



AP 3430 PROHIBITION OF HARASSMENT

References:

Education Code Sections 212.5, 66281.5 and 66281.8;
Government Code Section 12940; and 12923;
Civil Code Section 51.9;
Title 2 Sections 10500 et seq;
Title 5 Sections 59320 et seq.;
42 U.S. Code Annotated Section 2000e, Title VII of the Civil Rights Act of 1964

The District is committed to providing an academic and work environment free of 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 staff or faculty member or student within the District.

This procedure and the related policy applies to students, employees, unpaid interns, and volunteers associated with the academic, educational, co-curricular, athletic, and other programs of the District, whether these programs take place in the District's facilities, a district-sponsored method of transportation, or in a course or training program sponsored by the District at another location.

Definitions

General Harassment: Harassment based on the protected classes listed in BP 3400 Protected Classes is illegal and violates Board 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 the 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 Sexual Harassment under Title IX. For other forms of sexual harassment or gender-based harassment, Complainants should use this procedure and AP 3435 Discrimination and Harassment Complaints and Investigations.

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 innuendos 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 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, 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 are directed at an individual or group based on gender, race, nationality, sexual orientation, or other protected status; or gratuitous comments are made 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 for 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.

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 when 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 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 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 Among Employees

Consensual relationships between employees and their supervisors are prohibited. Except in unusual circumstances where explicit authorization has been obtained from the appropriate superior, no employee may participate in the supervision, employment actions, evaluation, promotion, or the direct setting of salary or wages of an employee with whom that person has or has had a consensual relationship.

In the event that a consensual relationship arises between a supervisor and an employee, the supervisor must immediately disclose the relationship to the appropriate superior. The District has the authority to transfer any involved employee to eliminate or attenuate the supervisory authority of one over the other. 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. (Also see BP/AP 7310 Nepotism.)

The appropriate superior may grant an exception to this policy, if requested, when eliminating the supervisory relationship/situation would unreasonably disadvantage one or both of the employees in the personal relationship.

If the exception is granted, a written agreement will be developed so that employment decisions are made impartially. A written agreement will also be created if a relationship has a negative impact on the work environment, even if the relationship does not have a direct influence on employment.

This policy does not prohibit consensual relationships between employees or faculty where there is no situation of authority between the parties, however, such relationships



may limit the future ability of one party to mentor, direct work, employ, or promote the career of the other party (e.g., in situations in which the parties are in the same department).

Romantic or sexual relationships between employees that may create an appearance of impropriety and lead to charges of favoritism by other employees are discouraged. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

Employee and Student Relationships

Generally, romantic relationships between employees and students are prohibited. See BP 3052 Employee Student Relationships.

Academic Freedom

District faculty members are entitled to freedom in the classroom and/or other teaching environments in discussing their subject matter. Controversy is a normal aspect of free academic inquiry and teaching, and it is proper to incorporate both the knowledge and beliefs of the faculty member into that which is taught; however, the freedom to teach must be joined by a constant effort to distinguish between knowledge and belief. Faculty members should allow the expression of differing points of view, while being careful to avoid the repeated and excessive intrusion of material that has no relation to their subject matter. District faculty members have the individual right and responsibility to select textbooks and other course materials, consistent with the approved Course Outline of Record, and as appropriate, in consultation with their department, program, or disciplinary colleagues, for each of the classes they teach.

District faculty members are both citizens and officers/representatives of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline. However, they should indicate that they are not speaking for the institution. In the context of social media, a statement in the writer's profile is suggested. When faculty speak or write as representatives of an educational institution, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate, should exercise appropriate restraint, and should show respect for the opinions of others.

The Board of Trustees reaffirms its commitment to academic freedom but recognizes that academic freedom does not allow any form of discrimination. This procedure will not protect speech or expressive conduct that violates federal or California



anti-discrimination laws. 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 ensures the faculty member's right to teach and the student's right to learn. Finally, nothing in these procedures and related policies shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course, or activity.

When investigating unlawful discrimination complaints containing issues of academic freedom, the District will consult with a faculty member appointed by the Academic Senate with respect to contemporary practices and standards for course content and delivery. (Reference: Cohen v. San Bernardino Valley College (1995) 883 F. Supplementary 1407, 1412-1414, affidavit In part and revised. In part on other grounds, (1996) 92F.3d 968 and Title 5 Section 59302). See BP 4030 Academic Freedom.

Also see AP 3435 Discrimination and Harassment Complaints and Investigations, BP 3400 Protected Classes, and BP/AP 3540 Sexual and Other Assaults on Campus.

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