Note: This policy addresses employee complaints of sexual misconduct, including sex/gender-based discrimination or harassment, sexual violence, and retaliation. For legally referenced material relating to this subject matter, see DAA(LEGAL). For complaints of discrimination, harassment, and retaliation based on race, color, national origin, religion, or disability, targeting employees, see DIAB. For sexual misconduct targeting students, see FFDA.

STATEMENT OF NONDISCRIMINATION

The College District prohibits discrimination, including harassment, against any employee on the basis of race, color, religion, national origin, age, disability, sex, sexual orientation, gender, gender identity, gender expression, or any other basis prohibited by law. Retaliation against anyone involved in the complaint process is a violation of College District policy.

SCOPE

The College District prohibits sexual misconduct in all of its programs and activities. Accordingly, this policy applies to any instance in which a College District employee is alleged to have engaged in sexual misconduct against any person (e.g., student, employee, or third party, such as a guest speaker or vendor), or believes he or she has been subjected to sexual misconduct, regardless of the complainant or respondent’s sex, gender, sexual orientation, or gender identity.

The College District shall respond to any complaint of sexual misconduct, including conduct alleged to have occurred during breaks, leaves of absence, or periods of dismissal, whether on or off College District property or premises. The disciplinary process is available as an option so long as the respondent remains within the jurisdiction of the College District.

DEFINITIONS

Solely for purposes of this policy, definitions include the following:

1. “Employee” includes former employees, applicants for employment, third-party vendors, and interns (paid or unpaid).

2. “Gender identity” means a person’s internal or personal sense of being a man or a woman.

3. “Gender expression” means external manifestations of a person’s gender identity, usually expressed through masculine or feminine clothing, haircut, voice or body characteristics. Typically, transgender people make their gender expression match their gender identity.
DISCRIMINATION

For the purposes of this policy, discrimination against an employee is defined as conduct directed at an employee on the basis of sex, sexual orientation, gender, gender identity, or gender expression that adversely affects the employee’s employment.

SEXUAL MISCONDUCT

The College District prohibits sex/gender-based discrimination or harassment, sexual harassment, sexual violence, sexual exploitation, relationship violence, and sex/gender-based stalking. This conduct and any other conduct that threatens the health and safety of any person on the basis of actual, expressed, or perceived gender identity, are referred to collectively in College District policies and regulations as sexual misconduct.

SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. Submission to the conduct is either explicitly or implicitly a condition of an employee’s employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or

2. The conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee’s work performance or creates an intimidating, threatening, hostile, or offensive work environment.

Sexual harassment does not include conduct or comments that are legitimately related to the subject matter of an instructional course or discussions, inside or outside of the classroom, that include germane, but controversial or sensitive subject matters.

SEXUAL VIOLENCE

Sexual violence is a form of sexual harassment. Sexual violence includes 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 or due to an intellectual or other disability.

For more information on what qualifies as consent, see DIAA(REGULATION).

EXAMPLES

Examples of sexual harassment may include sexual advances; touching intimate body parts; coercing or forcing a sexual act on another (e.g., rape, sexual assault, sexual battery, sexual abuse, and sexual coercion); jokes or conversations of a sexual nature; and other sexually motivated conduct, communication, or contact.
SEX / GENDER-BASED HARASSMENT

Sex/gender-based harassment includes physical, verbal, or non-verbal conduct based on the employee’s gender, the employee’s expression of characteristics perceived as stereotypical for the employee’s gender, or the employee’s failure to conform to stereotypical notions of masculinity or femininity. For purposes of this policy, sex/gender-based harassment is considered prohibited harassment if the conduct is so severe, persistent, or pervasive that the conduct has the purpose or effect of unreasonably interfering with the employee’s work performance or creates an intimidating, threatening, hostile, or offensive work environment.

Sex/gender-based harassment does not include conduct or comments that are legitimately related to the subject matter of an instructional course or discussions, inside or outside of the classroom, that include germane, but controversial or sensitive subject matters.

EXAMPLES

Examples of sex/gender-based harassment directed against an employee, regardless of the employee’s or the harasser’s actual or perceived sexual orientation or gender identity, may include:

- offensive jokes, name-calling, slurs, or rumors;
- physical aggression or assault;
- threatening or intimidating conduct;
- or other kinds of aggressive conduct such as theft or damage to property.

SEXUAL EXPLOITATION

Sexual exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another for one’s benefit or the benefit of another party.

EXAMPLES

Examples of sexual exploitation include, but are not limited to:

- prostitution,
- sexual voyeurism (such as watching a person undressing),
- taking pictures or video or audio recording of another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as disseminating sexual pictures without the photographed person’s consent).

RELATIONSHIP VIOLENCE

Relationship violence, including domestic violence and dating violence, is any act of violence or pattern of abusive behavior that occurs within an intimate relationship and is used by one partner to gain or maintain power and control over the other partner. Relationship violence can be physical, sexual, emotional, economic, or psychological actions that are used to influence, intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound another person.

SEX / GENDER-BASED STALKING

Sex/gender-based stalking is a course of conduct directed at a specific individual that would cause a reasonable person to fear for his or her safety, other’s safety, or to suffer substantial emotional distress.
The College District prohibits retaliation against an employee who makes a claim alleging to have experienced sexual misconduct, or another employee who, in good faith, makes such a report, serves as a witness, or otherwise participates in a College District investigation or proceeding, or that of any state or federal agency.

Examples of retaliation may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, unjustified negative evaluations, unjustified negative references, or increased surveillance.

An employee who intentionally makes a false claim, offers false statements, or refuses to cooperate with a College District investigation regarding harassment or discrimination is subject to appropriate discipline.

In this policy, the term “prohibited conduct” includes discrimination, sexual misconduct, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.

An employee who believes that he or she has experienced prohibited conduct or believes that another employee has experienced prohibited conduct should immediately report the alleged acts in accordance with DIAA(REGULATION).

All other complaints of discrimination, harassment, or retaliation shall be handled under DIAB(LOCAL) and DGBA(REGULATION).

Administrative responsibility for enforcement of this policy rests with the Office of Institutional Equity, acting by and through the College District Office of General Counsel.

The Chancellor or a designee shall designate a College District Title IX Coordinator who shall be responsible for overall compliance with Title IX and related federal, state, or local laws and regulations, and who will serve as director of the Office of Institutional Equity.

Each college within the College District shall also have a designated College Title IX Coordinator who is responsible for administering responsibilities related to Title IX at the college location.

Reports of sexual misconduct shall be directed to the College Title IX Coordinator at the specific college location or the College District Title IX Coordinator. Contact information for each can be found on the College District’s website at: https://www.dcccd.edu/SS/OnCampus/HealthWell/titleix/Pages/coordinators.aspx.
For purposes of this policy, a "responsible employee" is an employee:

1. Who has the authority to remedy prohibited conduct;

2. Who has been given the duty of reporting incidents of prohibited conduct; or

3. Whom an employee reasonably believes has the authority to remedy prohibited conduct or has been given the duty of reporting incidents of prohibited conduct.

Responsible employees may include, but are not limited to, the following persons: a supervisor, department chair, or the college location human resources director.

Responsible employees must report allegations of sexual misconduct to the College Title IX Coordinator or the Office of Institutional Equity.

The Chancellor or designee shall serve as coordinator for purposes of College District compliance with all other antidiscrimination laws.

An employee shall not be required to report prohibited conduct to the person alleged to have committed it. Reports concerning prohibited conduct, including reports against the College District Title IX Coordinator, may be directed to the Chancellor or designee.

A report against the Chancellor may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.

Information regarding this policy and any accompanying procedures, as well as relevant educational and resource materials concerning the topics discussed in this policy, shall be distributed annually to College District employees in compliance with law and in a manner calculated to provide easy access and wide distribution, such as through electronic distribution and inclusion in the employee handbook and other major College District publications. Information regarding the policy, procedures, and related materials shall also be prominently published on the College District’s website, taking into account applicable legal requirements. Copies of the policy and procedures shall be readily available at the College District’s administrative offices and shall be distributed to an employee who makes a report.