

**SAN FRANCISCO COMMUNITY COLLEGE DISTRICT
ADMINISTRATIVE PROCEDURES MANUAL**

Title: HARASSMENT	Number: AP 2.31
Legal Authority: California Education Code Sections 67382, 67385; California Government Code Sections 12923, 12940 and 12950.2; Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681, et seq., 34 C.F.R. Part 106, et seq.; Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act, 20 US.C Sections 1092(f); 34 C.F.R. Section 668.46(b)11; Pub. Law No. 89-329	

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 of the District, whether those programs take place in the District's facilities, in District transportation, via electronic means (e.g., social media, cellular phones, text and email), or at a class or training program sponsored by the District at another location. The definitions provided below should be read in concert with definitions provided in Administrative Procedure 2.30, and 2.32

A. Definitions

Harassment: Harassment that is based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation of any person, military and veteran status, or the perception that a person has one or more of these characteristics is illegal and violates District policy. *Harassment directs negative, inappropriate or unwanted conduct at an individual based on certain protected characteristics, and unreasonably interferes with an individual's learning or work. Conduct is offensive where a reasonable person with the same characteristics as the victim of the 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 program/activity, employment, or resource. A single incident of harassing conduct may be deemed to be sufficient to create a hostile environment if the conduct unreasonably interferes with the employment or education of the victim.*

Gender-based harassment: *Gender based harassment* does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender, gender identity or gender expression, 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, *gender identity or gender expression* could constitute gender-based harassment. The following conduct could, depending on the circumstances, meet the definition above, or could contribute to a set of circumstances that meets the definition:

- I. Verbal Harassment:** Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race, gender, gender identity, *gender expression*, 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.

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II. Physical Harassment: 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, gender identity, *gender expression*, 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, stalking, domestic violence and/or dating violence. 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.

III. Visual or Written Harassment: The display or circulation of visual or written material that degrades an individual or group based on gender, gender identity, *gender expression*, 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.

IV. Environmental Harassment: A hostile academic or work environment may exist where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, *gender identity*, *gender expression*, race, nationality, sexual orientation or other protected status; or gratuitous comments regarding gender, gender identity, *gender expression*, 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 educational or work environment. It can also be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, genders, gender identities, *gender expression*, 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. A hostile academic or work environment may also arise where

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an individual is the subject to stalking, domestic violence and/or dating violence by another individual.

B. Sexual Harassment

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, environmental 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 community college.

“Sexual harassment” includes, but is not limited to:

1. Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. Examples of possible sexual harassment that appear in a written form include, but are not limited to: suggestive or obscene letters, notes and/or invitations. Examples of possible verbal sexual harassment include, but are not limited to: leering, gestures, display of sexually aggressive objects or pictures, cartoons, or posters. Examples of possible sexual harassment of a physical nature also include, but are not limited to, impeding or blocking movements, or any physical interference with normal work or academic program or activity.
2. Continuing to express sexual interest after being informed that the interest is unwelcomed;
3. Making reprisals, threats of reprisal, or implied threats of reprisal following a rebuff or harassing behavior. The following are examples of conduct in an academic environment that might be found to be sexual harassment: implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied;

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4. Engaging in explicit or implicit coercive sexual behavior within the work environment which is used to control, influence, or affect an employee's career, salary, and/or work environment;
5. Engaging in explicit or implicit coercive sexual behavior within the educational environment that is used to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student;
6. Offering favors or educational or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors;
7. Sexual assault or other sexual violence.

There are two broad categories 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 *that unreasonably interferes with* the conditions of an individual's learning or work environment, unreasonably *interferes with* an individual's academic or work performance, or *creates* 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 is *egregious*, i.e. a sexual assault.

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.

C. Consensual Relationships

Romantic or sexual relationships between supervisors and employees, or between employees 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 an employee must evaluate a student's or another employee's work or make decisions affecting an employee or student. The relationship

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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.

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

E. Complaints

Formal complaints under these laws and regulations shall be processed through the procedures established by applicable state and federal agencies. (Section 703, Title VII of the Civil Rights Act of 1964, as interpreted by Section 1604.11, Title 29, Code of Federal Regulations; Title IX, Education Amendments of 1972; Section 200, et seq., California Education Code; the Sex Equity in Education Act (Educ. Code, Sections 66250 et seq.); Section 11135, California Government Code; Section 7287.6, Title 2, and Title 5, Section 53000, et seq., California Code of Regulations, and Board Policy and *Administrative Procedure* 2.30.

F. Retaliation

Employees, students, or other persons acting on behalf of the District who engage in unlawful discrimination and/or retaliation as defined in this policy or by state or federal law may be subject to discipline, up to and including discharge, expulsion, or termination.