

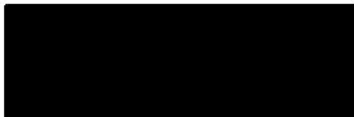


MIRACOSTA COMMUNITY COLLEGE DISTRICT

1 Barnard Drive, Oceanside, CA 92056


► P 760.757.2121 ► F 760.795.6609 ► www.miracosta.edu

June 26, 2020



Re: Notice of Determination of Investigation Outcome

Dear 

This letter serves to advise you of the MiraCosta Community College District's ("District") determination regarding the disability discrimination complaint that was filed by student,  on March 24, 2020.

A copy of the complaint was submitted to the California Community Colleges Chancellor's Office upon receipt.

Board Policy and Administrative Procedures

Pursuant to Title 5 requirements, the MiraCosta Board of Trustees has established a policy which provides that "the district is committed to equal opportunity in educational programs, employment, and access all access to institutional programs and activities." (Board Policy 3410). In addition, the Board Policy provides that, "the district, and each individual who represents the district, shall provide access to its services, classes, and programs without regard to... physical or mental disability, medical condition, military or veteran status, ... or because they are perceived to have one or more of the foregoing characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics."

The District's Institutional Code of Ethics also outlines employee's responsibilities to students, including the expectation that employees have a responsibility to: (4) make reasonable effort to protect the student from conditions harmful to learning or to health and safety; (5) avoid intentionally embarrassing or disparaging the student; and (6) avoid disclosing information about students obtained in the course of professional service, unless disclosure serves a compelling professional purpose or is required by law. (Administrative Procedure 3050)

The District has also established Administrative Procedures 3430 and 3435, which outline the complaint and investigative process for cases involving harassment and/or discrimination. The District is required to take all complaints seriously and to investigate them promptly.

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Community Learning Center

1831 Mission Avenue, Oceanside, CA 92058

► P 760.795.8710 ► F 760.795.8730

Oceanside Campus

1 Barnard Drive, Oceanside, CA 92056

► P 760.757.2121 ► F 760.795.6609

San Elijo Campus

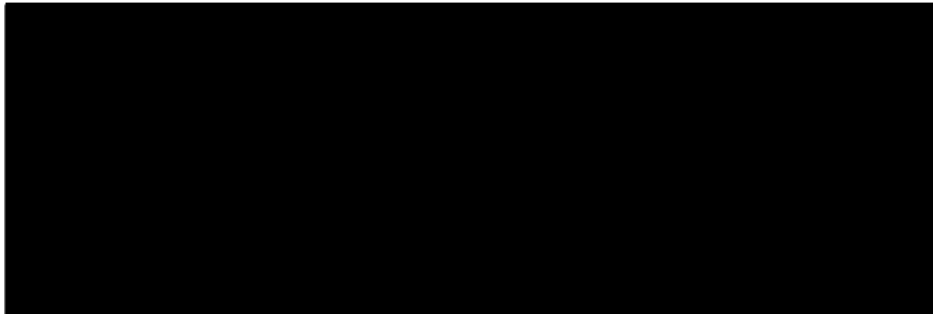
3333 Manchester Avenue, Cardiff, CA 92007

► P 760.944.4449 ► F 760.634.7875

Determination re Discrimination

The complaint was investigated by Human Resources Analyst, Christine Burrola. The investigator interviewed you, [REDACTED], and a number of other witnesses as part of the investigation process. The following individuals were interviewed as a result of the complaint:

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The following relevant policies and laws were reviewed as part of the investigation: relevant sections of the California Education Code, Title 5 regulations, and the California Community College Chancellor's Office Title 5 Implementation Guidelines; District Board Policy 3050 (Institutional Code of Ethics), District Administrative Procedure 3050 (Institutional Code of Ethics), District Board Policy 3410 (Nondiscrimination), District Administrative Procedure 3410 (Nondiscrimination), District Board Policy 3430 (Prohibition of Harassment), District Administrative Procedure 3430 (Prohibition of Harassment), District Administrative Procedure 3435 (Discrimination and Harassment Complaints and Investigations), District Board Policy 5140 (Disabled Students Programs and Services), District Administrative Procedure 5140 (Disabled Students Programs and Services), and the MiraCosta College Academic Accommodation Policy. The investigator also reviewed several documents produced by witnesses and District/College administrators.

Ms. Burrola issued a summary report, based on a preponderance of the evidence standard, and made the following conclusions:

- 1) There is no probable cause to find that [REDACTED] discriminated against student [REDACTED] when she asked her to move to a different seat during [REDACTED] class in violation MiraCosta College Board Policy 3410: Nondiscrimination.
- 2) There is no probable cause to find that [REDACTED] (a) disclosed information about the student obtained in the course of professional service, or (b) intentionally embarrassed or disparaged the student, in violation of MiraCosta College Administrative Procedure 3050: Institutional Code of Ethics.
- 3) There is probable cause to find that [REDACTED] failed to meet her responsibility to the student to make reasonable effort to protect the student from conditions harmful to learning or to health and safety in violation of MiraCosta College Administrative Procedure 3050: Institutional Code of Ethics.

Because you were found to have violated District policy and procedure, the District is required to take appropriate remedial action commensurate with the severity of the offense in response to the complaint.

Enclosed with this letter is a counseling memorandum concerning classroom policies and practices that may create barriers for students to access disability accommodations in accordance with the findings of the investigation.

Conclusion

The District is committed to providing an employment and academic environment for all students and staff that is collaborative, inclusive, and respectful. Please be assured that the contents of the investigation are confidential and will only be disclosed to those individuals who have a legitimate business need to know. The District does not tolerate retaliation against any person who brings forward a protected complaint or participates in an investigation. If you experience any behavior on the part of any member of our campus community that you perceive is discriminatory, harassing or retaliatory in nature, please contact me immediately.

If you have any questions or concerns about any of the information outlined in this letter, or any part of the investigation, do not hesitate to contact me directly.

Sincerely,



Hayley Schwartzkopf
Director of Labor Relations &
Title IX Coordinator
MiraCosta College
hschwartzkopf@miracosta.edu
(760) 795-6672

Enclosure



MIRACOSTA COMMUNITY COLLEGE DISTRICT

1 Barnard Drive, Oceanside, CA 92056

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To:

From: Hayley Schwartzkopf, Director of Labor Relations & Title IX Coordinator

Hds

Date: June 26, 2020

Re: Counseling Memorandum and Request for Corrective Action

Cc: Michael Fino, Dean of Mathematics & Sciences

This letter will serve as a counseling memorandum concerning classroom policies and practices that may create barriers for students to access disability accommodations.

On March 24, 2020, a student enrolled in your [REDACTED] course, [REDACTED] filed a disability discrimination complaint against you. The District immediately conducted an investigation into the complaint, and made the following conclusions based on a preponderance of the evidence standard:

- 1) There is no probable cause to find that [REDACTED] discriminated against student [REDACTED] when she asked her to move to a different seat during [REDACTED] class in violation MiraCosta College Board Policy 3410: Nondiscrimination.
- 2) There is no probable cause to find that [REDACTED] (a) disclosed information about the student obtained in the course of professional service, or (b) intentionally embarrassed or disparaged the student, in violation of MiraCosta College Administrative Procedure 3050: Institutional Code of Ethics.
- 3) There is probable cause to find that [REDACTED] failed to meet her responsibility to the student to make reasonable effort to protect the student from conditions harmful to learning or to health and safety in violation of MiraCosta College Administrative Procedure 3050: Institutional Code of Ethics.

The basis of the substantiated allegation in the complaint is as follows:

On January 21, 2020, [REDACTED] attended her first [REDACTED] class and gave her DSPS accommodation form to you. Due to her disability, [REDACTED] requires a note taker. By the second week of class, [REDACTED] still did not have a note taker, so she asked you for assistance in securing a note taker again. At that time, you questioned [REDACTED] and wanted to know if she really needed a note taker. [REDACTED] confirmed that she needed a note taker and that her DSPS accommodation states that she has been authorized by a DSPS specialist to receive a note taker. You then asked the class for a volunteer, and [REDACTED] was assigned a note taker.

However, throughout the investigation, it was confirmed by multiple students that you had a classroom policy or practice that prohibited students from being able to take notes in class.

During the investigation, it was determined that while [REDACTED] had a note taking accommodation, her note taker was not allowed to take notes in class. [REDACTED] note taker had to take notes from the textbook outside of class and use the materials on canvas to provide some sort of notes to give [REDACTED]

On February 26, 2020, a DSPS Counselor sent an email to the [REDACTED] Department Chair and shared that she received unsolicited information from three different students on separate occasions regarding this policy. The emailed stated, "[REDACTED] does not allow students to take notes in class during lecture because people could be working on their homework."

A student who was interviewed during the investigation also disclosed that they had a DSPS notetaking accommodation, but never gave it to you because of the classroom policy or practice of not allowing anyone take notes in class. The student reported that you would say, "I'm going to assume that you are doing homework for another class." According to the student, you would inform the class that if you caught them taking notes, you would dock them points. The student reported that you would say to the class, "Put your things away, notebooks and pencils, you don't need notes," and that you would only let students keep their textbook on their desks.

Another student reported that you would not let the class take notes, because you did not want students getting distracted. The student stated that if they or other students tried to take notes, you would "call them out" and tell them to put their pen and paper away. The student reported that this very situation happened to them during class.

During your interview, you confirmed that you "don't allow computers in the classroom." You also stated that students "can sit there and take notes. I stress the importance of listening. That is ludicrous. I bring in a lot of information from my travels. I do a lot of discussion and if you're busy taking notes you're going to miss out. I don't encourage students to type notes on their computer because they could be doing something else. I have found students doing other homework in my classroom."

This classroom policy or practice violates the District's Institutional Code of Ethics (Administrative Procedure 3050):

H. Responsibility to the Student

In fulfillment of their obligation to the student, employees:

4. Make reasonable effort to protect the student from conditions harmful to learning or to health and safety.

By not allowing students to use their computers in class or keep anything on their desk, they are unable to take notes during class. This action creates conditions and barriers that are harmful to learning for students, particularly students with notetaking accommodations or other disabilities.

During the investigation, at least one student indicated that they did not provide their accommodation paperwork to you because of this policy. While [REDACTED] was able to find a note taker for this course, the note taker had to take notes from the textbook outside of class to provide some sort of notes to give [REDACTED]. This is an additional burden on a note taker that may create barriers for students to access their accommodations.

While our faculty have an interest in maintaining control in their classrooms, this particular classroom policy or practice created barriers to learning for students. The bounds of Academic Freedom are not limitless, and do not include policies or practices that have a discriminatory impact.

The District will require that you take the following training:

- Americans with Disabilities Act Overview
- Discrimination Awareness in the Workplace

The District will work with the DSPS Department to provide additional training opportunities for faculty and staff, which you are also encouraged to attend for your own professional development.

A copy of this memo will not be placed in your personnel file at this time. However, failure to comply with these directives will result in the implementation of progressive discipline, up to and including possible dismissal from your position. Further action may include placing this memorandum in your personnel file.

Attachment:

AP 3050: Institutional Code of Ethics

A. Preamble

MiraCosta College is comprised of professionals who are dedicated to promoting a climate that enhances the worth, dignity, potential, and uniqueness of each individual within the college community. Although employees work in various settings and positions they are committed to protecting human rights and pursuing academic excellence. While demanding for themselves freedom of inquiry and communication, they accept the responsibility these freedoms require: competency; objectivity in the application of skills; concern for the best interest of students, colleagues, and the college community; and avoidance of conflicts of interest and the appearance of impropriety.

B. Definition of Ethics

Ethical behavior is often defined as "right" or "good" behavior as measured against commonly accepted rules of conduct for a society or profession. The ethical person is often described as one who is fair, honest, straightforward, trustworthy, objective, moral, and unprejudiced. The consistent exercise of integrity is the cornerstone of ethical behavior.

C. Rationale

The specifications of ethical standards enable the district to clarify the nature of common ethical responsibilities not only for present and future employees, but also for students. As a means of supporting these commitments and responsibilities, members of the MiraCosta College Board of Trustees, administration, faculty, and classified staff subscribe to the following standards of ethical and professional behavior. For purposes of this policy "employees" refers to individuals hired and/or paid by the district, including members of the Board of Trustees, full and part-time employees, and student employees.

D. Limitations

The following policy is not an attempt to provide comprehensive guidelines regarding ethical issues in education. Nor does it supersede more specific board policies affecting ethical considerations. It is intended to provide general guidelines and expectations for the conduct of individuals at MiraCosta College as they work toward maintaining ethical standards. Employees are also guided by ethical standards established by professional organizations in their fields, for example:

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Effective Date: 4/7/09, 3/18/16

Periodic Review: 6/16/15

Reference Update: 11/14, 1/15

References: Accrediting Commission for Community and Junior Colleges
Accreditation Standard III.A.13

CCLC Update: #25, 11/14

Steering: WCC / N/A

The American Association of University Professors, American College Personnel Association, Association of California Community College Administrators, and so on.

E. General Responsibilities to the College Community

Recognizing their responsibility to MiraCosta College, employees:

1. Model ethically responsible behavior for students and colleagues and expect ethical behavior from others at all times. When the employee and the college encounter disagreements or conflicts concerning ethical behavior, personal values, performance or conduct, both the employee and the college have the responsibility directly and constructively to seek resolution of the conflicts. Possible actions include (a) confronting the individual in question, (b) utilizing institutional channels and procedures, such as the district grievance procedure, and/or (c) using available mechanisms of professional associations.
2. Have responsibilities to the institution and to individuals they serve. Therefore, employees support the philosophy and the mission of the college.
3. Address issues and work with people without prejudice and therefore do not discriminate unjustly against or in favor of any student or employee.
4. Avoid relationships that seek to meet employee personal needs at the expense of a student or a person under their supervision. They avoid conflicts of interest that may result from dual relationships, such as those of a sexual nature.
5. Recognize that personal problems and conflicts may interfere with employee effectiveness. Accordingly, employees monitor their personal and professional effectiveness and seek assistance when needed (e.g., psychological, medical, legal).
6. Ensure that accurate representation of college goals, services, programs, and policies is made to the public, students, and colleagues.
7. Avoid conflicts of interest between their contractual obligations to the district and private business or personal commitments. For example, they avoid soliciting clients and selling services or products during the course of their regular work at MiraCosta College and they refuse remuneration for services rendered to persons for whom they perform the same services as an employee of the college.
8. Avoid forcing personal values, beliefs, and behaviors on others.
9. Recognize that the shift to an information society gives them access to increasing amounts of data, much of it automated. They exercise the privilege of using such data with care and integrity, and actively guard the privacy of individuals.

10. Use sound and defensible methodology when engaged in research and are knowledgeable and skilled in research technique. They conduct and report investigations in a manner that minimizes the possibility that results will be misleading, inaccurate, and/or deceptively incomplete.
11. Adhere to copyright law and established guidelines that seek an appropriate balance between the property rights of copyright owners and the instructional needs of educational institutions.

F. Responsibility to the Profession

Recognizing a responsibility to their professions, employees:

1. Contribute to the development of their respective professions through sharing skills and ideas; serving professional organizations; and serving as mentors to emerging professionals.
2. Maintain and enhance individual professional effectiveness and competence through continuing education to improve skills and acquire new knowledge, and they assure the same opportunity for persons under their supervision.
3. Accurately represent their experience and credentials, competencies and limitations to all concerned and are responsible for correcting any misrepresentations of their qualifications by others.

G. Responsibilities to Colleagues

In the interest of maintaining effective working relationships with their colleagues and promoting an environment of collegiality, employees:

1. Facilitate a climate of trust and mutual support through relationships focused on respect for reason, freedom of expression, and the right to dissent.
2. Avoid disclosing information about colleagues obtained in the course of professional service unless disclosure serves a compelling professional purpose or is required by law.
3. Avoid knowingly making false or malicious statements about colleagues.
4. In supervisory, management and administrative roles, treat those they supervise with respect and integrity and value the well-being of employees as they make decisions about the needs of the institution. They use the power inherent in their positions wisely and with serious regard for individual worth and personal and professional growth.
5. Foster openness by encouraging and maintaining two-way communication, characterized by honesty and integrity.

H. Responsibility to the Student

In fulfillment of their obligation to the student, employees:

1. Promote freedom of inquiry and expression in the pursuit of learning.
2. Avoid intentionally suppressing or distorting subject matter relevant to the student's progress.
3. Ensure that the student has access to varying points of view.
4. Make reasonable effort to protect the student from conditions harmful to learning or to health and safety.
5. Avoid intentionally embarrassing or disparaging the student.
6. Avoid disclosing information about students obtained in the course of professional service, unless disclosure serves a compelling professional purpose or is required by law.
7. Are sensitive to ethics issues in measurement and evaluation both in and out of the classroom and including but not limited to these factors: (a) orientation of students to the purposes and results of testing; (b) insurance against risks of stereotyping due to possible instrument limitations with regard to socioeconomic, ethnic and cultural factors; (c) the insurance of adequate qualification of employees responsible for the administration, scoring, and interpretation of instruments; (d) maintenance of test security; (e) insurance against risk of over-reliance on test data and over-interpretation of results. (Employees are referred to the sources listed for further guidance on ethical issues and technical information relating to measurement and evaluation.)

I. Consequences of Violations

Conduct that is determined to be in direct violation of this procedure will be subject to disciplinary action in accordance with applicable regulations, board policies, administrative procedures, working condition manuals, and collective bargaining agreements.

J. References

Each of the following professional organizations has developed ethical standards from which this Code of Ethics has been drawn. Copies of the codes of ethics of the below listed organizations have been placed in the Learning Resources Center. This is not an exhaustive list of organizations that have developed ethical standards; employees are urged to refer to their own professional organizations for additional codes of ethics.

1. ACPA – American College Personnel Association
2. AAUP – American Association of University Professors
3. ACCCA – Association of California Community College Administrators
4. NEA – National Education Association