

EMPLOYEE WELFARE DOA  
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION (REGULATION)

ILLUSTRATIONS OF  
SEXUAL HARASSMENT

Generally sexual harassment includes any sexual attention that is unwelcome. Harassment means conduct amounting to more than an occasional, isolated, or trivial act or remark. The following examples of sexual harassment are illustrations of prohibited conduct, but are not an all-inclusive list of such conduct:

1. Physical assault based on gender.
2. Direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades, or letters of recommendation.
3. Direct propositions of a sexual nature.
4. A pattern of conduct intended to discomfort or humiliate a person that includes one or more of the following:
  - a. Comments of a sexual nature.
  - b. Sexually explicit statements, questions, jokes, pictures, or anecdotes.
  - c. Unnecessary touching, patting, hugging, or brushing against a person's body.
  - d. Remarks of a sexual nature about a person's clothing or body.
  - e. Remarks about sexual activity or speculations about previous sexual experience.

Item 4 above does not include conduct or comments that are legitimately related to the subject matter of an instructional course as illustrated by, but not limited to, a physical education course, a human development course, or a Biology course.

CONSENSUAL  
RELATIONSHIPS

Consensual romantic or sexual relationships between a supervisor and an employee or a faculty member and a student in the faculty member's class can create significant problems; therefore, the College District strongly discourages such relationships and any conduct (such as dating) that might reasonably be expected to lead to a romantic or sexual relationship. If a romantic or sexual relationship develops between a supervisor and an employee or a faculty member and a student, the supervisor or faculty member must promptly disclose, in writing, the existence of the relationship to the supervisor's or faculty member's location human resources director or the College District's human resources director. The employee or student may also make the disclosure.

The location human resources director or the College District's human resources director shall inform the employee's next higher-

EMPLOYEE WELFARE  
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION (REGULATION) DOA

level supervisor or the faculty member's department head (and others on a need-to-know basis) of the existence of the relationship, and the highest level administrator will ensure that the supervisor or faculty member does not participate in activities or decisions that may either benefit or harm the employee or student.

The College District recognizes that the terms "romantic" and "dating" are not capable of precise definition. However, the College District believes that either or both parties to such a relationship can and will understand the meaning of the terms as they apply to them, and will act in a manner consistent with this memorandum and with appropriate ethical and contractual obligations to the College District and each other.

ISOLATED AND  
UNINTENTIONAL  
OFFENSES

A student or employee of the College District who, without establishing a pattern of doing so, engages in isolated conduct as described in item 4 above or who exhibits a pattern of engaging in such conduct, but fails to realize that such actions discomfort or humiliate a person, demonstrates insensitivity. Upon learning of such activities, the highest level administrator at the location shall direct the person engaged in such conduct to participate in an educational program designed to help the person understand the harm of such activities.

If, after participation in the education program or failing to participate after being directed to do so, a student or employee continues to engage in the conduct described in item 4 above, the person will be deemed to have engaged in a pattern of conduct intended to discomfort or humiliate the one at whom the actions or statements are directed.

FILING OF COMPLAINT

A complaint alleging a violation of one or more of the foregoing provisions in this procedure may be filed by any employee or student affected by the conduct or action; i.e., the complainant. Only a complainant is entitled to utilize the procedures in this memorandum.

REPORTING A  
VIOLATION

Any person may report an alleged violation of this procedure whether or not the person is affected by the conduct or action.

REQUIRED  
REPORTING

Any administrator who becomes aware that a student or an employee is being sexually harassed by a College District employee or student is required to report the alleged violation to the officials designated in the section on REPORTING THE COMPLAINT, below.

Any supervisor who becomes aware that one of the supervisor's employees is being sexually harassed by a College District employee or a student is required to report the alleged violation to the

EMPLOYEE WELFARE  
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION (REGULATION) DOA

officials designated in the section on REPORTING THE COMPLAINT, below.

Any faculty member who becomes aware that one of the faculty member's students is being sexually harassed by a College District employee or a student is required to report the alleged violation to the officials designated in the section on REPORTING THE COMPLAINT, below.

If a required report or a report by a third party (not a complainant) is made, the accused and the complainant will be notified of the report.

IMPROPER  
REPORTS

A person who is malicious or intentionally dishonest in reporting a violation is subject to disciplinary action.

PROCEDURES  
INFORMAL

Informal procedures for filing a complaint are as follows:

1. At the complainant's option, an informal complaint may be made to the location human resources director or an employee designated by the highest level administrator at the location or both. Location representatives shall be trained to receive complaints and counsel with complainants. Representatives will be objective in taking a complaint and advising a complainant; they will be sensitive to the complainant and the accused if the accused is informed; and they will not attempt to intimidate a complainant from pursuing the matter. Information disclosed to representatives is confidential and may not be disclosed without consent of the complainant unless required by law, court order, or to defend the College District in legal proceedings.
2. The representative to whom the complaint is made will counsel the complainant as to the options available under this procedure and, at the complainant's request, may assist the complainant informally and/or may assist the complainant in drafting a formal complaint if the complainant decides to file a formal complaint.
3. The representative to whom the informal complaint is made will not inform the accused of the complainant's action without the consent of the complainant unless the conduct reported is so sufficiently severe or pervasive that the College District believes it must investigate the complaint.
4. The representative shall maintain confidentiality with regard to the names of the complainant and the accused, all witnesses, the details of the complaint, and any other information protected by law.

EMPLOYEE WELFARE  
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION (REGULATION) DOA

5. One of the goals of the informal complaint process is to resolve less serious matters in an efficient and effective manner.
6. The representative to whom an informal complaint is made shall make a written response to the complainant regarding the nature of the complaint, its disposition, and any other information that is necessary to document the complaint.

FORMAL COMPLAINTS  
REPORTING THE  
COMPLAINT

A complainant wishing to make a formal complaint shall file it, in writing, with the College District director of human resources, if the complainant is an employee, or, with the Provost of Educational Affairs, if a student. The College District person receiving a complaint shall send a copy of the complaint to the highest level administrator at the location.

INVESTIGATION  
PRIOR TO FORMAL  
ACTION

The College District human resources office or its designee shall conduct an investigation if the accused is an employee. The Vice President of Student Development or equivalent position or that person's designee shall conduct an investigation if the accused is a student. A student complaint shall be handled under the Code of Student Conduct, FMA(LOCAL), as indicated at PROCESS OF TAKING FORMAL ACTION, item 2, below.

The purpose of the investigation is to establish whether there is a reasonable basis for believing that the alleged violation has occurred. In conducting the investigation, the College District human resources investigator shall interview the complainant, the accused, and other persons believed to have pertinent factual knowledge. At all times, the College District human resources investigator will take steps to ensure confidentiality during the investigation, including without limitation, requiring all parties to agree, in writing, that information disclosed during the investigation will not be disclosed to others unless required by law, court order, or to defend the College District in legal proceedings. A violation of confidentiality shall be grounds for disciplinary action.

The investigation will afford the accused a full opportunity to respond to the allegations.

Possible outcomes of the investigation are:

1. A judgment that the allegations are not warranted.
2. A negotiated settlement of the complaint.
3. Initiation of formal action described in succeeding provisions of this procedure.

EMPLOYEE WELFARE  
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION (REGULATION) DOA

PROCESS OF  
TAKING FORMAL  
ACTION

Procedures for taking formal action are as follows:

1. The decision to take formal action in cases in which an employee is charged will be made by the next to highest level administrator at the location. If, after reviewing the report of the investigation, the next to the highest level administrator at the location concludes that there is a reasonable basis for believing that the alleged violation has occurred and a negotiated settlement cannot be reached, the administrator shall authorize formal action.
2. The decision to take formal action in cases in which a student is charged will be made by the Vice President of Student Development or equivalent position. If, after reviewing the report of the investigation, the Vice President of Student Development or equivalent position concludes that there is a reasonable basis for believing that the alleged violation has occurred and a negotiated settlement cannot be reached, the Vice President or equivalent shall authorize formal action. A student accused of a violation of this procedure shall be afforded an opportunity for a hearing under FMA(LOCAL)–Code of Student Conduct.
3. If a complaint involves an administrator who is authorized to take formal action as enumerated in item 1 above, the decision to take formal action will be made by an administrator of higher rank than the accused administrator. Likewise, any other provision in this procedure involving an accused administrator shall be assigned to an administrator of higher rank than the accused.

FORMAL ACTION

Formal action procedures are as follows:

1. If formal action involving allegations of violations of one or more of the foregoing provisions is required, the highest level administrator at the location shall thoroughly review all evidence gained from the investigation and may request additional evidence (testimonial or documentary, or both) from the complainant, the accused, and other relevant witnesses. The review is not a hearing. Failure of an employee to comply and cooperate with a request from the highest level administrator may be grounds for disciplinary action, including termination.
2. The highest level administrator shall make a decision, based upon a preponderance of the evidence presented and shall report the decision within ten working days to the complainant and the accused.

EMPLOYEE WELFARE  
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION (REGULATION) DOA

3. Based upon the decision, the highest level administrator shall promptly take appropriate action, if any, toward the accused and any other persons involved with a complaint. Such action may include, but is not limited to, termination of employment or other action as deemed appropriate. Any action that is adopted shall utilize existing policies and procedures in this manual for implementation, if necessary.

PROTECTION OF  
COMPLAINANT AND  
OTHERS

Investigations of complaints will be initiated only with the complainant's consent unless the conduct reported is so sufficiently severe or pervasive that the College District believes it must investigate the complaint. The complainant will be informed fully of steps taken during the investigation.

All reasonable action will be taken to ensure that the complainant and those testifying on behalf of the complainant or supporting the complainant in other ways will suffer no retaliation as a result of their activities in regard to the process. Steps to avoid retaliation may include, but are not limited to:

1. Lateral transfers of one or more of the parties in an employment setting; or
2. Arrangements that employment evaluations concerning the complainant or others be made by an appropriate individual, other than the accused.

In extraordinary circumstances, the next to highest level administrator at the location with the consent of the highest level administrator at the location may, at any time during or after an investigation of a sexual harassment complaint, suspend from employment the accused with pay. The next to highest level administrator may suspend an employee from employment after reviewing the allegations and, if necessary, after interviewing the accused and complainant, and, if it seems appropriate, others with pertinent knowledge, and the administrator finds that it is reasonably certain that (1) the alleged sexual harassment has occurred; and (2) serious and immediate harm will ensue if the accused continues in employment.

PROTECTION OF THE  
ACCUSED

At the time the investigation begins, the accused will be informed of the written allegations.

In the event the allegations are not substantiated, all reasonable steps will be taken to restore the reputation of the accused if it has been damaged by the proceeding. An example of such a step may include, but is not limited to, publication of the results of the proceeding.

EMPLOYEE WELFARE  
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION (REGULATION) DOA

A complainant found to be intentionally dishonest in making the allegations or to have made them maliciously is subject to disciplinary action that may include, but is not limited to termination of employment. An unsubstantiated complaint is not per se malicious or intentionally dishonest.

PROTECTING BOTH  
PARTIES

To the extent possible, the proceedings will be conducted in a confidential manner calculated to protect the interests of both parties.

After the investigation, the parties will be informed of the facts developed in the course of the investigation.

EDUCATION

Educational efforts are essential to the establishment of a climate that is as free as possible of sexual harassment. The goals to be achieved through education are:

1. Ensuring that all victims (and potential victims) are aware of their rights.
2. Notifying individuals of conduct that is prohibited.
3. Informing administrators and others concerning the proper manner to address complaints of violations.
4. Helping educate the insensitive concerning the problems this policy and procedure addresses.

The highest level administrator at the location is responsible for achieving the above-listed goals.

PREPARATION AND  
DISSEMINATION OF  
INFORMATION

The College District director of human resources is charged with distributing copies of this policy and procedure to all current employees and to all future employees. A copy of this policy and procedure will be included in the college catalog and will be made continually available at appropriate campus centers and offices. It is the responsibility of the highest level administrator at the location to educate all employees concerning the essential elements of this procedure.

The College District director of human resources will develop a series of training sessions for persons who are likely to receive complaints under this procedure. The highest level administrator at the location is responsible for implementing this training.

The College District director of human resources will develop or identify a course or counseling designed to inform those who unintentionally violate the provisions in this procedure. The course or assistance shall be mandated for those in violation of provision 3 of this procedure and may be an element in the settlement of a complaint. It also may be mandated for persons found to have violated this procedure.