

# HARTNELL COLLEGE

## 5000 SERIES HUMAN RESOURCES AND STAFF DIVERSITY

### B. Equal Employment Opportunity

#### 5120 Sexual Harassment Policy

It is the policy of the Governing Board of the Hartnell Community College District to provide an educational and business environment free of unwelcome sexual advances, request for sexual favors, and other verbal, visual, or physical conduct or communications constituting sexual harassment, as defined by Education Code Section 212.5 and otherwise prohibited by state and federal statutes.

It is unlawful and a violation of this policy for anyone who is authorized to recommend or make personnel or educational decisions affecting an employee or student or who is otherwise authorized to transact business or perform other acts or services on behalf of the District to engage in sexual harassment.

Allegations of sexual harassment shall be thoroughly investigated in accordance with the District's sexual harassment/discrimination complaint procedures.

It is a violation of this policy to retaliate against a sexual harassment complainant or witness. The initiation of a complaint or participation as a witness in a sexual harassment investigation shall not affect the complainant's or witness's future business dealings with the District, his or her employment, compensation, work assignments, his or her grades, class standing, or other matters pertaining to his or her status as an employee or student in any District program.

A complaint and the results of the investigation shall be confidential to the extent maintenance of confidentiality is consistent with a thorough investigation and appropriate disposition of the matter.

Rules and procedures for reporting charges of sexual harassment and pursuing available remedies may be obtained from the Director of Human Resources and Staff Diversity or any employee in the Office of Human Resources and Staff Diversity.

#### A. Definition of Sexual Harassment

Sexual harassment occurs when unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature is:

1. Made either explicitly or implicitly a term or condition of an individual's employment, academic status, or progress;

2. Used as a basis for employment or academic decisions affecting such individual;
3. Has the purpose or effect of having a negative impact upon an individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment; or
4. Is used as a basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution. (Ed. Code, 212.5)

**B. Specific Examples of Sexual Harassment**

Sexual Harassment includes but is not limited to:

1. Suggestive or obscene letters, notes, invitations, derogatory comments, slurs, jokes, epithets, assaults, touching, impeding or blocking movement, leering, gestures, display of sexually suggestive objects, pictures, cartoons or posters.
2. Continuing to express sexual interest after being informed that the interest is unwelcome. (Reciprocal attraction is not considered sexual harassment.)
3. Coercive sexual behavior used to control, influence, or affect the career, salary, and/or work environment of another employee, such as threats of reprisal; implying or withholding support for an appointment, promotion, transfer, or change of assignment; suggesting a poor performance report will be prepared; or suggesting probation will be failed.
4. Coercive sexual behavior used to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student, including promises or threats regarding grades, course admission, performance evaluations, or recommendations; enhancement or limitation of student benefits or services (e.g. scholarships, financial aid, work study job.)
5. The deliberate or careless creation of an atmosphere of sexual harassment or intimidation, or a hostile or offensive working environment.
6. Offering favors or benefits, such as promotion, favorable performance evaluation, favorable grades, assignments, duties or shifts, recommendations or reclassification, in exchange for sexual favors.

7. Any other conduct which, at the time of the conduct, constitutes sexual harassment under any state or federal law or implementing regulation.

**C. Responsible District Officer**

1. The Director of Human Resources and Staff Diversity, shall be the District officer responsible for the overall implementation of all policies and regulations prohibiting sexual harassment. Copies of all documents related to sexual harassment complaints shall be forwarded to the Director of Human Resources and Staff Diversity to ensure uniform application of this policy and coordinated efforts to prevent and eliminate sexual harassment.
2. The Director of Human Resources and Staff Diversity shall assist in the processing of all complaints, and shall ensure that this policy and its implementing procedures are appropriately distributed to students and employees.
3. The Director of Human Resources and Staff Diversity, with the authorization of the Superintendent, may initiate training and education programs to enable all employees and students to better understand the problems and consequences of sexual harassment.

**D. Duty to Report Known or Suspected Incidents of Sexual Harassment**

1. A District employee who routinely works with students in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a student whom he or she knows or reasonably suspects has been, or is, the victim of sexual harassment, shall report the known or suspected incident of sexual harassment to the Dean/Managing Supervisor or the Director of Human Resources and Staff Diversity within 36 hours of receiving information concerning the incident. If the Dean/Managing Supervisor is the alleged perpetrator of the incident, the complainant shall report the incident to the Director of Human Resources and Staff Diversity. If the Superintendent/President is the alleged perpetrator of the incident, the complainant shall report the incident to the Director of Human Resources and Staff Diversity.
2. A supervisor who observes or is given information of sexual harassment of an employee shall report the known or suspected incident to his or her Managing Supervisor, if any, or Dean within 36 hours of observing or receiving information about the incident. If either the Managing Supervisor or Dean is the alleged perpetrator, the incident shall be reported to the Director of Human Resources and Staff Diversity.

3. Failure to report an incident of known or suspected sexual harassment of a student or employee shall be considered a violation of a district regulation and may result in disciplinary action.

Also see Governing Board Policy 5105, Non-Harassment Policy.

Reference:

Federal Employment and Housing Act

Government Code §§ 12900 - 12996

DFEH Administrative Regulations, 2 CCR Section 7287.6

Title 7, Section 703: 42 USC Section 2000(e) et seq.

EEOC Guidelines: 29 CFR 1604.11

Education Code Sections 200-262.3

Title 5, Code of Admin. Regulations, Sections 59300-59340

Adopted: 5-4-99

# HARTNELL COLLEGE

## SEXUAL HARASSMENT COMPLAINT PROCEDURES FOR EMPLOYEES

### I. Employee Complaints

#### A. Initial Steps

1. Employees are encouraged, but not required, to inform the offending person directly that his/her conduct is unwelcome or offensive and must stop.
2. If an employee is unwilling or unable to tell the offending person that his/her conduct is unwelcome or offensive and must stop or if such communication(s) from the employee has not brought a stop to the offensive conduct, the employee should prepare a written complaint and give it to his or her immediate supervisor. If the immediate supervisor is the subject of the complaint, the employee should give the complaint to the Director of Human Resources and Staff Diversity.

#### B. Written Complaints

The complaint should include the employee's name, witnesses' names, the names of the person(s) who engaged in the offensive conduct, and a description of the offensive conduct (i.e. when and where the conduct occurred, the nature of the conduct, the number of times it occurred, and a description of any informal attempts at resolution).

### II. Administrative Review and Procedures

#### A. Receipt of Complaints/Informal Resolution

1. An immediate supervisor who receives a verbal complaint of sexual harassment shall refer the complainant to the Director of Human Resources and Staff Diversity and also shall report the complaint to the Director of Human Resource and Staff Diversity within 36 hours. The Director of Human Resources and Staff Diversity shall seek to resolve the complaint informally. If such efforts fail, the complainant shall be provided a copy of the District's sexual harassment policy and procedures and be directed to prepare a written complaint and return it to the Director of Human Resources and Staff Diversity.

The Director of Human Resources and Staff Diversity shall advise the complainant that he or she need not participate in informal resolution and

that the complainant may also file a complaint with the Office of Civil Rights, U.S. Department of Education.

2. If it appears to the Human Resources Director that the employee is unable to prepare a written complaint without assistance, he or she shall assist the employee with preparation of a written complaint.

**B. Within ten (10) days of the receipt of a written complaint, the Director of Human Resources and Staff Diversity shall:**

1. Meet with the employee if necessary to obtain clarification of the employee's written complaint of sexual harassment;
2. Inform the alleged offender of the nature of the employee's complaint and offer the alleged offender the opportunity to explain;
3. Provide a copy of the District's sexual harassment policy and these procedures to the alleged offender; and
4. Individually advise the employee and alleged offender that the complaint and results of the investigation shall be confidential to the extent that maintenance of confidentiality is consistent with a thorough investigation and appropriate disposition of the matter.

**C. Investigation**

1. The Director of Human Resources and Staff Diversity shall promptly commence a thorough and objective investigation of the complaint. The investigation shall be coordinated through the Responsible District Officer. The investigation may be assigned to District staff or to outside persons or organizations. The investigation shall be so assigned whenever the complaint implicates the Director of Human Resources and Staff Diversity.
2. The person conducting the investigation shall interview and take statements from all individuals reasonably believed to have relevant information, including, but not limited to, the employee and the alleged offender, any witnesses to the conduct, and other victims of similar conduct whom the investigator reasonably believes may exist.
3. The investigation shall be conducted discreetly, maintaining confidentiality of the employee and the alleged offender insofar as confidentiality is consistent with a thorough investigation and appropriate disposition of the matter. The person conducting the investigation shall advise all individuals whom he/she contacts in connection with the

investigation of the confidential nature of the complaint and the investigation.

4. The investigation shall be free of stereotypical assumptions about either party.
5. “Day” or “days” as used in these procedures means calendar days.

#### **D. Investigative Report and Decision**

1. The person conducting the investigation shall prepare a written report (“Report”) summarizing the results of the investigation. The Report shall reflect the record as a whole and the totality of the circumstances (e.g. the nature of the alleged harassment and the context in which the alleged incidents occurred). The Report shall be considered a confidential document that shall be given only to the Director of Human Resources and Staff Diversity, and, if the matter is appealed under Section II.E below, to the Governing Board.

The report shall include the following: (a) a description of the circumstances giving rise to the complaint; (b) a summary of the testimony of each witness, including the complainant and any witnesses identified by the complainant; (c) an analysis of relevant data or other evidence collected during the investigation; (d) a specific finding whether harassment occurred with respect to each allegation, and (e) any other information deemed appropriate.

2. Based on that report, the Director of Human Resources and Staff Diversity shall prepare a written decision (“Decision”) containing the findings and disposition, the rationale for the disposition, and notice of the employee’s right to appeal. If the Director of Human Resources and Staff Diversity determines that there is reasonable cause to believe that sexual harassment occurred, the disposition shall include appropriate corrective action to ensure that it will not recur.
3. A finding of sexual harassment shall be deemed to constitute just and reasonable cause for discipline. Corrective action taken as a result of the investigation may include reassignment, transfer, suspension without pay, termination, or other disciplinary action and shall be in accordance with the District’s policies and regulations and any applicable laws and collective bargaining agreements.
4. The Director of Human Resources and Staff Diversity shall provide a copy of the Decision to the employee and alleged offender.

## **E. Appeal Procedures**

1. If the employee or alleged offender is dissatisfied with the Decision, he or she may file a written appeal to the Governing Board within fifteen (15) days after receipt of the Decision. The other party shall be given a copy of the appeal and shall have five (5) days after receipt of the appeal to submit a written response. The Governing Board shall review the employee's written complaint, the Report, the Decision, the appeal and any response to the appeal to determine whether alleged offender has engaged in sexual harassment and whether the Decision contains an appropriate disposition of the matter.
2. The Governing Board may request additional information and the personal appearance of any or all parties and witnesses.
3. The Governing Board shall issue a written decision within forty-five (45) days of the date of the written appeal.
4. The Superintendent/President shall inform the employee and alleged offender of the Governing Board's decision.
5. The complainant shall also be advised that he or she may file an appeal with the Office of the Chancellor within 30 days of the final decision of the Governing Board or within 30 days from the day the administrative decision is permitted to become final.

## **F. Investigation and Review by Other Agencies**

The Hartnell Community College District's policies and procedures are intended to supplement any applicable state and federal laws and regulations on sexual harassment. In addition to the District's investigation and review procedures, employees may file a complaint with:

Office for Civil Rights  
Employment  
50 United Nations Plaza Room 322  
San Francisco, CA 94102  
(415) 556-8586

California Department of Fair  
and Housing  
1330 Broadway, Suite 1326  
Oakland, CA 94612  
(510) 464-4095

Equal Employment Opportunity  
Commission  
San Francisco District Office  
901 Market Street, Suite 500  
San Francisco, CA 94103  
(415) 556-9461

Officer of the Chancellor  
California Community Colleges  
Sacramento, CA 94244

If an employee files a complaint with an administrative agency under any state or federal law, the District may elect to discontinue its investigation and complaint process in favor of the complaint procedure of the respective state or federal agency.

**G. Legal References**

Federal Employment and Housing Act

Government Code §§ 12900-12996

DFEH Administrative Regulations, 2 CCR Section 7287.6

Title 7, Section 703: 42 USC Section 2000e et seq.

EEOC Guidelines: 29 CFR 1604.11

Education Code, Sections 200-260.3

Title 5, Code of Admin. Regulations, Sections 59300-59340.

Adopted: 5-4-99

**HARTNELL COMMUNITY COLLEGE DISTRICT**  
**DISCRIMINATION COMPLAINT (\*\*PLEASE PRINT\*\*)**  
CONFIDENTIAL

NAME \_\_\_\_\_ DATE \_\_\_\_\_

ADDRESS \_\_\_\_\_

HOME PHONE (\_\_\_\_\_) \_\_\_\_\_ OTHER PHONE (\_\_\_\_\_) \_\_\_\_\_

Basis of Discrimination Complaint:

- |  |  |
|--|--|
| <input type="checkbox"/> Ethnic Group Identification | <input type="checkbox"/> Age                 |
| <input type="checkbox"/> Race                        | <input type="checkbox"/> Physical Disability |
| <input type="checkbox"/> Religion                    | <input type="checkbox"/> Mental Disability   |
| <input type="checkbox"/> Sex                         | <input type="checkbox"/> Other _____         |
| <input type="checkbox"/> Sexual Harassment           |  |

Allegation (Describe the incident, the participants, the background to the incident and any attempts you have made to solve the problem. Be sure to note date of alleged discrimination including relevant time(s) and places(s). (Attach additional sheet if necessary.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Individuals who may be able to corroborate these allegations (please list names, titles, addresses and phone numbers.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please state the remedy you request:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that, to the best of my knowledge, the information presented is correct.

\_\_\_\_\_  
Signature

Retain a copy for your records and return this form to:

Hartnell College  
Affirmative Action Officer  
156 Homestead Avenue  
Salinas, CA 93901  
(831) 755-6706

pm: 6/1/99