

SEXUAL HARASSMENT POLICY

(Applies to all Students, Faculty and Staff)

Purpose and Philosophy

Sexual harassment is one of many forms of discrimination and abusive behavior. Other forms of discrimination, such as that based on race, color, sex, ancestry, national origin, disability (mental and physical), including HIV and AIDS, medical conditions such as cancer, age (40 and above), and marital status, are also prohibited. Sexual harassment is abusive and illegal behavior that harms victims and negatively impacts the district's culture by creating an environment of fear, distrust and intolerance. Because the district is committed to provide a safe, healthy environment for all employees and students that promote respect, dignity, and equality, it is the purpose of this policy to create and preserve an educational environment free from unlawful sexual harassment and discrimination on the basis of sex.

References

- 20 U.S.C. section 1681, Education Amendments of 1972, 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 education program or activity receiving Federal financial assistance.
- 34 C.F.R. sections 106.1-106.71, U.S. Department of Education Office for Civil Rights Regulations Implementing Title IX. This provision requires designation of Student Judicial Affairs Coordinator, grievance procedure, and public notice of Title IX policies and procedures.
- 42 U.S.C. section 2000e, Civil Rights Act of 1964, Title VII. This provision prohibits employers from discriminating on the basis of sex.
- 29 C.F.R. section 1604.11, Equal Employment Opportunity Commission (EEOC) Regulations Implementing Title VII.

The following regulations provide guidelines on sexual harassment in the workplace.

- California Fair Employment and Housing Act (Government Code section 12900 et seq.)
- Sex Equity in Education Act (Education Code, section 66250 et seq.)
- Assembly Bill 80 of 1977 (Government Code sections 11135 et seq.)
- Chapter 2, Division 4, Title 2, of the California Administrative Code.
- Subsection 1 (Commencing with section 53000), Section 2, Chapter 1, Division 4, Title 5, of the California Administrative Code.
- section 87100 of the California Education Code.
- section 212.5 of the California Education Code.

Monitoring Responsibility

The Vice President of Human Resources and the Title IX Coordinator as designated by the Board of Trustees, will be responsible for ensuring compliance with this policy. The Vice President of Human Resources will yearly evaluate, among other things: The frequency and nature of complaints under this policy; employee and student compliance with the policy; employee and student perceptions of the policy's effectiveness. Results of the evaluation will be used to modify or update the policy as appropriate, with an emphasis on remedying deficiencies.

Policy (BP 3430)

All forms of harassment are contrary to basic standards of conduct between individuals, State, and federal law. This policy prohibits harassment and the District will not tolerate harassment. The District is committed to providing an academic and work environment that respects the dignity of individuals and groups. The District shall be free of unlawful harassment, including that which is based on any of the following statuses: race, religious creed, color, national origin, ethnicity, ancestry, immigration status, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status, or because he/she/they are perceived to have one or more of the foregoing characteristics.

The District seeks to foster an environment in which all employees, students, unpaid interns, and volunteers feel free to report incidents of harassment without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against any individual for filing a complaint of harassment or for participating in a harassment investigation. Such conduct is illegal and constitutes a violation of this policy. The District will investigate all allegations of retaliation swiftly and thoroughly. If the District determines that someone has retaliated, it will take all reasonable steps within its power to stop such conduct. Individuals who engage in retaliatory conduct are subject to disciplinary action, up to and including termination or expulsion.

Any student, employee, unpaid intern, or volunteer who believes that he/she/they have been harassed or retaliated against in violation of this policy should immediately report the incidents by following the procedures described in AP 3410. The District requires supervisors to report all incidents of harassment and retaliation that come to their attention.

This policy applies to all aspects of the academic environment, including but not limited to classroom conditions, grades, academic standing, employment opportunities, scholarships, recommendations, disciplinary actions, and participation in any community college activity. In addition, this policy applies to all terms and conditions of employment including but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities and compensation.

To this end, the Superintendent/President shall ensure that the institution undertakes education and training activities to encounter harassment and to prevent, minimize, or eliminate any hostile environment that impairs access to equal education opportunity or impacts the terms and conditions of employment.

The Superintendent/President shall establish procedures that define harassment on campus. The Superintendent/President shall further establish procedures for employees, students, unpaid interns, volunteers, and other members of the campus community that provide for the investigation and resolution of complaints regarding harassment and discrimination, and procedures to resolve complaints of harassment and discrimination. State and federal law and this policy prohibit retaliatory acts by the District, its employees, students, and agents.

The District will publish and publicize this policy and related written procedures (including the procedure for making complaints) to administrators, faculty, staff, students, unpaid interns, and volunteers, particularly when they are new to the institution. The District will make this policy and related written procedures (including the procedure for

making complaints) available in all administrative offices and will post them on the District's website.

Employees who violate the policy and procedures may be subject to disciplinary action up to and including termination. Students who violate this policy and related procedures may be subject to disciplinary measures up to and including expulsion. Unpaid interns who violate this policy and related procedures may be subject to disciplinary measures up to and including termination from the internship or other unpaid work experience program.

District Administrative Procedure 3410 contains information regarding the specific rules and procedures for reporting charges of sexual harassment and pursuing available remedies. The following applies for the distribution of this policy:

1. This policy shall be displayed in a prominent location in the main administrative building or other areas where notices regarding the institution's rules, regulations, procedures and standards of conduct are posted.
2. The policy shall be provided to students as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.
3. This policy shall be provided to all faculty, administrators, and staff at the beginning of the first semester of the school year, or at the time there is a new employee hired.
4. This policy shall appear in any publication of the district that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

Definitions

"Sexual harassment" is defined as being unwelcome sexual advances, requests for sexual favors, other unwanted physical or verbal conduct or communications of a sexual nature, and any other gender-based harassment, whether initiated by students, district employees, or third parties, when:

- Submission to the conduct is made explicitly or implicitly a term of employment or condition of a student's education (including any aspect of the student's participation in district-sponsored activities, or any other aspect of the student's education);
- Submission to, or rejection of the conduct is used as the basis for decisions affecting employment status decisions, or a student's academic performance, or participation in district-sponsored activities or creates an intimidating, hostile, or offensive educational environment.

Unacceptable Conduct

Complaints received will be thoroughly investigated to determine whether the totality of the behavior and circumstances meet any of the elements of the definitions described in AP 3410. Unacceptable conduct may or may not constitute sexual harassment. Normally, unacceptable behavior must be severe or pervasive to be considered sexual harassment.

In evaluating the totality of the circumstances and making a determination of whether conduct constitutes sexual harassment, employees who observe unacceptable behavior, as well as administrators conducting an investigation, should consider:

- Is the conduct sexual in nature?
- Is the conduct derogatory toward one gender?

- Is the conduct unwelcome?
- Would the behavior be offensive to a reasonable person of the same gender as the victim?
- The nature, severity, and scope of the incidents;
- The number of students or employees involved directly or indirectly;
- The relationship of the parties involved (i.e. employee/student, fellow students, etc.), and whether there is equal power between the parties;
- The past discipline history of the parties involved;
- The frequency and duration of the behavior;
- Whether there is a pattern of behavior;
- Whether the conduct is verbal or physical.

EXAMPLES: Campus-related conduct that the district considers unacceptable and often a part of sexual harassment includes, but is not limited to, the following:

- Rape, attempted rape, sexual assault, attempted sexual assault, forcible sexual abuse, hazing, and other sexual and gender-based activity of a criminal nature as defined under the California State Penal Code;
- Unwelcome sexual invitations or requests for sexual activity in exchange for grades, promotions, preferences, favors, selection for extracurricular activities, or job assignments, homework, etc.;
- Any unwelcome communication that is sexually suggestive, sexually degrading, or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities or exploits; sexual rumors and "ratings lists;" howling, catcalls, and whistles; sexually graphic computer files; messages or games, etc.;
- Unwelcome and offensive name-calling or profanity that is sexually suggestive, sexually degrading, implies sexual intentions, or that is based on sexual stereotypes or sexual preference;
- Unwelcome leers, stares, gestures, or slang remarks that are sexually suggestive, sexually degrading, or imply sexual motives or intentions;
- Unwelcome written or pictorial display or distribution of pornographic or other sexually explicit materials such as magazines, videos, films, Internet material, etc.;
- Any other unwelcome gender-based behavior that is offensive, degrading, intimidating, demeaning, or that is based on sexual stereotypes and attitudes.

Complaint Procedures

- In compliance with applicable federal and state law, it is the policy of the district to investigate promptly and resolve equitably all complaints of sexual harassment and discrimination on the basis of sex.
- Victims of sexual harassment shall be afforded avenues for filing complaints that are free from bias, collusion, intimidation, or reprisal.
- Victims of sexual harassment should document the harassment as soon as it occurs. In order to assist investigators, victims should document the harassment with as much detail as possible, including: the nature of the harassment; dates, times, and places it has occurred; name or names of harasser or harassers; witnesses of the harassment; and the victim's response to the harassment.
- To the extent they feel safe and comfortable doing so, victims are first encouraged to confront the harasser, verbally or in a letter and/or with an advocate present, and tell the harasser to stop the conduct because it is unwelcome. Victims should document the incident or incidents of continuing harassment, and any conversations they have

with the harasser, noting such information as time, date, place, what was said or done, and other relevant circumstances surrounding the incident(s) and the effect or impact of the behavior on the victim.

- If the victim's concerns are not resolved satisfactorily by communicating with the harasser, or if the victim feels they cannot discuss the concerns with the harasser, the victim should directly inform a district employee of the complaint and should clearly indicate what action they want taken to resolve the complaint.
- Any employee who receives a complaint of sexual harassment from a student or another employee shall inform them of their obligation to report the complaint to the district's administration, and then shall immediately notify the Vice President of Human Resources and/or the Title IX Coordinator.
- District employees who fail to report complaints of sexual harassment to appropriate administrators or law enforcement authorities may face disciplinary action, up to and including reprimand, suspension, or termination.
- District administrators, or other district officials who fail to report student or employee complaints of sexual harassment may also face disciplinary action, including reprimand, probation, or termination.
- Victims who contact a district employee with a complaint are encouraged to submit the complaint in writing. (See Attachment B – Discrimination Compliant Form available in the Human Resources Office) However, complaints may be filed verbally. Alternate methods of filing complaints (such as tape recorders, scribes, etc.) shall be made available to individuals with disabilities who need accommodation.
- The District encourages all persons involved to report complaints as soon as possible (i.e. within ninety (90) days after the incident), in order that complaints can be effectively investigated and resolved.
- Reports/Complaints to Law Enforcement Authorities

Consistent with district Policy, where a complaint contains evidence of violence or criminal activity, the employee and/or the Title IX Coordinator, shall refer the complaint to the district Vice President of Human Resources and/or law enforcement authorities for investigation.

The District encourages any individual who has knowledge of sexual harassment of a violent or criminal nature to independently report the information to law enforcement authorities.

- California Community Compliance and Enforcement (Discrimination Complaints). The district will comply with title 5 of the California Code of Regulations, Subchapter 5, Articles 3 and 4, section 59334 et. al. (See Attachment A available in the Human Resources Office)
- Complaints may be filed with the following individuals:
 - Vice President of Human Resources (employees or students)
 - Any administrator or supervisor (employees or students)

Confidentiality

It is district policy to respect the privacy and anonymity of all parties and witnesses to complaints brought under this policy. However, because an individual's need for confidentiality must be balanced with the district's obligations to cooperate with police investigations or legal proceedings, to provide due process to the alleged harasser, to conduct a thorough investigation, or to take necessary action to resolve a complaint, the district retains the right to disclose the identity of parties and witnesses to complaints to individuals only in appropriate circumstances.

Initial Investigation and (Informal) Resolution Procedures

(See Attachment A available in the Human Resources Office)

- The Vice President of Human Resources and/or designee has the responsibility of conducting a preliminary review when he, she or they receive a verbal or written complaint of sexual harassment, or if he, she or they observe sexual harassment. Except in the case of severe or criminal conduct, the Vice President of Human Resources and/or designee shall make all reasonable efforts to resolve complaints informally. The goal of informal investigation and resolution procedures is to end the harassment and obtain a prompt and equitable resolution to a complaint.
- As soon as possible, but no later than three (3) working days following receipt of a complaint, the Vice President of Human Resources shall commence an investigation of the complaint according to the following steps:
 - a. Interview the victim and document the conversation. Instruct the victim to have no contact or communication regarding the complaint with the alleged harasser. Ask the victim specifically what action they want taken in order to resolve the complaint.
 - b. Review any written documentation of the harassment prepared by the victim. If the victim has not prepared written documentation, instruct the victim to do so, providing alternative formats for individuals with disabilities who have difficulty writing.
 - c. Interview the alleged harasser regarding the complaint and inform the alleged harasser that if the objectionable conduct has occurred, it must cease immediately. Document the conversation. Provide the alleged harasser an opportunity to respond to the charges in writing.
 - d. Instruct the alleged harasser to have no contact or communication regarding the complaints with the victim and to not retaliate against the victim. If the alleged harasser does not comply with this instruction, they shall be subject to immediate disciplinary action.
 - e. Interview any witnesses to the complaint. Where appropriate, obtain a written statement from each witness. Caution each witness to keep the complaint and their statement confidential.
 - f. Review all documentation and information relevant to the complaint.
 - g. Where appropriate, suggest mediation as a potential means of resolving the complaint. In addition to mediation, utilize appropriate informal methods to resolve the complaint, including but not limited to:
 - i. Discussion with the alleged harasser, informing them of the district's policies and indicating that the behavior, if occurring, must stop;
 - ii. Conducting training for the department or area in which the behavior occurred, calling attention to the consequences of engaging in such behavior;
 - iii. Requesting a letter of apology to the complainant;
 - iv. Writing letters of caution or reprimand;
 - v. Separating the parties.
 - vi. Student or Employee Involvement and Notification
 - vii. The representatives or advocates of students who file complaints are welcome to attend each stage of both informal and formal investigation and resolution procedures. Employees bringing complaints shall be informed of their

right to be advised by union officials or other professional representatives.

- h. Report back to both the victim and the alleged harasser, notifying them in writing, and also in person as appropriate, regarding the outcome of the investigation and the action taken to resolve the complaint. Instruct the victim to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against them.
- i. Notify the victim that if they desire further investigation and action, they may request a formal district investigation by contacting the Vice President of Human Resources or designee. Also, notify the victim of their right to contact the U.S. Department of Education's Office for Civil Rights, the Department of Fair Employment and Housing (DFEH), and/or a private attorney.

Whenever a sexual harassment complaint is made, district administrators must take action to refer the complaint to the Vice President of Human Resources or designee for investigation, even if the student does not request any action or withdraws the complaint.

If the initial investigation results in a determination that sexual harassment did occur, and the harasser repeats the wrongful behavior or retaliates against the victim, the Vice President of Human Resources shall consult with the appropriate Vice President and the Superintendent/President to determine appropriate disciplinary action.

The Vice President of Human Resources must consider the severity or pervasiveness of the conduct and exercise discretion in determining whether a formal investigation is necessary. If a complaint contains evidence or allegations of serious or extreme harassment, such as criminal touching, or quid pro quo (e.g. offering an academic reward or punishment as an inducement for sexual favors), the complaint shall be investigated immediately. In addition, where there is reasonable suspicion that the alleged harassment involves criminal activity, the Vice President of Human Resources will immediately contact law enforcement authorities. Where criminal activity is alleged or suspected, the alleged harasser (employee) shall be placed on administrative leave pending the outcome of the investigation.

Formal Investigation

(See Attachment A and Section 7 available in the Human Resources Office)

Right to Representation and Other Legal Rights

The victim and the alleged harasser have the right to be represented by a person of their choice, at their own expense, during sexual harassment investigations and hearings. Students who file complaints may elect to be accompanied by another student of their choice at each stage of the complaint procedure. Victims also have the right to register sexual harassment complaints with the U.S. Department of Education's Office for Civil Rights (OCR).

Students and Employees

U. S. Department of Education
Office for Civil Rights, Region VIII
Federal Office Building
1244 Speer Boulevard, Suite #310
Denver, CO 80204

Tel: (303) 844-5695

Employees

State of California
State and Consumer Services Agency
Department of Fair Employment & Housing
110 West "C" Street, Suite 1702
San Diego, CA 92101
Tel: (619) 645-2691

United States Equal Employment Opportunity Commission (EEOC)

San Diego Area Office
401 "B" Street, Suite 1550
San Diego, CA 92101
Tel: (619) 557-7282

Nothing in this policy shall be construed to limit the right of the complainant to file a lawsuit in either state or federal court.

Retaliation Prohibited

Any act of retaliation against any person who opposes sexually harassing behavior, or who has filed a complaint, is prohibited and illegal and, therefore, subject to disciplinary action. Likewise, retaliation against a person who has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a sexual harassment complaint is prohibited. For purposes of this policy, retaliation includes but is not limited to: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, and any other form of harassment. Any person who retaliates is subject to immediate disciplinary action, up to and including suspension, probation or termination.

Discipline

Any individual, including an individual with disabilities, who violates this policy will be subject to appropriate disciplinary action under applicable Board Policies, Unit Bargaining Agreements, and Education Code discipline procedures. Disciplinary measures available to district authorities may include, but are not limited to, the following:

- Verbal warnings/reprimands;
- Written warning/reprimand in the employee or student's file;
- Requirement of verbal and/or written apology to victim;
- Mandatory education and training on sexual harassment by means of reading assignments, videos, classes, or other presentations;
- Involvement of policy and/or other law enforcement authorities.

In addition, if the harassment is severe or persistent, an individual who violates this policy may be subject to suspension, expulsion, probation or termination. Moreover, students who violate this policy may lose the privilege of participating in extracurricular activities such as athletics, student government, cheerleading, graduation ceremonies, etc. These penalties may be imposed even for first offenses, which are severe or extreme.

In determining what disciplinary or corrective action is appropriate, district officials shall consider the totality of the circumstances, including but not limited to:

- The number of victims and harassers involved;
- The prior disciplinary records of the harasser or harassers;

- The disability status of the victim and/or harasser or harassers;
- The threatened or actual harm caused by the harassment; and
- The frequency and/or severity of the harassment.

If district administrators have reasonable suspicion that the harassment involves sexual assault, rape, or any other activity of a criminal nature, they shall notify appropriate law enforcement authorities and immediately initiate appropriate due process proceedings to remove the alleged harasser party from the situation.

False Complaints

False or malicious complaints of sexual harassment will result in corrective or disciplinary action being taken against the complainant. The disciplinary measures available to the district are the same as those listed under the Discipline section of this policy.

Training

All students shall be informed of this policy in student handbooks, folders, and registration materials. A summary of this policy shall also be posted in a prominent location. All Associated Student Body officers shall receive district training about the policy at the beginning of each school year.

All new employees shall receive information about this policy at new employee orientation. All other employees shall be provided information annually and attend awareness training at least once every five (5) years regarding this policy and the district's commitment to a harassment-free learning and working environment.

The Title IX Coordinator and other administrative employees who have specific responsibilities for investigating and resolving complaints of sexual harassment shall receive yearly training on this policy and related legal developments from the Vice President of Human Resources.

The Vice President of Human Resources and department administrators shall be responsible for informing students and employees on a yearly basis of the terms of this policy, including the procedures established for investigation and resolution of complaints, general issues surrounding sexual harassment, the rights and responsibilities of students and employees, and the impact of sexual harassment on the victim.

Records

Separate confidential records of all sexual harassment complaints and investigations shall be maintained in the office of the Vice President of Human Resources. Records of investigations shall be maintained in the office of the Vice President of Human Resources.

- Records of informal investigations and resolutions shall be retained for at least three (3) years.
- Records of investigations shall be retained for at least six (6) years.
- Records of complaints and investigations of blatant violations involving criminal touching, quid pro quo situations, or other criminal acts shall be retained permanently.