

**P&P 3433 PROHIBITION OF SEXUAL HARASSMENT UNDER TITLE IX**

**Reason for Changes**

- Legal Update 40 – The Service updated this policy to add optional language regarding the prevalence of sexual harassment and sexual violence.

*(For more info on SBCCD's process for Board Policies and Administrative Procedures, visit <https://sbccd.edu/ap2410>.)*

<b>Review Level:</b> 2   Legal Edit (Non 10+1)	<b>Review Level Approved by PPAC:</b> 12/12/2022	<b>Constituent Review:</b> Due 1/31/2023	<b>PPAC Info Item:</b> 2/13/2023
<b>BOT 1<sup>st</sup> Reading:</b> 3/9/2023	<b>BOT 2<sup>nd</sup> Reading &amp; Approval:</b> 4/13/2023		

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With Changes Redlined

The District recognizes that sex discrimination, including sexual harassment and violence, harms all students, undermines students' physical safety, impedes students' ability to learn, and can reinforce social inequality throughout a student's lifetime.

All forms of sexual harassment are contrary to basic standards of conduct between individuals. State and federal law and this policy prohibit sexual harassment and the District will not tolerate sexual harassment. The District is committed to providing an academic and work environment that respects the dignity of individuals and groups. The District shall be free of sexual harassment and all forms of sexual intimidation and exploitation including acts of sexual violence. The District has a responsibility to make reasonable efforts to respond effectively when sexual harassment is reported to, or observed by, District employees.

The District seeks to foster an environment in which all employees, students, applicants for employment, and applicants for admission feel free to report incidents of sexual harassment in violation of this policy and Title IX, without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against any individual for filing a complaint of sexual harassment in violation of this policy and Title IX or for participating, or refusing to participate, in a sexual harassment investigation. The District will investigate all allegations of Title IX retaliation swiftly and thoroughly. If the District determines that someone has retaliated, it will take reasonable steps within its power to stop such conduct. Individuals who engage in Title IX retaliatory conduct are subject to disciplinary action, up to and including termination or expulsion.

Any employee, student, applicant for employment, or applicant for admission who believes he/she/they has been harassed or retaliated against in violation of this policy should immediately report such incidents by following the procedures described in AP 3434 Responding to Harassment Based on Sex under Title IX. The District requires supervisors to report all incidents of harassment and retaliation that come to their attention.

This policy applies to all aspects of the academic environment, including but not limited to classroom conditions, grades, academic standing, employment opportunities, scholarships, recommendations, disciplinary actions, and participation in any community college activity. In addition, this policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities, and compensation.

To this end, the Chancellor shall ensure that the institution undertakes education and training activities to counter sexual harassment and to prevent, minimize, or eliminate any hostile environment that impairs access to equal education opportunity or impacts the terms and conditions of employment.

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The Chancellor shall establish procedures that define sexual harassment on campus. The Chancellor shall further establish procedures for employees, students, and other members of the campus community that provide for the investigation and resolution of complaints regarding sexual harassment in violation of this policy, and procedures to resolve complaints of sexual harassment in violation of this policy. State and federal law and this policy prohibit retaliatory acts against all participants by the District, its employees, students, and agents.

The District will publish and publicize this policy and related written procedures (including the procedure for making complaints) to administrators, faculty, staff, students, applicants for employment, and applicants for admission, particularly when they are new to the institution. The District will make this policy and related written procedures (including the procedures for making complaints) available in all administrative offices and will post them on the District's website.

Employees who violate the policy and procedures may be subject to disciplinary action up to and including termination. Students who violate this policy and related procedures may be subject to disciplinary measures up to and including expulsion. Volunteers or unpaid interns who violate this policy and related procedures may be subject to disciplinary measure up to and including termination from the volunteer assignment, internship, or other unpaid work experience program.

**References:**

Title IX of the Education Amendments Act of 1972;  
34 Code of Federal Regulations Part 106

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The District is committed to providing an academic and work environment free of unlawful sex harassment under Title IX. This procedure defines sexual harassment on campus.

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

**Definitions**

**Sexual Harassment under Title IX:** Conduct that satisfies one or more of the following:

- A District employee conditions the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (*quid pro quo* harassment);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity;
- Sexual assault, including the following:
  - **Sex Offenses.** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
  - **Rape** (except Statutory Rape). The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their

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- temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the genital or anal opening of the body of another person.
- **Sodomy.** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
  - **Sexual Assault with an Object.** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything the offender uses other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.
  - **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity.
  - **Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse.**
    - **Incest.** Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
    - **Statutory Rape – Non-Forcible.** Sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.
  - **Dating violence.** Violence against a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a relationship will be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
  - **Domestic Violence.** Violence committed:
    - By a current or former spouse or intimate partner of the victim;
    - By a person with whom the victim shares a child in common;
    - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
    - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of California; or
    - By any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws of California.
  - **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her/their safety or the safety of others or suffer substantial emotional distress.

**References:**

Title IX, Education Amendments of 1972; Title 5 Sections 59320 et seq.;  
Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e

**END OF RECOMMENDATION**