

Note: this procedure is **legally required** to comply with updated language regarding protected categories. **Revised – GCCCD Procedure**

First Reading–6/11/12
Second Reading–7/9/12
Final Reading–8/13/12

AP 3430 Prohibition of Harassment

Reference: ***Education Code Sections 212.5; 44100; 66281.5; Title IX, Education Amendments of 1972; Title 5, Sections 59320 et seq. ; Title VII of the Civil Rights Act of 1964, and 42 U.S. Code, Annotated Section § 2000e.***

Date Issued: September 2, 2009 Last Updated:

[CCLC template language, except italicized language]

The Grossmont-Cuyamaca Community College District (District) is committed to providing an academic and work environment free from harassment. This procedure defines sexual harassment and other forms of harassment on District property, 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. ~~The procedure below is based on the following definitions:~~

This procedure protects students and employees 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, a District bus or van, or at a class or training program sponsored by the District at another location. The procedure below is based, but may not be limited on the following definitions:

Definitions

General Harassment: Harassment based on ethnic group identification, race, color, national origin, religion, sex or gender, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, veteran status, 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. 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 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 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:

- **S**ubmission to the conduct is made a term or condition of an individual's employment, academic status, or progress;
- **S**ubmission to, or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual;
- **T**he 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
- **S**ubmission 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. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it is severe, 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.

Consensual Relationships

District employees are strongly discouraged from entering into or maintaining any romantic or sexual relationship with any student or employee over whom they exercise any academic, administrative, supervisory, evaluative, counseling, or extracurricular authority or influence.

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 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.

[CCLC Note: The following is **legally advised**]

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 an administrator to determine whether or not this violates the sexual harassment policy.

The Governing Board reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow any form of unlawful discrimination or harassment. It is recognized that an essential function of education is a probing of opinions and an exploration of ideas that may cause some students discomfort. It is further recognized that academic freedom insures the faculty's right to teach and the student's right to learn.

Procedure Regarding Complaints of Harassment

Any person who believes that they are being harassed based on an actual or perceived protected characteristic such as ethnic group identification, race, color national origin, religion, age, ~~sex or gender~~, gender, gender identity, gender expression, physical disability, mental disability, ~~race, color~~, medical condition, genetic information, ancestry, sexual orientation, marital status, veteran status, or ~~physical or mental disability~~, or because he or she is perceived to have one or more of the foregoing characteristics, or the perception that a person has one or more of these characteristics may file a written complaint describing in detail the alleged violation. All complaints shall be signed and dated by the complainant and shall contain, to the best of the complainant's ability, the names of the individuals involved, the date(s) of the event(s) at issue, and a detailed description of the actions constituting the alleged violation.

The District may return without action any complaints that are inadequate because they do not state a clear allegation of harassment or violation of the anti-harassment policies.

The District shall investigate all complaints of harassment. To the extent practicable, a written determination on all accepted written complaints will be issued to the complainant within ninety (90) days of the filing of the complaint. The equal employment opportunity officer will forward copies of all written complaints to the State Chancellor's Office.

Employment

Complaints involving harassment in the course of employment or attempting to secure employment must be filed as soon as possible after the occurrence of an alleged violation and not later than sixty (60) days after such occurrence unless the complainant can verify a compelling reason for the District to waive the sixty (60) day limitation.

If an employee or applicant for employment feels they have been harassed and would like to file a complaint, complaint procedures can be found on the District's Equal Employment Opportunity website, or by contacting the office of the Vice Chancellor for Human Resources and Labor Relations.

Students and Visitors

Complaints alleging violations that do not involve hiring processes must be filed as soon as possible after the occurrence of an alleged violation and not later than ninety (90) days after such occurrence unless the violation is ongoing.

Information on District college complaint procedures can be located in the Student Grievance Manual or by contacting the Office of Student Affairs at either college.