

Chapter 3 - General Institution

AP 3430 Prohibition of Harassment

References:

Education Code Sections 212.5, 44100, and 66281.5 **and 66281.8**; Government Code 12940 **and 12923**; **Civil Code Section 51.9**; Title IX, ~~Education Amendments of 1972~~; **Title 2 Sections 11000 et seq.**; Title 5 Sections 59320 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e;

I. Introduction:

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~~ **employee** 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.

These written procedures and protocols are also intended to ensure that individuals or groups reporting harassment receive resources and information. All students, employees, unpaid interns, volunteers, or third parties who allege that they have been subjected to harassment shall be provided with information regarding options and assistance available to them.

II. Jurisdiction:

Any harassment, as defined by BP 3430 - Prohibition of Harassment, whether committed by an employee, student, unpaid intern, or volunteer occurring on campus is subject to applicable disciplinary 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, conduct in connection with the College's educational activity or other program, and conduct that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile work or educational environment or could otherwise reasonably negatively affect, disrupt, or interfere with students' or employees' access to the College's program(s) or activities.¹

¹ See Cal. Ed. Code § 66281.8(b)(3)(B), 67383, 76033, 76034; 34 C.F.R. § 668.46

For complaints of incidents of sexual harassment under Title IX, occurring prior to August 1, 2024, the College must proceed under AP 3434 - Responding to Harassment Based on Sex under Title IX. For other forms of sexual harassment or gender-based harassment, Complainants should use this procedure.

III. Definitions

General Harassment: Harassment based on race, religious creed, color, national origin, **immigration status**, ancestry, physical disability, mental disability, medical condition, **genetic information**, marital status, sex, **gender, gender identity, gender expression**, 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. **Harassment shall be found where a reasonable person with the same characteristics as the victim of the harassing conduct would be adversely affected to a degree that interferes with their ability to participate in or to realize the intended benefits of an institutional activity, employment, or resource.**

Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment. **For example, repeated derisive comments about a person's competency to do the job, when based on that person's gender, could constitute gender-based harassment.**

Harassment comes in many forms, including, but not limited to, the following conduct that could, depending on the circumstances, meet the definition above **or could contribute to a set of circumstances that meets the definition.**

Verbal: Inappropriate or offensive remarks, slurs, jokes, or innuendoes based on a person's race, gender, sexual orientation, or other protected status **characteristic**. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, **sexual prowess**, 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 **characteristic**.

Physical: Inappropriate or offensive touching, assault, or physical interference with free 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 **characteristic**. **Physical sexual harassment includes acts of sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. Sexual violence refers to 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. An individual also may be unable to give consent due to an intellectual or other disability.**

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 characteristic**. 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 characteristic**; or gratuitous comments regarding gender, race, sexual orientation, disability, or other protected **status characteristic** 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 characteristics**. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in ~~his or her~~ **their** 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: **In addition to the above, s**Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other **verbal, visual, or physical** conduct of a sexual nature **made by someone from, or in, the work or educational setting** when:

- submission to the conduct is **explicitly or implicitly** 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 **(as more fully described below)**; 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, **honors, programs,** or activities available at or through the community college.

This definition encompasses two kinds of sexual harassment:

1. "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.

2. "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~~s the conditions of an individual's learning academic or work environment; ~~unreasonably interfere with an individual's academic or work performance;~~ or ~~creates~~s 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 of the same gender would perceive the environment as hostile. **A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it unreasonably interfered with the person's academic or work performance or created an intimidating, hostile, or offensive learning or working environment.**²

Sexually 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 managers and employees or between managers, faculty members, 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 member, 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. **Employees must inform Human Resources of any romantic or sexual relationship they enter where there is an inherent imbalance of power.** 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.

IV. Reporting Harassment

Any person may report incidents of unlawful discrimination, harassment, or retaliation to the College Compliance Officer, or designee, in person, over the phone at (909) 274-4225, via email to eeo.titleix@mtsac.edu or online at <http://www.mtsac.edu/discriminationcomplaint>. Complainants have the option of filing a Complaint using the methods described above and in accordance with AP 3435 - Discrimination and Harassment Complaints and Investigations.

Any employee who is made aware of or witnesses incidents that infringe upon BP 3430 must inform the College Compliance Officer or Title IX Coordinator within 24 hours or as soon as practically possible even if they are unsure that

² Cal. Gov. Code 12940

the incident occurred or unsure whether it constitutes unlawful harassment.³ When reporting, the information must include the names of the parties, even if the person has requested anonymity.

An employee acting in their professional capacity as a therapist, physician, psychotherapist, member of the clergy, sexual assault counselor, domestic violence counselor, or another individual acting in a professional capacity for which confidentiality is mandated by law is considered a confidential employee and is exempt from having to report harassment concerns to the College Compliance Office, Title IX Coordinator or other any other designated employee, unless otherwise required by law. Confidential employees shall inform each person who provides them with information regarding sexual harassment of the person's ability to report to the College's Title IX Coordinator and direct the person to the Title IX Coordinator.

The College prohibits false reports of harassment. The College will address false reports in accordance with AP 3050 (employees) and AP 5520 (students).

V. College Compliance Officer

The College Compliance Officer is the designated College official responsible for the College's compliance with local, state, and federal laws and regulations pertaining to claims of discrimination in the College's educational programs, activities, and employment.⁴

VI. 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 College Compliance Officer shall endeavor to honor any request for confidentiality; however, the College Compliance Officer 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 College Compliance Officer, 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.⁵

The College Compliance Officer will determine whether such confidentiality requests are granted given the circumstances of each such incident.

All inquiries from reporters or other media representatives about alleged harassment, including sexual harassment, shall be referred to the College's Public Information Officer, who shall work with College officials to ensure that all confidentiality rights are maintained. Records will be maintained and secured in accordance with College Board Policies and Administrative Procedures and federal and state law.

³ See Cal. Ed. Code § 66281.8 (a)(2)

⁴ See 5 CCR, § 59324;

⁵ See Cal. Const. Art. I, § 1; Civil Code § 47; Ed. Code, §76234 and 87740; *Silberg v. Anderson* (1990) 50 Cal.3d. 205

VII. Administrative Process⁶:

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

A. Outreach

When a person reports actual or suspected harassment involving students, employees, unpaid interns, or volunteers to the College Compliance Officer, Title IX Coordinator, or designee, the College Compliance Officer, Title IX Coordinator, or designee will assess the report of harassment and provide outreach, as appropriate, to each identifiable student, employee, unpaid intern, or volunteer who is alleged to be the victim of the reported conduct. The outreach shall include all of the following information:

- 1. The College received a report that the person may have been a victim of harassment;**
- 2. A statement that retaliation for filing a complaint or participating in the complaint process, or both, is prohibited;**
- 3. Counseling resources within the College or in the community;**
- 4. Where a crime may have occurred, notice that the person has the right, but not the obligation, to report the matter to law enforcement;**
- 5. The College's complaint and investigation procedures;**
- 6. Potential interim measures, such as no-contact directives, housing changes, and academic schedule changes, where applicable;**
- 7. The importance of preserving evidence;**
- 8. A request for the person to meet with the College Compliance Officer, Title IX Coordinator, or designee, to discuss options for responding to the report; and**
- 9. The manner in which the College responds to reports of harassment and a description of potential disciplinary consequences.**

The College shall consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the College's policies.

B. Interim and Supportive Measures⁷

Interim measures are individualized services offered as appropriate to either or both the Complainant and Respondent ("Parties") in an alleged incident of

⁶ See Cal. Ed Code § 66281.8(b)(4)(A)(xxiii); 5 CCR, § 59300 et. seq.

⁷ See Cal. Ed Code § 66281.8(b)(4)(A)(xxi)

sexual misconduct, prior to an investigation or while an investigation is pending.

Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a Complaint has been filed.

The College will provide interim or supportive measures to Parties as appropriate and as reasonably available.

Interim and supportive measures may include changes to academic, living, transportation, and working situations under the College's control or protective measures such as counseling, extensions of deadlines, other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact, changes in work or housing locations under the College's control, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

No Contact Directives

When requested by a Complainant or otherwise determined to be appropriate, the College shall issue an interim no-contact directive prohibiting the Respondent from contacting the Complainant during the pendency of the investigation. The College shall not issue an interim mutual no-contact directive automatically but instead shall consider the specific circumstances of each case to determine whether a mutual no-contact directive is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to respond to interference with an investigation. If the College issues a no-contact directive after making a decision of responsibility, the no-contact directive shall be unilateral and only apply against the Party found responsible.

Upon the issuance of a mutual no-contact directive, the College shall provide the Parties with a written justification for the directive and an explanation of the terms of the directive. Upon the issuance of any no-contact directive, the College shall provide the Parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action.

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.

IX. Retaliation⁸

⁸ Cal. Ed Code § 66281.8(b)(4)(A)(xxiii)(II)

Any form of Retaliation against anyone who has complained of or reported harassment or has participated in an investigation of such a report or complaint, regardless of whether the report of complaint is substantiated, will not be tolerated and violates Board Policy 3430, Board Policy 7700, and applicable law.⁹

X. 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 Division to determine whether or not this violates the sexual harassment College policy.~~

No provision of this Administrative Procedure shall be interpreted to prohibit conduct protected by BP/AP 4030 - Academic Freedom, or article 18.O, Academic Freedom, of the collective bargaining agreement with the Faculty Association. Freedom of speech and academic freedom are, however, not limitless and this procedure will not protect speech or expressive conduct that violates federal or California anti-discrimination laws.

XI. Sexual Harassment Training¹⁰

~~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 **and faculty** who are employed as of July 1, 2005 and at least one hour of paid classroom, online, or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees. All new supervisory employees must be provided with the training and education within six months of their assumption of a supervisory **their 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.** 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, **a review of "abusive conduct," and harassment based on gender identity, gender expression, and sexual orientation. The training for employees shall address the employee's obligation to report sexual harassment and instruction on how to report sexual harassment to the Title IX Coordinator.** The training and education shall also include practical examples aimed at instructing supervisors **and**

⁹ 5 CCR § 59300 et seq.; 20 U.S.C. § 1681 et seq.; 34 C.F.R. § 106;

¹⁰ **See Cal. Gov. Code § 12950.1 & 34 C.F.R. § 106.8 (d)(1)**

faculty 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. **The manager's and faculty harassment training must also address potential exposure and liability for employers and individuals, the manager's and faculty's obligation to report sexual harassment, discrimination, and retaliation when they become aware of it, and appropriate remedial measures to correct harassing behavior.**

~~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.

The College will maintain appropriate records of the training provided, including the names of the supervisory employees trained, the date of training, sign in sheets, copies of all certificates of attendance or completion issued, the type of training provided, a copy of all written or recorded training materials, and the name of the training provider. If the training is provided by webinar, the College will maintain a copy of the webinar, all written materials used by the training and all written questions submitted during the webinar, and document all written responses or guidance the trainer provided during the webinar. The College will retain these records for at least two years.

A copy of BP 3430 - Prohibition of Harassment, shall be provided to each employee at the time of hire.

XII. Education and Prevention for Students¹¹

The College Compliance Officer, in partnership with Human Resources, Police and 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.

In order to take proactive measures to prevent sexual harassment and violence toward students, the College will provide preventive education programs and

¹¹ See Cal Ed. Code § 67385.7

make victim resources, including comprehensive victim services, available to students. The College will include such education in their orientation programs for new students, and in training for student-athletes. These programs will include a discussion of what constitutes sexual harassment and sexual violence, the College's policies and disciplinary procedures, and the consequences of violating these policies.

The education programs will also include information aimed at encouraging students to report incidents of sexual harassment to the appropriate College and law enforcement authorities. Since victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of College or campus rules were involved, the College will inform students that the primary concern is for student safety and that use of alcohol or drugs never makes the victim at fault for sexual harassment.

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

Beginning on September 1, 2024, and each year thereafter, students attending the College shall complete annual training within six months of the beginning of the academic year.

The annual training for students shall cover all of the following topics:

- A. Common facts and myths about the causes of sexual violence and sexual harassment.
- B. What constitutes sexual violence and sexual harassment, including information on how to file internal administrative complaints with the institution of higher education and how to file criminal charges with local law enforcement officials.
- C. The availability of, and contact information for, campus and community resources for students who are victims of sexual violence and sexual harassment.
- D. Methods of encouraging peer support for victims and the imposition of sanctions on offenders.
- E. Information regarding campus, criminal, and civil consequences of committing acts of sexual violence and sexual harassment.
- F. The contact information of a Title IX coordinator or a similar position.
- G. Statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity.

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