

## UNLAWFUL DISCRIMINATION AND UNLAWFUL HARASSMENT

### Unlawful Discrimination Policy

The policy of the Contra Costa Community College District is to provide an educational and employment environment in which no person shall be unlawfully subject to discrimination on the basis of ethnic group identification, national origin, religion, age, sex, sexual orientation, gender, race, color, medical condition, military or veteran status, ancestry, marital status or physical or mental disability or because he/she is perceived to have one or more of the foregoing characteristics in any program or activity that is funded directly by, or that receives any financial assistance from the Chancellor or Board of Governors of the California Community Colleges. In so providing, the Contra Costa Community College District hereby implements the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code, Section 66250 et seq.), Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d and Section 2000e-2(a)(1), Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12100 et seq.) and the Age Discrimination Act (42 U.S.C. Section 6101), to the end that no person in the State of California shall, on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability, be unlawfully denied access to, the benefits of, or be unlawfully subjected to discrimination under any program or activity that is funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.

California Code of Regulations, Title 5, Section 59300;  
Government Code Sections 11135-11139.5;  
Education Code, Section 66250 et seq  
42 U.S.C. Sections 2000d, 2000e-2(a)(1); 20 U.S.C. Section 1681;  
29 U.S.C. Section 794; 42 U.S.C. Section 12100 et seq.; 42 U.S.C. Section 6101

### Workforce Investment Act – Title I – Financially assisted Program/Activity

Equal opportunity is the law. It is against the law for any recipient of Federal financial assistance to discriminate on the following basis:

1. Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and,
2. Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in an WIA Title I financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

1. Deciding who will be admitted, or have access, to any WIA Title I-financially assisted program or activity;
2. Providing opportunities in, or treating any person with regard to, such a program or activity; or
3. Making employment decisions in the administration of, or in connection with, such a program or activity

29 C.F.R. 37.30

### **Unlawful Harassment Policy**

The policy of the Contra Costa Community College District is to provide an educational and employment environment free from unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting unlawful harassment. Employees, students, or other persons acting on behalf of the District who engage in unlawful harassment as defined in this policy or by state or federal law shall be subject to discipline, up to and including discharge, expulsion, or termination of contract.

### **Sexual Harassment of Students**

“Responsible employee” means an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority.

“Responsible employee” includes, but is not limited to, those individuals with any of the following positions or substantially similar positions or job duties, regardless of the specific title attached to the position:

1. Title IX coordinator or other coordinator designated to comply with and carry out the District’s responsibilities under this section;
2. Student life directors, coordinators, or deans.
3. Athletic directors, coordinators, or deans.
4. Coaches of any student athletic or academic team or activity.
5. Faculty and associate faculty, teachers, instructors, or lecturers.
6. Laboratory directors, coordinators, or principal investigators. Internship or externship directors or coordinators.
7. Study abroad program directors or coordinators.

### **Notice Requirements Regarding Sexual Harassment of Students**

The District shall disseminate, by electronic or other means, a notice of nondiscrimination, including, but not limited to, all information required to be included in the notice provided pursuant to Education Code Section 66281.5, to all of the following:

1. Each employee of the District
2. Each volunteer who will regularly interact with students.
3. Each individual or entity under contract with the District to perform any service involving regular interaction with students at the institution.

### **Jurisdiction for Investigation of Sexual Harassment of Students or By Students**

The District shall take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the District policy that occur in connection with any educational activity or other program of the institution, as well as incidents that occurred outside of those educational programs or

activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education.

### **Website Requirements**

The District shall publish in a prominent place on its internet website, with accompanying text clearly associating them with the sexual harassment and sexual violence grievance processes, the name, title, and contact information, which shall include the telephone number, office location, and email address, of each of the following individuals:

1. The Title IX coordinator or other designated employee.
2. Any individual official within the District with the authority to investigate complaints made pursuant to this section or to institute corrective measures such as sanctions, accommodations, or other forms of resolution of the complaint.

### **Training Requirements**

The District designates the District Title IX and Campus Title IX officers to coordinate efforts to comply with and carry out its responsibilities under this section. The District shall ensure that Title IX officers shall have adequate training on what constitutes sexual harassment and on trauma-informed investigatory and hearing practices, and shall understand how the institution's grievance procedures operate.

The District shall provide the training described in Education Code Section 67386(b)(12) to each employee engaged in the grievance procedures related to sex discrimination, including sexual violence, which shall include for these employees training on (i) trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process, (ii) best practices for assessment of a sexual harassment or sexual violence complaint, (iii) best practices for questioning of the complainant, respondent, and witnesses, and (iv) implicit bias and racial inequities, both broadly and in school disciplinary processes.

Materials approved by the District for this training shall include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity. When possible, citation to such statistics shall be included in the written sexual harassment policies required by Education Code Section 66281.5 accompanying the institution's grievance procedures.

The District shall notify employees of the obligation to report harassment to appropriate school officials.

The District shall provide training to all employees on the identification of sexual harassment, including the person to whom it should be reported. This paragraph does not require the District to provide separate training for identification of sexual harassment. The District may include this requirement in existing employee training on sexual harassment.

The District shall describe the obligations of all faculty and staff designated by the District as "responsible employees" to report concerns of sexual harassment to the Title IX coordinator or other designated employee. An individual who has a confidential relationship with a student or students by law is exempt from having to report sexual harassment concerns to the Title IX coordinator or other designated employee, unless otherwise required by law.

### **Outreach Requirements**

The Title IX coordinator or other designated employee must assess each report of sexual harassment and provide outreach, as appropriate, to each identifiable student who is alleged to be the victim of the reported conduct. The outreach shall include all of the following information:

1. The District has received a report that the student may have been a victim of sexual harassment.
2. A statement that retaliation for filing a complaint or participating in a complaint process, or both, under this section is prohibited.
3. Counseling resources within the institution or in the community.
4. Where a crime may have occurred, notice that the student has the right, but not the obligation, to report the matter to law enforcement.
5. The institution's investigation procedures established pursuant to the requirements of this section.
6. Potential interim measures, such as no-contact directives, housing changes, and academic schedule changes, where applicable.
7. The importance of preserving evidence.
8. A request for the student to meet with the Title IX coordinator or other designated employee to discuss options for responding to the report.
9. The manner in which the institution responds to reports of sexual harassment and a description of potential disciplinary consequences.
10. That the District permits student to report sexual harassment by a third party. The District shall respond to those reports to address or prevent a hostile educational environment or to ensure students' access to education.

The District shall satisfy these outreach requirements by providing students with copies of this Board Policy, Student Services Procedure 3027, and HR Procedure 1040.07, and/or by providing links to those policies available on the District's website.

California Code of Regulations, Title 5, Section 59326;  
Education Code, Section 66281.5; 66281.8;  
20 U.S.C. Section 1681 et seq.

### **Prohibition of Retaliation**

The District seeks to foster an environment in which all employees and students feel free to report incidents of harassment without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against someone who files an unlawful harassment or other unlawful discrimination complaint, who refers a matter for investigation or complaint, who participates in an investigation of a complaint, who represents or serves as an advocate for an alleged victim or alleged offender, or who otherwise furthers the principles of this unlawful discrimination policy.

Employees who violate the policy and procedures may be subject to disciplinary action up to and including termination. Students who violate the policy and procedures may be subject to disciplinary measures up to and including expulsion.

20 U.S.C. Section 1681 et seq.; 34 C.F.R. Section 106;  
California Code of Regulations, Title 5, Section 59300 et seq.;

*Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, Office of Civil Rights, January 19, 2001*

### **Use of Explicit Classroom Material**

The Contra Costa Community College District Board of Trustees reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow sexual harassment or any other form of unlawful discrimination. The lecture, content, and discourse that are an intrinsic part of the course content shall in no event constitute sexual harassment or other form of unlawful discrimination. It is recognized that an essential function of education is a probing of received 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. Nothing in these policies shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

To the extent the harassment policies and procedures are unreasonably in conflict with the District's policy on academic freedom, the harassment policies and procedures shall prevail. If a faculty member wishes to use sexually explicit materials in the classroom as a teaching technique and is unsure if such use would violate sexual harassment policy, the District recommends that the faculty member review that use with an administrator to determine whether or not such materials would violate the sexual harassment policy.

### **Definition of Sexual Harassment**

1. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other unwelcome visual, verbal, nonverbal, or physical conduct of a sexual nature where 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. This definition includes numerous forms of offensive behavior and includes gender-based harassment of a person of the same or different sex as the accused individual.
2. Sexual harassment is generally divided into two types of conduct:
  - a. Quid pro quo conduct, which occurs when submission to sexual conduct is made a condition for receiving concrete benefits, including hiring or advancement, or relates to employment or educational decisions affecting the employee or student.
  - b. Hostile environment sexual harassment
    - 1) Hostile work environment conduct, which is unwelcome sexual conduct that negatively affects an employee's performance and/or alters the conditions of employment by creating an intimidating, hostile or otherwise offensive environment.
    - 2) Hostile learning environment sexually harassing conduct (which can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, visual, or physical conduct of a sexual nature) by an employee, by another student, or by a third party that negatively impacts a student's ability to participate in, or benefit from, an education program or activity or to create a hostile or abusive learning environment.

3. Examples of the type of conduct which can constitute sexual harassment include, but are not limited to, the following:
  - a. Unwanted sexual advances.
  - b. Offering employment or educational benefits in exchange for sexual favors.
  - c. Making or threatening reprisal after a negative response to sexual advances.
  - d. Visual conduct (i.e., leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons, or posters.)
  - e. Verbal sexual advances or propositions.
  - f. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations.
  - g. Physical conduct (i.e., touching, assault, impeding, or blocking movements).
4. 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.
5. For example, a hostile learning environment generally is not created by a detailed discussion of Shakespeare's Othello, in a literature class, despite the sexual content of some of its language, which might prove offensive to some. Similarly, the use of photographs of female or male genitalia in a human anatomy class text generally would also not create a hostile learning environment for students. On the other hand, the use of explicit photographs from sexually explicit magazines in the same human anatomy class generally would violate the prohibition of this policy against creating a hostile learning environment for students. 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 would also violate such prohibitions. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom.

*Cohen v. San Bernardino Valley College* (1995) 883 F. Supp. 1407,  
1412-1414 affirmed in part and reviewed in part on other grounds,  
(1996) 92 F.3d 968; California Code of Regulations, Title 5, Section 59302.

Historical Annotation:  
Revised 4/6/83  
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Fourth Revision 6/27/90  
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Ninth Revision 08/27/03  
Tenth Revision 08/31/05  
Eleventh Revision 1/27/10  
Twelfth Revision 10/7/15  
Thirteenth Revision 5/26/21

Related Policies:  
Board Policy 2018

Related Procedures  
Human Resources Procedure 1040.07  
Management, Supervisory and Confidential Employees Personnel Manual 2.2