Chapter 3 - General Institution

AP 3430  Prohibition of Harassment

References:

Education Code Sections 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.

I.  Introduction:

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

II.  Jurisdiction:

Any harassment, as defined by BP 3430, Prohibition of Harassment, whether committed by an employee, student, or member of the public, occurring on campus is subject to applicable employee or student discipline procedures. Incidents that occur off campus may be subject to applicable employee or student discipline procedures. The College may resolve incidents of harassment through informal or formal procedures, as applicable.

This jurisdiction also 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), when the Title IX Coordinator, or designee, determines that 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 College employees are Responsible Employees. Any employee who knows or has reason to know of incidents that infringe upon BP 3430 shall promptly inform the Title IX Coordinator or designee. 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 each such incident.
In cases of Sexual Harassment that include incidents of Sexual Misconduct (including incest, sexual assault, sexual battery, sexual exploitation and rape), Dating Violence, Domestic Violence, or Stalking, see AP 3540 for the appropriate reporting procedures.

IV. Title IX Coordinator

The Title IX Coordinator is the College official responsible for oversight and implementation of California Department of Fair Employment and Housing, U.S. Department of Education’s Office for Civil Rights, and Equal Employment Opportunity Commission compliance and management of all harassment complaints.

V. Confidentiality

Information regarding a complaint may be shared on a “need to know” basis with other campus employees, and with law enforcement, except for some limited exceptions. The Title IX Coordinator shall endeavor to honor any request for confidentiality; however, the Title IX Coordinator shall also 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 harassment, 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 harassment 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 harassment 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 harassment 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 with, or after any judicial, criminal, or administrative proceedings. In cases of harassment, 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 harassment 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 harassment. Information regarding harassment will be posted on the College’s internet website and in other prominent locations. A copy of BP 3430, Prohibition of Harassment, shall be provided to each employee at the time of hire.
The College will provide two hours of classroom, online, or other effective interactive training and education regarding sexual harassment to all supervisory employees. All new supervisory employees must be provided with the training and education within six months of their assumption of a supervisory position. The College will provide sexual harassment training and education to each supervisory employee once every two years.

The College will provide one hour of classroom, online, or other effective interactive training and education regarding sexual harassment to all non-supervisory employees. All new permanent non-supervisory employees must be provided with the training and education within six months of their assumption of a supervisory position. All adjunct faculty, short-term, temporary, professional experts, student employees, and volunteers must be provided with the training and education within 30 days or 100 hours of their first day of employment. The College will provide sexual harassment training and education to each non-supervisory employee once every two years.

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

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.
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.

The College is committed to providing an academic and work environment free of unlawful harassment. This procedure defines sexual harassment and other forms of harassment on campus and sets forth a procedure for the investigation and resolution of complaints of harassment by or against any staff or faculty member or student within the College.

This procedure and the related policy protects students, employees, unpaid interns, and volunteers in connection with all the academic, educational, extracurricular, athletic, and other programs of the College, whether those programs take place in the College facilities, a College vehicle, or at a class or training program sponsored by the College at another location.

Definitions

General Harassment: Harassment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, military status, or veteran status of any person, or the perception that a person has one or more of these characteristics, is illegal and violates College policy. Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment.

Harassment comes in many forms including, but not limited to, the following conduct:

Verbal: Inappropriate or offensive remarks, slurs, jokes, or innuendoes based on a person’s race, gender, sexual orientation, or other protected status. This may include, but is not limited to, inappropriate comments regarding an individual’s body, physical appearance, attire, marital status, or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats, or intimidation; or sexist, patronizing, or ridiculing statements that convey derogatory attitudes based on gender, race, nationality, sexual orientation, disability, or other protected status.

Physical: Inappropriate or offensive touching, assault, or physical interference with free

\(^5\) Bonnell, 241 F.3d at 821.
movement. This may include, but is not limited to, kissing, patting, lingering, or intimate touches; grabbing, pinching, leering, staring, unnecessarily brushing against; or blocking another person; or whistling or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's gender, race, national origin, sexual orientation, disability, or other protected status.

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

**Environmental:** A hostile academic or work environment exists where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, race, nationality, sexual orientation, disability, or other protected status; or gratuitous comments regarding gender, race, sexual orientation, disability, or other protected status that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment. It can also be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, genders, disabilities, or other protected statuses. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in his or her immediate surroundings, although the conduct is directed at others. A final scenario for a hostile work environment is one in which behaviors are directed at specific individuals for the purpose of aggressively humiliating, belittling, and/or ridiculing them. The determination of whether an environment is hostile is based on the totality of the circumstances including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work.

**Sexual 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 made a term or condition of an individual's employment, academic status, or progress, internship, or volunteer activity;
- submission to, or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual;
- 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; or
- submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding working conditions, employment or enrollment status, benefits and services, or activities available at or through the community college.
This definition encompasses two kinds of sexual harassment:

"Quid pro quo" sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.

"Hostile environment" sexual harassment occurs when unwelcome conduct, based on a person's gender or specific attributes, is sufficiently severe or pervasive so as to alter the conditions of an individual's learning or work environment; unreasonably interfere with an individual's academic or work performance; or create an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person would perceive the environment as hostile.

Sexual harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the victim would perceive the conduct as harassment based on sex.

Consensual Relationships

Romantic or sexual relationships between supervisors and employees or between managers, faculty, or staff members and students are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the manager, faculty, or staff member must evaluate the student's or employee's work or make decisions affecting the employee or student. The relationship may create an appearance of impropriety and lead to charges of favoritism by other students or employees. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing. In the event that such relationships do occur, the College has the authority to transfer any involved employee to eliminate or attenuate the supervisory authority of one over the other, or of a teacher over a student. Such action by the College is a proactive and preventive measure to avoid possible charges of harassment and does not constitute discipline against any affected employee.

Academic Freedom

To the extent the harassment policies and procedures are in conflict with the College's policy on academic freedom, the harassment policies and procedures shall prevail. If the faculty member wishes to use sexually explicit materials in the classroom as a teaching technique, the faculty member must review that use with the Department Chairperson and Division Dean who may consult with the Human Resources Office to determine whether or not this violates the sexual harassment policy.

Sexual Harassment Training

By January 1, 2006, Mt. San Antonio College shall provide at least two hours of
classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees who are employed as of July 1, 2005. All new supervisory employees must be provided with the training and education within six months of their assumption of a supervisory position. After January 1, 2006, Mt. San Antonio College shall provide sexual harassment training and education to each supervisory employee once every two years.

The training and education required by this procedure shall include information and practical guidance regarding the Federal and State statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

Training of all staff will be conducted. Training for academic staff should emphasize environmental harassment in the classroom.

In years in which a substantive policy or procedural change has occurred, all College employees will attend a training update and/or receive a copy of the revised policies and procedures.

A training program or informational services will be made available to all students at least once annually. The student training or informational services shall include an explanation of the policy, how it works, and how to file a complaint.

Participants in training programs will be required to sign a statement that they have either understood the policies and procedures, their responsibilities, and their own and the College’s potential liability, or that they did not understand the policy and desire further training.

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