

# PROHIBITION OF HARASSMENT & DISCRIMINATION (AP 3430)

References: Education Code §§212.5, 44100, 66010.2, 66030, and 66281.5; Title IX, Education Amendments of 1972, (20 U.S.C. §1681); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794); Title VI of the Civil Rights Act of 1964, (42 U.S.C. §2000e); Government Code §§11135-11139.5 and 12950.1; Title 5, §§59320 -59339, and 59300 et seq.; 34 Code of Federal Regulations §106.8(b) Americans with Disabilities Act of 1990 (42 U.S.C. §12100 et seq.) Age Discrimination Act (42 U.S.C. §6101).

## I UNLAWFUL DISCRIMINATION

The District is committed to providing an academic and work environment free of unlawful discrimination. "Unlawful discrimination" is defined as discrimination, including harassment, based on age, ancestry, color, ethnic group identification, national origin, religion, race, gender, sexual orientation, physical or mental disability, veteran status or on the basis of these perceived characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics. The definition of "sexual harassment" and other terms are set forth below. This procedure describes the process for the investigation and resolution of complaints of unlawful discrimination by or against any employee or student within the District.

Failure to report harassment and discrimination impedes the District's ability to stop discriminatory behavior; the District strongly encourages employees and students who believe they are being harassed or discriminated against to file a complaint. The District also strongly encourages the filing of such complaints within 30 days of the alleged incident. While all complaints are taken seriously and will be reviewed promptly, delay in filing impedes the District's ability to investigate and remediate. The District further encourages students and staff to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste and/or inappropriate.

All supervisors and managers have a mandatory duty to report incidents of harassment and discrimination; the existence of a hostile, offensive or intimidating work environment, and acts of retaliation.

The District is legally obligated to investigate when it discovers the possibility that discrimination, including harassment, is, or may be occurring, regardless of whether a complaint is filed. The Vice President for Human Resources is charged with receiving complaints of discrimination or harassment, and coordinating their investigation. The actual investigation of complaints may be assigned by the Vice President for Human Resources to other staff or to outside persons or organizations under contract with the District. Such assignment shall occur whenever the Vice President for Human Resources is named in the complaint or implicated by the allegations in the complaint. All employees shall cooperate with a District investigation into allegations of harassment or discrimination.

District Policy and Procedure No. 3430, "Prohibition of Harassment & Discrimination," will be available to all students and employees in hard copy and electronic format. Beginning January 1, 2010, new employees shall be required to sign that they have received the policy and procedures, and the signed acknowledgment of receipt will be placed

in each new employee's personnel file. In addition, these policies and procedures shall be incorporated into the District's course catalogs and orientation materials for new students.

## II DEFINITIONS

**Disability.** A physical or mental impairment as defined in Government Code, section 12926 which limits (makes difficult) one or more major life activities. A person may be considered disabled who has a record of such an impairment, or is regarded as having such an impairment.

**Environmental Harassment.** A hostile academic or work environment is one permeated by insults or abusive comments directed at an individual or group; or gratuitous comments regarding any of the protected categories, which are not relevant to the subject matter of the class or activities of the job. It can also be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, genders or other protected characteristics. An environment may also be hostile toward anyone who witnesses unlawful discrimination 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 ability to learn or perform work duties.

**Gender.** Sex, including a person's gender identity and gender-related appearance and behavior, whether or not stereotypically associated with the person's assigned sex at birth. Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment.

**Physical Harassment.** Inappropriate or offensive touching, assault, or physical interference with free movement. This may include, but is not limited to any physical intimidation or assault directed at an individual or group.

Protected Categories are those characteristics contained within the definition of unlawful discrimination: age, ancestry, color, ethnic group identification, national origin, religion, race, gender, sexual orientation, physical or mental disability, veteran status.

**Sexual Harassment.** Sexually harassing conduct can occur between people of the same or different genders. Such conduct includes unwelcome sexual advances, requests for sexual favors, kissing, patting, lingering or intimate touches, grabbing, pinching, leering, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures, 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 District.

There are two types of sexual harassment:

1. "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.
2. "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. A hostile environment can arise from continual sexual innuendo, an unwarranted focus on sexual topics, or sexually suggestive statements in the classroom 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.

**Verbal Harassment.** Inappropriate or offensive remarks, slurs, jokes or innuendoes based on one or more protected categories. 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; verbal abuse, threats or intimidation; or demeaning, patronizing or ridiculing statements that convey derogatory attitudes based on one or more of the protected categories.

**Visual or Written Harassment.** The display or circulation of visual or written material that degrades an individual or group. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.

### III UNLAWFUL DISCRIMINATION & HARASSMENT COMPLAINTS (Title 5 §59328-59339)

#### A. FILING A COMPLAINT

1. The complaint shall 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 administrator.
2. This Title 5 process will also be used to investigate and resolve complaints filed by a peer, family member or another third party. In the case of such third party complaints filed on behalf of an individual, the College District will require written consent from the injured party on behalf of whom a complaint is filed, including the scope of disclosure made to the complaint filer acting in the place and stead of the injured party. The College District will not require written consent in the case of third-party complaints filed on behalf of a class of individuals.
3. The College District encourages complainants to submit the complaint using a form prescribed by the California Community College Chancellor's Office. The form must be completed in its entirety. The form is available from the office of Employee Services. If a complaint of unlawful discrimination is presented in another written form, such as a letter, the College District will request that the complainant complete the form. However, if the complainant chooses not to do so, a legitimate complaint will not be dropped or ignored solely based on the failure to file the complaint on this form.
4. Any complaint not involving employment shall be filed within one year of the date of the alleged unlawful discrimination or within

one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

5. Any complaint alleging discrimination in employment shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period shall be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

#### B. WHERE TO FILE A COMPLAINT

The Unlawful Discrimination Complaint must be filed with the Southwestern Community College District Vice President of Employee Services; or the Chancellor of the California Community Colleges at 1102 Q Street, Sacramento, California 95811.

Any District employee who receives a harassment or discrimination complaint shall immediately provide a copy to Employee Services.

#### C. DISTRICT RESPONSE TO COMPLAINT

Upon receiving an unlawful discrimination complaint, the District shall take action as follows:

1. **Defective Complaint:** Determine whether the complaint is properly filed and/or whether an investigation is required. If the District finds the complaint to be defective, it shall notify the complainant within ten (10) working days that the complaint has been rejected and specify in what requirement the complaint is defective.
2. **Informal Resolution:** If the complaint is properly filed, undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling and/or training, etc. The complainant shall be advised that he or she need not participate in an informal resolution of the complaint. When informal resolution is reached to the satisfaction of the parties, the matter will be closed and the Chancellor's Office shall be notified.
3. **Additional Notifications:** All properly filed complaints not informally resolved will be investigated. Notify complainant that he or she may file a complaint with the Office of Civil Rights of the U.S. Department of Education. Employee complainants shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH). The District shall also notify the Chancellor of California Community Colleges of the complaint.
4. **Investigation:** The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the extent possible without impeding the District's ability to investigate and respond effectively to the complaint.
  - a. Commence an impartial fact-finding investigation of the complaint and inform the complainant and the Chancellor's Office of the name of the investigator. The investigation will include interviews with the complainant, the injured party (if not the complainant), the accused, and any other persons who may have relevant knowledge concerning the complaint. This may include alleged victims of similar conduct.
  - b. Set forth the results in a written investigation report, including a description of the circumstances giving rise to the complaint, a summary of the testimony of each witness, an analysis of any relevant data or other evidence collected during the investigation, a specific finding as to whether there is probable cause to believe that discrimination did or did not

occur with respect to each allegation in the complaint, and any other appropriate information.

5. **Administrative Determination:** Within ninety (90) days from the date the District received the complaint, the District shall complete its investigation and issue the administrative determination of the Vice President for Human Resources as to whether there is probable cause to believe that harassment or other discriminatory conduct did or did not occur with respect to each allegation in the complaint. The complainant shall also be provided with a copy or summary of the investigation report (at the District's discretion), a description of action taken, if any, remedy the effects of the harassment or other discriminatory conduct and to prevent similar problems from occurring in the future; the proposed resolution of the complaint; and notice of his or her right to appeal to the District's Governing Board. The results of the investigation and the determination as to whether harassment or other discriminatory conduct occurred shall also be reported to the accused, and the appropriate academic or administrative official(s). Information provided to the complainant and the accused shall be prepared so as not to violate any applicable privacy rights of the accused.

- **Extensions of Time:** The District may request an extension of time in which to complete its investigation if it is unable to comply with the ninety-day requirement for reasons beyond its control. The request shall be submitted to the Chancellor's Office no later than ten (10) days prior to the expiration of the deadline and shall set forth the reasons for the request and the date by which the District expects to be able to complete its investigation and issue an administrative determination. A copy of the request for an extension shall be sent to the complainant, who shall be notified that he or she may file written objections with the Chancellor within five (5) days of receipt. The Chancellor may grant the request unless delay would be prejudicial to the investigation.

6. **Appeals to Governing Board:** If the complainant is not satisfied with the results of the administrative determination, he or she may, within fifteen (15) days, file a written appeal to the Governing Board. The appeal must be in writing, and must bear the complainant's name, original signature, address and telephone number. The appeal must include the reasons the administrative decision is not acceptable to the complainant. The Board shall review the original complaint, the investigative report, the administrative determination, and the appeal. The Board shall issue a final District decision within forty-five (45) days after receiving the appeal. If the Governing Board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final District decision. The District shall notify the complainant and the Chancellor's Office of the final District decision.

#### D. RESULTS OF COMPLAINT

If the final District decision concludes that harassment, discrimination and/or retaliation occurred, the District shall take disciplinary action against the accused and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense. Although disciplinary actions are, and must remain, confidential, the nature of the disciplinary action imposed may be communicated to the complainant in some instances, including where the sanction relates directly to the complainant (or injured party) or where otherwise

necessary for the complainant to determine whether the College District's remedial actions are sufficient to resolve the complaint.

Disciplinary actions against faculty, staff and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.

The District shall also take reasonable steps to remedy the effects of the harassment or other discriminatory conduct on the complainant (or injured party), to protect the complainant (or injured party) from further harassment, and/or discrimination, and to protect the complainant, injured party, and witnesses from retaliation as a result of communicating the complaint and/or assisting in the investigation.

#### IV MANDATORY TRAINING

The Southwestern Community College District shall provide sexual harassment training and education to each supervisory employee once every two years. All new supervisory employees must be provided with the training and education within six months of their assumption of a supervisory position.

The training and education required by this procedure shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of harassment and discrimination in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

Participants in training programs will be required to sign a statement that they have either understood the policies and procedures, their responsibilities, and their own and the district's potential liability, or that they did not understand the policy and desire further training.