



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



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