



Administrative Regulation
Chapter 3 – General Institution

AR 3430 PROHIBITION OF HARASSMENT

Sexual Harassment Prevention

1. PURPOSE

The Santa Monica Community College District is committed to providing an academic and work environment free of sexual harassment and retaliation. This Administrative Regulation defines sexual harassment and sets forth a procedure for the investigation and resolution of complaints of sexual harassment by or against any employee¹ or student within the District.

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

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

Employees who violate this Administrative Regulation may, in accordance with all applicable laws and collective bargaining agreements, be subject to disciplinary action up to and including dismissal. Students who violate this Administrative Regulation may, in accordance with applicable laws and district administrative regulations, be subject to disciplinary measures up to and including expulsion.

2. DEFINITION

A. Sexual harassment is a form of sex or gender² discrimination that violates Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972 and applicable provisions of the California Education Code and Code of Regulations. It consists of unwelcome sexual advances, requests for sexual favors and other conduct of a sexual nature when:

- 1) submission to the conduct is made a term or condition of an individual’s employment, academic status or progress;
- 2) rejection of the conduct by the individual is used as a basis of employment or academic decisions affecting the individuals;

¹ The term “employee(s)” as used in this section refers to all faculty, staff, administrators and managers.

² The phrase “sex or gender” as used in this section is inclusive of sexual orientation.

- 3) 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 education environment; or
- 4) submission to or rejection of the conduct by the individual is used as the basis for decisions affecting the individual regarding benefits and services, honors, programs or activities available at or through the college district.
- 5) There are two (2) types of sexual harassment:
 - a. "Quid pro quo" (this for that) 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.
 - b. "Hostile environment" sexual harassment occurs when unwelcome conduct based on sex/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.
- 6) Sexual harassment can consist of virtually any form or combination of verbal, physical, visual or environmental conduct. It need not be explicit or specifically directed at the individual who is offended. 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 complainant/victim would perceive the conduct as harassment based on sex/gender.

3. EXAMPLES

A. Sexual harassment includes but is not limited to the following misconduct:

- 1) **Verbal:** Inappropriate or offensive remarks, slurs, jokes or innuendoes based on sex/gender. 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 of a sexual nature; or sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular gender.
- 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, blocking another person, whistling or sexual gestures.
- 3) **Visual/Written:** The display or circulation of offensive sexually oriented visual or written material. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.
- 4) **Environmental:** An academic or work environment that is permeated with sexually-oriented talk, innuendo, insults or abuse not relevant to the subject matter of the class. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment. An environment may be hostile if unwelcome sexual behavior is directed specifically at an individual or if the individual merely witnesses unlawful harassment in his or her immediate surroundings. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency or severity of the conduct, and whether the conduct is humiliating or physically threatening or unreasonably interferes with an individual's academic or work performance.

4. COMPLAINT PROCEDURE

- A. The Superintendent/President shall assign the Dean, Human Resources to serve as the District's compliance officer. The Dean, Human Resources, or designee is responsible for receiving complaints of sexual harassment and coordinating investigations. Investigations may be assigned to other trained staff or to outside persons or organizations under contract with the District and this shall occur if the, Dean, Human Resources, or designee, is named in the complaint or implicated by the allegations in the complaint.
- B. A student who believes he or she has been sexually harassed may make a complaint orally or in writing within one (1) year of the date of the alleged harassment to any of the following:
 - 1) the Dean, Human Resources;
 - 2) the Dean, Student Services or any other academic manager/advisor;
 - 3) the Dean, Student Life; or
 - 4) the Superintendent/President;
- C. An employee who believes he or she has been sexually harassed may make a complaint orally or in writing within one (1) year of the date of the alleged harassment to any of the following:
 - 1) the Dean, Human Resources;
 - 2) any District manager;
 - 3) the Vice President of Human Resources
 - 4) the Superintendent/President;
- D. Upon receiving notification of a harassment complaint, the Dean, Human Resources shall:
 - 1) Undertake efforts, where appropriate, to resolve the complaint informally. Any efforts at an informal resolution shall not serve to extend the timelines for completion of an investigation.
 - 2) Advise the complainant that he/she need not participate in an informal resolution and he/she may file a complaint with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or for students the Office of Civil Rights of the United States Department of Education. The Dean, Human Resources shall also notify the Chancellor of the California Community Colleges of the complaint.
 - 3) Within ten days of receipt of a complaint or the beginning of an investigation, provide Respondent a written notice setting forth:
 - a. the allegation(s) set forth in the complaint;
 - b. whether an investigation has been started;
 - c. the estimated time to complete the investigation, which normally will be completed within ninety (90) days;
 - d. who will be conducting the investigation;
 - e. statement advising the Respondent that he/she is not to conduct his/her own investigation and are in no way to discuss the matter with students and/or potential witnesses;
 - f. the Respondent may be represented by a person of his/her own choice during any investigatory process.
 - g. The potential consequences for employees of not complying with the investigation or of impeding the investigation in any manner, including but not limited to retaliation against students and/or employees.
 - h. The right of the Respondent to meet with the investigator and provide the investigator with any documents/information.
 - 4) In the event that the investigation will not be completed within the initial estimate of time, the Respondent will receive a subsequent notice advising of the new anticipated date of completion of the investigation. Upon completion of the investigation, the Respondent shall receive a written summary of the investigation. Documents generated during the course of an investigation shall be maintained in a file separate from an employee's personnel file. Documents from an investigation may only be placed in an employee's personnel file after the investigation has been completed and in compliance with applicable provisions of the appropriate collective bargaining agreement.

- 5) Authorize the investigation of the complaint and supervise and/or conduct a thorough, prompt and impartial investigation of the complaint. The investigation will include interviews with the complainant, Respondent and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct. The person or persons conducting the investigation shall keep the name of the Respondent as confidential as possible but may use the Respondent's name as necessary in conducting the investigation. If it is determined that the allegations warrant the placement of the Respondent on a paid administrative leave, the Respondent will be so notified in writing. Such notice will specify the anticipated duration of the leave and shall clearly inform the employee that such action does not constitute disciplinary action. An employee placed on an administrative leave under this section may request a meeting with the Vice President, Human Resources to discuss the reason(s) for the administrative leave. In the event that an employee is placed on an administrative leave pending the completion of an investigation, the District shall complete the investigation within sixty (60) days. In the event that the investigation may not be completed within sixty (60) days, the Vice President, Human Resources shall meet with the employee to discuss whether the administrative leave shall continue beyond sixty (60) days.
 - 6) Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct and the context in which the alleged incidents occurred.
 - 7) Set forth the results of the investigation in a written report. The written report shall include a description of the circumstances giving rise to the complaint, a summary of the testimony of each witness, an analysis of any relevant data or other evidence collected during the investigation, a specific finding as to whether discrimination did or did not occur with respect to each allegation in the complaint and any other appropriate information.
 - 8) Provide the complainant with a copy or summary of the investigative report within ninety (90) days from the date the District received the complaint. The complainant shall also be provided with a written notice setting forth the determination of the Superintendent/President or his/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; and notice of the complainant's right to appeal to the District's Board of Trustees and 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 any appropriate academic or administrative official.
 - 9) Anyone who files a complaint in which he/she knowingly makes a false accusation may be subject to appropriate discipline.
- E. If sexual harassment occurred, the District may take remedial or disciplinary action against the Respondent. The action will be prompt, effective and commensurate with the severity of the offense. Disciplinary actions against employees and students will conform to all relevant statutes, regulations, personnel policies and procedure, including the provision of any applicable collective bargaining agreements.
- 1) The District shall also take reasonable steps to protect the complainant from further harassment and retaliation as a result of communicating the complaint.
 - 2) The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties.
 - 3) If the complainant is not satisfied with the results of the administrative determination, he/she may, within fifteen (15) days, submit a written appeal to the District's Board of Trustees. The Board of Trustees shall review the original complaint, investigative report, administrative decision and the appeal. The Board of Trustees shall issue a final decision in the matter within 45 days after receiving the appeal. A copy of the final decision rendered by the Board of Trustees

shall be forwarded to the complainant and to the Chancellor of the California Community Colleges. The complainant shall also be notified of his/her right to appeal this decision. If the Board of Trustees does not act within 45 days the administrative determination shall be deemed approved and shall become the final decision of the District in the matter.

- 4) The complainant shall have the right to file a written appeal with the Chancellor of the California Community Colleges within thirty (30) days after the Board of Trustees issues the final District decision or permits the administrative decision to become final. Such appeals shall be processed pursuant to Section 59350 of Title 5 of the California Code of Regulations.
- 5) Within 150 days of receiving a complaint, the District shall forward all required documents to the Chancellor of the California Community Colleges. If, due to circumstances beyond its control, the District is unable to comply with the 150 day deadline for submission of materials, it may file a written request for an extension of time no later than ten (10) days prior to the expiration date.

5. ENVIRONMENT

Academic Freedom and Sexual Harassment Issues in the Learning Environment:

- A. The District is committed to creating an environment where there is the full and free discussion of ideas and where students are free from a hostile learning environment.
- B. In general, works of art and literature, readings and other written, auditory, or visual course materials, including lectures and discussions, which are used in a learning context or which are a part of academic or cultural programs, would not violate the prohibition against creating a hostile learning environment for students.
- C. In all circumstances, sexual harassment of individuals is inconsistent with the maintenance of academic freedom.

Also see BP/AR 3410 Nondiscrimination, AR 3435 Discrimination and Harassment Complaints and Investigations, and BP 4030 Academic Freedom.

References:

Education Code Sections 212.5, 44100, and 66281.5;
Government Code Section 12940;
Title 2 Sections 10500 et seq.;
Title IX, Education Amendments of 1972; Title 5 Sections 59320 et seq.;
Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e

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