

Chapter 3 – General Institution

BP 3410 Prohibition of Discrimination

References:

Cal. Code Regulations 11053, 11154; Title 5 § 59300; Ed. Code § 212, 66250 et seq., 66271.1, 66700, 66281.5; 70901; 72011; Gov. Code, § 11135-11139.5; 12926; 12950; 12950.1; 12951; Penal Code § 422.6 and 422.55; 20 U.S.C. § 1681; 29 U.S.C. § 794 and 794d; 42 U.S.C. § 6101, 12100 et seq. and 2000d; 36 C.F.R. § 1194.

I. Policy Statement

The policy of Mt. San Antonio College is to provide an educational and employment environment in which no person shall be denied full and equal access to, the benefits of, or be subjected to Discrimination, in whole or in part, based on any Protected Category, including: Ancestry, Age, Color, Disability (physical or mental), Ethnic Group Identification, Gender Identity, Gender Expression, Genetic Information, Marital Status, Medical Condition, National Origin, Race, Religion, Sex/Gender, Sexual Orientation, and Veteran or Military Status, in any program or activity that is administered by, funded directly by, or that receives any financial assistance from the State Chancellor or Board of Governors of the California Community Colleges.

The policy of Mt. San Antonio College is to comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973 in the development, procurement, maintenance, or use of electronic or information technology and respond to and resolve Discrimination complaints regarding accessibility. Such complaints will be treated as complaints of Discrimination on the basis of disability.

If a Responsible Employee knows, or reasonably should have known, of an incident of Discrimination they must report such incidents to the Director of EEO Programs as soon as practically possible.

BP 3430 and AP 3430 are the appropriate policies and procedures for addressing Discrimination based Harassment. BP 3540 and AP 3540 are the appropriate policies and procedures for addressing the following forms of Discrimination: Sexual Misconduct, (including incest, sexual assault, sexual battery, sexual exploitation and rape) Dating Violence, Domestic Violence, and Stalking.

The College shall respond promptly and effectively to all complaints of Discrimination and shall take appropriate action to prevent, investigate, correct, and discipline conduct that infringes upon this policy. Investigations into complaints of Discrimination will be conducted in accordance with the procedures set forth in AP 3410, Prohibition of Discrimination and AP 3435, Discrimination and Harassment Investigations.

Employees and students who are found to have infringed upon this policy may be subject to discipline commensurate with the violation. If employee discipline is warranted, it shall be administered in a manner consistent with applicable collective bargaining agreements, the College policies, and legal requirements. Student discipline shall be administered in accordance with AP 5520, Student Discipline Procedures.

Procedures for addressing Discrimination shall be administered in accordance with AP 3410 and shall be widely publicized to all students and employees of the institution.

Mt. San Antonio College hereby implements the provisions of California Government Code sections 11135 through 11139.5, California Code of Regulations Title 5, § 59300, the Sex Equity in Education Act (Ed. Code, § 66250 et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101).¹

II. Policy Definitions

- A. Adverse Action, means conduct that has the purpose or effect of substantially and materially denying or limiting a Complainant from equal opportunity to employment or participation in, or to the benefits or services of, College programs and activities. Minor or trivial actions or conduct not reasonably likely to do more than anger or upset a Complainant does not constitute an Adverse Action.²
- B. Age, with respect to employment discrimination, refers to the chronological age of any individual who has reached his or her 40th birthday.³
- C. Ancestry – see National Origin, Article II, Section K or Ethnic Group Identification, Article II, Section E.
- D. Color – See Race, Article II, Section L.
- E. Complainant – any person who files a complaint or any person who is reported to have experienced a violation of this policy in cases where some other person has made a report on that person's behalf.

¹ If the federal statutes cited above would result in broader protection of the civil rights of individuals than that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of title 5, section 59300, as cited in the Model Policy published by the California Community Colleges Chancellor's Office.

² See 2 Cal. Code Regs. § 11154

³ See Cal. Govt. Code § 12926(b).

F. Disability (mental or physical), as defined in California Government Code § 12926 and the federal Americans with Disabilities Act (ADA), 2008 Amendments, means:

1. Having a physical or mental condition that limits a major life activity. "Limits" means making the achievement of a major life activity difficult. "Limits" is determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity. A "major life activity" is broadly construed and includes physical, mental, and social activities (such as walking, talking, seeing, hearing) and working; or
2. Having a known history of a qualifying impairment; or
3. Being regarded or treated as having or having had a qualifying impairment; or
4. Being regarded or treated as having or having had such an impairment that has no presently disabling effects but may become a qualifying impairment in the future.

Disability includes HIV and AIDS.

G. Discrimination, means Adverse Action taken against an employee, student, third party by an employee, student, or third party because of a Protected Category.⁴

H. Ethnic Group Identification, includes ancestry, color, and ethnic background.⁵

I. Gender Expression, includes Gender Identity, and means a person's gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.⁶

J. Genetic Information⁷ means:

- The person's genetic tests.
- The genetic tests of the person's family members.
- The manifestation of a disease or disorder in the person's family members.
- Any request for, or receipt of genetic services, or participation in clinical research that includes genetic services, by a person or any person's family member.
- Genetic Information does not include information about the sex or age of any person.

⁴ See 2 Cal. Code Regs. § 11154

⁵ See Cal. Govt. Code § 12926(o).

⁶ See Cal. Govt. Code § 12926(r).

⁷ See Cal. Govt. Code § 12926(g).

- K. Marital Status means an individual's state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment, or other marital state.⁸
- L. Medical Condition⁹, means either of the following:
1. Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer; or
 2. Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:
 - a. Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder; or
 - b. Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.
- M. National Origin includes citizenship, country of origin, and national origin. It also includes language use restrictions and holding or presenting a driver's license issued under section 12801.9 of the Vehicle Code.¹⁰
- N. Preponderance of the Evidence¹¹ is the standard of evidence applied to investigations of allegations of Discrimination. Preponderance of the Evidence means the greater weight of the evidence. In applying this standard, the investigator will consider whether the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side.
- O. Protected Category includes Ancestry, Age, Color, Disability (physical or mental), Ethnic Group Identification, Gender Identity, Gender Expression, Genetic Information, Marital Status, Medical Condition, National Origin, Race, Religion, Sex/Gender, Sexual Orientation, and Veteran or Military Status.
- P. Race, includes ancestry, color, ethnic group identification, and ethnic background.¹²

⁸ See 2 Cal. Code Regs. §11053.

⁹ See Cal. Govt. Code § 12926 (i).

¹⁰ See Cal. Govt. Code § 12926 (o)(v) and Cal. Govt. Code § 12951.

¹¹ See Cal. Ed. Code § 67386 (a)(3).

¹² See Cal. Govt. Code § 12926(o).

- Q. Religion, includes all aspects of religious belief, observance, and practice, including religious dress and grooming practices. “Religious dress practice” shall be construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of the observance by an individual of his or her religious creed. “Religious grooming practice” shall be construed broadly to include all forms of head, facial, and body hair that are part of the observance by an individual of his or her religious creed. Religion includes agnosticism and atheism.¹³
- R. Respondent means an Employee, Student, or Third Party who is alleged to have violated this policy.
- S. Responsible Employee¹⁴ is any employee who has the authority to take action to redress Discrimination; who has been given the duty of reporting incidents of Discrimination or any other misconduct by students to the appropriate school designee; or whom an individual could reasonably believe has this authority or duty. At the College that includes all employees.
- T. Sex/Gender, means sex, and includes but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression. Sex also includes, but is not limited to, pregnancy, childbirth, breastfeeding, or any related medical condition(s).¹⁵
- U. Sexual Orientation means one’s preference in sexual partners and includes heterosexuality, homosexuality, or bisexuality.¹⁶
- V. Veteran or Military Status means service in the active military, naval, or air service.¹⁷

¹³ See Cal. Govt. Code § 12926(q) and Cal Ed. Code § 212.3

¹⁴ See 2001 *Revised Sexual Harassment Guidance*, Office of Civil Rights

¹⁵ See Cal. Govt. Code § 12926(r).

¹⁶ See Cal. Gov. Code § 12926(s).

¹⁷ See 38 C.F.R.