



Policy

3433 Prohibition of Sexual Harassment under Title IX

All forms of sexual harassment are contrary to 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 seeks to foster an environment in which all employees, students, applicants for employment, and applicants for admission feel free to report alleged 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 thoroughly and in a timely manner. 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, trustee, 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. 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 prevent sexual harassment.

The Chancellor shall establish procedures that define sexual harassment on campus. The Chancellor shall further establish procedures for employees, students, trustees, 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.

1 The District will publish and publicize this policy and related written procedures (including the procedure
2 for making complaints), BP 3-8020, and academic freedom policies BP 4030 and 5-8081 to administrators,
3 faculty, staff, students, trustees, applicants for employment, and applicants for admission, particularly
4 when they are new to the institution. The District will make this policy and related written procedures
5 (including the procedures for making complaints) available in all administrative offices and will post them
6 on the District’s website.

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

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15 **Cross References (see also):**

- 16 YCCD Policy 3430 – Prohibition of Harassment
- 17 YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX
- 18 YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations
- 19 YCCD Policy 3540 – Sexual and Other Assaults on Campus
- 20 YCCD Policy 3-8020 – Due Process
- 21 YCCD Policy 5500 – Standards of Student Conduct
- 22 YCCD Policy 5530 – Complaint Policy
- 23 YCCD Policy 7700 – Whistleblower Protection

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25 **References:**

26 [Title IX, Education Amendments of 1972](#); [34 Code of Federal Regulations Part 106](#)

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28 **Adopted:** February 10, 2021

29 **Last Reviewed:** February 10, 2021

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Administrative Procedure**3433 Prohibition of Sexual Harassment under Title IX**

The District is committed to providing an academic and work environment free of unlawful sex harassment under Title IX. This procedure defines sexual harassment occurring in any District education program or activity.

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

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (quid pro quo harassment);
2. Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
3. Sexual assault, as defined in 34 Code of Federal Regulations Sections 668.46(a), dating violence, domestic violence or stalking as defined in the Violence Against Women Act, including the following:
 - a. 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.
 - b. 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 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.
 - c. 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.
 - d. 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.
 - e. 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.
 - f. Sex Offenses, Non-Forcible Unlawful, Non-Forcible Sexual Intercourse.
 - i. Incest. Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- 1 ii. Statutory Rape. Non-forcible sexual intercourse with a person who is under
2 the statutory age of consent. There is no force or coercion used in Statutory
3 Rape; the act is not an attack.
- 4 g. Dating Violence. Violence against a person who is or has been in a social relationship
5 of a romantic or intimate nature with the victim. The existence of a relationship will
6 be determined based on a consideration of the following factors: the length of the
7 relationship, the type of relationship, and the frequency of interaction between the
8 persons involved in the relationship.
- 9 h. Domestic Violence. Violence committed:
 - 10 i. By a current or former spouse or intimate partner of the victim;
 - 11 ii. By a person with whom the victim shares a child in common;
 - 12 iii. By a person who is cohabitating with, or has cohabitated with, the victim as
13 a spouse or intimate partner;
 - 14 iv. By a person similarly situated to a spouse of the victim under the domestic or
15 family violence laws of California.
- 16 i. Stalking. Engaging in a course of conduct directed at a specific person that would
17 cause a reasonable person to fear for his/her/their safety or the safety of others or
18 suffer substantial emotional distress.
- 19 j. Additional Definitions
 - 20 i. Consent. Consent means affirmative, conscious, and voluntary agreement to
21 engage in sexual activity. Both Parties must give affirmative consent to sexual
22 activity. It is the responsibility of each person involved in the sexual activity
23 to ensure that he/she/they has the affirmative consent of the other or others
24 to engage in the sexual activity. Lack of protest, lack of resistance, or silence
25 does not indicate consent. Affirmative consent must be ongoing throughout
26 a sexual activity and one can revoke his/her/their consent at any time. The
27 existence of a dating relationship between the persons involved, or the fact
28 of past sexual relations between them, is not an indicator of consent.
 - 29 ii. Force. Force is the use of physical violence and/or physical imposition to gain
30 sexual access. Force also includes threats, intimidation (implied threats), and
31 coercion that is intended to overcome resistance or produce consent (e.g.,
32 “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).
33 Silence or the absence of resistance alone is not consent. Consent is not
34 demonstrated by the absence of resistance. While resistance is not required
35 or necessary, it is a clear demonstration of non-consent.
 - 36 iii. Coercion. Coercion is unreasonable pressure for sexual activity. Coercive
37 conduct differs from seductive conduct based on factors such as the type
38 and/or extent of the pressure used to obtain consent. When someone makes
39 clear that they do not want to engage in certain sexual activity, that they want
40 to stop, or that they do not want to go past a certain point of sexual
41 interaction, continued pressure beyond that point can be coercive.
 - 42 iv. Incapacitation. A person cannot consent if they are unable to understand
43 what is happening or is disoriented, helpless, asleep, or unconscious, for any
44 reason, including by alcohol or other drugs. As stated above, a Respondent
45 violates this policy if they engage in sexual activity with someone who is
46 incapable of giving consent. It is a defense to a sexual assault policy violation
47 that the Respondent neither knew nor should have known the Complainant
48 to be physically or mentally incapacitated. “Should have known” is an
49 objective, reasonable person standard that assumes that a reasonable person

1 is both sober and exercising sound judgment. Incapacitation occurs when
2 someone cannot make rational, reasonable decisions because they lack the
3 capacity to give knowing/informed consent (e.g., to understand the “who,
4 what, when, where, why, or how” of their sexual interaction). Incapacitation
5 is determined through consideration of all relevant indicators of an
6 individual’s state and is not synonymous with intoxication, impairment,
7 blackout, and/or being drunk. This policy also covers a person whose
8 incapacity results from a temporary or permanent physical or mental health
9 condition, involuntary physical restraint, and/or the consumption of
10 incapacitating drugs.

11 v. Sexual Exploitation. Sexual exploitation is defined as taking non-consensual
12 or abusive sexual advantage of another for their own benefit or for the
13 benefit of anyone other than the person being exploited, and that conduct
14 does not otherwise constitute sexual harassment under this policy. Examples
15 of sexual exploitation include, but are not limited to:

- 16 • Sexual voyeurism (such as observing or allowing others to observe a
17 person undressing or using the bathroom or engaging in sexual acts,
18 without the consent of the person being observed).
- 19 • Invasion of sexual privacy.
- 20 • Taking pictures, video, or audio recording of another in a sexual act,
21 or in any other sexually-related activity when there is a reasonable
22 expectation of privacy during the activity, without the consent of all
23 involved in the activity, or exceeding the boundaries of consent (such
24 as allowing another person to hide in a closet and observe sexual
25 activity, or disseminating sexual pictures without the photographed
26 person’s consent), including the making or posting of revenge
27 pornography.

28 vi. Discrimination. Discrimination is defined as actions that deprive, limit, or
29 deny other members of the community of educational or employment
30 access, benefits, or opportunities.

31 vii. Intimidation. Intimidation is defined as implied threats or acts that cause an
32 unreasonable fear of harm in another.

33 viii. Hazing. Hazing is defined as acts likely to cause physical or psychological
34 harm or social ostracism to any person within the Recipient community, when
35 related to the admission, initiation, pledging, joining, or any other group-
36 affiliation activity.

37 ix. Bullying. Bullying is defined as repeated and/or severe aggressive behavior
38 likely to intimidate or intentionally hurt, control, or diminish another person,
39 physically and/or mentally, that is not speech or conduct otherwise protected
40 by the First Amendment. Violation of any other Recipient policies may
41 constitute a Civil Rights Offense when a violation is motivated by actual or
42 perceived membership in a protected class, and the result is a discriminatory
43 limitation or denial of employment or educational access, benefits, or
44 opportunities.

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46 II. Procedure Process for Investigation of Title IX Complaints

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48 In order to prevent conflict of interest and possible contamination of the investigative processes, Title IX
49 Investigations to be conducted in the following manner:

- Student vs. Student = Assigned to Campus Safety Title IX Officer to Investigate
- Student vs. Employee = Assigned for Investigation through Human Resources
- Employee vs. Employee = Assigned for Investigation through Human Resources

A. Step 1: Intake

1. Receive Formal Complaint/Incident reported through the District’s online reporting system.
2. Determination by the Director of District Public Safety, Compliance and Emergency Preparedness for appropriate assignment based on the status of the involved parties (student, employee, etc.) using above criteria.
 - a. In conjunction with the appropriate College Title IX Coordinator or Human Resources administrator, consideration should be immediately given to whether any involved person should be removed from the campus pending completion of informal resolution or investigation.
 - b. Required notifications:
 - i. For students, provided by Student Services.
 - ii. For employees, provided by Human Resources.
 - c. Note: If the conduct as alleged by the Complainant would not constitute sexual harassment, as defined above, or did not occur within the District’s program or activity, the District must terminate its grievance process with regard to that conduct, however, every effort will be made to assist the Complainant to seek the appropriate resources and/or reporting entities.

B. Step 2: Attempt to Resolve

1. Undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling, training, etc.
 - a. Take interim steps to protect a Complainant from coming into contact with an accused individual, especially if the Complainant is a victim of sexual violence.

C. Step 3: Investigate (in accordance with BP 3-8020)

1. Initiate a fact-finding investigation (minimally to include the following):
 - a. Interviewing the Complainant(s)
 - b. Interviewing the accused individual
 - c. Identifying and interviewing witnesses and evidence identified by each party
 - d. Identifying and interviewing any other witnesses, if needed
 - e. Reminding all individuals interviewed of the District’s no-retaliation policy
 - f. Reviewing personnel/academic files of all involved parties
 - g. Reach a conclusion as to the allegations

Title IX YCCD Investigation Report Format

- I. Investigation Overview/Executive Summary
- II. Summary of Findings
- III. The Investigative Background
 - A. Witnesses
 - B. Documents
 - C. The Policies
 - D. Scope of Findings
 - E. Evidentiary Standard

- F. Independence
- G. Timing
- IV. Factual Background
 - A. Department and Parties
 - B. Interim Measures
 - C. Notice To
- V. Overview of Allegations and Response
 - A. (Name)'s Complaint
 - i. Overview of (Name)'s Perspective
 - ii. Requested Resolution
 - iii. Timing of Complaint
 - B. (Name)'s Response
 - i. Overview of (Name)'s Perspective
 - ii. Requested Resolution
 - iii. Timing of Complaint
- VI. Chronology of Undisputed Facts and Key Events
 - A. Chart and Description or Other Evidence
 - B. Factual Findings Based on Undisputed Facts
- VII. Summary of Disputed Allegations
- VIII. Evidence, Analysis and Findings Related to the Disputed Allegations
 - A. Issue 1
 - B. Issue 2
 - C. Issue 3
 - D. Credibility Assessment
- IX. Policy Analysis and Determination

D. Step 4: Report Findings

1. Draft report completed, turned in to Senior Director of Human Resources for review.
2. A review of the completed report will be conducted and corrections made as needed.
3. Report corrections completed, etc.

E. Step 5: Final Report Distribution

1. Student vs. Student – Student Conduct Officer
2. Employee vs. Student – Student Conduct Officer and/or Human Resources Administrator
3. Employee vs. Employee – Human Resources Administrator

F. Step 6: Corrective Action Taken

1. Student Action – Student Conduct Officer
2. Employee Action – As deemed appropriate by Human Resources Administrator or Manager/Dean as determined through disciplinary processes

G. Step 7: Notifications

1. All notification letters regarding employees sent by Human Resources.
2. All notification letters for investigations regarding students will be sent by Title IX Coordinator.

Cross References (see also):

YCCD Policy 3430 – Prohibition of Harassment

YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX

YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations

- 1 YCCD Policy 3540 – Sexual and Other Assaults on Campus
- 2 YCCD Policy 3-8020 – Due Process
- 3 YCCD Policy 5500 – Standards of Student Conduct
- 4 YCCD Policy 5530 – Complaint Policy
- 5 YCCD Policy 7700 – Whistleblower Protection

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7 **References:**

8 [Title IX, Education Amendments of 1972](#); Title 5 Sections [59320 et seq.](#); [Title VII of the Civil Rights Act of](#)
9 [1964, 42 U.S. Code Annotated Section 2000e](#)

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11 **Procedure Last Revised:** February 10, 2021

12 **Last Reviewed:** February 10, 2021