

ADMINISTRATIVE PROCEDURE

PALO VERDE COMMUNITY COLLEGE DISTRICT ADMINISTRATIVE PROCEDURE

3430

PROHIBITION OF HARASSMENT

References: Education Code Sections 212.5, 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

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. The District's procedure for the investigation and resolution of complaints of harassment by or against any staff or faculty member or student within the District is set forth in Administrative Procedure 3410 – Nondiscrimination.

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

Definitions

Harassment: Harassment based on race, ethnicity, ethnic group identification, religion, creed, color, nationality, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, or military or veteran status, 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:

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 physical characteristics, appearance, attire, marital status or sexual orientation; 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.

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.

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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 or 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 conduct of a sexual nature when:

- submission to the conduct is made a term or condition of an individual's employment, academic status, or progress;
- 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; 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.

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

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- **Verbal:** Inappropriate or offensive remarks, slurs, jokes or innuendoes of a sexual nature. 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 of a sexual nature or that convey derogatory attitudes about a particular gender.
- **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. 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 voluntary consent due to threats, intimidation, or an intellectual or other disability.
- **Visual or Written:** The display or circulation of visual or written material of a sexual nature, offensive, or sexually oriented. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.
- **Environmental:** An academic or work environment that is permeated with sexual innuendo, insults or abuse comments directed at an individual or group based on sex or gender; or gratuitous comments regarding sex 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. An environment may be hostile if unwelcome sexual behavior is directed specifically at an individual or if the individual merely witnesses unlawful harassment in his or 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.

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.

Complaints of Harassment

Any student, employee, or third party who believes that they have been harassed or discriminated against by a student, employee, or third party in violation of the District's policy should immediately report such incidents by following the complaint procedures detailed in Administrative Procedure 3410 – Nondiscrimination. Administrators, faculty members, and other

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District employees are mandated to report to the responsible District officer indicated in Administrative Procedure 3410 all incidents of harassment, including sexual harassment, and retaliation that come to their attention.

Academic Freedom

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. If the faculty member wishes to use sexually explicit materials in the classroom as a teaching technique, the faculty member must review that use with an administrator to determine whether or not this violates the sexual harassment policy.

See Board Policy 3430

See also AP 3410

05/03/16 New Admin. Procedure Reviewed by College Council
05/10/16 Board Information
09/05/17 College Council Review
09/12/17 Board Information Item