

PFT PROPOSED
ADMINISTRATIVE PROCEDURE 3430 PROHIBITION OF UNLAWFUL HARASSMENT

The District is committed to providing an academic and work environment free of unlawful harassment. 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 by or against any student, faculty, staff or other person using the services of the District.

I. Definitions

A. General Harassment

Harassment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender identification, age, or sexual orientation of any person, or the perception that a person has one or more of these characteristics is illegal and violates District policy. Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment. 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:

B. 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.

C. 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.

D. 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.

E. 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, nationality, 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 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.

F. Sexual Harassment

In addition to the above, sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature when:

1. submission to the conduct is made a term or condition of an individual's employment, academic status, or progress;
2. submission to, or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual;
3. the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment; or
4. submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the community college.
5. 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 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.

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.

II. Examples:

Harassment includes, but is not limited to the following misconduct:

A. Verbal

Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's protected status, including but not limited to sex. 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 of a sexual nature; or sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular gender.

B. 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.

C. Visual or Written

The display or circulation of offensive sexually oriented or other discriminatory visual or written material. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.

D. Environmental

An academic or work environment that is permeated with racially or sexually-oriented talk, innuendo, insults or abuse 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. An environment may be hostile if unwelcome sexual behavior or other harassing behavior based on a protected status is directed specifically at an individual or if the individual merely witnesses unlawful harassment in his/her immediate surroundings. 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.

III. 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 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 other students or employees. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing. In the event that such relationships do occur, the District has the authority to transfer any involved employee to eliminate or attenuate the supervisory authority of one over the other, or of a teacher over a student. Such action by the District is a proactive and preventive measure to avoid possible charges of harassment and does not constitute discipline against any affected employee.

IV. Threshold Requirements Prior to Investigation of a Formal Written Complaint

When a formal written complaint is filed it will be reviewed to determine if the complaint meets the following requirements:

- The complaint should be filed on a form prescribed by the State Chancellor's Office. If the complaint is not filed on this form, every effort should be made to have the complaint filed on this form and to obtain complainant's signature. However, where a complainant has indicated that he or she wishes to pursue the formal complaint process, a complaint should not be rejected solely based on the failure to file the complaint on this form.

- The complaint must allege unlawful discrimination prohibited under title 5, section 59300.
- The complaint must be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administration.
- In any complaint not involving employment, the complaint must be filed within one year of the date of the alleged unlawful discrimination or harassment or within one year of the date on which the complainant knew or should have known of the facts underlying the specific incident or incidents of the alleged unlawful discrimination.
- In any complaint alleging discrimination in employment, the complaint shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period will be extended by no more than 90 days following the expiration of that 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of 180 days.

Authority: Cal. Code Regs., tit. 5, § 59328.

V. Defective Complaint

If a complaint is found to be defective it will be immediately returned to the complainant with a complete explanation of why an investigation will not be initiated under California Code of Regulations, title 5, section 59300 et seq. The notice will inform the complainant that the complaint does not meet the requirements of section 59328, and shall specify in what requirement the complaint is defective. A copy of the notice to the complainant will also be sent to the State Chancellor's Office.

Authority: Cal. Code Regs., tit. 5, §§ 59328, 59332.

VI. Filing or Submission of Informal Complaint

If a complainant files or submits an “informal complaint” of harassment, the District shall attempt to mediate or resolve the matter informally. If this effort is unsuccessful, the matter shall be considered closed, unless the complainant files a timely formal complaint.

If a written informal complaint is filed or submitted, a copy shall be promptly provided to the respondent, before s/he is required to submit to interview by the District.

If no written informal complaint is filed, the District shall summarize the complaint with particularity, setting forth the alleged improper action and the proposed remedy, and all other information adverse to the faculty employee.

An employee shall not be interviewed in regard to an informal complaint. Instead, the District's efforts shall be focused on resolving the matter.

VII. Filing of Formal Written Complaint

If a complainant decides to file a formal written unlawful discrimination complaint against the District, he or she must file the complaint on a form prescribed by the State Chancellor. A copy of this approved form is attached to this policy, elsewhere available from the District, and also at the State Chancellor's website, as follows:

<http://www.cccco.edu/ChancellorsOffice/Divisions/Legal/Discrimination/tabid/294/Default.aspx>

The completed form must be filed with the District representative or mailed directly to the State Chancellor's Office of the California Community Colleges.

If a complaint of unlawful discrimination is presented in another written format, such as a letter, a district may request that the complainant complete the form. If there is a delay in obtaining a completed form, or the complainant refuses to transfer the information or otherwise complete the form but wishes to pursue the formal complaint process, a district may attach the letter to the form and open a formal investigation. While a complaint filed in an improper form is still procedurally defective under title 5 standards, the merits of the complaint itself may still be valid and must be addressed.

Once a complaint is filed, the respondent(s) accused of engaging in prohibited discriminatory conduct should be advised of that filing and provided a copy of the complaint. This will occur as soon as possible, and at least seven (7) days prior to any

interview or meeting with the respondent(s) by the District or outside persons or organizations conducting the investigation. The District shall also advise the respondent that an assessment of the accuracy of the allegations has not yet been made, that the complaint will be investigated, that he or she will be provided an opportunity to present his/her side of the matter, and that any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided. The District shall inform the respondent of his or her right to representation in the matter.

The complainant and respondent shall each have the right to timely review any investigatory report created by the by the District or outside persons or organizations under contract with the District to independently and impartially conduct the investigation.

Authority: Cal. Code Regs., tit. 5, §§ 59311 and 59328.

VII. Investigatory Interview with Respondent

If the District, or an investigator for the District, undertakes to interview the respondent, the respondent shall be provided with full and complete copies of all documents filed by the complainant with the District, which might prove relevant to the investigation or which might adversely affect the respondent.

Before an interview of the respondent teacher is conducted, the District shall inform the teacher that any information provided by the teacher during the interview could result in discipline, and that as a result, the respondent teacher is entitled to representation by the union at the meeting.

The district shall confirm to the respondent that the respondent is requested to maintain confidentiality of the interview process, except that the respondent is entitled to discuss the investigation and allegations with others, including faculty, and his/her union.

VII. Academic Freedom

The District Governing Board reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow unlawful discrimination. It is recognized that an essential function of education is a probing of opinions and an exploration of ideas that may cause some students discomfort. It is further recognized that academic freedom insures the faculty's right to teach and the student's right to learn. Finally, nothing in these policies and procedures shall be interpreted to prohibit *bona fide* academic requirements for a specific community college program, course or activity. *Whether the conduct or words involved which are the subject of a charge of harassment are protected by academic freedom or freedom of speech is determined based on the circumstances of each case.*

Reference: Cohen v. San Bernardino Valley College (1995) 883 F.Supp. 1407, 1412-1414, affd. in part and revd. in part on other grounds, (1996) 92 F.3d 968; Cal. Code Regs., tit. 5, § 59302.

~~To the extent the harassment policies and procedures are in conflict with the District's policy on academic freedom, the harassment policies and procedures shall prevail.~~

Reference:

Education Code Sections 212.5, 44100, and 66281.5;

Title IX, Education Amendments of 1972; Title 5, Sections 59320 et seq.;

Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000e

Approved by the Chancellor: