

PROHIBITION OF HARASSMENT (AP 3430)

References: *Education Code Sections 212.5, 44100, 66252, and 66281.5; Government Code Section 12940; Title II Sections 10500 et seq.; Title 5 Sections 59320 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e; Board Policy & Administrative Procedure No. 3540 - (BP/AP) Sexual and Other Assaults on Campus ; Board Policy & Administrative Procedure No. 3500 - (BP/AP) Campus Safety; Board Policy & Administrative Procedure No. 3510 - (BP/AP) Workplace Violence Plan; Board Policy & Administrative Procedure No. 3515 - (BP/AP) Reporting of Crimes; Board Policy No. 3430 - (BP) Prohibition of Harassment; Administrative Procedure No. 3435 - (AP) Discrimination and Harassment Complaints & Investigations;*

The College District is committed to providing an academic and work environment free of unlawful harassment and discrimination. This procedure defines sexual harassment and other forms of harassment on campus and sets forth a procedure for the investigation and resolution of complaints of harassment and discrimination by or against any employee or student within the College District.

This procedure and the related policy protect students, employees, unpaid interns, and volunteers in connection with all academic, educational, extracurricular, athletic, and other programs of the College District, whether those programs take place in the College District's facilities, in College District transportation, or at a class or training program sponsored by the College District at another location.

DEFINITIONS

General Harassment: Harassment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation of any person, military and veteran status, or the perception that a person has one or more of these characteristics is illegal and violates College 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 harassing conduct would be adversely affected to a degree that interferes with his/her/their ability to participate in or to realize the intended benefits of an institutional activity, employment, or resource.

For sexual harassment under Title IX, Complainants must proceed under BP 3433 Prohibition of Sexual Harassment Under Title IX, AP 3433 Prohibition of Sexual Harassment Under Title IX, and AP 3434 Responding to Harassment Based on Sex under Title IX. For other forms of sexual harassment or gender-based harassment, Complainants should use this procedure.

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 competency 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:

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, nationality, 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 coercion. Sexual Violence refers to physical, sexual acts perpetuated 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, nationality, 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 may exist where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, race, nationality, sexual orientation, or other protected status; or gratuitous comments regarding gender, race, nationality, sexual orientation or other protected status any of the protected status that is 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 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 (as more fully described below); 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 College District.

This definition encompasses two kinds of sexual harassment:

- a. **"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.
- b. **"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 interferes with an individual's academic or work performance, or creates an intimidating, hostile, or abusive learning or work environment. The person 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 or isolated incident of sexual harassment may be sufficient to create a hostile environment if it is severe, i.e., a sexual assault.

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.

Consensual Relationships

Romantic or sexual relationships between supervisors and employees, or between administrators, faculty, or staff members and students are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the administrator, faculty member, or staff member must evaluate the student's or employee's work or make decisions affecting the employee or student. The relationship may create an appearance of impropriety and lead to charges of favoritism by students or employees. A consensual sexual relationship may change, with the result that the sexual conduct that was once welcome becomes unwelcome and harassing. In the event that such relationships do occur, the College District has the authority to transfer any involved employees to eliminate or attenuate the supervisory authority of one over the other, or of a teacher over a student. Such action by the College District is a proactive and preventative measure to avoid possible charges of harassment and does not constitute discipline against affected employees.

Academic Freedom

No provision of this Administrative Procedure 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 procedure will not protect speech or expressive conduct that violates federal or California anti-discrimination laws.