AP 3430  Prohibition of Harassment and Sexual Violence and Hate Crimes

Reference:
Education Code Sections 212.5; 66281.5; 67385.7
Title IX, Education Amendments of 1972; Title 5, Sections 59320 et seq.

The District 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 District. It also establishes a procedure for administrative response to hate crimes within the District. This policy also outlines the District policy for providing prevention and educational information regarding sexual violence.

Definitions:

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;

- 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 benefits and services, honors, programs, 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 sex 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 for 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.

Approved by the Board of Trustees December 11, 2001
Sexual harassment can consist of virtually any form or combination of verbal, physical, visual or environmental conduct. It need not be explicit or even specifically directed at the victim. 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.

**Examples:** Harassment includes, but is not limited to the following misconduct:

- **Verbal:** Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's protected status, including but not limited to sex. 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 of a sexual nature; or sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular gender.

- **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, whistling or sexual gestures.

- **Visual or Written:** The display or circulation of offensive sexually oriented or other discriminatory visual or written material. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.

- **Environmental:** An academic or work environment that is permeated with racially or sexually-oriented talk, innuendo, insults or abuse 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. An environment may be hostile if unwelcome sexual behavior or other harassing behavior based on a protected status is directed specifically at an individual or if the individual merely witnesses unlawful harassment in his or her immediate surroundings.

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.

Romantic or sexual relationships between supervisors and employees or between administrators, 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 administrator, faculty or staff member must evaluate the student 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. By definition, sexual harassment is not within the course and scope of an individual’s employment with the community District.

Hate crimes consist of crimes which specifically target individuals or groups for characteristics relating to their ethnicity, color, religion, ancestry, national origin, disability, sex (i.e., gender), sexual orientation, class, or relating to the perception that a person has one or more of the foregoing characteristics.

Approved by the Board of Trustees December 11, 2001
**Academic Freedom**
To the extent the sexual harassment policy is in conflict with the District's policy on academic freedom, the sexual harassment policy shall prevail. If the faculty member wishes to use sexually explicit materials in the classroom to stimulate dialogue as part of classroom materials or as a teaching technique, the faculty member must review that use with an administrator to determine whether or not this violates the sexual harassment policy.

To the extent the hate crimes policy is in conflict with the District's policy on academic freedom, the hate crimes policy shall prevail.

**Complaint Procedure for Investigation and Resolution of Claims of Harassment Reference:**
**Title 5, Section 59320**

The Vice President of Administrative Services is the “responsible District officer” charged with receiving complaints of sexual harassment or other forms of prohibited harassment, and coordinating their investigation.

The Gavilan College “Alleged Discrimination/Harassment Complaint” form is attached and made part of the procedure.

The actual investigation of complaints may be assigned by the President of the College other staff or to outside persons or organizations under contract with the district. This shall occur whenever the Vice President of Administrative Services is named in the complaint or implicated by the allegations in the complaint.

A student who believes he or she has been sexually harassed, or harassed based on any other protected status, shall make a complaint in writing using the Gavilan College “Alleged Discrimination/Harassment Complaint” form, within one year of the date of the alleged harassment or the date on which the complainant knew or should have known of the facts underlying the complaint, to any of the following:

- The Vice President, Administrative Services;
- The President of the College;
- The Vice President, Student Services;
- The Vice President, Instructional Services

A staff or faculty member who believes he or she has been sexually harassed, or harassed based on any other protected status, shall make a complaint in writing using the Gavilan College “Alleged Discrimination/Harassment Complaint” form to any of the following:

- The Vice President, Administrative Services;
- The President of the College;
- The Vice President, Student Services;
- The Vice President, Instructional Services

Any District employee who receives a harassment complaint shall notify the Vice President of Administrative Services immediately.

Upon receiving notification of a harassment complaint, the Vice President, Administrative Services shall:

Advise the complainant that he or she need not participate in an informal resolution of the complaint, and that he or she may file a complaint with the Office of Civil Rights of the

Approved by the Board of Trustees December 11, 2001
U.S. Department of Education. The Vice President of Administrative Services shall also notify the Chancellor of California Community Colleges of the complaint.

Authorize the investigation of the complaint, and supervise and/or conduct a thorough, prompt and impartial investigation of the complaint.

The investigation will include interviews with the complainant, the accused harasser, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.

Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.

Set forth the results of the investigation in a written report. The written report shall include a description of the circumstances giving rise to the complaint, a summary of the testimony of each witness, an analysis of any relevant data or other evidence collected during the investigation, a specific finding as to whether discrimination did or did not occur with respect to each allegation in the complaint, and any other appropriate information.

Provide the complainant with a copy or summary of the investigative report within ninety days from the date the District received the complaint. The complainant shall also be provided with a written notice setting forth the determination of the Vice President of Administrative Services as to whether sexual harassment or harassment based on any other protected status did or did not occur with respect to each allegation in the complaint; a description of action taken, if any, to prevent similar problems from occurring in the future; the proposed resolution of the complaint; and notice of the complainant's right to appeal to the District's Board of Trustees and the State Chancellor's Office. The results of the investigation and the determination as to whether harassment occurred shall also be reported to the alleged harasser, and the appropriate academic or administrative official(s).

To meet the requirements in Section 67385.7 and Section 66281.5 of the Education Code as amended through AB 1088, the college will:

- Post sexual violence prevention and educational information on the college website and in both on-line and on-ground New Student Orientations
- Provide a printed brochure and include on the website common facts and myths about the causes of sexual violence that includes:
  - Information on how to file criminal charges with local law enforcement
  - Contact information for campus and community resources for students who are victims of sexual violence
  - Information on campus, criminal and civil consequences of committed acts of sexual violence
  - Include information in each printed and online class schedule stating where information related to sexual violence is posted

Approved by the Board of Trustees December 11, 2001
If harassment occurred, the District shall take remedial or disciplinary action against the harasser. The action will be prompt, effective, and commensurate with the severity of the offense. If discipline is imposed, the nature of the discipline will not be communicated to the complainant.

Disciplinary actions against faculty, staff and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.

The District shall also take reasonable steps to protect the complainant from further harassment and to protect the complainant from retaliation as a result of communicating the complaint. The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties.

If the complainant is not satisfied with the results of the administrative determination, he or she may, within fifteen days, submit a written appeal to the Board of Trustees. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within 45 days after receiving the appeal.

A copy of the decision rendered by the Board shall be forwarded to the complainant and to the State Chancellor’s Office. The complainant shall also be notified of his or her right to appeal this decision.

If the Board does not act within forty-five days the administrative determination shall be deemed approved and shall become the final decision of the District in the matter.

The complainant shall have the right to file a written appeal with the State Chancellor’s Office within thirty days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Section 59350 of Title 5 of the California Code of Regulations.

In any case involving employment discrimination, the complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the Department of Fair Employment and Housing. In such cases, the complainant may also file a petition for review with the state Chancellor’s Office within thirty days after the governing board issues the final decision or permits the administrative decision to become final.

Within 150 days of receiving a complaint, the District shall forward to the State Chancellor’s Office the original complaint, the investigative report, a copy of the written notice to the complainant setting forth the results of the investigation, a copy of the final administrative decision rendered by the Board or indicating the date upon which the decision became final, and a copy of the notification to the complainant of his or her appeal rights. If, due to circumstances beyond its control, the District is unable to comply with the 150-day deadline for submission of materials, it may file a written request for an extension of time no later than ten days prior to the expiration of the deadline.

*Dissemination of Policy and Procedures*

District Policy and Procedures related to harassment will be provided to all students, faculty members, members of the administrative staff and members of the support staff, and will be posted on campus.

When hired, employees are required to sign that they have received the policy and procedures, and the signed acknowledgment of receipt is placed in each employee’s personnel file.

Approved by the Board of Trustees December 11, 2001
In addition, these policies and procedures are incorporated into the District's course catalogs and orientation materials for new students.

Training

Training of academic staff should be conducted emphasizing environmental harassment in the classroom. Each participant in the training should be required to sign a statement where they check one of two boxes:

I have participated in training regarding the District's sexual harassment policy. I understand the policy and accept my obligation to comply with the policy.

OR

I do not understand the District's sexual harassment policy and wish additional training.

Procedure for Prevention and Resolution of Hate Crime Victimization

The District will seek to prevent and eradicate hate crimes on its campus.

The Vice President of Administrative Services will be the "responsible District officer" in following up hate crimes. Upon receiving notice of a possible hate crime from the college Security department, the VP of Administrative Services shall:

--as soon as is practical report to the Public Information Officer and college president the general nature, as well as the approximate time and place, of the hate crime or suspected crime

The Public Information Officer will, in a timely matter, publicize to all staff and students that an incident that is or may be a hate crime has been committed; the general nature, and approximate time and place of the crime will be disclosed.

--turn over all information about the alleged hate crime to local law enforcement agents for investigation.

The College President will, in a timely and forceful manner, issue a public statement describing the hate crime or suspected crime in general terms, and condemning hate crimes on a campus devoted to the pursuit of higher learning.

Amended by the Board of Trustees: October 10, 2006

Amended by the Board of Trustees: Nov. 11, 2003

Approved by the Board of Trustees December 11, 2001
GAVILAN COLLEGE
ALLEGED DISCRIMINATION/HARASSMENT COMPLAINT

*PLEASE PRINT*
NAME: _______________________________ DATE: _______________________________
(Complainant) (of Alleged Discrimination)

ADDRESS: _______________________________ (Street or PO Box) _______________________________
(Zip Code)

HOME PHONE: (______)_____________________ MESSAGE: (______)_____________________

COMPLAINT STATUS: ____Student ____Management ____Faculty
____Classified ____Job Applicant ____Other (please specify)______________________________

I WISH TO COMPLAIN AGAINST: Name of person, college, or activity: _______________________________
Address: ____________________________________________ (City) _______________________________
(Zip Code)

I ALLEGED THAT I WAS DISCRIMINATED AGAINST ON THE BASIS OF: Please check only those which apply
____Race/Ethnicity ____Religion/Creed ____Color ____National Origin ____Ancestry
____Disability / Date Disability Disclosed __________, To Whom ____________________________
____Gender
____Marital Status ____Sexual Orientation ____Sexual Harassment ____Age

I FEEL I WAS DISCRIMINATED AGAINST FOR THE FOLLOWING REASON(S): Describe the incident, the participants and
any attempts you have made to solve the problem. Give relevant dates, times and places.

_____________________________________________________________________________________
_____________________________________________________________________________________

WITNESSES: Persons who can provide information regarding this complaint.

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>PHONE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
_____________________________________________________________________________________
_____________________________________________________________________________________

REMEDY SOUGHT: Specify what you think can and should be done to solve the problem.
_____________________________________________________________________________________
_____________________________________________________________________________________

I CERTIFY THAT THIS INFORMATION IS CORRECT AND TO THE BEST OF MY KNOWLEDGE

______________ (Signature of Complainant) __________ (Date) (use additional paper if necessary)

______________ (Signature of Person Helping Complainant Complete Complaint Form) (Date)

Approved by the Board of Trustees December 11, 2001