



SAN DIEGO COMMUNITY COLLEGE DISTRICT

Board of Trustees Policy

Chapter 3 - GENERAL INSTITUTION

BP 3430 PROHIBITION OF HARASSMENT

All forms of harassment are contrary to basic standards of conduct between individuals and are prohibited by state and federal law, as well as this policy, and will not be tolerated. The District is committed to providing an academic and work environment that respects the dignity of individuals and groups. The District shall be free of sexual harassment and all forms of sexual intimidation and exploitation. It shall also be free of other unlawful harassment, including that which is based on any of the following statuses: ethnicity, national origin, religion, age, sex, gender, race, color, medical condition, ancestry, sexual orientation, marital status, physical disability or mental disability of any person, or because he or she is perceived to have one or more of the foregoing characteristics.

The Districts seeks to foster an environment in which all employees and students feel free to report incidents of harassment without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against any individual for filing a complaint of harassment or for participating in a harassment investigation. Such conduct is illegal and constitutes a violation of this policy. All allegations of retaliation will be swiftly and thoroughly investigated. If the District determines that retaliation has occurred, it will take all reasonable steps within its power to stop such conduct. Individuals who engage in retaliatory conduct are subject to disciplinary action, up to and including termination or expulsion.

Any student or employee who believes that he or she has been harassed or retaliated against in violation of this policy should immediately report such incidents by following the procedures described in AP 3435 Discrimination and Harassment Investigations. Supervisors are mandated to report all incidents of harassment and retaliation that come to their attention.

This policy applies to all aspects of the academic environment including, but not limited to, classroom conditions, grades, academic standing, employment opportunities, scholarships, recommendations, disciplinary actions, and participation in any community college activity. In addition, this policy applies to all terms and conditions of employment including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities and compensation.

To this end the Chancellor shall ensure that the institution undertakes education and training activities to counter discrimination and to prevent, minimize and/or eliminate any hostile environment that impairs access to equal education opportunity or impacts the terms and conditions of employment.

The Chancellor shall establish procedures that define harassment on campus. The Chancellor shall further establish procedures for employees, students, and other members of the campus community that provide for the investigation and resolution of complaints regarding harassment and discrimination, and procedures for students to resolve complaints of harassment and discrimination. All participants are protected from retaliatory acts by the District, its employees, students, and agents.

This policy and related written procedures shall be widely published and publicized to administrators, faculty, staff, and students, particularly when they are new to the institution. They shall be available for students and employees in all administrative offices.

Employees who violate the policy and procedures may be subject to disciplinary action up to and including termination. Students who violate this policy and related procedures may be subject to disciplinary measures up to and including expulsion.

References:

Education Code Section 212.5; 44100; 66252; 66281.5; Government Code 12950.1; Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e

Adopted 2/12/2009



SAN DIEGO COMMUNITY COLLEGE DISTRICT

Administrative Procedure

Chapter 3 - GENERAL INSTITUTION

AP 3430 PROHIBITION OF HARASSMENT

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 identifies the procedure for the investigation and resolution of complaints of harassment by or against any staff, faculty member or student within the District.

Definitions

General Harassment. Harassment based on ethnicity, national origin, religion, age, sex, gender, race, color, medical condition, ancestry, sexual orientation, marital status, physical disability or mental disability of any person, or the perception that a person has one or more of these characteristics is illegal and violates District policy. 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.

Sexual Harassment. In addition to the above, sexual harassment consists of unwelcome sexual advances, requests for sexual favors, 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.

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 sex 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 would perceive the environment as hostile.

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

Examples of Harassment: Harassment comes in many forms including, but 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. 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 of a sexual nature; or sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular gender.
- 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 sexual gestures.
- Visual or Written: The display or circulation of offensive sexually oriented or other discriminatory visual or written material. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.
- Environmental: An academic or work environment that is permeated with racially or sexually-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 or sexually suggestive statements in the classroom or work 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 his or her 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.

Complaints of Harassment

Any student or employee who believes that he or she has been harassed or retaliated against in violation of the District's policy should immediately report such incidents by following the procedures described in AP 3435 Discrimination and Harassment Investigations. Supervisors are mandated to report all incidents of harassment and retaliation that come to their attention.

Consensual Relationships

Romantic or sexual relationships between supervisors and employees, or between administrators, faculty or staff members and students are discouraged. Board Policy 4120, Consensual Relationships, provides that no employee should enter into a consensual relationship with a student actually under that employee's authority and that no employee should participate in the supervision, hiring committee, evaluation or decision pertaining to promotion for someone with whom that person has or has had a consensual relationship. 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 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 teacher 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

If a faculty member wishes to use sexually explicit materials in the classroom for teaching purposes, it is recommended that the faculty member review that use with an administrator to determine whether or not this violates the sexual harassment policy.

References:

Education Code Sections 212.5; 44100; 66281.5;
Title IX, Education Amendments of 1972; Title 5, Sections 59320 et seq. ;
Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e.

Supersedes Procedure 4105.2

See Administrative Procedure 3435

Adopted 2/12/2009



SAN DIEGO COMMUNITY COLLEGE DISTRICT

Administrative Procedure

Chapter 3 - GENERAL INSTITUTION

AP 3435 DISCRIMINATION AND HARASSMENT INVESTIGATIONS

Filing a Timely Complaint

Since failure to report harassment and discrimination impedes the District's ability to stop the 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 thirty (30) days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the District's ability to investigate and remediate.

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.

Communicating that the Conduct is Unwelcome

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.

Oversight of Complaint Procedure

The Equal Opportunity and Diversity Officer is the "responsible District officer" charged with receiving complaints of discrimination or harassment, and coordinating their investigation.

The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the District.

Where to File a Complaint

A student or employee who believes he or she has been discriminated against or harassed in violation of these policy and procedures may make a complaint orally or in writing, within one year of the date of the alleged harassment or the date on which the complainant knew or should have known of the facts underlying the complaint.

Employment complaints should be filed within 6 months of the date of the alleged discrimination or the date on which the complainant knew or should have known of the facts underlying the complaint.

A student or employee can file a complaint with their Site Compliance Officer (SCO). In addition, students may also file a complaint with the Dean responsible for student affairs, who will notify the SCO and work with the SCO to resolve the complaint. The SCO will undertake efforts to informally resolve any charges including, but not limited to, investigating the allegations; resolving the conflict amongst the parties; rearrangement of work/academic schedules; obtaining apologies; providing informal counseling and/or training, etc. The SCO will advise the complainant that he or she need not participate in an informal resolution of the complaint, as described above, and that he or she may file a formal complaint. In the case of employment cases, the SCO will advise the complainant that they may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH).

If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, he or she must file the complaint on a form prescribed by the California Community Colleges Chancellor's Office. (*See copy of complaint form attached as Appendix A.*) These approved forms are available from the Equal Opportunity and Diversity Officer, the Site Compliance Officers or the District's office of Legal Services and EEO.

The completed form must be filed with any of the following:

- the Equal Opportunity and Diversity Officer;
- the District's office of Legal Services and EEO;
- the Chancellor of the California Community Colleges.

Any District employee who receives a harassment or discrimination complaint shall notify the Equal Opportunity and Diversity Officer immediately.

Intake and Processing of the Complaint

Upon receiving notification of a harassment or discrimination complaint, the Equal Opportunity and Diversity Officer shall:

- Undertake efforts to informally resolve the charges (if that process has not already been completed by one of the District's SCOs) including, but not limited to, mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling and/or training, etc. Advise the complainant that he or she need not participate in an informal resolution of the complaint, and that he or she may file a formal complaint and/or a complaint with the Office of Civil Rights of the U.S. Department of Education. In the case of employment discrimination, the complainant will be advised that he or she may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH).
- Notify the Chancellor of California Community Colleges of any formal written complaint, as well as any complaint filed with EEOC and/or DFEH.

- Authorize the investigation of the complaint, and supervise and/or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. Where complainants opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. In the case of a formal complaint, the investigation will include interviews with the complainant, the accused, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.
- Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.
- Set forth the results of the investigation in a written report. The written report shall include 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 discrimination did or did not occur with respect to each allegation in the complaint, and any other appropriate information.
- Provide the complainant with a copy or a summary of the investigative report within ninety (90) days from the date the District received the complaint. The complainant shall also be provided with a written notice setting forth the administrative determination as to whether harassment or other discriminatory conduct did or did not occur with respect to each allegation in the complaint; a description of action taken, if any, to prevent similar problems from occurring in the future; the proposed resolution of the complaint; and notice of the parties' rights to appeal to the District's Board of Trustees and the state Chancellor's Office. 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). Reports to the complainant shall be prepared so as not to violate any applicable privacy rights of the accused.

Investigation of the Complaint

The District shall promptly investigate every complaint of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. As set forth above, where the complainant opts for an informal resolution, the Site Compliance Officer or Equal Opportunity and Diversity Officer may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation.

Investigation Steps. The District will fairly and objectively investigate harassment and discrimination complaints utilizing the following steps: interviewing the complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses, if any; reminding all individuals interviewed of the District's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reach a

conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion.

Timeline for Completion. The District will undertake its investigation promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report within ninety (90) days of the District receiving a formal written complaint.

Cooperation Encouraged. All employees are expected to cooperate with a District investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the District of its obligation to investigate. The District will conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed.

Discipline and Corrective Action

If harassment, discrimination and/or retaliation occurred in violation of the policy or procedure, 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. If discipline is imposed, the nature of the discipline will not be communicated to the complainant.

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 protect the complainant from further harassment, and/or discrimination, and to protect the complainant and witnesses from retaliation as a result of communicating the complaint and/or assisting in the 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.

Appeals

If the complainant is not satisfied with the results of the administrative determination, he or she may, within fifteen (15) days, submit a written appeal to the Board of Trustees. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within forty-five (45) days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the complainant and to the state Chancellor's Office. The complainant shall also be notified of his or her right to appeal this decision.

If the Board does not act within forty-five (45) days, the administrative determination shall be deemed approved and shall become the final decision of the District in the matter.

The complainant shall have the right to file a written appeal with the state Chancellor's Office within thirty (30) days after the Board issues the final District decision or permitted

the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Section 59350 of Title 5 of the California Code of Regulations.

In any case involving employment discrimination, including workplace harassment, the complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the Department of Fair Employment and Housing. In such cases, the complainant may also file a petition for review with the state Chancellor's Office within thirty (30) days after the governing board issues the final decision or permits the administrative decision to become final.

Within one hundred fifty (150) days of receiving a formal complaint, the District shall forward to the state Chancellor's Office the original complaint, the investigative report, a copy of the written notice to the complainant setting forth the results of the investigation, a copy of the final administrative decision rendered by the Board or indicating the date upon which the decision became final, and a copy of the notification to the complainant of his or her appeal rights. If, due to circumstances beyond its control, the District is unable to comply with the one hundred fifty (150) day deadline for submission of materials, it may file a written request for an extension of time no later than ten (10) days prior to the expiration of the deadline.

Dissemination of Policy and Procedures

District Policy and Procedures related to harassment will be provided to all students, faculty members, members of the administrative staff and members of the support staff, and will be posted throughout the District.

When hired, employees are required to sign that they have received the policy and procedures pertaining to nondiscrimination and prohibition of harassment, and the signed acknowledgment of receipt is placed in each employee's personnel file. In addition, these policies and procedures are incorporated into the District's course catalogs and orientation materials for new students.

Training

By January 1, 2006, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees who are employed as of July 1, 2005. All new supervisory employees must be provided with the training and education within six (6) months of their assumption of a supervisory position. After January 1, 2006, the District shall provide sexual harassment training and education to each supervisory employee once every two (2) years.

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 sexual harassment and the remedies available to victims of sexual harassment 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.

In years in which a substantive policy or procedural change has occurred, all District employees will attend a training update and/or receive a copy of the revised policies and procedures.

A training program or informational services regarding nondiscrimination and prohibition of harassment policies will be made available to all students at least once annually. The student training or informational services shall include an explanation of the policy, how it works, and how to file a complaint.

Appendix A - San Diego Community College District Unlawful Discrimination Complaint Form

References:

Education Code Section 66281.5; Government Code 12950.1;
Title 5, Sections 59320, 59324, 59326, 59328, and 59300 et seq.; 34 C.F.R. Section 106.8(b)

Replaces former SDCCD procedure 4105.1

Adopted 2/12/2009