



# College Coordinating Council Meeting

**Wednesday, April 24 , 2019**  
 A124 – President’s Conference Room  
 9:00 a.m. – 10:00 a.m.

**Type of Meeting:** Regular  
**Note Taker:** Patty McClure  
**Please Review/Bring:** Agenda, Minutes

**Committee Members:**  
 Van Rider, Academic Senate  
 VACANT, Associated Student Organization  
 Ed Knudson, President  
 Pamela Ford, Classified Union  
 Michelle Hernandez, Confidential/Management/Supervisory/Administrators  
 LaDonna Trimble, Deans  
 Dr. Scott Lee, Faculty Union  
 VACANT, Vice President of Academic Affairs  
 Mark Bryant, Vice President of Human Resources  
 Dr. Erin Vines, Vice President of Student Services

## AGENDA

Items	Person(s) Responsible	Time	Action
<b>STANDING ITEMS:</b>			
I. Approval of Previous Minutes of March 13, 2019. (attached)	All		
II. Constituent Reports	All		
<b>INFORMATION/DISCUSSION/ACTION ITEMS:</b>			
III. BP & AP 6975 Export Control (attached)	Diana	5 minutes	Returned from March 13, 2019 CCC Meeting and constituent review.
IV. Student Success Committee Membership	Erin	5 minutes	
V. New AP 3415 Immigration Enforcement Activities (attached)	Mark	2 minutes	
VII. BP & AP 3430 – Prohibition of Harassment (attached)	Mark	2 minutes	
VIII. AP 3435 – Discrimination and Harassment Complaints and Investigations (attached)	Mark	2 minutes	
IX. BP 7340 – Leaves (attached)	Mark	2 minutes	
<b>FUTURE AGENDA ITEMS:</b>			
<b>NEXT MEETING DATE:</b> <b>May 8, 2019</b>			



# College Coordinating Council Minutes

**Wednesday, March 13, 2019**  
A124 – President’s Conference Room  
9:00 a.m. – 10:00 a.m.

**Type of Meeting:** Regular  
**Note Taker:** Patty McClure  
**Please Review/Bring:** Agenda, Minutes

**Committee Members:**

Van Rider, Academic Senate  
VACANT, Associated Student Organization  
Ed Knudson, President  
Pamela Ford, Classified Union  
Michelle Hernandez, Confidential/Management/Supervisory/Administrators  
LaDonna Trimble, Deans  
Dr. Scott Lee, Faculty Union  
VACANT, Vice President of Academic Affairs  
Mark Bryant, Vice President of Human Resources - **ABSENT**  
Dr. Erin Vines, Vice President of Student Services

## MINUTES

Items	Person(s) Responsible	Time	Action
<b>STANDING ITEMS:</b>			
I. Approval of Previous Minutes of February 13, 2019.	All		The minutes were approved as presented.
II. Constituent Reports	All		Ed stated that there would be a campus communication going out regarding the Funding Formula and that for 18-19 there is a \$4.5 million deficit with great concern in the out years. He stated that is why the college budgets conservatively and that there would be more information to come.
<b>INFORMATION/DISCUSSION/ACTION ITEMS:</b>			
III. AP 3720 – Computer, Network and Telecommunications Use	Rick	3 minutes	It was agreed to go to the April 8, 2019 board meeting.
IV. AP 3721 – Virtual Private Network (VPN)/Remote Access Procedure	Rick	3 minutes	There was some discussion/clarification regarding the CBA and remote access. There was some discussion on the language “interrogation.” Rick will revise and send out for everyone’s review. If agreed upon, it will go to the April 8, 2019 board meeting.
V. AP 3722- Acceptable Use Agreement	Rick	3 minutes	It was agreed to go to the April 8, 2019 board meeting.
VI. AP 6200 – Budget Preparation	Diana	5 minutes	It was agreed to go to the April 8, 2019 board meeting.

VII.	BP 6250 – Budget Management	Diana	5 minutes	Diana provided clarification on the pension stabilization fund and it was agreed to go to the April 8, 2019 board meeting.
VIII.	BP & AP 6975 – Export Control	Diana	5 minutes	This was reviewed and will go out to the constituent groups and return at the April 24, CCC meeting.
IX.	AP 4230 – Grading and Academic Record Symbols	Erin	5 minutes	It was agreed to go to the April 8, 2019 board meeting.
X.	AP 5010 – Admissions	Erin	5 minutes	It was agreed to change the title of “Vice President of Academic Affairs” to “Chief Instructional Officer” and to go to the April 8, 2019 board meeting.
XI.	AP 5012 – International Students	Erin	5 minutes	It was agreed to go to the April 8, 2019 board meeting.
XII.	AP 5031 – Instructional Material Fees	Erin	5 minutes	Michelle stated that the constituent group had a comment on the “length of the class up to at least two years” and that sometimes it’s 6 months. It was agreed to go to the April 8, 2019 board meeting.
XIII.	BP 2330 – Quorum and Voting	Ed/Mark	2 minutes	It was agreed to go to the April 8, 2019 board meeting.
XIV.	BP 2720 – Communications Among Board Members	Ed/Mark	2 minutes	It was agreed to go to the April 8, 2019 board meeting.
XV.	BP 3900 – Speech: Time, Place and Manner	Ed/Mark	2 minutes	It was agreed to go to the April 8, 2019 board meeting.
XVI.	Enrollment Management Committee Composition	LaDonna	5 minutes	LaDonna stated that with the requirements of AB705, the committee is requesting 3 more faculty members. It was agreed upon by the committee.
<b>FUTURE AGENDA ITEMS:</b>				
<b>NEXT MEETING DATE:</b> <b>March 27, 2019</b>				

## BP 6975 Export Control Policy

### Reference:

*U.S. Export Administration Act implemented by export Administration Regulations (EAR), U.S. Arms Export Control Act implemented by International Traffic in Arms Regulations (ITAR), and U.S. Office of Foreign Asset Control Regulations (OFAC).*

It is the policy of the Antelope Valley Community College District to fully comply with United States export control laws and regulations. Export controls are a complex set of federal regulations that apply to the release of certain information, commodities, technologies, and software to foreign nationals in the United States and abroad.

Although the District maintains an open academic environment in support of its teaching and research mission, the District is committed to complying with all United States export control laws in both research and non-research activities. While the majority of activities at the District are not subject to export control restrictions or licensing requirements, it is the responsibility of each member of District to be aware of the requirements and determine how export controls might apply to their activities.

This Board Policy applies to all District staff, faculty, academic appointees, students (including student employees), and non-employee participants in District programs and activities. Export control violations can impact both the District and the individuals who violate the law and can result in severe criminal and/or civil penalties for non-compliance.

See Administrative Procedures #6975

Adopted: \_\_\_\_\_

## AP 6975 Export Control Administrative Procedure

### Reference:

*U.S. Export Administration Act implemented by Export Administration Regulations (EAR), U.S. Arms Export Control Act implemented by International Traffic in Arms Regulations (ITAR), and U.S. Office of Foreign Asset Control Regulations (OFAC).*

### I. Overview of Export Controls

Export controls are a complex set of federal laws and regulations that regulate the release of certain commodities, technologies, and software to foreign nationals in the United States and abroad. The export control regulations are intended to protect U.S. foreign policy interests, protect national security, prevent terrorism and the proliferation of weapons of mass destruction, and preserve U.S. economic competitiveness. In general, anything leaving the U.S., such as research data, other intellectual property, documents or tangible items, whether shipped, carried and transported in any way is an “export.” The releasing or otherwise transferring certain technical data and/or technology to a foreign person in the U.S. is a “deemed export” subject to the export control regulations. The particulars of each activity must be analyzed to determine the applicability of export control regulations and whether any exceptions apply.

### II. Export Controls Laws and Regulations

Export Controls exist under three primary federal laws and associated regulations that are implemented by the U.S. Department of Commerce, the U.S. Department of State and the U.S. Department of Treasury as follows.

The Export Administration Act of 1979, as amended, authorizes the Department of Commerce, in consultation with other appropriate agencies, to regulate the export or re-export of certain U.S. origin goods, software, and technology. The Export Administration Regulations (“EAR”) are administered by the United States Department of Commerce Bureau of Industry and Security (15 C.F.R. § 730-740).<sup>1</sup> EAR focusses on items that can have both regular civilian uses and can have military applications, often described as “dual-use” and are identified on the Commerce Control list.<sup>2</sup> Items subject to the EAR include purely civilian items, items with both civil and military terrorism or potential weapon of mass destruction-related applications, and items that are exclusively used for military applications but that do not warrant control under the International Traffic in Arms Regulations.

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<sup>1</sup> <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

<sup>2</sup> <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>

The Arms Export Control Act (“AECA”) is implemented by the Department of States International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. § § 120-130).<sup>3</sup> All persons or entities that engage in the manufacture, export, or brokering of defense articles and services must be registered with the U.S. government. The ITAR sets out the requirements for licenses or other authorizations for specific exports of defense articles and services. This regulation is the most restrictive and has stringent requirements for who can perform this type of research or have access to the defense articles and services. An overview of U.S. Export Control systems is provided by the Department of States at: <https://www.state.gov/strategictrade/overview/>.

The U.S. Department of Treasury implements the Office of Foreign Asset Control Regulations (“OFAC”) (31 C.F.R. § § 501-598). OFAC regulations mostly affect foreign collaborations, international shipments and lectures or research abroad.<sup>4</sup> The OFAC administers and enforces economic sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. Additional information on the OFAC is available at the U.S. Department of Treasury Resource Center at: [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques\\_index.aspx](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques_index.aspx)

### **III. Activities that Generally Require Export Control Review**

It is up to each individual to determine if their work may involve information or activities requiring Export Control review. The following are examples, but not an exhaustive list, of activities requiring Export Control review: export of goods (equipment, hardware, materials); export of technology (technical information and data including technology sent via email); export of software/code (including software sent via email); travel to other countries; visits by foreign nationals to District; disclosure of controlled information and materials to foreign nationals in the U.S., collaboration with foreign nationals or foreign companies.

### **IV. Fundamental Research Exclusion**

The Fundamental Research Exclusion (“FRE”) provides that technology or software that arises during, or results from, fundamental research and is intended to be published is excluded from the export control regulations. The FRE generally permits U.S. higher educational institutions to allow foreign members of their communities (e.g., students, faculty and visitors) to participate in research involving export-controlled information on campuses in the U.S. without obtaining a license. However, the FRE does not permit the transfer of export controlled materials or items abroad, even to research collaborators. The FRE does not apply to research with restriction on publication of the results of the project.<sup>5</sup> Fundamental Research is defined under EAR to mean:

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<sup>3</sup> [https://www.pmdtc.state.gov/?id=ddtc\\_kb\\_article\\_page&sys\\_id=24d528fddbfc930044f9ff621f961987](https://www.pmdtc.state.gov/?id=ddtc_kb_article_page&sys_id=24d528fddbfc930044f9ff621f961987)

<sup>4</sup> <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

<sup>5</sup> See 22 C.F.R. § 120.11(a)(8); 15 C.F.R. § 734.8(c); and 10 C.F.R. § 810.3.

Fundamental research means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons. (15 C.F.R. § 734.8(c)).

Fundamental Research is defined in ITAR to mean:

(8) Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if: (i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or (ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable. (22 C.F.R. § 120.11(a)(8)).

## **V. District Export Compliance Officer**

The District's Export Compliance Officer (ECO) in the office of the Executive Director of Business Services in conjunction with Purchasing and Contracts is available to assist members of the District to assess their export control obligations and facilitates the procurement of export licenses when required.

- A. The District's ECO implements District practices and procedures involving:
1. Identification, review and determination of any export control requirements, including control plans and licensing exceptions that may apply;
  2. Identification of license exceptions or exclusions;
  3. Submit export license application when an export license is required;
  4. Conduct screening for restricted individuals and entities;
  5. Document and communicate export control decisions;
  6. Monitor export controlled projects for regulatory compliance;
  7. Establishment of Technology Control Plans when required;
  8. Establish procedures for individuals to report potential non-compliance;

9. Review and investigate reports of non-compliance;
10. Develop and implement export controls training program for the District;
11. Develop procedures for obtaining approval of foreign travel, for hosting foreign guests and for international collaborations;
12. Develop and implement international shipping and purchasing practices for export controls compliance.

B. Compliance Assistance for District Employees

District employees are responsible for identifying whether their activities may involve export control issues and for contacting the ECO for assistance in compliance with applicable laws and regulations. Compliance with export control regulations requires the cooperation and shared responsibility of many offices and persons across the District. The ECO shall be the District's point of contact in charge of the District's export control training and compliance efforts.

C. Record-Keeping

U.S. export control regulations (e.g., EAR, OFAC, ITAR) contain specific recordkeeping requirements that must be satisfied. The District must keep copies of all export documentation as required by the controlling regulations, and consistent with District document retention policies. In the event of a conflict between the retention periods in the applicable U.S. export regulations and the District document retention policy, the periods specified in the federal regulations shall take precedence.

D. Potential Violations

The District will respond promptly to all reports of non-compliance and will take appropriate action to correct and prevent future violations. The District's ECO shall investigate all reports of suspected violations and coordinate with legal counsel and other District leadership as necessary.

E. Disclosure to Federal Agencies

Federal regulations may require reporting of any violations to the cognizant agency responsible for the export control regulation and to federal sponsors. Voluntary and timely self-disclosures may mitigate the seriousness of a penalty. The ECO shall coordinate with the District's leadership and legal counsel concerning advance notification to the relevant governmental entity.

Adopted: \_\_\_\_\_



## AP 3415 Immigration Enforcement Activities

References:

Education Code Sections 66093 and 66093.3

**NOTE:** *This procedure is **legally required**. The following is model language provided by the Office of the California Attorney General. Districts must adopt this language or locally created equivalent language to comply with Education Code Section 66093.3(h).*

### Responding to Requests for Access for Immigration Enforcement Activities

District personnel shall provide guidance and offer to campus employees training addressing law enforcement access to campus buildings and student residences. This guide shall include the following required topics:

- Campus police contact information to report concerns about the presence of officers engaged in immigration enforcement on any campus property.
- Samples of warrant and subpoena documents that could be used for access onto campus property, or to seize or arrest students or other individuals on campus.
- Sample responses for building personnel to use in response to officers seeking access for immigration enforcement purposes that avoids classroom interruptions, and that preserves the peaceful conduct of the school's activities.

District personnel shall advise all students, faculty, and staff to immediately notify the office of the Superintendent/President, or his/her designee, if he/she is advised that an officer engaged in immigration enforcement is expected to enter, will enter, or has entered the campus for immigration enforcement purposes. Campus police should also be notified as soon as possible.

No personnel may consent to entry of District facilities or portions thereof.

District personnel shall advise all students, faculty, and staff responding to or having contact with an officer engaged in immigration enforcement executing an immigration order, to refer the entity or individual to the office of the Superintendent/President, or his/her designee, for purposes of verifying the legality of any warrant, court order, or subpoena.

If the officer declares that exigent circumstances exist and demands immediate access to the campus, District personnel should not refuse the officer's orders and immediately contact the **Superintendent/President's Office**.

The office or designee of the Superintendent/President's Office shall determine what type of authorization is being provided to support the officer's request for access:

- **A U.S. Immigrations and Customs Enforcement (ICE) “warrant.”** Immediate compliance is not required. District personnel shall inform the officer that he/she cannot consent to any request without first consulting with the **Superintendent/President’s Office**. Provide copy of the warrant to the designated administrator (where possible, in consultation with legal counsel) as soon as possible.
- **A federal judicial warrant (search-and-seizure warrant or arrest warrant):** Prompt compliance with such a warrant is usually legally required, but where feasible, consult with the **Superintendent/President’s Office** before responding.
- **A subpoena for production of documents or other evidence:** Immediate compliance is not required. Inform the officer that the District cannot respond to the subpoena until after it has been reviewed by a designated administrator. Provide a copy of the subpoena to a designated administrator or legal counsel as soon as possible.
- **A notice to appear:** This document is not directed at the District. District personnel are under no obligation to deliver or facilitate service of this document to the person named in the document. If a copy of the document is received, it must be given to a designated administrator as soon as possible.

District personnel should not attempt to physically interfere with an officer, even if the officer appears to be acting without consent or exceeding the authorization given under a warrant or other document. If an officer enters the premises without consent, District personnel shall make a record of the contact and forward the information to the Office of the President or Chancellor.

In making record of the contact with an immigration enforcement officer, District personnel shall provide the following information:

- Name of the officer, and, if available, the officer’s credentials and contact information;
- Identity of all school personnel who communicated with the officer;
- Details of the officer’s request;
- Whether the officer presented a warrant, subpoena, or court order to accompany his/her request, what was requested in the warrant/subpoena/court order, and whether the warrant/subpoena/court order was signed by a judge;
- District personnel’s response to the officer’s request;
- Any further action taken by the immigration officer; and
- Photo or copy of any documents presented by the agent.

District personnel shall provide a copy of those notes, and associated documents collected from the officer, to the **Superintendent/President’s Office** .

In turn, the **Superintendent/President's Office** shall submit a timely report to the District's governing board and the campus public safety office regarding the officer's requests and actions and the District's response(s).

### **Responding to Immigration Acts against Students or Family Members**

If there is reason to suspect that a student, faculty member, or staff person has been taken into custody as the result of an immigration action, District personnel shall notify the person's emergency contact that the person may have been taken into custody.

District personnel shall designate a staff person as a point of contact for any student, faculty member, or staff person who may or could be subject to an immigration order or inquiry.

District personnel shall not discuss the personal information, including immigration status information, of any student, faculty member, or staff person with anyone, or reveal the personal information to anyone, unless disclosing this information is permitted by federal and state law.

District personnel shall maintain a contact list of legal service providers who provide legal immigration representation and provide this list free of charge to any student who requests it. At minimum, the list shall include the legal service provider's name and contact number, e-mail address, and office address.

If a student is detained or deported, or is unable to attend to his/her academic requirements because of an immigration order, District shall make all reasonable efforts to assist the student in retaining any eligibility for financial aid, fellowship stipends, exemption from nonresident tuition fees, funding for research or other educational projects, housing stipends or services, or other benefits the student has been awarded or received subject to and in compliance with its policy.

District personnel shall permit a student who is subject to an immigration order to reenroll if and when the student is able to return to the District, subject to and in compliance with its policy and will make reasonable and good-faith efforts to provide for a seamless transition in the student's reenrollment and reacquisition of campus services and support.

District personnel shall be available to assist any student, faculty, and staff who may be subject to an immigration order or inquiry, or who may face similar issues, and whose education or employment is at risk because of immigration enforcement actions.

**NEW 3/19**

## BP 3430 Prohibition of Harassment

Reference:

**Education Code Sections 212.5; 44100; 66252; 66281.5;**  
**Government Codes 12923, 12940 and 12950.1;**  
**Civil Code Section 51.9;**  
**Title 2 Sections 10500 et seq.;**  
**Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e.**

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 including acts of sexual violence. It shall also be free of other 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, age, or sexual orientation of any person, Vietnam Veteran, or because he or she is perceived to have one or more of the foregoing characteristics.

The District seeks to foster an environment in which all employees, 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.

Any student, employee, unpaid intern, or volunteer who believes that he or 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 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.

To this end the Superintendent/President shall ensure that the institution undertakes education and training activities to counter discrimination and to prevent, minimize and/or eliminate any hostile environment that impairs access to equal education opportunity or impacts the terms and conditions of employment.

The Superintendent/President shall establish procedures that define harassment on campus. The Superintendent/President shall further establish procedures for employees, students, unpaid interns, volunteers and other members of the campus community that provide for the investigation and resolution of complaints regarding harassment and discrimination, and procedures for students to resolve complaints of harassment and discrimination. All participants are protected from retaliatory acts by the District, its employees, students, and agents.

Notice of this policy and related written procedures including the procedure for making complaints, shall be widely published and publicized to administrators, faculty, staff, students, unpaid interns, and volunteers particularly when they are new to the institution. They shall be available for students, employees, unpaid interns and volunteers in all administrative offices, and shall be posted on the District's website.

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. Unpaid interns who violate this policy and related procedures may be subject to disciplinary measures up to and including termination from the internship or other unpaid work experience program.

**Adopted: 11/7/05**

**Revised: 8/13/12, 4/15**

**Revised: 10/9/17**

**Revised: 3/19**

# AP 3430 Prohibition of Harassment

## References:

*Education Code Sections 212.5; 44100; 66281.5;*  
*Government Code Sections 12940 and 12923*  
*Civil Code Section 51.9;*  
*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.C.A. § 2000e.*

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

## 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 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.

Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment if it meets the definition above. 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:

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

Romantic or sexual relationships between supervisors and employees, or between administrators, faculty or staff members and students are discouraged. 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.

### **Academic Freedom**

No provision of this Administrative Procedure 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 this procedure will not protect speech or expressive conduct that violates federal or California antidiscrimination laws.

11/7/05

Revised: 8/13/12

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Revised: 3/19



# AP 3435      Discrimination and Harassment Complaints and Investigations

Reference:

*20 U.S.C. Section 1681 et seq.:*

*Education Code Section 212.5, 231.5, 66281.5, and 67386;*

*Government Code 12923 and 12950.1;*

*Title 5, Sections 59320, 59324, 59326, 59328, and 59300 et seq.;*

*34 C.F.R. Section 106.8(b);*

*Title 2 Sections 11023 and 11024*

## ANTELOPE VALLEY COLLEGE COMPLAINT PROCEDURE FOR ALLEGATION OF DISCRIMINATION\* OR SEXUAL HARASSMENT

### Complaints

The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in harassment, discrimination, or retaliation. Any person who has suffered harassment, discrimination, or retaliation may file a formal or informal complaint of harassment, discrimination, or retaliation.

A formal complaint is a written and signed statement filed with the District or the State Chancellor's office that alleges harassment, discrimination, or retaliation in violation of the District's Board Policies, Administrative Procedures or in violation of state or federal law. An informal complaint is any of the following: (1) An unwritten allegation of harassment, discrimination, or retaliation; (2) a written allegation of harassment, discrimination, or retaliation that falls outside the timelines for a formal complaint; or (3) a written complaint alleging harassment, discrimination, or retaliation filed by an individual who expressly indicates that he or she does not want to file a formal complaint.

### Informal Complaint

Any person may submit an informal complaint to the Vice President of Human Resources or any other District or college administrator. Administrators receiving an informal complaint shall immediately notify the Vice President of Human Resources in writing of all pertinent information and facts alleged in the informal complaint.

Upon receipt of an informal complaint, the Vice President of Human Resources or designee will notify the person bringing the informal complaint of his or her 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 Vice President of Human Resources or designee 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 Vice President of Human Resources or designee determines that the allegation(s), if proven true, would constitute a violation of the District policy prohibiting harassment, discrimination, or retaliation. The Vice President of Human Resources or designee will explain to any individual bringing an informal complaint that the Vice President of Human Resources or designee may decide to initiate an investigation, even if the individual does not wish the Vice President of Human Resources or designee to do so. The Vice President of Human Resources or designee 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 State Chancellor or the Vice President of Human Resources or designee unless the party submitting the Formal Complaint alleges discrimination, harassment, or retaliation against the responsible District officer, in which case it should be submitted directly to the Superintendent/President or the State Chancellor.

Formal Complaints should be submitted on the form prescribed by the State Chancellor. A copy of the form will be available at the Human Resources Office and on the college's/district's website.

If any party submits a written allegation of harassment, discrimination, or retaliation not on the form described above, the District will seek to have the individual complete and submit the form. However, if the individual chooses not to do so, the District will attach the written allegation(s) to the form and treat it as a Formal Complaint. In no instance will the District reject a written allegation of harassment, discrimination, or retaliation on the basis that it was not submitted on the proper form.

A Formal Complaint must meet each of the following criteria:

- It 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 be extended 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.

If the Formal Complaint does not meet the requirements set forth above, the Vice President of Human Resources or designee will promptly return it to the complainant and specify the defect. If the sole defect is that the Formal Complaint was filed outside the applicable proscribed timeline, the Vice President of Human Resources or designee will handle the matter as an informal complaint.

### **Oversight of Complaint Procedure**

The Vice President of Human Resources is the "responsible District officer" charged with receiving complaints of discrimination or harassment, and coordinating their investigation.

The actual investigation of complaints may be assigned by the Vice President of Human Resources to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the Vice President of Human Resources is named in the complaint or implicated by the allegations in the complaint or if it is deemed more appropriate to have an outside investigator involved.

### **Who May File a Complaint**

Any student, employee, or third party who believes he/she has been discriminated against or harassed by a student, employee, or third party in violation of this procedure and the related policy.

A student, employee, or third party who believes he/she has been discriminated against or harassed in violation of these policy and procedures may make a complaint orally or in writing

### **Where to File a Complaint**

If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, he/she must file the complaint on a form prescribed by the State Chancellor's Office. These approved forms are available from the Human Resources Office and at the State Chancellor's website.

The completed form must be filed with any of the following:

- The *Vice President of Human Resources or designee*;
- The Vice President of Student Services
- Superintendent/President
- The State Chancellor's Office.

### **Employment-Related Complaints**

Complainants filing employment-related complaints shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH).

Complaints filed with the EEOC or the DFEH should be forwarded to the State Chancellor's Office.

Any District employee who receives a harassment or discrimination complaint shall notify the Vice President of Human Resources immediately.

### **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 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

### **Communicating that the Conduct is Unwelcome**

Although it is not required, the District 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 Vice President of Human Resources or designee shall:

- Undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling, training, etc.
- Advise the complainant that he/she need not participate in an informal resolution of the complaint, as described above, and has the right to end the informal resolution process at any time. Mediation in all cases is permitted as long as all parties agree.
- Advise a student complainant that he/she may file a complaint with the Office of Civil Rights of the U.S. Department of Education and employee complainants may file a complaint with the Department of Fair Employment and Housing. All complainants should be advised 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. In addition, the District should ensure that complainants are aware of any available resources, such as counseling, health, and mental health services. The Vice President of Human Resources or designee shall also notify the State Chancellor's Office of the complaint.
- Take interim steps to protect a complainant from coming into contact with an accused individual, especially if the complainant is a victim of sexual violence. The Vice President of Human Resources should notify the complainant of his or her options to avoid contact with the accused individual and allow students to change academic situations as appropriate. For instance, the District may prohibit the accused individual from having any contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and accused individual, the District shall minimize the burden on the complainant. For example, it is not appropriate to remove complainants from classes or housing while allowing accused individuals to remain.

### **Investigation**

The Vice President of Human Resources 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 designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. In the case of a formal complaint, the investigation will include interviews with the complainant, the accused, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.
- 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.

### **Investigation of the Complaint**

The District shall promptly investigate every complaint and claim 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 at a class or training program sponsored by the District at another location. The District shall promptly investigate complaints of harassment or discrimination that occur off campus if the alleged conduct creates a hostile environment on campus.

As set forth above, where the complainant opts for an informal resolution, the Vice President of Human Resources or designee may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the accused individual's rights to receive information about the allegations if the information is maintained by the District as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. The District will inform the complainant if it cannot maintain confidentiality.

### **Investigation Steps**

The District will fairly and objectively investigate harassment and discrimination complaints. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the District's grievance 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:

- Interview the complainant(s)
- Interview the accused individual(s)
- Identify and interview witnesses and evidence identified by each party
- Identify and interview any other witnesses
- If needed; remind all individuals interviewed of the District's no-retaliation policy
- Consider whether any involved person should be removed from the campus pending completion of the investigation
- Review personnel/academic files of all involved parties as warranted.
- 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 the 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.

### **Timeline for Completion**

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

### **Cooperation Encouraged**

All employees are expected to cooperate with a District investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the District of its obligation to investigate. The District will conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed. No employee will be retaliated against as a result of lodging a complaint or participating in any workplace investigation.

### **Written Report:**

The results of the investigation of a complaint shall be set forth in a written report that will include at least all of the following information:

- A description of the circumstances giving rise to the Formal Complaint;
- A summary of the testimony provided by each witness interviewed by the investigator;
- An analysis of relevant evidence collected during the course of the investigation;
- A specific finding as to whether there is probable cause to believe that discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint; and
- Any other information deemed appropriate by the District.

### **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.

### **Administrative Determination**

- In any case not involving employment discrimination, within 90 days of receiving a formal complaint, the District shall complete its investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:
  - The determination of the Vice President of Human Resources or designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
  - A description of actions taken, if any, to prevent similar problems from occurring in the future;
  - The proposed resolution of the complaint; and
  - The complainant's right to appeal to the district governing board and the Chancellor.
- In any case involving employment discrimination, within 90 days of receiving a formal complaint, the District shall complete its investigation and forward a copy or

summary of the report to the complainant, and written notice setting forth all the following to the complainant:

- The determination of the Vice President of Human Resources or designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
- A description of actions taken, if any, to prevent similar problems from occurring in the future;
- The proposed resolution of the complaint; and
- The complainant's right to appeal to the District governing board and to file a complaint with Department of Fair Employment and Housing or the U.S Equal Employment Opportunity Commission.

### **Discipline and Corrective Action**

If harassment, discrimination or retaliation occurred in violation of the policy or procedure, the District shall take disciplinary action against the accused and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense. Remedies for the complainant might include, but are not limited to:

- Providing an escort to ensure that the complainant can move safely between classes and activities;
- Ensuring that the complainant and alleged perpetrator do not attend the same classes or work in the same work area;
- Preventing offending third parties from entering campus;
- Providing counseling services or a referral to counseling services
- Providing medical services or a referral to medical services;
- Providing academic support services, such as tutoring;
- Arranging for a student-complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and
- Reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.

If the District imposes discipline, the nature of the discipline will not be communicated to the complainant. However, the District may disclose information about the sanction imposed on an individual who was found to have engaged in harassment when the sanction directly relates to the complainant; for example, the District may inform the complainant that the harasser must stay away from the complainant.

Disciplinary actions against faculty, staff, and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.

The District shall also take reasonable steps to protect the complainant from further harassment, or discrimination, and to protect the complainant and witnesses from retaliation as a result of communicating the complaint or assisting in the investigation. The District will ensure that complainants and witnesses know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred. The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the extent possible without impeding the District's ability to investigate and respond effectively to the complaint.

If the District cannot take disciplinary action against the accused individual because the complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

### **Appeals and District Final Decision**

If the District imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the procedure for appealing a disciplinary decision.

If the complainant is not satisfied with the results of the administrative determination, the complainant may, within fifteen (15) days, submit a written appeal to the district governing board. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty-five (45) days after receiving the appeal. A copy of the final district decision rendered by the governing board shall be forwarded to the complainant and to the Chancellor. The complainant shall also be notified of his/her right to appeal this decision.

If the governing board does not act within forty-five (45) days, the administrative determination shall be deemed approved and shall become the final district decision in the matter.

In any case not involving employment discrimination, harassment, or retaliation, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days after the governing board issues the final district decision or permits the administrative determination to become final. Such appeals shall be processed pursuant to the provision of Title 5 Section 59350

In any case involving an allegation of discrimination on the basis of race, color, national origin, sex, disability or age, in the provision of programs and services provided by the college, a complainant may also file a complaint with U.S. Department of Education. Complaints may also be filed with the Equal Employment Opportunity Commission or the Department of Fair Employment and Housing (addresses listed below)

Equal Employment Opportunity Commission  
Roybal Federal Building  
255 E. Temple Street, 4<sup>th</sup> Floor  
Los Angeles, CA 90012  
<http://www.eeoc.gov>

Office for Civil Rights (OCR)  
United States Department of Education  
50 Beale Street, Suite 7200  
San Francisco, CA 94105  
<http://www.ed.gov/offices/OCR>

Department of Fair Employment and Housing (DFEH)



611 West Sixth Street, Suite 1500  
Los Angeles, CA 90017  
<http://www.dfeh.ca.gov/default.asp>

### **Extension of time**

Within 150 days of receiving a complaint, the district will forward the following to the Chancellor:

- The original complaint;
- The report describing the nature and extent of the investigation conducted by the district;
- A copy of the notice sent to the complainant (pursuant to Government Code 59336);
- A copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative decision became final
- A copy of the notice to the complainant (pursuant to Government Code 59338);
- Such other information as the Chancellor may require.

### **Extensions: Failure to Comply**

If a District, for reasons beyond its control, is unable to comply with the 150-day deadline specified for submission of materials to the Chancellor, the District may file a written request that the Chancellor grant an extension of the deadline. The request shall be submitted no later than ten (10) days prior to the expiration of the deadline established and shall set the reasons for the request and the date by which the District expects to be able to submit the required materials.

A copy of the request for an extension shall be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt.

The Chancellor may grant the request unless delay would be prejudicial to the complainant.

If a District fails to comply with the requirements by the required deadline, including any extension granted, the Chancellor may proceed to review the case based on the original complaint and any other relevant information then available.

### **File Retention**

The District will retain on file for a period of at least three years after closing the case copies of:

- The original complaint;
- The investigatory report;
- The summary of the report if one is prepared;
- The notice provided to the complainant, of the District's administrative determination and his or her right to appeal;
- Any appeal; and
- The District's final decision.

The District will make such documents available to the State Chancellor upon request

**Where the complaint allegation consists of Sexual Misconduct, as defined by Title IX, the following applies:**

### **Sexual Misconduct**

Sexual misconduct includes sexual harassment and sexual violence.

- Sexual harassment may include 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 education setting.
- Sexual violence refers to physical sexual acts perpetrated against a person's will or when a person is incapable of giving consent due to the victim's use of drugs or alcohol or due to an intellectual or other disability. Sexual violence includes rape, sexual assault, sexual battery, and sexual coercion.
- Affirmative consent means an affirmative, conscious, and voluntary agreement to engage in sexual activity.

Sexual misconduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the District's program. A single or isolated incident may create a hostile environment if the incident is sufficiently severe.

### **Complaint Procedure**

Where the complaint involves a minor, the District will comply with California mandated reporting requirements.

All responsible employees are required to report all actual or suspected sexual misconduct to the Title IX Coordinator immediately. A responsible employee is any employee who has the authority to take action to redress sexual misconduct, who has been given the duty of reporting incidents of sexual misconduct to the Title IX Coordinator or Vice President of Human Resources or designee, or whom a student or employee could reasonable believe has this authority or duty. The District is on notice if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual misconduct.

Any person may make a complaint by contacting the Title IX Coordinator directly. The District's Title IX Coordinator is the Vice President of Human Resources. The Title IX Coordinator will receive all relevant details about the alleged sexual misconduct reported to the District responsible employee in order to determine what occurred and how to resolve the situation. This includes the names of alleged victim and alleged perpetrator (if known), and the date, time, and location of the alleged sexual misconduct.

### **Privileged or Confidential Reporting**

A responsible District employee should, whenever possible, before a student or employee reveals information that he or she may wish to keep confidential, ensure that the person making the report understands the employees obligations to report to the Title IX Coordinator, the victims option to request confidentiality, which the District will take into consideration, and the victims ability to share the information confidentially with designated District employees.

**Professional, licensed, mental health counselors, and pastoral counselors, who provide mental-health counseling to members of the District community, or interns, graduate students, and others supervised by professional licensed counselors, are not required to report any information to the title IX Coordinator.**

**Non-professional counselors who work or volunteer in health center, victim advocacy office, women's center, etc., including front desk personnel and student employees in the course of their duties, may maintain confidentiality. They are not required to report actual or suspected sexual misconduct to the Title IX Coordinator in a way that identifies the student without the victims consent.**

### **Authority over Parties**

The District has authority over students, employees, and third parties for alleged violations of this policy that occur on District property. The District has authority over District employees and students for alleged violations of this policy that occur at District activities or events. The District may exercise authority over events that occur off-campus to determine if the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

### **Standard of Proof**

The District will use a “preponderance of the evidence” standard of proof in determining whether there has been a violation of this policy. This standard of proof is also known as “more likely than not” standard.

### **Upon Receiving the Complaint – Health and Safety**

The Title IX Coordinator or designee, will make an immediate assessment concerning the health and safety of the victim and campus community as a whole. The District will provide the reporting party and responding party with immediate, interim measures necessary to protect his or her health and safety. These immediate interim measures may include:

- Providing an escort
- Ensuring that the victim and perpetrator do not attend the same classes or work in the same area
- Preventing offending third parties from entering campus
- Providing counseling services or a referral to counseling services
- Providing academic support services

Where the District determines that there is a substantial threat to the campus community, it will issue a timely warning. The District will issue the warning according to District Administrative Procedures. The District will not to disclose the victim’s name or other identifying information when issuing the warning.

### **Communicating that the Conduct is Unwelcome**

The employee or student may, but is not required 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**

If the District determines that a sexual misconduct complaint is appropriate for informal resolution, it may permit an informal resolution, including mediation. All parties, including the complainant and respondent, must receive full disclosure of the allegations and information about options for formal resolution before voluntarily agreeing to participate in an informal resolution. If parties agree to an informal resolution, the District does not have to complete a full investigation and adjudication of a report of sexual misconduct.

### **Confidentiality**

Where the victim requests confidentiality regarding a reportable incident the District will take all reasonable steps to comply with the victim’s request or inform the victim when it cannot ensure confidentiality. The District will not disclose the name of the victim unless the victim provides written consent after being informed of his/her right to have the information withheld. Where the victim insists that the District not disclose his or her name or other identifiable information to the alleged perpetrator, the District will inform the victim that its ability to respond will be limited. The District will evaluate this request in the context of its responsibility to provide a safe and nondiscriminatory environment for all employees and students. When weighing a request for confidentiality against the

seriousness of the alleged harassment, the Title IX Coordinator will take the factors listed above into consideration.

### **Fact-Finding Investigation**

Where the victim has filed a criminal complaint with local law enforcement, the District will consider what information the District is able to share, pursuant to state and federal law, to ensure that victims are not unnecessarily required to give multiple statements about a traumatic event. The District will continue to conduct its own thorough, reliable, prompt, and impartial investigation. The District will normally complete its sexual misconduct investigation within 90 days of receiving the complaint, unless extended by the Title IX Coordinator for good cause. The Title IX Coordinator will notify the victim and accused in writing of the reason for the extension and the projected new timeline.

The victim and accused will have equal opportunity to present relevant witnesses and other evidence to the District investigator. The District will provide the same opportunities to the victim and accused, for example if the District permits the victim or accused to have a lawyer or other advisor present, it must do so for the other party. Any District imposed restrictions on the ability of a lawyer or other advisor to speak or participate in the interview must also apply equally.

The results of the fact-finding investigation will be set out in a formal investigative report which will include the requirements listed above and a credibility determination of the victim, accused, and witnesses.

### **Reporting to State Chancellor's Office**

The District considers all sexual misconduct complaints to be formal complaints. The Vice President or designee must notify the State Chancellor's Office of any sexual misconduct complaints. Upon completing the investigation, the District shall forward to the Chancellor's Office a copy of the investigative report and administrative determination and to the complainant a copy or summary of the investigative report and administrative determination.

### **Dissemination of Policy and Procedures**

District Policy and Procedures related to harassment will include information that specifically addresses sexual violence. District policy and procedures will be provided to all students, faculty members, members of the administrative staff and members of the support staff, and will be posted on campus and on the District's website.

When hired, employees are required to sign that they have received the policy and procedures, and the signed acknowledgment of receipt is placed in each employee's personnel file. In addition, these policies and procedures are incorporated into the District's course catalogs and orientation materials for new students.

### **Supervisory Employee Training**

By January 1, ~~2006~~2020, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees **and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees.** ~~who are employed as of July 1, 2005.~~ All new ~~supervisory~~ employees must be provided with the training and education within six months of their assumption of ~~a supervisory~~ his/her position. After January 1, ~~2006~~2020, the District shall provide sexual harassment training and education to each ~~supervisory~~ employee once every two years.

The training and education required by this procedure shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment, **a review of "abusive conduct," and harassment based on gender identify, gender expression, and sexual orientation.** The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

Supervisor's harassment training must also address potential exposure and liability for employers and individuals, supervisor's obligation to report sexual harassment, discrimination, and retaliation when they become aware of it, appropriate remedial measures to correct harassing behavior, ~~and a review of "abusive conduct."~~

The District will maintain appropriate records of the training provided, including the names of the supervisory employees trained, the date of training, sign in sheets, copies of all certificates of attendance or completion issued, the type of training provided, a copy of all written or recorded training materials, and the name of the training provider. If the training is provided by webinar, the District will maintain a copy of the webinar, all written materials used by the training and all written questions submitted during the webinar, and document all written response or guidance the trainer provided during the webinar. The District will retain these records for at least three years.

### **Staff Training**

~~Training of all staff will be conducted. This includes counselors, faculty, health personnel, law enforcement officers, coaches, and all staff who regularly interact with students. Training for academic staff should emphasize environmental harassment in the classroom.~~ The District will also provide training to students who lead student organizations. The District should provide copies of the sexual harassment policies and training to all District law enforcement unit employees regarding the grievance procedures and any other procedures used for investigating reports of sexual violence.

In years in which a substantive policy or procedural change has occurred, all District employees will attend a training update and/or receive a copy of the revised policies and procedures.

Participants in training programs will be required to sign a statement that they have either understood the policies and procedures, their responsibilities, and their own and the District's potential liability, or that they did not understand the policy and desire further training.

### **Education and Prevention for Students**

In order to take proactive measures to prevent sexual harassment and violence toward students, the District will provide preventive education programs and make victim resources, including comprehensive victim services, available. The District will include such programs in their orientation

programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, the District's policies and disciplinary procedures, and the consequences of violating these policies. A training program or informational services will be made available to all students at least once annually.

The education programs will also include information aimed at encouraging students to report incidents of sexual violence to the appropriate District and law enforcement authorities. Since victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of District or campus rules were involved, the District will inform students that the primary concern is for student safety and that use of alcohol or drugs never makes the victim at fault for sexual violence. If other rules are violated, the District will address such violations separately from an allegation of sexual violence.

4/14/08

Revised: 10/12/09

Revised: 3/10/14

Revised: 11/14/16

Revised: 5/14/18

Revised: 3/19

## BP 7340 Leaves

Reference:

**Education Code Sections 87763 et seq., 88190 et seq., 88198 et seq. and cites below  
Labor Code Sections 245 et seq.**

The Superintendent/President shall establish procedures for employee leaves as authorized by law and by any collective bargaining agreements entered into by the District. Such leaves shall include, but are not limited to:

- illness or injury leaves for all classes of permanent employees; (Education Code Sections 87781 and 88192);
- paid sick leave; (Labor Code Section 246);
- vacation leave for members of the classified service, administrators, supervisors and managers, as well as, confidential employees and faculty on 12 month contracts;
- leave for service as an elected official **or steward** of a community college District public employee organization, or of any statewide or national employee organization with which the local organization is affiliated or leave for a reasonable number of unelected classified employees for the purpose of enabling an employee to attend important organizational activities authorized by the public employee organization; *EC 87768.5; 88210; **Government Code Section 3558.8***
- leave of absence to serve as an elected member of the legislature; *EC 87701*
- pregnancy/child birth leave; *EC 87766; 88193; Gov Code 12945*
- leave to bond with a new child; (Education Code Sections 87780.1, 87784.5, 88196.1 and 88207.5);
- use of illness leave for personal necessity; *EC 87784; 88207*
- industrial accident and illness leave; (Education Code Sections 87787 and 88192);
- bereavement leave; (Education Code Sections 87788 and 88194);
- jury service or appearance as a witness in court; (*Education Code Sections 87036; 87037*);
- military service; (Education Code Section 87700);
- sabbatical leaves for permanent faculty, academic employees, administrators and managers;
- catastrophic leave; *EC 87045*

Vacation leave for members of the classified service and 12 month faculty shall be limited in accord with collective bargaining agreements.

Vacation leave for confidential/management/supervisory group and educational administrators shall not accumulate beyond the number of days of leave accumulated over a two-year period.

Employees shall be permitted to take vacation in a timely manner to avoid accumulation of excess vacation.

In addition to these policies and collective bargaining agreements, the Board retains the power to grant leaves with or without pay for other purposes or for other periods of time.

The district will require medical certification to support a claim for leave for an employee's own serious health condition or to care for a seriously ill child, spouse, or parent. For the employee's own medical leave, the certification must include a statement that the employee is unable to perform at least one of the functions of his or her position. For leave to care for a seriously ill child, spouse, or parent, the certification must include an estimate of the amount of time that the employee is needed to provide care.

The district may require a second medical opinion and periodic re-certifications at its own expense. If the first and second opinions differ, the district may require the binding opinion of a third health care provider, approved jointly by the district and the employee and paid for by the district.

Refer to Article V of the faculty collective bargaining agreement and Article XI of the classified collective bargaining agreement for specific leave guidelines.

Adopted: 5/8/06

Revised: 5/9/16

Reviewed: 10/9/17

Revised: 3/19