

**Coast Community College District
ADMINISTRATIVE PROCEDURE**

Chapter 3
General Institution

AP 3410 Prohibition of Unlawful Discrimination, Harassment, and Retaliation

References:

Education Code Sections 200, 210.2, 220, 66260.6, 66260.7, 66270, 72010 et seq., and 87100 et seq.;

Government Code Sections 11135 et seq.; 12920, 12926, 12926.1, 12940 et seq.;

Penal Code Sections 422.55 and 422.57;

Military & Veterans Code Sections 389 and 395;

Title 5 of the California Code of Regulations Sections 53000 et seq. and 59300 et seq.;

Title IX of the Education Amendments of 1972 (20 U.S. Code Sections 1681 et seq.; 29 Code of Federal Regulations Part 1691);

Title VI of the Civil Rights Act of 1964 (42 U.S. Code Sections 2000d-1 et seq.; 34 Code of Federal Regulations Part 100; 29 Code of Federal Regulations Part 1691);

Equity in Higher Education Act (Education Code Sections 66250 et seq.);

Title VII of the Civil Rights Act of 1974 (42 U.S. Code Sections 2000e et seq.);

Genetic Information Nondiscrimination Act of 2008 (42 U.S. Code Sections 2000ff et seq.);

29 Code of Federal Regulations Part 1635);

Section 504 of the Rehabilitation Act of 1973 (29 U.S. Code Sections 794; 34 Code of Federal Regulations Part 104);

Americans with Disabilities Act (42 U.S. Code Sections 12101 et seq. and 12132 et seq.; 29 Code of Federal Regulations Part 1630);

Age Discrimination in Employment Act (42 U.S. Code Sections 6101 et. seq.; 29 Code of Federal Regulations Part 1625);

Uniformed Services Employment and Reemployment Act (38 U.S. Code Sections 4303 and 4311; 20 Code of Federal Regulations Part 1002, Subpart B);

California Code of Regulations: Title 2 Sections 7286 et seq.;

Accreditation Commission for Community and Junior Colleges Standard II.C.2;

BP/AP 3900 Speech: Time, Place, and Manner;

BP/AP 4030 Academic Freedom;

BP/AP 5500 Student Code of Conduct;

BP/AP 5910 Sexual Misconduct;

BP/AP 3435 Discrimination, Harassment, and Retaliation Investigations;

Agreement between the District and the Coast Federation of Educators/American Federation of Teachers, Local 1911;

Cohen v. San Bernardino Valley College (1995) 883 F.Supp. 1407, affirmed in part and reversed in part, (1996) 92 F.3d 968.

The District is committed to providing an academic and business environment free of unlawful discrimination, harassment, and retaliation. This Procedure, and related Policies and Procedures, is intended to protect students and employees in connection with all the academic, educational, extracurricular, athletic, and other programs and business of the District, regardless of whether those programs or business take place in the District's facilities, in a District vehicle, or at a class or training program sponsored by the District at another location.

Definitions

Unlawful discrimination means unfair or unequal treatment of an individual (or group) based upon an actual or perceived characteristic related to ethnic group identification, national origin, immigration status, religion, age, sex, gender, gender identification, gender expression, military and veteran status, marital status, medical condition, race, color, ancestry, sexual orientation, physical or mental disability, or any other characteristic or status protected under applicable federal or state law or because they are perceived to have one or more of these characteristics or statuses, or based on association with a person or group with one or more of these actual or perceived characteristics or statuses.

Harassment

Harassment based on a protected characteristic or status identified by state and federal law of any person, or based on the perception that a person has one or more of these characteristics, or status, is illegal and violates Policy.

Gender-based or sex-based harassment does not necessarily involve conduct that is sexual in nature. Any hostile or offensive conduct based on gender or sex 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 or sex, could constitute gender-based or sex-based harassment. Harassment can come 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 protected status, or based on the perception that a person has one or more of these characteristics or statuses. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status, gender expression, and/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 sex, gender, gender expression, race, nationality, sexual orientation, religion, disability, or other protected characteristics or statuses.

- **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, and whistling or making sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's protected characteristic or status, or based on the perception that a person has one or more of these characteristics or statuses. Physical sexual harassment includes acts of sexual violence, such as rape, sexual assault, sexual battery, stalking, 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.
- **Visual or Written:** The display or circulation of visual or written material that degrades an individual or group based on a protected characteristic or status, or based on the perception that a person has one or more of these characteristics or statuses. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics, and electronic media transmissions.
- **Environmental:** A hostile academic or business environment exists where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on a protected characteristic(s), or based on the perception that a person has one or more of these characteristics 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 academic or business environment. It also can be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, sex, genders and/or gender expressions, religions, the disabled or other protected statuses. An environment also may be hostile toward anyone who witnesses unlawful discrimination and/or harassment in their immediate surroundings, even though the conduct is directed at others. The determination of whether an environment is unlawfully 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, sexually harassing conduct can occur between people of the same or different sex or genders and sexual harassment may consist of unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature when any of the following conditions exists:

- 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 academic and business performance, or of creating an intimidating, hostile, or offensive academic or business 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.

This definition encompasses two general 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 in employment occurs when unwelcome conduct based on a person's sex or gender is sufficiently severe or pervasive so as to alter the conditions of an individual's business environment, unreasonably interfere with an individual's work performance, or create an intimidating, hostile, or abusive business environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person 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, like a sexual assault.

Examples of harassment include, but are not limited to the following misconduct:

- Verbal: Inappropriate or offensive remarks, slurs, jokes, or innuendoes based on a person's protected status, including but not limited to sex or gender. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, gender expression, 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 based on sex/gender; or sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular sex or gender. If applicable, also refer to the "Academic Freedom" section below.
- 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 making sexual gestures. If applicable, also refer to the "Academic Freedom" section below.
- Visual or Written: The display or circulation of offensive sexually or gender oriented or other discriminatory visual or written material. This may include, but is not limited to, emails, posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions. If applicable, also refer to the "Academic Freedom" section below.
- Environmental: An academic or business environment that is permeated with racially or, sexually, or gender-oriented talk, innuendo, insults, or abuse 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, gender, and/or sexually suggestive statements in the academic or business environment. An environment may be hostile if

unwelcome sexual behavior or other harassing behavior based on a protected status is directed specifically at an individual or if the individual merely witnesses unlawful harassment in their 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. If applicable, also refer to the "Academic Freedom" section below.

Consensual Relationships

Romantic or sexual relationships between managers and staff members, or between managers, faculty, or staff members, as well as romantic or sexual relationships between employees and District 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 romantic or 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 an instructor 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

The District reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow any form of unlawful discrimination or harassment. It is recognized that an essential function of education is a probing of opinions and an exploration of ideas that may cause some students discomfort. It is further recognized that academic freedom ensures the faculty member's right to teach and the student's right to learn. Nothing in this Procedure and related Policy shall be interpreted to prohibit bona fide academic requirements for a specific College program, course, or activity. See also BP 3900 and AP 3900 Speech: Time, Place, and Manner.

When investigating unlawful discrimination complaints containing issues of academic freedom, the District will consult with a faculty member or group of faculty appointed by the Academic Senate with respect to contemporary practices and standards for course content and delivery.

Training

The District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees. All new supervisory employees must be provided with the training and education within six months of their assumption of a supervisory position. The District shall provide sexual harassment training and education to each supervisory employee once every two years.

The District shall also provide at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all non-supervisory employees. The District shall provide sexual harassment training and education to each non-supervisory employee once every two years. New non-supervisory employees must be provided with the training and education within 30 calendar days from their hire date or within 100 hours worked, whichever occurs first.

The training 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 sexual harassment, and the remedies available to victims of sexual harassment in employment. The training also shall include practical examples aimed at instructing supervisors and staff in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

Education and Prevention for Students

In order to take proactive measures to prevent sexual harassment and violence toward students, the District will provide preventive education programs and make victim resources, including comprehensive victim services, available. The District will include such content in its orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, the District's policies and disciplinary procedures, and the consequences of violating these policies. A training program or informational services will be made available to all students at least once annually.

The education programs also will include information aimed at encouraging students to report incidents of sexual violence to the appropriate District and law enforcement authorities. Because victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of District or campus rules were involved, the District will inform students that the primary concern is for student safety and that use of alcohol or drugs never makes the victim at fault for sexual violence. If other rules are violated, the District will address such violations separately from an allegation of sexual violence.

Ratified December 2, 2013
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