

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, and sets forth a procedure for the investigation and resolution of complaints of harassment by or against any staff or faculty member or student within the district.

This procedure and the related policy protects students, employees, unpaid interns, and volunteers 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 vehicle, or at a class or training program sponsored by the district at another location.

For sexual harassment under Title IX, complainants must proceed under Board Policy 3433: Prohibition of Sexual Harassment under Title IX, Administrative Procedure 3433: Prohibition of Sexual Harassment under Title IX, and Administrative Procedure 3434: Responding to Harassment Based on Sex under Title IX. For other forms of sexual harassment or gender-based harassment, complainants should use this procedure.

Definitions

General Harassment: Harassment based on race, religious creed, color, 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, military and veteran status, or the perception that a person has one or more of these characteristics is illegal and violates district policy. Harassment shall be found where, in aggregate, the incidents are sufficiently pervasive, persistent, or severe that a reasonable person with the same characteristics as the victim of the harassing conduct would be adversely affected to a degree that interferes with their ability to participate in or to realize the intended benefits of an institutional activity, employment, or resource.

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 if it meets the definition above.

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| Effective Date: | 5/19/09, 9/1/15, 12/14/17, 2/1/18, 8/16/20 |
| Reference Update: | 10/16; 3/19; 7/20 |
| References: | Education Code §§ 212.5, 44100, and 66281.5 Government Code §§ 12923, 12940 Civil Code § 51.9 Title 2 §§10500 et seq. Title 5, §§ Sections 59320 et seq.; |
| | Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § U.S. Code Annotated Section 2000e |
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Harassment comes in many forms, including but not limited to the following conduct that could, depending on the circumstances, meet the definition above, or could contribute to a set of circumstances that meets the definition:

- **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 body, physical appearance, attire, sexual prowess, marital status, or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; 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, 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. 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 use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability.
- **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.
- **Environmental:** A hostile academic or work environment may exist 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 their 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 environment.

Sexual Harassment: In addition to the above, sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or

physical conduct of a sexual nature made by someone from, or in, the work or educational setting when:

- Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, progress, internship, or volunteer activity;
- 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 (as more fully described below);
- 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 unreasonably interfered with the person's academic or work performance or created an intimidating, hostile, or offensive learning or working environment.

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.

Consensual Relationships

Romantic or sexual relationships are prohibited:

- Between a supervisor and their subordinate employee.
- Between any classroom faculty member and a MiraCosta College student who is currently enrolled in a class taught by the faculty member, or who is working as a student employee under the supervision of the faculty member.
- Between any non-classroom faculty member and students whom they are currently advising.

Romantic or sexual relationships are discouraged:

- Between a supervisor and an employee.
- Between any employee (whether administrator, faculty member, or classified staff member) and a student.

There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the administrator, faculty member, or staff member must evaluate the student 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 faculty member 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.

Academic Freedom

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