

GENERAL INSTITUTION

**AP 3430 PROHIBITION OF HARASSMENT**

**References:**

- Education Code Sections 212.5, 44100, and 66281.5;
- Government Code Sections 12940 and 12923;
- 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

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 in conjunction with associated administrative procedure AP 3435 titled Discrimination and Harassment Complaints and Investigations, sets forth a procedure for the investigation and resolution of complaints of harassment by or against any student, employee, or volunteer within the District.

This procedure and the related policy protect students and employees in connection with all academic, educational, extracurricular, athletic, and other programs of the District, whether those programs 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 race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, sex, age, or sexual orientation of any person, military or veteran status, or the perception that a person has one or more of these 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 their ability to participate in or to realize the intended benefits of an institutional activity, employment, or resource.

For sexual harassment under Title IX, Complainants must proceed under BP 3433 Prohibition of Sexual Harassment under Title IX, AP 3433 Prohibition of Sexual Harassment under Title IX, and AP 3434 Responding to Harassment Based on Sex under Title IX. For other forms of sexual harassment or gender-based harassment, Complainants should use this procedure.

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 on 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 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. This section does not apply to library holdings or classroom materials used for instructional purposes and in accordance with BP 4030, titled Academic Freedom.
- *Environmental:* A hostile educational or work environment caused by sexual harassment occurs when unwelcome comments or conduct based on sex, gender, and/or sexual orientation unreasonably interferes with an individual's educational experience or work performance or create an intimidating, hostile, or offensive work environment. The harassment must be severe or pervasive

such that it alters the conditions of the victim's education or employment and creates an abusive working environment. A single, unwelcome act of harassment may be sufficiently severe so as to create an unlawful hostile work environment. To be unlawful, the harassment must be both subjectively and objectively offensive.

- **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 educational setting when:
  - submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, 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 working 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 members, 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 employee 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.

Also see BP 3410 titled Nondiscrimination, BP 3420 titled Equal Employment Opportunity, BP 3430 titled Prohibition of Harassment, AP 3435 titled Discrimination and Harassment Complaints and Investigations BP 4030 Academic Freedom, and relevant provisions of applicable collective bargaining agreements/employee handbooks.

### **Academic Freedom**

This policy works with BP 4030 titled Academic Freedom and is not intended to inhibit or interfere with freedom of expression and freedom of inquiry within the framework of rights and responsibilities, as enumerated in BP 4030.

Office of Primary Responsibility: Human Resource Services