

MONTEREY PENINSULA COLLEGE
GOVERNING BOARD POLICIES

Appendix 5105 Procedure for the Prevention of Sexual Harassment

- I. Introduction and Purpose
- II. Definition of Sexual Harassment
- III. Employee/Student Obligations
- IV. Disciplinary Action
- V. Retaliation
- VI. Sexual Harassment Complaint Procedure (Informal and Formal)
- VII. Further Appeal Options
- VIII. State and Federal Compliance Agencies

I. Introduction and Purpose

It is the intent and policy of the Monterey Peninsula Community College District to maintain an institutional environment free of unwelcome sexual suggestions or advances, requests for sexual favors, and/or other conduct constituting sexual harassment as defined and otherwise prohibited by state and federal law.

Engaging in sexual harassment shall be a violation of District policy for those authorized either to recommend or take personnel or academic actions affecting employees or students, for students, or for those otherwise authorized to transact business or perform other acts or services on behalf of the Monterey Peninsula Community College District.

Sexual harassment is inappropriate and is prohibited within the college institution. No one in the institution, whether an elected member of the Board of Trustees, an appointed officer to the District, a member of the administration, a member of the faculty, employee, student, or any other person who is a supervisor, teacher, mentor, tutor, or who otherwise exercises authority within the institution, whether in a paid position or as a volunteer, shall engage in any verbal or physical conduct which constitutes a sexual threat or suggestion in violation of the District policy prohibiting sexual harassment.

II. Definition of Sexual Harassment

A. General Definition

Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

- 1. Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status or progress.

MONTEREY PENINSULA COLLEGE
GOVERNING BOARD POLICIES

Appendix 5105 Procedure for the Prevention of Sexual Harassment

2. Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
3. 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.
4. 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 educational institution.

B. Specific Examples

For the purpose of further clarification, sexual harassment includes, but is not limited to:

1. Making unsolicited written, verbal, physical and/or other contacts with sexual overtones. (Examples of sexual harassment, which appear in a written form, include but are not limited to: suggestive or obscene letters, notes, and invitations. Examples of verbal sexual harassment include but are not limited to: derogatory comments, slurs, jokes, and epithets. Examples of physical harassment include, but are not limited to: assault, touching, impeding, or blocking movement. Examples of other sexual harassment include, but are not limited to: visual contact with sexual overtones, gestures, display of sexually suggestive objects or pictures, cartoons or posters.
2. Continuing to express sexual interest after being informed that the interest is unwelcome.
3. Making reprisals, threats of reprisal, or implied threats of reprisal following a rebuff of harassing behavior. The following are examples of this type of sexual harassment within the workplace: implying or actually withholding support for an appointment, promotion or change of assignment; suggesting a poor performance report will be prepared; or suggesting probation will be failed. Examples of this type of sexual harassment, within the educational environment include: implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied.

MONTEREY PENINSULA COLLEGE
GOVERNING BOARD POLICIES

Appendix 5105 Procedure for the Prevention of Sexual Harassment

4. Engaging in explicit or implicit coercive sexual behavior within the educational environment which is used to control, influence or affect the employee's career, salary and/or work environment.
5. Engaging in explicit or implicit coercive sexual behavior within the educational environment which is used to control, influence or affect the educational opportunities, grades and/or learning environment of a student.
6. Offering favors or educational or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.

III. Employee/Student Obligations

Employees and students are encouraged and have an obligation to:

1. Promptly report harassing behavior to a supervisor, manager, administrator or Responsible Officer. The person receiving the complaint will immediately notify the Responsible Officer.
2. Cooperate in any investigation.
3. Refrain from filing frivolous complaints.

IV. Disciplinary Action

The Monterey Peninsula Community College District forbids any form of sexual harassment, including the acts of non-employees. Prompt disciplinary action, up to and including expulsion or termination, will be taken against any student or employee (supervisory or otherwise) determined to be engaging in sexual harassment.

Legal References

Civil Rights Restoration Act of 1987 (PL 100-259, 102 Stat 28)
California Code of Regulations, Title 5 (SS 59300 et seq.) as amended 6/30/96
Title IX of the Education Amendments of 1972 (20 USC 1618 et seq.)
Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991 (42 USC 2000 et seq.)

MONTEREY PENINSULA COLLEGE
GOVERNING BOARD POLICIES

Appendix 5015 Procedure for the Prevention of Sexual Harassment

California Fair Employment and Housing Commission, California Code of Regulations. Title 2, SS 7291.1 & 7287.6

Equal Employment Opportunity Commission, Policy Guidance on Current Issues of Sexual Harassment. No. N-915-050-81,479

The Sex Equity in Education Act (Education Code SS 200 et seq.)

Meritor Savings Bank v. Vinson, 447 U.S. 57 (1986)

Yates v. Avco Corp., 819 F 2d 630 (1987)

Alexander v. Yale University, 459 F. Supp. 1 (1977)

OCR Docket Number 09-96-2153

V. Retaliation

All employees and students are assured that they may make reports of sexual harassment and participate in any investigation without fear of retaliation by the District, department management, their immediate supervisor, or other employee, instructor, or student. Retaliation will be considered a serious act of misconduct. Anyone found to have committed any act(s) of retaliation will be subject to the applicable disciplinary process, up to and including expulsion or termination.

VI. Sexual Harassment Complaint Procedure

A. General

The College recognizes that sexual harassment is a matter requiring prompt attention by the College. Since this College recognizes the delicate nature of such situations, each step in the complaint procedure must be conducted with discretion in order to maintain confidentiality. It is the intent of this procedure to ensure prompt recourse when the circumstances justify such recourse and to ensure fairness and equity to both the individual alleging sexual harassment and to the person accused of such behavior.

In an effort to safeguard individual privacy, information relating to sexual harassment complaints shall be disseminated only to those individuals who need to have the information to facilitate this procedure.

Nothing in this procedure shall affect the right of the complainant to pursue the matter with any state or federal agency. Sexual harassment complaints may be filed concurrently with an external agency to meet state and federal agency deadlines without jeopardizing an individual's rights to pursue a complaint under this procedure.

MONTEREY PENINSULA COLLEGE
GOVERNING BOARD POLICIES

Appendix 5105

Procedure for the Prevention of Sexual Harassment

B. Purpose of Complaint Procedure

This complaint procedure implements the civil rights protections against sexual harassment. Its purpose is to ensure that no person shall be subjected to sexual harassment under any program; activity or service offered by this College and to provide an opportunity for both alleged victim and alleged harasser to be heard.

C. Coverage

1. This procedure applies to the processing of sexual harassment complaints by any student, employee, volunteer. Governing Board member or applicant for employment who believes that she/he is a victim of sexual harassment.
2. Persons who believe the Responsible Officer has harassed them may file a complaint with the Vice President for Administrative Services who will conduct the investigation in accordance with this policy.
3. Persons who believe they have been harassed by the President may file a complaint with the President of the Governing Board who will conduct an investigation under this policy.
4. Persons who believe they have been harassed by a member of the Governing Board may file a complaint with the Board President who will conduct an investigation. If a person believes he/she has been harassed by the Board President, a complaint may be made to the Board Vice President who will conduct an investigation. If resolution is not possible in these cases, the Complainant will be referred to state and federal compliance agencies.

D. Definition of Terms

1. **Responsible Officer:** The Responsible Officer is the Director of Human Resources/Affirmative Action and is designated by the college to receive and process complaints under this procedure. A designee may be appointed by the Director of Human Resources/Affirmative Action to provide assistance in the investigation of complaints.

MONTEREY PENINSULA COLLEGE
GOVERNING BOARD POLICIES

Appendix 5105 Procedure for the Prevention of Sexual Harassment

2. Complainant: An individual who believes she/he has been sexually harassed. A Complainant may be accompanied by a representative of his/her choice in meetings with the Responsible Officer or Respondent.
3. Respondent: The individual who allegedly sexually harassed the Complainant. A respondent may be accompanied by a representative of his/her choice in meeting with the Responsible Officer and/or Complainant.
4. Days: As used in this procedure means working days unless specified otherwise. Timelines may be extended by mutual agreement.

E. Processing the Complaint

Any individual who believes she/he has been sexually harassed may file a complaint with Responsible Officer. Complainants are urged to file complaints within ten (10) working days of the incident believed to be sexual harassment in order that the complaint can be reviewed by the District in a timely manner. In order for a complaint to be processed, the complaint must be filed within one (1) year of sexual harassment or within one (1) year of learning of the sexual harassment (Section 59328, California Code of Regulations, Title 5). Complaints should be filed promptly.

F. Informal Procedure

The purpose of this informal resolution process is to allow an individual who believes she/he has been sexually harassed to resolve the issue through a mediation process rather than the more formal process provided by the College. The Complainant may file a formal complaint if he/she does not wish to participate in the informal procedure. If it is determined that sexual harassment has taken place, resolution may require only an apology from the Respondent and an assurance that the offending behavior will cease. The steps of the informal procedure follow:

1. The Complainant may attempt to resolve the issue by directly expressing his/her discomfort with the behavior of the offender. The Complainant may speak directly to the offender and/or the offender's supervisor. If the supervisor believes that harassment may have occurred and the issue cannot be resolved easily, he/she will contact the Responsible Officer. If the Complainant believes that discussion of alleged sexual harassment with the Respondent or his/her supervisor would be unproductive or inappropriate, the Complainant may consult with the Responsible Officer.

MONTEREY PENINSULA COLLEGE
GOVERNING BOARD POLICIES

Appendix 5105

Procedure for the Prevention of Sexual Harassment

2. If the Complainant speaks to the supervisor or Respondent, and if the matter is not resolved, the Complainant may contact the Responsible Office who will counsel the Complainant regarding the sexual harassment policy and complaint procedure.
3. The Complainant's allegation of sexual harassment shall be kept confidential by the Responsible Officer and used only to provide a factual basis for resolving the complaint. The Responsible Officer will explain to the complainant the nature and extent of the confidentiality provided by this process. The conduct of an investigation requires that the alleged harasser be informed of the allegations and the name of the Complainant. When identified, witnesses and/or other individuals who can provide the corroborating evidence will be interviewed.
4. The Responsible Officer may request that the Complainant puts the allegation in writing in any format comfortable for the Complainant. The written statement should contain as much detail as possible including dates, time, description of incident(s), parties involved, any witnesses, etc. The District policy prohibits sexual harassment, and the failure to put the complaint in writing will not prevent the District from investigating the complaint.
5. Within ten (10) working days of notice of an informal complaint, the Responsible Officer shall contact the Respondent in an attempt to resolve the matter informally. The Respondent will be given a copy of the Sexual Harassment Policy and Procedure and will be asked to provide a response to the allegations within the (10) working days.
6. Within ten (10) working days of receiving the response to the allegation, the Responsible Officer will review the statements of both Complainant and the Respondent and meet with each party in an attempt to resolve the matter.
7. Steps F1 through F6 of this informal process shall be completed within thirty (30) calendar days.
8. After both parties have met with the Responsible Officer, or at any time during the informal process, alternate dispute resolution (ADR) methods (e.g. mediation) will be explored. If both parties are willing, mediation or other ADR methods will be employed in an attempt to achieve resolution.

MONTEREY PENINSULA COLLEGE
GOVERNING BOARD POLICIES

Appendix 5105

Procedure for the Prevention of Sexual Harassment

9. The completion of the informal procedure is not a prerequisite to initiating a formal complaint under the College's formal sexual harassment complaint procedure. (Section 59327 (a) (2), California Code of Regulations, Title 5).

G. Possible Outcomes of the Informal Complaint Procedure

1. If the matter is resolved, the Responsible Officer will put the resolution in writing and meet with both parties who will review and sign the agreement.
2. If the parties agree that there has been no sexual harassment and are satisfied with the resolution, the documents connected with the allegation will be destroyed by the Responsible Officer and the complaint shall be considered resolved.
3. If the parties agree that sexual harassment has occurred, but are satisfied with the resolution, then the documents connected with the allegations and resolution will be placed in a sealed envelope and remain in the possession of the Responsible Officer. At this point, the complaint will be considered resolved.
4. If the Complainant is dissatisfied with the resolution of the complaint, she/he may file a formal complaint within the one-year period following the sexual harassment.
5. If, after negotiations between the parties, it becomes clear to the Responsible Officer that an informal resolution cannot be reached, she/he will convey the determination of both parties. The Responsible Officer will also inform the Complainant of the right to file a formal sexual harassment complaint under this procedure or to file a sexual harassment complaint with any appropriate state or federal enforcement agency (i.e., Office of Civil Rights, Equal Employment Opportunity Commission, Department of Fair Employment and Housing.)

H. Formal Procedure

1. Administrative Determination

MONTEREY PENINSULA COLLEGE
GOVERNING BOARD POLICIES

Appendix 5105

Procedure for the Prevention of Sexual Harassment

- a. The Complainant shall initiate the formal complaint procedure by filing a complaint in writing that meets the requirements of (Section 59328, California Code of Regulations, Title 5). If a written complaint was filed as part of the informal complaint procedure, the Complainant will not be required to file a new written complaint unless he/she wishes to modify the complaint.
- b. The Responsible Officer will conduct an investigation. (Section 59334, California Code of Regulations, Title 5). Investigations will be timely and as extensive as required based upon the nature of the allegations. All persons named as potential witnesses and those who may have information relevant to the issues of the complaint will be contacted and interviewed during the course of the investigation.

All investigations shall be documented in writing and will be handled with discretion, sensitivity and due concern for the dignity of those involved. Every reasonable effort will be made to restrict information on the specifics of the complaint to those who are participating in the investigation: the Complainant, the alleged harasser, witnesses and management.

The Responsible Officer will meet individually with the alleged harasser and alleged victim. The parties will be given copies of the policy and procedures. Both will have the opportunity to present the facts as they see them. The alleged victim will be asked what remedies he/she feels will resolve the complaint. The alleged harasser will be given an opportunity to put his/her response in writing and identify witnesses. Mediation or other dispute resolution methods will be used when possible.

- c. Within ninety (90) calendar days of receiving the complaint (Section 59336, California Code of Regulations, Title 5), the Responsible Officer shall provide the Complainant with an administrative determination that includes:

MONTEREY PENINSULA COLLEGE
GOVERNING BOARD POLICIES

Appendix 5105

Procedure for the Prevention of Sexual Harassment

- (1) A copy of the report of the College's investigation of the sexual harassment complaint.
 - (2) The written decision that sexual harassment did or did not occur.
 - (3) A copy of the proposed resolution of the complaint.
 - (4) A description of the action taken by the College administration to prevent similar sexual harassment in the future.
 - (5) A statement that if discipline is to be imposed on the harasser, the specific manner of discipline will not be communicated to the Complainant.
 - (6) Notice of the Complainant's right to appeal the administrative decision to the Governing Board of the College.
2. Appeal to the Governing Board (Section 59338, California Code of Regulations, Title 5).
- a. If the Complainant is not satisfied with the administrative decision she/he has fifteen (15) working days in which to file a written appeal with the College's Governing Board through the Superintendent/President.
 - b. Only the Complainant has a right to appeal the administrative decision (Section 59338, California Code of Regulations, Title 5). However, a Respondent who is an employee may have an opportunity to challenge any disciplinary action resulting from these proceedings.
 - c. The Governing Board shall review the written records at an executive session of the next regularly scheduled Governing Board meeting. The Governing Board may make a final decision, request further information, schedule a hearing or take whatever action it deems appropriate.

MONTEREY PENINSULA COLLEGE
GOVERNING BOARD POLICIES

Appendix 5105

Procedure for the Prevention of Sexual Harassment

The Governing Board requests further information or a hearing, the Respondent will be given at least two (2) weeks to prepare a response. If the Governing Board does not request an extension and does not act within forty-five (45) calendar days, the administrative determination shall be deemed approved and shall become the final District decision in the matter.

VII. Further Appeal Options

If the Complainant is not satisfied with the decision of the Governing Board, she/he has thirty (30) days in which to file a written appeal with the Chancellor of the California Community Colleges (Section 59338, California Code of Regulations, Title 5).

Legal References

Civil Rights Restoration Act of 1987 (PL 100-259, 102 Stat 28)
California Code of Regulations, Title 5 (SS SS 59300 et. seq.) as amended 6/30/96
Title IX of the Education Amendments of 1972 (20 USC 1618 et seq.)
Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991 (42 USC 2000 et seq.)
California Fair Employment and Housing Commission, California Code of Regulations, Title 2,
SS SS 7291
Equal Employment Opportunity Commission, Policy Guidance on Current Issues of Sexual
Harassment, No. N-915-050,81,479
Sex Equity in Education Act (Education Code SS SS 200 et seq.)
Meritor Savings Bank v. Vinson 447 U.S. 57 (1986)
Yate v. Avco Corp., 819 F 2d 630 (1987)
Alexander v. Yale University, 631 F 2d 178 (1980)
Robinson v. Jacksonville Shipyards, Inc., 760 F Supp. 1486 (1991)
OCR Docket Number 09-96-2153

VIII. State and Federal Compliance Agencies

Nothing in this policy shall be interpreted so as to deny the right of any employee who believes he/she has been harassed to file a complaint with the state and/or federal compliance agencies and/or in state or federal court. However, time limits for filing complaints with compliance agencies vary and employees should check directly with those agencies for specific information.

MONTEREY PENINSULA COLLEGE
GOVERNING BOARD POLICIES

Appendix 5105 Procedure for the Prevention of Sexual Harassment

The state federal compliance agencies may be contacted at the following addresses:

(State) Department of Fair Employment and Housing
 111 North Market Street #810
 San Jose, CA 95113-1102
 (408) 277-1264

(Federal) Equal Employment Opportunity Commission
 901 Market Street Suite 500
 San Francisco, CA 94103
 1 (800) 669-3362

Revised: 12/11/96

If there is anyone who could provide more information regarding this, please list names, addresses, and phone numbers.

	<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE NUMBER</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

THE PROJECTED SOLUTION: Indicate what you think can and should be done to solve the problem. Be as specific as possible.

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

SIGNATURE OF COMPLAINANT _____

DATE _____

Instructions for District Complaint: Original copy for the District. Give one copy to the complainant.

