



## **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, and in conjunction with associated administrative procedure AP 3435 titled Discrimination and Harassment Investigations, 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 related to an academic or work activity of the District whether the programs or activities take place in the District's facilities, a District vehicle, or at a class or training program sponsored by the District at another location.

### **Definitions**

**General Harassment** – Harassment based on any of the following protected statuses: 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, or military and veteran status, or the perception that a person has one or more of these characteristics or based on association with a person or group with one or more of these actual or perceived characteristics is illegal and violates District policy. Harassment shall be found where a reasonable person with the same characteristics as the victim of the harassing conduct would be adversely affected to a degree that interferes with his or her 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 if it meets the definition above. 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 that could, depending upon 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



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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. 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 victim's 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 and/or insults, abusive, or gratuitous comments directed at an individual or group based on gender, race, nationality, 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/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 verbal, visual or physical conduct of a sexual nature made by someone from, or in, the work or education setting when:



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- submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or 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); 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 gender alters 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 work 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 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 administrator, faculty, or staff member must evaluate

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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 and result in a harassment complaint. Upon receiving the complaint, the District may take appropriate corrective action prior to and during the investigation. This may include an offer of a change of location to any involved employee to eliminate or attenuate the supervisory authority of one over the other, of a teacher over a student, or peer-to-peer. Such change of location by the District is a proactive and preventive measure and does not constitute discipline against any affected employee or student. Upon conclusion of the investigation, appropriate District action will be determined.

### **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 the classrooms and public forums. Freedom of speech and academic freedom are, however, not limitless and the procedure will not protect speech or expressive conduct that violates federal or California anti-discrimination laws.

### **Training**

All new supervisory employees must be provided with the training and education within six months of their assumption of a supervisory position. The District provides subsequent sexual harassment training and education to each supervisory employee once every two 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.

Training is required of all regular employees and of all temporary employees who regularly interact with students. Training for academic employees should emphasize hostile environment harassment in the classroom. The District will also provide training



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to students who lead student organizations. At the time of employment, the District provides copies of the sexual harassment policies and procedures to all employees.

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

Upon completion of training, participants in training programs will be required to sign a statement that they have either understood the policies and procedures, their responsibilities, and their own and the District's potential liability, or that they did not understand the policy and desire further training.

### **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 includes such programs for student leaders, designated student workers, athletes, and coaches. These programs include discussion of what constitutes sexual harassment and sexual violence, the District's policies and disciplinary procedures, and the consequences of violating these policies.

The education programs will also include information aimed at encouraging students to report incidents of sexual violence to the appropriate District and law enforcement authorities. Since 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.

Also see BP/AP 3410 titled Nondiscrimination and AP 3435 titled Discrimination and Harassment Investigations

References: Education Code Sections 212.5, 44100, 66252, and 66281.5;  
Government code Sections 12923, 12940 and 12950.1;  
Civil Code Section 51.9;  
Title 2 Sections 10500 et seq.;  
Title 5 Sections 59320 et seq.;  
Title IX, Education Amendments of 1972;  
Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000e



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