

# Palomar Community College District

## SEXUAL HARASSMENT POLICY

### I. Statement of Policy

#### A. Introduction

It is the policy of the Palomar Community College District, in keeping with efforts to establish and maintain an environment in which the dignity and worth of all members of the college community are respected, that sexual harassment of students and employees is unacceptable conduct and will not be tolerated.

This Policy applies to the unlawful harassment of any student on the basis of sex by any employee of the District including, but not limited to, classroom conditions, grades, academic standing, scholarships, recommendations, employment opportunities, disciplinary action, or any other aspect of college life within the control of the District or its employees.

This Policy also applies to the unlawful sexual harassment of any employee with respect to all terms and conditions of employment with the District, including but not limited to hiring, placement, evaluation, promotion, disciplinary action, layoff, recall, transfer, leaves of absence, training opportunities, compensation, work assignments, and hours of work, shifts, or workload.

Employees who violate this Policy may be subject to corrective measures and to disciplinary action up to and including termination of employment. Students who violate this Policy may be subject to corrective measures, including discipline, up to and including expulsion.

#### B. Dissemination of Policy

This Policy shall be posted in prominent locations on the college campuses and in the District Office, incorporated into orientation materials for new students, and for new and current faculty and staff. Questions regarding this Policy should be directed to the Assistant Superintendent/Vice President, Human Resources and Affirmative Action.

#### C. Definitions

1. **Sexual harassment** is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, written, or physical conduct of a sexual nature. It occurs when:
  - a. Submission to the conduct is procured by force, threat, intimidation, trick or surprise, or is made a term or condition of an individual's employment, or status as a student;
  - b. Submission to the conduct or rejection or avoidance of the conduct by an individual in the making of employment or academic decisions regarding that individual is used as a basis for a positive or adverse decision or one which maintains the status quo;
  - c. The conduct is intended to and/or does interfere with or have a negative effect on

the individual's work or educational performance, or creates an intimidating, hostile or offensive educational or work environment; or

d. The conduct takes place in the presence of another, or others, between people of the same or different gender and fits one of the above definitions.

## 2 **Forms of Sexual Harassment**

a. "Quid pro quo" sexual harassment occurs when a person in a position to effectively recommend, grant, deny, or adversely effect the terms or conditions of employment or a student's status, educational, or career opportunities, offers or suggests that such effects are conditional on an individual's willingness to engage in or tolerate the unwelcome sexual conduct.

b. "Hostile environment" sexual harassment occurs when the unwelcome sexual conduct 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.

### **D. Examples of Prohibited Sexual Harassment**

1. **Verbal harassment** – Includes, but is not limited to, unwelcome derogatory comments, remarks, slurs, jokes or innuendo based on sex or of a sexual nature and may include, but is not limited to, unwelcome sexual comments, obscenities or innuendo regarding an individual's body, physical appearance, attire, sexual prowess, marital status or sexual orientation; unwelcome or repeated flirting, or proposals to meet, date, or engage in conversations which include the verbal statements defined above; demands for sexual favors, or verbal abuse, threats or intimidation of a sexual nature; or patronizing or ridiculing statements which convey derogatory attitudes toward or are demeaning to a particular gender.
2. **Physical harassment** - Includes, but is not limited to, unwelcome and offensive touching, assault, impeding or blocking free movement, attempting to kiss or kissing, patting, stroking, grabbing, or invading the space of another; pinching, leering, unnecessarily brushing against, whistling or making sexual signs or gestures toward or in the presence of another.
3. **Visual harassment** - Includes, but is not limited to, the display or circulation of sexually derogatory, demeaning, or offensive posters, pictures, cards, cartoons, graffiti, drawings, or gestures; or reading sexually derogatory materials, computer graphics or electronic media transmission.
4. **Solicitation of sexual favors** - Includes, but is not limited to, unwelcome sexual advances, demands, suggestions or requests for sexual acts or favors.

### **E. Complaints of Sexual Harassment**

Complaints of sexual harassment filed by students or employees will be investigated and resolved in accordance with the Sexual Harassment Complaint Procedure set forth in Section II herein. If the investigation results in a determination that disciplinary action or corrective

measures are necessary or appropriate, the District, in its sole discretion, may impose such action or measures in accordance with law which may include, but is/are not limited to, warning, reprimand, suspension without pay, dismissal or any other preventive or corrective measure deemed appropriate by the District.

#### **F. District Responsible Officer**

The District Assistant Superintendent/Vice President of Human Resources and Affirmative Action is the District Responsible Officer (“Responsible Officer”) who is responsible for receiving complaints of sexual harassment, coordinating the timely investigation and resolution of such complaints in accordance with this Policy, and assuring compliance with all state and federal complaint procedures and reporting requirements. The Responsible Officer shall take steps to assure the confidentiality of complaints, and that access to complaint and investigative information is confined to those individuals and entities with a need to know, or where the information is otherwise permitted or required to be released in accordance with law.

#### **G. Sexual Harassment Complaint Investigators**

The District Responsible Officer and/or designee(s) shall investigate singularly or in a team only those complaints which are not resolved at the informal complaint level and which, additionally, do not identify as the harasser a supervisor or administrator in a position superior to that of any designated investigator(s). Where appropriate, the Responsible Officer may recommend that the Governing Board appoint another person or organization not employed by the District to conduct the investigation under contract with the District. Neither the Responsible Officer nor any investigator will be appointed to investigate any complaint in which the officer or investigator is named as a percipient witness, is accused in the complaint of sexual harassment or retaliation, as defined above, or is otherwise implicated by the allegations in the complaint.

### **II. Sexual Harassment Complaint Procedure**

#### **A. Introduction**

##### **1. Applicability**

This procedure applies to students, employees and applicants for employment who, either allege that they have personally suffered sexual harassment discrimination or retaliation, or to an individual who learned of the alleged conduct in his or her official capacity. Any oral or written complaint of sexual harassment discrimination or retaliation must be made to one of the individuals identified in paragraph B below within one year of the date of the alleged harassment or retaliation, or within one year of the date on which the Complainant knew or should have known of the facts underlying the alleged unlawful discrimination.

##### **2. Definitions**

**Complainant:** A student, employee or applicant for employment who believes that they have been personally sexually harassed, or an individual who learned of it in his or her official capacity.

**Respondent:** The individual who allegedly sexually harassed or took reprisals upon the Complainant, or an individual who participated in the complaint procedure.

**Complaint:** A written statement which contains as much detail as possible as to the circumstances surrounding the alleged harassment including date(s), time(s), description of incident(s), witnesses and the desired remedy.

**Informal Complaint:** An unwritten complaint, which the Complainant has verbally provided to a District supervisor or management employee and which contains the information described in the Complaint definition above.

**Days:** Days, as used in this Policy, mean days in which the District Office is open for business.

## **B. Reporting Unwelcome Conduct**

Sexual harassment is unlawful only when it is conduct which is not solicited, welcome or voluntarily engaged in or participated in. Therefore, where possible or practicable, an individual who believes that such unwelcome conduct constitutes sexual harassment should clearly inform the perpetrator that such conduct is not wanted, not appropriate and should cease. Where it is not possible or practicable to do so, or if the harassment continues after clear notice to the alleged harasser that the conduct is unwelcome, employees, applicants and students should take the action set forth below.

**Employees** should immediately inform their supervisor or the Responsible Officer. If it is not practicable to inform the immediate supervisor, or that individual is the alleged harasser, employees shall promptly report any charges of discrimination to the next higher level supervisor or the Responsible Officer. Immediate supervisors who learn of such a complaint shall immediately report it to the Responsible Officer or President as appropriate. All charges shall be reported to the District Responsible Officer.

**Students** should immediately report any allegations of sexual harassment to the Director of Student Activities, the Assistant Superintendent/Vice President of Student Services or, if not available, to the Responsible Officer. Any such report shall be promptly reported to the Responsible Officer. Any District employee to whom an oral or written harassment complaint is reported shall immediately notify the Responsible Officer.

## **C. Informal Complaint Procedure**

Upon the receipt of notice of the filing of a timely, within one (1) year of the date of the alleged harassment or retaliation, written or oral harassment complaint, the District Responsible Officer shall:

1. Clarify the specific nature of the allegations whether written or oral, and attempt to informally resolve the complaint.
2. Advise the individual that he or she need not participate in any informal efforts to resolve the complaint, and that he or she may file a complaint with the Office of Civil Rights of the U.S. Department of Education (OCR), or the Chancellor for Community College Districts.
3. Take appropriate action to assist in preventing conduct by the alleged harasser or others which may constitute or appear to constitute reprisal for filing the complaint.

4. Within ten (10) days of the receipt of the complaint, provide a copy of this Policy to both the Respondent and the Complainant; provide to the Respondent written notice of the substance of the allegations of the complaint where oral, a copy of the complaint where written, and request that the Respondent provide a written response to the written complaint or to the summary of the allegations provided within ten (10) days. Failure or refusal of the individual making the complaint to provide requested information regarding the allegations, other facts or circumstances surrounding the charges, or necessary for the continued processing of the complaint, or to cooperate in the complaint procedure shall result in dismissal of the complaint without investigation or any further action.
5. Within ten (10) days of receipt of the statement of the Respondent, or if no statement is submitted within ten (10) days of the notice to the Respondent in paragraph 4 above, the Responsible Officer shall provide the Respondent the opportunity to discuss the allegations of the complaint and any possible resolution of them. If within the above ten (10) day period no statement is submitted, the Responsible Officer shall review what information is available to determine whether the allegations are sufficiently serious to warrant the initiation of a formal complaint.
6. If the matter is resolved, the Responsible Officer will put the agreed upon resolution in writing and shall meet individually with both parties who will review and sign an agreement which shall include the specific nature of the allegations and all of the terms of the resolution.
7. If the parties agree that there has been no sexual harassment and are satisfied with the resolution, the written agreement shall state these facts, and that the parties agree. The documents and the original of the agreement shall be retained by the Responsible Officer for a period of three (3) years, after which time the documents and the agreement will be shredded. The documents and the agreement will not be filed in the personnel files of either party.
8. If the parties agree that sexual harassment has occurred, but are satisfied with the resolution, then the agreement, specifically describing the conduct alleged, the resolution and the complaint shall be placed in a sealed envelope in the personnel file of the Respondent marked to the effect that it may be opened only at the direction of the President, or if otherwise required by law.
9. If the Complainant is not satisfied with the resolution of the complaint, or if the Responsible Officer determines that an informal resolution either cannot be reached or cannot be reached within thirty (30) days of the submission of the complaint at the informal level, the Responsible Officer will provide written notice of that determination to the parties and of the Complainant's right to file a formal complaint with the Responsible Officer under this Policy and/or with any federal or state enforcement agency such as the Office of Civil Rights, the Equal Employment Opportunity Commission, or the Department of Fair Employment and Housing.
10. Even if the Complainant is satisfied with the resolution of the complaint, or agrees that no sexual harassment or retaliation occurred, the Responsible Officer shall determine, subject to the approval of the President, whether the alleged conduct is of such a serious nature under all of the facts and circumstances that, if true, corrective action in addition to that agreed upon by the parties, if any, and/or disciplinary action would be appropriate. In such cases, the Responsible Officer will direct the formal investigation of the Complaint as

provided in paragraph D below, provide a copy of the report of the investigation to the Respondent for review, comment and submission of any statement or evidence not previously provided within the time required to submit a statement in response to documents to be placed in the personnel file. The Responsible Officer shall submit such report and statement to the President for appropriate disposition.

**D. Formal Complaint Procedure**

1. Except as provided in paragraph C 10 above, the Complainant shall initiate the formal complaint procedure by filing a complaint in writing after ~~either~~ completing the informal resolution process. A formal complaint form is attached as Exhibit A to this Policy.
2. Upon receipt of the formal complaint, the Responsible Officer, or trained designee, shall investigate the complaint. Any designated investigator is required to notify the Responsible Officer immediately when it comes to his/her attention that such member is a witness to allegations, or for any other reason may not be able to fairly or impartially investigate the allegations.
3. The Responsible Officer or designee will examine the complaint, and will interview the Respondent and the Complainant, with their consent, and any other witnesses deemed necessary to make a determination as to whether the conduct alleged occurred as stated in the complaint, or if not, what conduct did occur. If sexual harassment did occur, the Responsible Officer will determine the nature and seriousness of the conduct in light of all of the surrounding facts and circumstances. The above determinations and the bases for such determinations shall be included in a written report drafted or submitted to the Responsible Officer for review within eighty (80) days of the filing of the formal written complaint. The Responsible Officer shall review the report for sufficiency and, if found to be sufficient, will review the report with the appropriate site manager and President for recommended action.
4. Within ninety (90) days of receiving the formal written complaint, the Responsible Officer shall provide the Complainant with:
  - a) A copy of the report of the District's investigation or a summary of the investigation;
  - b) A written notice of the administrative decision setting forth the determination of the President, or his or her designee, 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; notice of the Complainant's right to submit a written appeal to the District Governing Board within fifteen (15) days of receipt of the report; and to submit an appeal to the Chancellor of the California Community Colleges. The results of the investigation and the determination as to whether harassment occurred shall also be reported to the Respondent and to the Respondent's supervisor. The Responsible Officer shall be responsible for preparing and submitting the above notice.

**E. Appeal to the Governing Board**

If the Complainant timely files a written appeal to the Governing Board, the Board shall review the original complaint, the investigation report, the administrative decision, and the appeal. The Governing Board shall issue a final decision within forty-five (45) days after receiving the appeal, or the administrative decision will become final automatically upon the expiration of the forty-five (45) day period. The Complainant and the Respondent shall be notified in writing of the Governing Board's decision, or that the administrative decision has become final by operation of law.

**F. Further Appeal**

Within thirty (30) days after the Governing Board issues its final decision or the administrative decision otherwise becomes final, the Complainant shall have the right to file a written appeal with the Chancellor of Community College Districts. If the complaint involves allegations of employment related discrimination, the Complainant may, at any time, also file a complaint with the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission instead of, or in addition to, filing a petition for review with the Chancellor of Community College Districts within thirty (30) days after the Governing Board issues a final decision or permits the administrative decision to become final. Any complaint filed with the Chancellor of Community College Districts must be filed within one (1) year of the date of the alleged unlawful discrimination or within one (1) year of the date on which the Complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

**G. Reports**

The District Responsible Officer shall make any required reports to the Chancellor of California Community College Districts.

March 10, 2000



**PALOMAR COLLEGE**  
**Unlawful Discrimination Complaint Form**

Name: \_\_\_\_\_  
Last First

Address: \_\_\_\_\_  
Street or P.O. Box City State Zip

Phone: Day (\_\_\_\_) \_\_\_\_\_ Evening (\_\_\_\_) \_\_\_\_\_

I Am A: Student Employee Other: \_\_\_\_\_

I Wish To Complain Against:

District: \_\_\_\_\_ College: \_\_\_\_\_

Date of Most Recent Incident of Alleged Discrimination: \_\_\_\_\_

*(Nonemployment complaints must be filed within one year of the date of the alleged unlawful discrimination.  
Employment complaints must be filed within six months of the date of the alleged unlawful discrimination)*

I Allege Discrimination Based on the Following Category Protected under Title 5: *(you must select at least one):*

- Age
- Ancestry
- Color
- Ethnic Group Identification
- Mental Disability
- National Origin
- Physical Disability
- Race
- Religion
- Retaliation
- Sex (includes Harassment)
- Sexual Orientation

**Clearly state your complaint. Describe each incident of alleged discrimination separately. For each action provide the following information: 1) date(s) the discriminatory action occurred, 2) name of individual(s) who discriminated; 3) what happened; 4) witnesses (if any); and 5) why you believe the discrimination was because of protected group status [religion, age, race, sex or whatever basis you indicated above] and/or, if applicable, why you believe you were retaliated against for filing of complaint or asserting your rights. *(Attach additional pages as necessary.)***

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What would you like the District to do as a result of your complaint -- what remedy are you seeking?:

\_\_\_\_\_  
\_\_\_\_\_

I certify that this information is correct to the best of my knowledge.

\_\_\_\_\_  
Signature of Complainant Date