

Harassment and Discrimination

4640

Members of a college community — students, faculty, staff and visitors — must be able to study and work in an atmosphere of mutual respect and trust. Foothill-De Anza Community College District is actively committed to creating and maintaining an environment which respects the dignity of individuals and groups. The Board of Trustees supports an educational and employment environment where diverse cultures, abilities and needs are respected and where diversity offers opportunities for learning and for personal and professional fulfillment. The District is committed to providing an educational and employment environment free of unlawful harassment and discrimination. Faculty, staff and students must be assured that the District will take action to prevent misconduct.

Accordingly, the Board adopts the following:

It is the policy of the Foothill-De Anza Community College District to provide an educational and employment environment free of unlawful harassment and discrimination. The Board shall not discriminate against any person in the provision of any program or service based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or gender identity, or any other legally protected status. Anyone who engages in unlawful harassment or discrimination shall be subject to sanctions up to and including termination of employment or expulsion in accordance with applicable contractual, procedural and statutory requirements.

Harassment

Harassment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or gender identity of a person, or any other legally protected status, or harassment based on the perception that a person has one or more of these statuses, constitutes unlawful harassment and violates District policy.

Unlawful harassment comes in many forms and may include but is not limited to the conduct described below:

Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race, gender, sexual orientation, or other legally 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, whistling, or propositions; demands for sexual favors; verbal abuse, threats or intimidation.

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, unnecessarily brushing against or blocking another person, or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's race, gender, sexual orientation, or other legally protected status. It may also include leering and staring.

Visual or Written: The display or circulation of visual or written material that degrades an individual or groups based on race, gender, sexual orientation, or other legally protected status. This may include, but is not limited to, posters, cartoons, drawing, graffiti, reading materials, computer graphics, or electronic media transmissions.

Environmental: A hostile academic or work environment exists where it is permeated by innuendo or insults or abusive comments directed at an individual or group based on race, gender, sexual orientation, or other legally protected status. An environment may in some circumstances also be hostile toward anyone who merely witnesses unlawful harassment in his or her immediate surroundings, although the conduct is directed at others.

For an unlawful harassment or hostile environment claim to be valid, in general the conduct must be sufficiently severe or pervasive so as to alter the conditions of the employment or educational environment. Subjective perception alone is insufficient evidence for a claim to be valid; an objective appraisal must be considered as well. The conduct shall be evaluated from the objective viewpoint of a reasonable person facing the same conditions.

Sexual Harassment

As noted throughout the preceding section of this policy, sexual harassment may be verbal, visual, written, physical or environmental and, as such, is a form of unlawful harassment.

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature when submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment or academic status or progress.

“Quid pro quo” harassment occurs when submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

“Hostile environment” harassment occurs when 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.

Retaliation

The District seeks to foster an environment in which all employees and students feel free to report incidents of harassment or discrimination without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against any individual for filing a complaint of harassment or discrimination or for participating in an investigation of such complaints. Such conduct is illegal and constitutes a violation of this policy. All allegations of retaliation will be investigated. Any individual found to have violated this policy will be subject to disciplinary sanctions, up to and including termination of employment or expulsion in accordance with applicable contractual, procedural and statutory requirements.

Academic Freedom

While the Board recognizes that academic freedom does not allow harassment or any other form of unlawful discrimination, the Board reaffirms its commitment to academic freedom as established in Board Policy on Academic Freedom (4190). The lecture, content and discourse (including rhetorical strategies) that are an integral part of the course or which serve a legitimate pedagogical purpose shall in no event constitute harassment or other forms of unlawful discrimination. In cases involving questions of academic freedom, the District shall consult with the Academic Senates whenever possible or with other appropriate faculty representatives as needed, consistent with Administrative Procedures 4640.

Complaints

Appropriate action shall be taken immediately against individuals determined to be in violation of this policy. Any individual who believes that he or she has been a victim of harassment or discrimination or retaliation in violation of this policy may file a complaint within one year of the alleged unlawful harassment or discrimination or within one year of the date on which the complainant knew or should have known of the facts of the incident(s).

The District has developed procedures to address complaints of discrimination, harassment and retaliation. Complaints filed by an employee of the District against another employee or student, or a student against an employee of the District, shall be referred and handled pursuant to the District's "Administrative Procedures: Investigation and Resolution of Complaints Regarding Harassment and Discrimination."

Complaints filed by a student against another student, or student against the criteria of a program, shall be referred and handled pursuant to the District's "Procedures to Resolve Student Complaints of Harassment and Discrimination."

Complaints filed by students or employees regarding harassment or discrimination by third parties who are not themselves students or employees in the District shall be investigated. Additionally, the District shall forward written notice to the responsible

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Board of Trustees
Board Policy Manual*

party with a request for an investigation of the incident(s) and a report of the findings to be sent to the District.

Copies of the District's "Administrative Procedures: Investigation and Resolution of Complaints Regarding Harassment and Discrimination," "Procedures to Resolve Student Complaints of Harassment and Discrimination," and the District's Unlawful Harassment and Discrimination Complaint forms are available in the District Human Resources Office, the District Chancellor's Office, the President's Office at each campus, the Office of the Vice President for Student Services (De Anza), and the Office of the Vice President of Student Development and Instruction (Foothill).

Reference:

Education Code §§ 212.5; 44100; 66281.5
Title IX, Education Amendments of 1972
Title 5, §§ 59320 et seq.
Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000E
Board Policy 4190

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