

VICTOR VALLEY COMMUNITY COLLEGE DISTRICT
ADMINISTRATIVE PROCEDURE

GENERAL INSTITUTION

Chapter 3

Prohibition of Harrassment

AP 3430

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.

Definitions

General Harassment. Harassment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation 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. Harassment comes 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 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 or 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.
- *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 exists 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

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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 his or her 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.

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 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.

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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.

Examples: Harassment includes, but is 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.

Consensual Relationships

Romantic or sexual relationships between supervisors and employees, or between administrators, faculty or staff members and 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

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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

To the extent the harassment policies and procedures are in conflict with the District's policy on academic freedom, the harassment policies and procedures shall prevail. If the faculty member wishes to use sexually explicit materials in the classroom as a teaching technique, the faculty member must review that use with the appropriate dean to determine whether or not this violates the sexual harassment policy.

Complaint Procedure for Investigation and Resolution of Claims of Harassment

Reference: Title 5, Section 59320

Students or employees who believe they have been harassed have the responsibility to inform the accused harasser that the behavior is offensive and demand that it be stopped.

Informal Procedure

When it is not practical or possible to confront the accused harasser directly, or if the situation continues, the complainant must inform the director of Human Resources. The director of Human Resources will hear the complaint, conduct an appropriate investigation, and proceed to final resolution informally. The informal process shall not exceed thirty (30) working days from receipt of the complaint.

Formal Procedure

If the complainant does not find satisfactory resolution in the informal process, a formal written complaint must be filed on the discrimination complaint form available in Human Resources within 100 calendar days from the date of completion of the informal process.

The director of Human Resources is the "responsible district officer" charged with receiving complaints of sexual harassment or other forms of prohibited harassment, and coordinating their investigation.

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The actual investigation of complaints may be assigned by the director of Human Resources to other staff or to outside persons or organizations under contract with the district. This shall occur whenever the director of Human Resources is named in the complaint or implicated by the allegations in the complaint.

Students who believe they have been sexually harassed, or harassed based on any other protected status, 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, to any of the following:

- The director of Human Resources,
- The superintendent/president, and/or
- The chancellor of the California Community Colleges.

Staff or faculty members who believe they have been sexually harassed, or harassed based on any other protect status, may make a complaint orally or in writing to any of the following:

- The director of Human Resources,
- The superintendent/president, and/or
- The chancellor of the California Community Colleges.

Any district employee who receives a harassment complaint shall notify the director of Human Resources immediately.

Upon receiving notification of a harassment complaint, the director of Human Resources shall:

- 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 complaint with the Office of Civil Rights of the U.S. Department of Education. The director of Human Resources shall also notify the chancellor of California Community Colleges of the complaint.
- Authorize the investigation of the complaint and supervise and/or conduct a thorough, prompt, and impartial investigation of the complaint. The investigation will include interviews with the complainant, the accused harasser, 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 giving consideration to all faculty 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.

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- 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/administrative determination as to whether discrimination did or did not occur with respect to each allegation in the complaint, recommendations formulated as a result of the findings/administrative determination, and any other appropriate information.
- Provide the complainant with a copy or 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 determination of the director of Human Resources as to whether sexual harassment 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 complainant's right 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 occurred shall also be reported to the alleged harasser, and the appropriate academic or administrative official(s).

If harassment occurred, the district shall take remedial or disciplinary action against the harasser. 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, and 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 to protect the complainant from retaliation as a result of communicating the complaint. The district shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties. All employees who are involved in the complaint investigation as either complainant, accused harasser, or witnesses, will be directed by the investigator to avoid any retaliation against anyone involved in the investigation. Those involved in the investigation shall also be directed to observe strict confidentiality regarding the complaint and all aspects of the investigation. All participants in the investigation shall be required to sign a statement pledging they will not retaliate or breach confidentiality as result of participation in the investigation. Failure to comply with these directives will be considered an act of insubordination and may lead to disciplinary action.

If the complainant is not satisfied with the results of the administrative determination, the complainant may, within fifteen (15) days, submit a written appeal to the Board of Trustees. The

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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 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 the 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 issued 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

If any case involving employment discrimination, 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 150 days of receiving a 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 appeal rights. If, due to circumstances beyond its control, the district is unable to comply with the 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, and members of the administrative staff and support staff and will be posted on campus in the following locations: Human Resources, Fiscal Services, Campus Police, Mailroom, Maintenance & Operations, and other locations as needed.

When hired, employees are required to sign that they have received the policy and procedures, 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 catalogues and orientation materials for new students.

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Training

Training of academic staff should be conducted emphasizing environmental harassment in the classroom. Each participant in the training shall be required to sign a statement where they check one of two boxes:

I have participated in training regarding the district's sexual harassment policy. I understand the policy and accept my obligation to comply with the policy.

OR

I do not understand the district's sexual harassment policy and wish additional training.

References:

Education Code Sections 212.5; 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.