

Chapter 3 - General Institution

AP 3410 Prohibition of NonDiscrimination

References:

Education Code Sections ~~66250 et seq., 200 et seq., and 72010 et seq.~~; Penal Code Sections ~~422.55 et seq.~~; **212.5, 44100, and 66281.5; Title IX, Education Amendments of 1972;** Title 5 Sections 59300 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e; Board Policy 3435, 5500, 7360, 7365, 7700; Administrative Procedures 5500, 5520 and ~~Accreditation Standard II.B.2.c.~~

I. Introduction:

These written procedures and protocols are designed to ensure that individuals or groups subject to discrimination receive resources and information. All students, employees, or third parties who allege they have been subjected to discrimination shall be provided with information regarding options and assistance available to them. Resource information shall be available at Human Resources, Campus Safety, Student Health Services, and Student Life.

II. Jurisdiction:

Discrimination, as defined by BP 3410, Prohibition of Discrimination, committed by an employee or student, that occur on campus is subject to applicable employee or student discipline procedures. Discrimination committed by an employee or student, that occur off campus may be subject to applicable employee or student discipline procedures. The College may resolve incidents of discrimination through informal or formal procedures, as applicable.

Jurisdiction includes, but is not limited to the College's main campus; any other property used by the College; and off-campus conduct and/or actions, including, but not limited to electronic activity (such as e-mail, texting, telephone contact, social media). The Title IX Coordinator, or designee, determines if the off-campus conduct affects, disrupts, interferes or otherwise has the potential to have a continued adverse effect on students, employees, or third parties on-campus.

III. Duty to Report

All employees are responsible employees. Any employee who knows or reasonably should know of incidents that infringe upon BP 3410 shall promptly inform the Title IX Coordinator. Employees are required to disclose all information, including the names of the parties, even where the person has requested anonymity.

The Title IX Coordinator, or designee, will determine whether such confidentiality is appropriate given the circumstances of the incident.

In cases of discrimination that include incidents of sexual misconduct (including incest, sexual assault, sexual battery, and sexual exploitation), dating violence, domestic violence, or stalking, see AP 3540 for the appropriate reporting procedures.

IV. Title IX Coordinator

The Title IX Coordinator is the designated official responsible for oversight and implementation of Department of Fair Employment and Housing (DFEH), Office for Civil Rights (OCR), and Equal Employment Opportunity Committee (EEOC) compliance, as well as management of all discrimination complaints.

V. Confidentiality

Information regarding a complaint may be shared on a “need to know” basis with other campus employees, and/or with law enforcement. The Title IX Coordinator shall endeavor to honor any request for confidentiality; however, the Title IX Coordinator shall weigh requests for confidentiality against the College’s duty to provide a safe and nondiscriminatory environment for all members of the campus community. Confidentiality, therefore, cannot be ensured. The Title IX Coordinator, or designee, receives all complainant requests for confidentiality involving cases of discrimination, and determines if the request can be honored under the facts and circumstances of the particular case.

VI. Administrative Process:

The administrative process will be addressed in accordance with AP 3435, Discrimination and Harassment Investigations.

A. Notice:

Once written or verbal notice of discrimination has been received by the Title IX Coordinator, or designee, the complainant will be contacted to schedule a meeting with the Title IX Coordinator, or designee, and provided the following:

1. A copy of the College’s Board Policies and Administrative Procedures regarding discrimination.
2. A list of campus and local support services and resources available to complainant, including confidential and health services.
3. Notification of the right to file a written or verbal complaint.
4. The option to notify proper law enforcement authorities, including on-campus and local law enforcement, if applicable.

B. Interim Measures:

The complainant will be given the opportunity to identify and discuss reasonable interim measures, as appropriate.

The College will work with employees, students, and third parties to ensure their safety and well-being. This assistance may take the form of immediate interim actions or measures to support and protect the involved students, or employees in the immediate aftermath of an incident or while an investigation or disciplinary action is pending.

The Title IX Coordinator may determine measures, such as, but not limited to, solutions relating to adjusting academic schedules, Campus Safety escort services, restrictions for the respondent pending investigation, and other measures to promote the well-being, safety, and restoration of the campus community. The complainant shall be notified of any interim measures.

C. Informal Resolution:

Informal resolutions shall be addressed pursuant to AP 3534, Discrimination and Harassment Investigations. Selecting an informal resolution does not extend the time limitations for filing a formal complaint. Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. Even if the complainant does dismiss the complaint, the Title IX Coordinator, or designee, may require the investigation to continue if they determine that the allegations are serious enough to warrant an investigation.

D. Formal Investigation:

When informal resolution is inappropriate or not sought by the complainant, or when the complainant submits a written or verbal complaint, the Title IX Coordinator, or designee, shall conduct an investigation in accordance with AP 3435.

The standard of evidence applied to investigations of allegations of discrimination is the preponderance of the evidence, that is, 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.

E. Communication:

Complainants shall be kept informed of any ongoing investigation by the Title IX Coordinator, or designee. Information may include the status of any student or employee disciplinary proceedings or appeal.

All inquiries from reporters or other media representatives about alleged Discrimination shall be referred to the College's Public Information

Officer, who shall work with college officials to assure that all confidentiality rights are maintained.

Campus Safety will be responsible for maintaining the College's Annual Security Report, which includes a statement regarding the College's programs to prevent discrimination and procedures that should be followed after an offense occurs. The Annual Security Report does not include any identifying information, but does include statistics of reported crimes, including, but not limited to hate crimes.

VII. Advisors

Both the complainant and the respondent may elect to be accompanied by an advisor, including a collective bargaining representative, as permitted by existing bargaining agreements, to any meeting(s) or interview(s). The advisor's role is limited to observing, consulting with, and providing support to the complainant or respondent. An advisor may not participate in the investigation on the behalf of the complainant or respondent.

VIII. Concurrent Proceedings

College administrative proceedings are independent from criminal court, civil court, or other administrative proceedings. Discipline may be instituted against an individual also charged in civil or criminal courts based on the same facts that constitutes the alleged violation of applicable Board Policy. The College may proceed before, concurrently, or after any judicial, criminal, or administrative proceedings. In cases of discrimination, the College shall proceed with investigation without undue delay, in accordance with federal and state law requirements, and college policies and procedures.

IX. Retaliation

Any form of retaliation against anyone who has complained of or formally reported discrimination or has participated in an investigation of such a complaint, regardless of whether the complaint is substantiated, will not be tolerated, and violates Board Policy 7700, this procedure, and applicable law.

X. Education and Prevention

The Title IX Coordinator in partnership with Human Resources, Campus Safety, Student Health Services, and Student Life will develop as part of the College's established on-campus orientation program, education and prevention information about discrimination. Information regarding discrimination will be posted on the College's website and in other prominent locations. A copy of BP 3410, Prohibition of Discrimination, shall be provided to each employee at the time of hire.

A training program or informational services will be made available to all students at least once annually.

XI. Academic Freedom

The College recognizes that academic freedom is paramount for the unrestricted inquiry and exploration of ideas in education. Notwithstanding this, the right to academic freedom and the freedom of expression in the academic setting are not so absolute to the point of compromising a student's right to learn in an environment free of unlawful discrimination, harassment, and retaliation.¹

Speech of a faculty member related to scholarship and teaching generally is entitled to protection under the First Amendment when it addresses a matter of public concern *and* the interest in speaking outweighs the College's interest in regulating speech.² On balance, the College also has a strong interest in preventing conduct that rises to the level of discrimination or harassment based on a protected category. Such conduct can create a hostile environment that ultimately impedes the academic process.³

In order to justify the prohibition of speech or conduct by a faculty member related to scholarship or teaching, the College must show *more* than a mere desire to avoid discomfort or unpleasantness that can accompany an unpopular viewpoint.⁴ At the same time, for example, the use of profanity may not be protected under the First Amendment when it is not germane to the subject matter of the course in direct contravention of the College's harassment policy.⁵

The College affirms and protects the principles of Academic Freedom. At the same time, the College must consistently balance a faculty member's rights to academic freedom of expression with the College's legal obligation to maintain and preserve an educational and employment environment that is free from unlawful discrimination, harassment (including sexual harassment), and retaliation.

Education Programs

~~The College shall provide access to its services, classes, and programs without regard to race or ethnicity, religious creed, color, national origin, ancestry, physical disability, mental disability, pregnancy, medical condition, marital status, sex (gender), age, sexual~~

¹ *Bonnell v. Lorenzo*, 241 F.3d 800 (6th Cir. 2001).

² *Demers v. Austin*, 746 F.3d 402, 406 (9th Cir. 2014); *Bonnell*, 241 F.3d at 809.

³ *Bonnell*, 241 F.3d at 824.

⁴ *Bonnell*, 241 F.3d at 811.

⁵ *Bonnell*, 241 F.3d at 821.

~~orientation, military status, or veteran status, or the perception that a person has one or more of these characteristics.~~

~~All courses, including noncredit classes, shall be conducted without regard to the gender of the student enrolled in the classes.~~

~~The College shall not prohibit any student from enrolling in any class or course on the basis of gender.~~

~~Academic staff including, but not limited to, counselors, instructors, and managers, shall not offer program guidance to students which differs on the basis of gender.~~

~~Insofar as practicable, the College shall offer opportunities for participation in athletics equally to male and female students.~~

Nondiscrimination References for Employment

~~Education Code Sections 87100 et seq.; Government Code Sections 11135 et seq. and 12940 et seq.; and Title 5 Sections 53000 et seq.~~

Employment

~~The College shall provide equal employment opportunities to all applicants and employees regardless of race or ethnicity, religious creed, color, national origin, ancestry, physical or mental disability, pregnancy, medical condition, marital status, sex (gender), age, sexual orientation, military status, or veteran status, or the perception that a person has one or more of these characteristics.~~

~~All employment decisions including, but not limited to, hiring, retention, assignment, transfer, evaluation, dismissal, compensation, and advancement for all position classifications, shall be based on job-related criteria as well as be responsive to the College's needs.~~

~~All College employees are encouraged to be involved in the active promotion of diversity in employment, including recruitment.~~

~~The College shall, as necessary, provide professional and staff development activities and training to promote understanding of diversity.~~