harassment on campus.

This procedure and the related policy protects students, 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 or training program sponsored by the District at another location.

# AP 3433, 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 his/her/their age or because of his/her/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.

Sodomy. Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.

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 his/her/their age or because of his/her/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 his/her/their age or because of his/her/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;

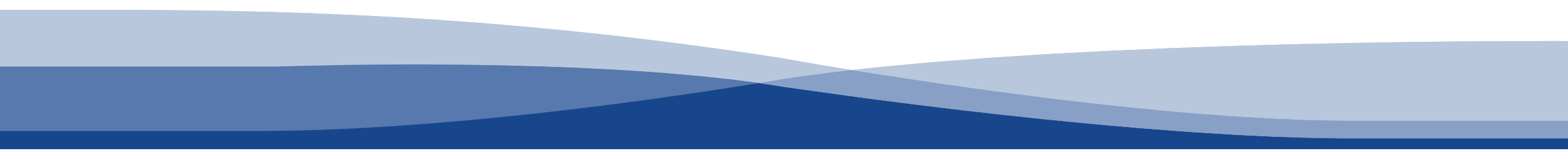
By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

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 his/her/their safety or the safety of others or suffer substantial emotional distress.

# AP 3433, Definitions

- 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;
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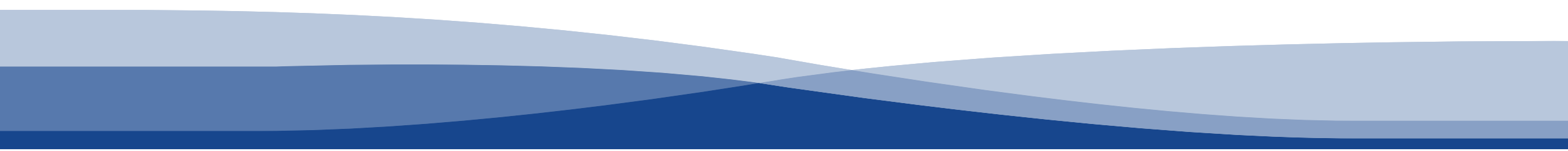
# Harassment as Defined by DFEH & EEOC

The harassment must be severe or pervasive to be unlawful. That means that it alters the conditions of your employment and creates an abusive work environment. A single act of harassment may be sufficiently severe to be unlawful. (DFEH)

Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people. (EEOC)

# Sexual Harassment (cont.)

The harassing conduct creates a hostile environment when:

- 1) So severe, persistent, or pervasive as to deny or limit a person's ability to participate in or benefit from the school's programs; or
  - 2) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance; or
  - 3) The conduct results in an intimidating, hostile, or offensive work or educational environment.
- 

# Sexual Harassment: The Bottom Line

Any unwelcome conduct of a sexual nature may be sexual harassment, but it may not rise to the level of an institutional violation of Title IX or Ed Code .

Regardless, allegations must be addressed.

Complainants should report any behavior causing discomfort.

# Faculty Responsibility

**All employees are responsible for knowing and adhering to college policies and procedures.**



# AP 3435, Complaints and Investigations

The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in harassment, discrimination, or retaliation. Any person who has suffered harassment, discrimination, or retaliation may file a formal or informal complaint of harassment, discrimination, or retaliation, or who has learned of harassment, discrimination, or retaliation.

# Reporting per AP 3435

**All supervisors and managers have a mandatory duty to report incidents of harassment and discrimination; the existence of a hostile, offensive or intimidating work environment, and acts of retaliation.**

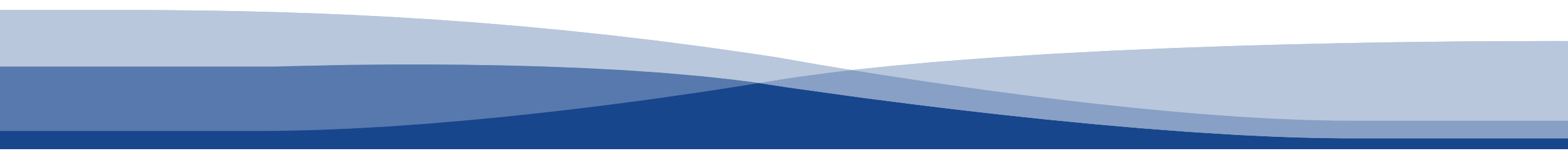
# Scenario #1

“What do I do? Who do I tell?” asks the faculty member.

Alexa approaches her instructor, Dr. Schmoe after class and shares that she is worried about Bridget, who has not been to class for a few days. Alexa says that she heard that something happened to Bridget at a party on Saturday night, but she isn't sure if it is true or what happened exactly.

What should Dr. Schmoe do?

# Notes for Reporting Party

- 1) **Report up, not out. Your confidentiality is required.**
    - a) Please ensure you get ahold of a person immediately. If T9 Coordinator is not available, do not leave a voice message or send an email.
  - 2) **Follow-up by documenting your report to T9 Coordinator (email)**
  - 3) **Do not expect to hear anything in return.**
- 

# Scenario #2

## Confidentiality and the Reluctant Reporter

Dean Hawkeye received a report from a faculty member that a staff member in his department complained of being “grabbed” by another staff member after a department meeting. Dean Hawkeye reports this incident to the Title IX Coordinator as follows:

Dear Coordinator,

FYI. One of my faculty members called me a few days ago to report a staff member complaint of “grabbing.” Because they are friends, the faculty member has promised the staff member that he will not share her personal information, and the faculty member would rather not get involved either. However, he did tell the staff member where she could report the incident. I called my VP the day it happened and left a message.

Thanks,

Hawkeye

# Title IX Investigations



# Title IX “Commandments”

<b>Thorough</b>	<b>Reliable</b>	<b>Impartial</b>
<b>Prompt</b>	<b>Effective</b>	<b>Equitable</b>
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community

Investigation  
(prompt & fair –  
VAWA Sec. 304)

Process

Remedies

From ATIXA Investigator One Booklet

# Standard of Proof

The District will use a “preponderance of the evidence” standard of proof in determining whether there has been a violation of this policy. This standard of proof is also known as “more likely than not” standard.



# MCCCD Procedure for Investigations (AP 3435)

1) Chief Human Resources Officer is the "responsible District officer" charged with receiving complaints of discrimination or harassment, and coordinating their investigation.

- a) Interview complainant
- b) Interview respondent
- c) Interview witnesses
- d) Review evidence
- e) Write Investigative Report and Administrative Determination

2) The District will undertake its investigation promptly and swiftly as possible, within 90 days of the District receiving the complaint.

# Retaliation

The bottom of the slide features a decorative graphic consisting of several overlapping, wavy bands of blue. The colors range from a light, pale blue to a deep, dark navy blue, creating a layered, landscape-like effect.

# Retaliation

Retaliation against **any party** is strictly prohibited.

Retaliation is defined as any adverse employment action taken against an employee because the employee engaged in activity protected under this policy.

Adverse employment action is conduct or an action that materially affects the terms and conditions of the employee's employment status or is reasonably likely to deter the employee from engaging in protected activity.

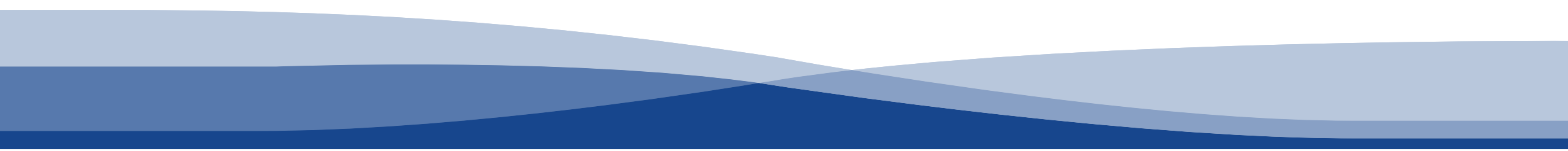
# Protected Activity

## Examples of “Protected Activity”

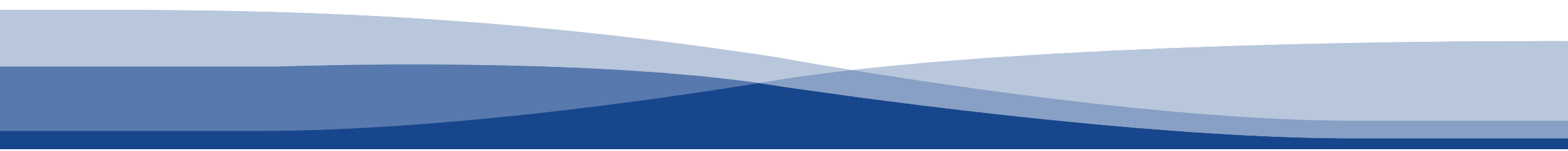
- Filing or being a witness in an EEO charge, complaint, investigation, or lawsuit
- Communicating with a supervisor or manager about employment discrimination, including harassment
- Answering questions during an employer investigation of alleged harassment
- Refusing to follow orders that would result in discrimination
- Resisting sexual advances, or intervening to protect others
- Requesting accommodation of a disability or for a religious practice
- Asking managers or co-workers about salary information to uncover potentially discriminatory wages.

**\*\*Participating in a complaint process is protected from retaliation under all circumstances.**

# Supportive Measures Must Be...

- ✓ Immediate
  - ✓ Clearly Communicated
  - ✓ Adaptable
  - ✓ Address Friends/Peer Groups
  - ✓ Consistent with Swift Resolution
- 

# Example of Supportive Measures

- “No contact” order
  - Transportation/work/class alternatives
  - Increased security or monitoring
  - Campus escort services
  - Leaves of absence, extensions of time, or other course related adjustments
- 

## Scenario #3

After speaking with Bridget (from Dr. Schmoe's class), the Title IX Coordinator begins an investigation and is concerned about the impact on Bridget's ability to pursue her education as she claims to have been raped at the men's basketball team's victory celebration sponsored by the Merced College Foundation on Saturday night.

Bridget has one class with the alleged perpetrator of the rape (Harry), Dr. Schmoe's class. In addition, Bridget is on the college's swim team and uses the same gym as the basketball team and is fearful of running into basketball team members who may know or have witnessed what happened at the party.

# Student Discipline

- **Merced College students are held to BP/AP 5500, Standards of Conduct**
  - **Those behaviors relating to Title IX include, but are not limited to:**
    - **Sexual assault or sexual exploitation regardless of the victim's affiliation with the district.**
    - **Committing sexual harassment as defined by law or by District policies and procedures.**
    - **Engaging in harassing or discriminatory behavior based on disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other status protected by law.**
    - **Lewd, indecent or obscene conduct on District-owned or controlled property, or at District-sponsored or supervised functions.**



# Student Discipline

## Forms of Student Discipline that may be assigned as sanctions:

- Short-term Suspension-- Exclusion of the student by the Superintendent/President or designee for good cause from one or more classes for a period of up to ten consecutive days of instruction.
- Long-term Suspension-- Exclusion of the student by the Superintendent/President or designee for good cause from one or more classes for the remainder of the school term, or from all classes and activities of the college for one or more terms.
- Expulsion--Exclusion of the student by the Board of Trustees from all instructional sites in the District for one or more terms.
- Removal from class--Exclusion of the student by an instructor for the day of the removal and the next class meeting.
- Written or verbal reprimand--An admonition to the student to cease and desist from conduct determined to violate the Standards of Student Conduct. Written reprimands may become part of a student's permanent record at the college. A record of the fact that a verbal reprimand has been given may become part of a student's record at the college for a period of up to one year.
- Withdrawal of Consent to Remain on Campus-- Withdrawal of consent by the Vice President, Student Services for any person to remain on campus in accordance with California Penal Code Section 626.4 where the Vice President, Student Services has reasonable cause to believe that such person has willfully disrupted the orderly operation of the campus.

# Student Discipline

Students are guaranteed due process rights:

- Notice
- Time limits
- Meeting
- Request for Hearing
- Schedule of Hearing
  - Hearing Panel
  - Conduct of the Hearing

# Questions?

*Grow Here. Go Anywhere.*

