

General Institution

1 **AP 3430 PROHIBITION OF HARASSMENT**

2 **References:**

- 3 Education Code Sections 212.5, 44100, and 66281.5;
- 4 Government Code Sections 12940 and 12923;
- 5 Civil Code Section 51.9;
- 6 Title 2 Sections 10500 et seq.;
- 7 Title IX, Education Amendments of 1972; Title 5 Sections 59320 et seq.;
- 8 Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e

9 The District is committed to providing an academic and work environment free of unlawful
10 harassment. This procedure defines sexual harassment and other forms of harassment
11 on campus, and sets forth a procedure for the investigation and resolution of complaints
12 of harassment by or against any staff or faculty member or student within the District.

13 This procedure and the related policy protects students and employees in connection with
14 all the academic, educational, extracurricular, athletic, and other programs of the District,
15 whether those programs take place in the District's facilities, a District bus, or at a class
16 or training program sponsored by the District at another location.

17 **Definitions**

18 **General Harassment:** Harassment based on race, religious creed, color, national origin,
19 ancestry, physical disability, mental disability, medical condition, genetic information,
20 marital status, sex, gender, gender identity, gender expression, age, or sexual orientation
21 of any person, or military and veteran status, or the perception that a person has one or
22 more of these characteristics is illegal and violates District policy. Harassment shall be
23 found where a reasonable person with the same characteristics as the victim of the
24 harassing conduct would be adversely affected to a degree that interferes with his or her
25 ability to participate in or to realize the intended benefits of an institutional activity,
26 employment, or resource.

27 Gender-based harassment does not necessarily involve conduct that is sexual. Any
28 hostile or offensive conduct based on gender can constitute prohibited harassment if it
29 meets the definition above. For example, repeated derisive comments about a person's
30 competency to do the job, when based on that person's gender, could constitute gender-
31 based harassment. Harassment comes in many forms, including but not limited to the
32 following conduct that could, depending on the circumstances, meet the definition above,
33 or could contribute to a set of circumstances that meets the definition:

34 **Verbal:** Inappropriate or offensive remarks, slurs, jokes or innuendoes based on
35 a person's race gender, sexual orientation, or other protected status. This may
36 include, but is not limited to, inappropriate comments regarding an individual's
37 body, physical appearance, attire, sexual prowess, marital status or sexual
38 orientation; unwelcome flirting or propositions; demands for sexual favors; verbal
39 abuse, threats or intimidation; or sexist, patronizing or ridiculing statements that
40 convey derogatory attitudes based on gender, race nationality, sexual orientation
41 or other protected status.

42 **Physical:** Inappropriate or offensive touching, assault, or physical interference
43 with free movement. This may include, but is not limited to, kissing, patting,
44 lingering or intimate touches, grabbing, pinching, leering, staring, unnecessarily
45 brushing against or blocking another person, whistling or sexual gestures. It also
46 includes any physical assault or intimidation directed at an individual due to that
47 person's gender, race, national origin, sexual orientation or other protected status.
48 Physical sexual harassment includes acts of sexual violence, such as rape, sexual
49 assault, sexual battery, and sexual coercion. Sexual violence refers to physical
50 sexual acts perpetrated against a person's will or where a person is incapable of
51 giving consent due to the victim's use of drugs or alcohol. An individual also may
52 be unable to give consent due to an intellectual or other disability.

53 **Visual or Written:** The display or circulation of visual or written material that
54 degrades an individual or group based on gender, race, nationality, sexual
55 orientation, or other protected status. This may include, but is not limited to,
56 posters, cartoons, drawings, graffiti, reading materials, computer graphics or
57 electronic media transmissions.

58 **Environmental:** A hostile academic or work environment may exist where it is
59 permeated by sexual innuendo; insults or abusive comments directed at an
60 individual or group based on gender, race, nationality, sexual orientation or other
61 protected status; or gratuitous comments regarding gender, race, sexual
62 orientation, or other protected status that are not relevant to the subject matter of
63 the class or activities on the job. A hostile environment can arise from an
64 unwarranted focus on sexual topics or sexually suggestive statements in the
65 classroom or work environment. It can also be created by an unwarranted focus
66 on, or stereotyping of, particular racial or ethnic groups, sexual orientations,
67 genders or other protected statuses. An environment may also be hostile toward
68 anyone who merely witnesses unlawful harassment in his/her immediate
69 surroundings, although the conduct is directed at others. The determination of
70 whether an environment is hostile is based on the totality of the circumstances,
71 including such factors as the frequency of the conduct, the severity of the conduct,
72 whether the conduct is humiliating or physically threatening, and whether the
73 conduct unreasonably interferes with an individual's learning or work.

74 **Sexual Harassment:** In addition to the above, sexual harassment consists of unwelcome
75 sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct
76 of a sexual nature made by someone from, or in, the work or educational setting when:

- 77 • submission to the conduct is explicitly or implicitly made a term or condition of
78 an individual's employment, academic status, or progress;
- 79 • submission to, or rejection of, the conduct by the individual is used as a basis
80 of employment or academic decisions affecting the individual;
- 81 • the conduct has the purpose or effect of having a negative impact upon the
82 individual's work or academic performance, or of creating an intimidating,
83 hostile or offensive work or educational environment (as more fully described
84 below); or
- 85 • submission to, or rejection of, the conduct by the individual is used as the basis
86 for any decision affecting the individual regarding benefits and services,
87 honors, programs, or activities available at or through the community college.

88 This definition encompasses two kinds of sexual harassment:

89 **"Quid pro quo"** sexual harassment occurs when a person in a position of authority
90 makes educational or employment benefits conditional upon an individual's
91 willingness to engage in or tolerate unwanted sexual conduct.

92 **"Hostile environment"** sexual harassment occurs when unwelcome conduct
93 based on a person's gender alters the conditions of an individual's learning or work
94 environment, unreasonably interfere with an individual's academic or work
95 performance, or create an intimidating, hostile, or abusive learning or work
96 environment. The victim must subjectively perceive the environment as hostile,
97 and the harassment must be such that a reasonable person of the same gender
98 would perceive the environment as hostile. A single or isolated incident of sexual
99 harassment may be sufficient to create a hostile environment if it unreasonably
100 interfered with the person's academic or work performance or created an
101 intimidating, hostile, or offensive learning or working environment.

102 Sexually harassing conduct can occur between people of the same or different genders.
103 The standard for determining whether conduct constitutes sexual harassment is whether
104 a reasonable person of the same gender as the victim would perceive the conduct as
105 harassment based on sex.

106 **Consensual Relationships**

107 Romantic or sexual relationships between supervisors and employees, or between
108 administrators, faculty or staff members and students are discouraged. There is an
109 inherent imbalance of power and potential for exploitation in such relationships. A conflict
110 of interest may arise if the administrator, faculty or staff member must evaluate the
111 student's or employee's work or make decisions affecting the employee or student. The
112 relationship may create an appearance of impropriety and lead to charges of favoritism
113 by other students or employees. A consensual sexual relationship may change, with the
114 result that sexual conduct that was once welcome becomes unwelcome and harassing.

115 In the event that such relationships do occur, the District has the authority to transfer any
116 involved employee to eliminate or attenuate the supervisory authority of one over the
117 other, or of a teacher over a student. Such action by the District is a proactive and
118 preventive measure to avoid possible charges of harassment and does not constitute
119 discipline against any affected employee.

120 **Academic Freedom**

121 No provision of this Administrative Procedure shall be interpreted to prohibit conduct that
122 is legitimately related to the course content, teaching methods, scholarship, or public
123 commentary of an individual faculty member or the educational, political, artistic, or
124 literary expression of students in classrooms and public forums. Freedom of speech and
125 academic freedom are, however, not limitless and this procedure will not protect speech
126 or expressive conduct that violates federal or California anti-discrimination laws.

127 Also see BP 3430 titled Prohibition of Harassment, AP 3435 titled Discrimination and
128 Harassment Investigations, BP 5500 titled Standards of Conduct, and AP 5520 titled
129 Student Discipline Procedures

130 Office of Primary Responsibility: Vice President, Human Resources

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