

Harassment & Unlawful Discrimination

Unlawful Harassment

All forms of harassment are contrary to basic standards of conduct between individuals and are prohibited by state and federal law—as well as by MiraCosta Community College District Board Policy 3430—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 unlawful harassment, including that which is based on any of the following statuses: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, citizenship status, parental status, military or veteran status, or because they are perceived to have one or more of the foregoing characteristics.

Definitions

General harassment—Harassment 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, 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, 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 the ability to participate in or to realize the intended benefits of an institutional activity, employment, or resource.

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 if it meets the definition above.

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 harassment**—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 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, 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 harassment**—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 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, 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 their 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 environment.

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

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performance, or of creating an intimidating, hostile or offensive work or educational environment (as more fully described below).

- ▶ 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.

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 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 are prohibited:

- ▶ Between a supervisor and their subordinate employee.
- ▶ Between any classroom faculty member and a MiraCosta College student who is currently enrolled in a class taught by the faculty member or who is working as a student employee under the supervision of the faculty member.
- ▶ Between any non-classroom faculty member and students whom they are currently advising.

Romantic or sexual relationships are discouraged:

- ▶ Between a supervisor and an employee.
- ▶ Between any employee (whether administrator, faculty member, or classified staff member) and a student.

There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the administrator, faculty member, 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 faculty member 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.

Protection from Retaliation

The District seeks to foster an environment in which all students, employees, 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 Board Policy 3430: Prohibition of Harassment. The District will investigate all allegations of retaliation swiftly and thoroughly. 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.

Any student, employee, unpaid intern, or volunteer who believes that they have been harassed or retaliated against in violation of this policy should immediately report such incidents by following the procedures described under "Filing an Unlawful Discrimination Complaint" below. The District requires supervisors to report all incidents of harassment and retaliation that come to their attention.

This policy 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 policy 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 the policy and procedures may be subject to disciplinary action up to and including termination. Students who violate this policy and related procedures may be subject to disciplinary measures up to and including expulsion. Volunteers or unpaid interns who violate this policy and related procedures may be subject to disciplinary measure up to and including termination from the volunteer assignment, internship, or other unpaid work experience program.

Filing an Unlawful Discrimination Complaint

Complaints

Any person who has suffered harassment, discrimination, or retaliation may file a formal or informal complaint of harassment, discrimination, or retaliation.

Complaints of unlawful discrimination may be written or verbal, and may be made by a student, an employee, a parent of a minor, or an individual with legal authority on behalf of a student or employee, who alleges that the student or employee has suffered unlawful discrimination in violation of the District's board policies and administrative procedures or in violation of state or federal law.

The complainant may be requested, but shall not be required, to submit the complaint on a form prescribed by the State Chancellor. Verbal complaints shall be lodged with the Title IX coordinator. The Title IX coordinator shall record the verbal complaint in writing. The Title IX coordinator shall take appropriate steps to ensure the writing accurately reflects the facts alleged by the complainant.

Oversight of the Complaint Procedure

The Title IX coordinator is the "responsible District officer" charged with receiving complaints of discrimination or harassment, and coordinating the investigation.

The actual investigation of complaints may be assigned by the Title IX coordinator to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the Title IX Coordinator is named in the complaint or implicated by the allegations in the complaint.

Informal Complaints

Any person may submit an informal complaint to the Title IX coordinator, or any other District or college administrator. Administrators receiving an informal complaint shall immediately notify the Title IX coordinator in writing of all pertinent information and facts alleged in the informal complaint.

Upon receipt of an informal complaint, the Title IX coordinator will notify the person bringing the informal complaint of their right to file a formal complaint, if the incident falls within the timeline for a formal complaint, and explain the procedure for doing so. The complainant may later decide to file a formal complaint, if within the timelines to do so. If the individual chooses not to file a formal complaint, or if the alleged conduct falls outside the timeline to file a formal complaint, the Title IX coordinator shall consider the allegations contained in the informal complaint and determine the appropriate course of action. This may include efforts to informally resolve the matter or a fact-finding investigation.

Investigation of an informal complaint will be appropriate if the Title IX coordinator determines that the allegation(s), if proven true, would constitute a violation of the District policy prohibiting harassment, discrimination, or retaliation. The Title IX coordinator will explain to any individual bringing an informal complaint that the Title IX coordinator may decide to initiate an investigation, even if the individual does not wish the Title IX coordinator to do so. The Title IX coordinator shall not disregard any allegations of harassment, discrimination, or retaliation solely on the basis that the alleged conduct falls outside the deadline to file a formal complaint.

Formal Complaints

Formal complaints must be filed with the Title IX coordinator. If the party submitting the formal complaint alleges discrimination, harassment, or retaliation against the Title IX coordinator, the complaint should be submitted directly to the superintendent/president or the State Chancellor.

A formal complaint must meet each of the following criteria:

- ▶ The formal complaint must allege facts with enough specificity to show that the allegations, if true, would

constitute a violation of District policies or procedures prohibiting discrimination, harassment, or retaliation.

- ▶ The complainant must sign and date the formal complaint.
- ▶ The complainant must file any formal complaint not involving employment within one year of the date of the alleged discriminatory, harassing, or retaliatory conduct or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation(s) of discrimination, harassment, or retaliation.
- ▶ The complainant must file any formal complaint alleging discrimination, harassment, or retaliation in employment within 180 days of the date of the alleged discriminatory, harassing, or retaliatory conduct, except that this period shall extend by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

Who May File a Complaint

Any student, employee, parent of a minor, or individual with legal authority on behalf of a student or employee, who alleges that the student or employee has suffered unlawful discrimination in violation of the District's board policies and administrative procedures or in violation of state or federal law may file a complaint.

Where to File a Complaint

Any student, employee, parent of a minor, or individual with legal authority on behalf of a student or employee who believes they have been discriminated against or harassed may make a complaint orally or in writing. If a complainant decides to file a formal, written, unlawful discrimination or harassment complaint against the District, they may file the complaint on a form provided by the State Chancellor's Office. These approved forms are available from the Title IX coordinator and at the State Chancellor's Office website.

The complaint may be filed with any of the following:

- ▶ Title IX coordinator
- ▶ Superintendent/president
- ▶ California Community Colleges Chancellor's Office

Filing a Timely Complaint

Since failure to report harassment and discrimination impedes the District's ability to stop the behavior, the District strongly encourages anyone who believes they are being harassed or discriminated against to file a complaint. The District also strongly encourages the filing of such complaints within thirty (30) days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the District's ability to investigate and remediate. All supervisors and managers have a mandatory duty to report incidents of harassment and discrimination; the existence of a hostile, offensive or intimidating work environment; and acts of retaliation. The District will investigate complaints involving acts that occur off campus if they are related to an academic or work activity, or if the harassing conduct interferes with or limits a student's or employee's ability to participate in or benefit from the school's programs or activities.

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Communicating that the Conduct is Unwelcome

The District further encourages students and staff to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste, or inappropriate.

Intake and Processing of the Complaint

Upon receiving notification of a harassment or discrimination complaint, the Title IX coordinator shall:

- ▶ Undertake efforts to informally resolve the charges.
- ▶ Advise all parties that they need not participate in an informal resolution of the complaint, and have the right to end the informal resolution process at any time. Mediation is not appropriate for resolving incidents involving sexual violence.
- ▶ Notify the complainant of their right to file a formal complaint and explain the appropriate procedure for doing so.
- ▶ Advise a student complainant that they may file a complaint with the Office of Civil Rights (OCR) of the U.S. Department of Education. If the complaint is employment-related, the complainant should also be advised that they may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where such a complaint is within that agency's jurisdiction.
- ▶ Advise complainants that they have a right to file a complaint with local law enforcement if the act complained of is also a criminal act. The District must investigate even if the complainant files a complaint with local law enforcement.
- ▶ Advise complainants of any available resources, such as counseling, health, and mental health services.
- ▶ Take interim steps to protect a complainant from coming into contact with the respondent.

Investigation of the Complaint

The District shall:

- ▶ Authorize the investigation of the complaint and supervise or conduct a thorough, prompt, and impartial investigation of the complaint, as set forth below. Where complainants opt for informal resolution, the Title IX coordinator will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate.
- ▶ Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, 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.

The District shall promptly investigate every complaint of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. This includes complaints involving activities that occur off campus and 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, on a District bus or vehicle, or at a class or training program sponsored by the District at another location. As set forth above, where the complainant opts for an informal resolution, the Title IX coordinator may limit the scope of the investigation, as appropriate.

Confidentiality of the Process

Investigations are best conducted within a confidential climate. Therefore, the District does not reveal information about ongoing investigations, except as necessary to fulfill its legal obligations. The District will keep the investigation confidential to the extent possible, but it cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation and to protect the rights of accused students and employees during the investigation process and any ensuing discipline.

Timeline for Completion

The District will undertake its investigation as promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report within ninety (90) days of the District receiving the complaint.

Investigation Steps

The District will fairly and objectively investigate harassment and discrimination complaints. Employees designated to serve as investigators shall have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the District's complaint procedures operate. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigators will use the following steps: interviewing the complainant(s); interviewing the respondent(s); identifying and interviewing witnesses and evidence identified by each party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion. When the District evaluates the complaint, it shall do so using a preponderance of evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that discrimination or harassment has occurred.

The results of the investigation of a complaint shall be set forth in a written report as specified in Administrative Procedure 3435.

For more information about the harassment and unlawful discrimination complaint process, contact the Human Resources Office, 760.795.6672.

Academic Freedom

The MiraCosta Community College District Board of Trustees reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow any form of unlawful discrimination. Nothing in the District's policy and procedure on

discrimination, harassment, or retaliation 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 the District's policy and procedure will not protect speech or expressive conduct that violates federal or California anti-discrimination laws.

(Sources: M CCD Board Policy/Administrative Procedure 3430 and M CCD Administrative Procedure 3435. All MiraCosta College board policies and administrative procedures are located on the Board of Trustees webpage.)