

General Institution

1 **AP 3430 PROHIBITION OF HARASSMENT**

2 **References:**

- 3 Education Code Sections 212.5, 44100, 66281.5, and 66281.8;
- 4 Government Code Sections 12940 and 12923;
- 5 Civil Code Section 51.9;
- 6 Title 2 Sections 10500 et seq.;
- 7 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 harassment. AP 3435 Discrimination and
11 Harassment Complaints and Investigations sets forth a procedure for the investigation
12 and resolution of complaints of harassment by or against any students, employees,
13 unpaid interns, or volunteers within the District.

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

18 For information on the District's prohibition of sex discrimination including sex-based
19 harassment under Title IX, see BP 3433 Prohibition of Sex Discrimination Under Title IX,
20 AP 3433 Prohibition of Sex Discrimination Under Title IX, and AP 3434 Responding to
21 Sex Discrimination Under Title IX. For other forms of harassment, Complainant should
22 use this procedure.

23 **Definitions**

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

33 Gender-based harassment does not necessarily involve conduct that is sexual. Any
34 hostile or offensive conduct based on gender can constitute prohibited harassment if it
35 meets the definition above. For example, repeated derisive comments about a person's
36 competency to do the job, when based on that person's gender, could constitute gender-

37 based harassment. Harassment comes in many forms, including but not limited to the
38 following conduct that could, depending on the circumstances, meet the definition above,
39 or could contribute to a set of circumstances that meets the definition:

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

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

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

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

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

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

90 This definition encompasses two kinds of sexual harassment:

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

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

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

108 **Consensual Relationships**

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

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

122 **Academic Freedom**

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

129 Office of Primary Responsibility: Vice President, Human Resources

130 See also BP 3430 titled Prohibition of Harassment, AP 3435 titled Discrimination and
131 Harassment Investigations, BP 5500 titled Standards of Conduct, and AP 5520 titled
132 Student Discipline Procedures

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