

Policy Change
Procedure Change
New Policy
New Procedure

Subject Matter Area Review
Constituency Group Review
District Council
Board 1st Reading
Board 2nd Reading

KEY:
BOLD= new language
~~strikethrough~~= delete language

Comments:
Updates provided by HR in collaboration with Compliance using CCLC templates to inform recommended revisions
CCLC Spring 2015 Update
Need to add cross reference if BP-3435 is approved

Referred to:

Edited:
11/18/15

1



2

3

Policy

4

3430 ~~Sexual~~ Prohibition of Harassment

5

6

This new policy is comprised of two former YCCD policies, 5520 and 4018, and is currently under revision.

7

8

All forms of harassment are contrary to basic standards of conduct between individuals and are prohibited by state and federal law, as well as this policy, and will not be tolerated. The District is committed to providing an academic and work environment that respects the dignity of individuals and groups. The District shall be free of ~~sexual harassment and all forms of sexual intimidation and exploitation. It shall also be free of other~~ **all forms of** unlawful harassment, including that which is based on any of the following statuses: race, **religious creed**, color, **religion**, **ancestry**, national origin, **ancestry**, **physical** disability, **mental disability**, **medical condition**, **genetic information**, **marital status**, sex (i.e., gender), **gender**, **gender identity**, **gender expression**, age, sexual orientation **of any person**, **or military and veteran status**, or **because he/she is perceived to have** the perception that a person has one or more of the foregoing characteristics.

9

10

11

12

13

14

15

16

17

18

19

The District seeks to foster an environment in which all employees, ~~and students~~, unpaid interns, and volunteers feel free to report incidents of harassment without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against any individual for filing a complaint of harassment or for participating in a harassment investigation. Such conduct is illegal and constitutes a violation of this policy. All allegations of retaliation will be swiftly and thoroughly investigated. If the District determines that retaliation has occurred, it will take all reasonable steps within its power to stop such conduct. Individuals who engage in retaliatory conduct are subject to disciplinary action, up to and including termination or expulsion.

20

21

22

23

24

25

26

27

28

Any student, ~~or~~ employee, unpaid intern, or volunteer who believes that he/she has been harassed or retaliated against in violation of this policy should immediately report such incidents by following the procedures described in AP 3435. Supervisors are mandated to report all incidents of harassment and

29

30

31

1 retaliation that come to their attention. All employees, other than those defined as confidential, are
2 mandatory reporters when the incident involves sex/gender harassment, discrimination and sexual
3 misconduct. For more information see YCCD Policy 3540.

4
5 Harassment based on any of the following statuses is prohibited and will not be tolerated: race, color,
6 religion, ancestry, national origin, disability, gender, or sexual orientation, or the perception that a person
7 has one or more of the foregoing characteristics.

8
9 Sexual harassment violates state and federal laws, as well as this policy, and will not be tolerated. It is also
10 illegal to retaliate against any individual for filing a complaint of sexual harassment or for participating in
11 a sexual harassment investigation, and retaliation constitutes a violation of this policy.

12
13 Sexual harassment is further defined as unwelcome sexual advances, requests for sexual favors and other
14 conduct of a sexual nature when:

- 15
16 • submission to the conduct is made a term or condition of an individual's employment, academic
17 status, or progress;
- 18
19 • submission to or rejection of the conduct by the individual is used as a basis of employment or
20 academic decisions affecting the individual;
- 21
22 • the conduct has the purpose or effective of having a negative impact upon the individual's work
23 or academic performance, or of creating an intimidating, hostile or offensive work or education
24 environment; or
- 25
26 • submission to or rejection of the conduct by the individual is used as the basis for any decision
27 affecting the individual.

28
29 This policy applies to all aspects of the academic environment, including but not limited to classroom
30 conditions, grades, academic standing, employment opportunities, scholarships, recommendations,
31 disciplinary actions, and participation in any community college activity. In addition, this policy applies to
32 all terms and conditions of employment, including but not limited to hiring, placement, promotion,
33 disciplinary action, layoff, recall, transfer, leave of absence, training opportunities and compensation.

34
35 To this end the Chancellor shall ensure that the institution undertakes education and training activities to
36 counter discrimination and to prevent, minimize and/or eliminate a any hostile environment that impairs
37 access to equal education opportunity or impacts the terms and conditions of employment. (Education
38 Code 66252)

39
40 The Chancellor shall establish procedures that define sexual harassment and other forms of harassment
41 on campus. The Chancellor shall further establish procedures for employees, students, unpaid interns,
42 volunteers, and other members of the campus community that provide for the investigation and
43 resolution of complaints regarding sexual harassment and discrimination, and procedures for students to
44 resolve complaints of sexual and other harassment and discrimination. All participants are protected from
45 retaliatory acts by the District, its employees, students, and agents.

This policy and related written procedures (including the procedure for making complaints) shall be
widely published and publicized to administrators, faculty, staff, and students, unpaid interns, and

1 **volunteers** particularly when they are new to the institution. They shall be available for students, **and**
2 employees, **unpaid interns, and volunteers** in all administrative offices.

3
4 Employees who violate the policy and procedures may be subject to disciplinary action up to and including
5 termination. Students who violate this policy and related procedures may be subject to disciplinary
6 measures up to and including expulsion. **Unpaid interns who violate this policy and related procedures**
7 **may be subject to disciplinary measure up to and including termination from the internship or other**
8 **unpaid work experience program.**

9
10 It is the policy of the Yosemite Community College District to provide an environment free of unlawful
11 discrimination in its programs, activities and work environment. Sexual harassment is a form of unlawful
12 sexual discrimination and will not be tolerated by the District.

13
14 Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual
15 nature constitute sexual harassment when:

- 16
17 • Submission to sexual conduct is an explicit or implicit term or condition of an individual's
18 employment, academic status or progress;
- 19
20 • Submission to or rejection of sexual conduct by an individual is the basis for a decision affecting
21 that individual's employment, academic status or progress.
- 22
23 • Sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature
24 have the purpose or effect of unreasonably interfering with an individual's work or academic
25 performance or create an intimidating, hostile or offensive work or educational environment.

26
27 The District strongly forbids any form of sexual harassment, including acts of non-employees. Disciplinary
28 action will be taken promptly against any student or employee, supervisory or otherwise, engaging in
29 sexual harassment.

30
31 **Cross References (see also):**

32 **YCCD Policy 3540 – Sex/Gender Harassment, Discrimination and Sexual Misconduct**

33
34 **References:**

35 Education Code Sections 212.5; 66252; 66281.5, Education Code Sections [212.5](#), [44100](#), [66252](#), and
36 [66281.5](#); Government Code Sections [12940](#) and [12950.1](#); Title VII of the Civil Rights Act of 1964, 42
37 [U.S.C.A. § 2000e](#).

38
39 **Adopted:** June 28, 2004

40 **Revision Adopted:** October 14, 2009

41 **Last Reviewed:**

Administrative Procedure

3430 Sexual 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 on campus, 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.

This procedure and the related policy protects students, and 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, a District bus, or at a class or training program sponsored by the District at another location.

I. Definitions

A. General Harassment.

Harassment based on race, religion, 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, military and 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, in aggregate, the incidents are sufficiently pervasive, persistent, or severe that 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. Additional definitions and information about sex/gender harassment, discrimination and sexual misconduct can be found in BP 3540.

~~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 that could, depending on the circumstances, meet the definition above, or could contribute to a set of circumstances that meets the definition:

1. 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.
2. 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

1 intimidation directed at an individual due to that person's gender, race, national origin, sexual
2 orientation or other protected status.

- 3
- 4 3. Visual or Written: The display or circulation of visual or written material that degrades an
5 individual or group based on gender, race, nationality, sexual orientation or other protected
6 status. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading
7 materials, computer graphics, or electronic media transmissions.
- 8
- 9 4. Environmental: A hostile academic or work environment **may** exist where it is permeated by
10 sexual innuendo; insults or abusive comments directed at an individual or group based on
11 gender, race, nationality, sexual orientation or other protected status; or gratuitous
12 comments regarding gender, race, sexual orientation, or other protected status that are not
13 relevant to the subject matter of the class or activities on the job. A hostile environment can
14 arise from an unwarranted focus on sexual topics or sexually suggestive statements in the
15 classroom or work environment. It can also be created by an unwarranted focus on, or
16 stereotyping of, particular racial or ethnic groups, sexual orientations, genders or other
17 protected statuses. An environment may also be hostile toward anyone who merely
18 witnesses unlawful harassment in his or her immediate surroundings, although the conduct
19 is directed at others. The determination of whether an environment is hostile is based on the
20 totality of the circumstances, including such factors as the frequency of the conduct, the
21 severity of the conduct, whether the conduct is humiliating or physically threatening, and
22 whether the conduct unreasonably interferes with an individual's learning or work.

23
24 **B. Sexual Harassment.**

25 In addition to the above, sexual harassment consists of unwelcome sexual advances, requests for
26 sexual favors, and other conduct of a sexual nature when:

- 27
- 28 1. submission to the conduct is made a term or condition of an individual's employment,
29 academic status, or progress;
- 30
- 31 2. submission to, or rejection of, the conduct by the individual is used as a basis of employment
32 or academic decisions affecting the individual;
- 33
- 34 3. the conduct has the purpose or effect of having a negative impact upon the individual's work
35 or academic performance, or of creating an intimidating, hostile or offensive work or
36 educational environment; or
- 37
- 38 4. submission to, or rejection of, the conduct by the individual is used as the basis for any
39 decision affecting the individual regarding benefits and services, honors, programs, or
40 activities available at or through the community college.

41
42 This definition encompasses two kinds of sexual harassment:

- 43
- 44 1. "Quid pro quo" sexual harassment occurs when a person in a position of authority makes
45 educational or employment benefits conditional upon an individual's willingness to engage in
46 or tolerate unwanted sexual conduct.
- 47

1 ~~2. "Hostile environment" sexual harassment occurs when unwelcome conduct based on a~~
2 ~~person's gender is sufficiently severe or pervasive so as to alter the conditions of an~~
3 ~~individual's learning or work environment, unreasonably interfere with an individual's~~
4 ~~academic or work performance, or create an intimidating, hostile, or abusive learning or work~~
5 ~~environment. The victim must subjectively perceive the environment as hostile, and the~~
6 ~~harassment must be such that a reasonable person of the same gender would perceive the~~
7 ~~environment as hostile.~~

8
9 ~~3. Sexually harassing conduct can occur between people of the same or different genders. The~~
10 ~~standard for determining whether conduct constitutes sexual harassment is whether a reasonable~~
11 ~~person of the same gender as the victim would perceive the conduct as harassment based on sex.~~

12
13 ~~C. Examples:~~

14 ~~Harassment includes, but is not limited to the following misconduct:~~

15
16 ~~1. Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a~~
17 ~~person's protected status, including but not limited to sex. This may include, but is not~~
18 ~~limited to, inappropriate comments regarding an individual's body, physical appearance,~~
19 ~~attire, sexual prowess, marital status or sexual orientation; unwelcome flirting or~~
20 ~~propositions; demands for sexual favors; verbal abuse, threats or intimidation of a sexual~~
21 ~~nature; or sexist, patronizing or ridiculing statements that convey derogatory attitudes~~
22 ~~about a particular gender.~~

23
24 ~~2. Physical: Inappropriate or offensive touching, assault, or physical interference with free~~
25 ~~movement. This may include, but is not limited to, kissing, patting, lingering or intimate~~
26 ~~touches, grabbing, pinching, leering, staring, unnecessarily brushing against or blocking~~
27 ~~another person, whistling or sexual gestures.~~

28
29 ~~3. Visual or Written: The display or circulation of offensive sexually oriented or other~~
30 ~~discriminatory visual or written material. This may include, but is not limited to, posters,~~
31 ~~cartoons, drawings, graffiti, reading materials, computer graphics or electronic media~~
32 ~~transmissions.~~

33
34 ~~4. Environmental: An academic or work environment that is permeated with racially or~~
35 ~~sexually oriented talk, innuendo, insults or abuse not relevant to the subject matter of~~
36 ~~the class or activities on the job. A hostile environment can arise from an unwarranted~~
37 ~~focus on sexual topics or sexually suggestive statements in the classroom or work~~
38 ~~environment. An environment may be hostile if unwelcome sexual behavior or other~~
39 ~~harassing behavior based on a protected status is directed specifically at an individual or~~
40 ~~if the individual merely witnesses unlawful harassment in his or her immediate~~
41 ~~surroundings. The determination of whether an environment is hostile is based on the~~
42 ~~totality of the circumstances, including such factors as the frequency of the conduct, the~~
43 ~~severity of the conduct, whether the conduct is humiliating or physically threatening, and~~
44 ~~whether the conduct unreasonably interferes with an individual's learning or work.~~

45
46 ~~II. Consensual Relationships~~
47

1 Romantic or sexual relationships between supervisors and employees, or between administrators, faculty,
2 or staff members and students are discouraged. There is an inherent imbalance of power and potential
3 for exploitation in such relationships. A conflict of interest may arise if the administrator, faculty or staff
4 member must evaluate the student's or employee's work or make decisions affecting the employee or
5 student. The relationship may create an appearance of impropriety and lead to charges of favoritism by
6 other students or employees. A consensual sexual relationship may change, with the result that sexual
7 conduct that was once welcome becomes unwelcome and harassing. In the event that such relationships
8 do occur, the District has the authority to transfer any involved employee to eliminate or attenuate the
9 supervisory authority of one over the other, or of a teacher over a student. Such action by the District is
10 a proactive and preventive measure to avoid possible charges of harassment and does not constitute
11 discipline against any affected employee.

12 **II. III. Academic Freedom**

13
14
15 **No provision of this Administrative Procedure shall be interpreted to prohibit conduct that is**
16 **legitimately related to the course content, teaching methods, scholarship, or public commentary of an**
17 **individual faculty member or the educational, political, artistic, or literary expression of students in**
18 **classrooms and public forums. Freedom of speech and academic freedom are, however, not limitless**
19 **and this procedure will not protect speech or expressive conduct that violates federal or California anti-**
20 **discrimination laws. To the extent the harassment policies and procedures are in conflict with the**
21 **District's policy on academic freedom, the harassment policies and procedures shall prevail. If the faculty**
22 **member wishes to use sexually explicit materials in the classroom as a teaching technique, the faculty**
23 **member must review that use with an administrator to determine whether or not this violates the sexual**
24 **harassment policy.**

25 **References:**

26
27 Education Code Sections [212.5](#), [44100](#), and [66281.5](#); **Government Code Section 12940**; [Title IX,](#)
28 [Education Amendments of 1972](#); Title 5, Sections [59320 et seq.](#) ; [Title VII of the Civil Rights Act of 1964,](#)
29 [42 U.S.C.A. § 2000e.](#)

30
31 **Adopted Procedure Last Revised:** April 11, 2007

32 **Last Reviewed:**