

Chapter 3

General Institution*

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*Procedures listed in bold text are currently available. All other procedures are being reviewed and will be posted once finalized.

AP 3050 Institutional Code of Ethics

Reference: *Accreditation Standard III.A.1.d*

The Ohlone Community College District recognizes its responsibility and obligation to the community, students, and staff to act with honesty, integrity, and professionalism in the performance of the operations necessary to achieve its established mission.

All District employees share the responsibility to always act with integrity and in a manner that reflects the best interests of the District and its students. This Code of Ethics applies to behavior during the course of employment and is communicated to all employees of the District upon hire.

Standards of Conduct for all district employees include:

- Embracing and supporting the District's mission, vision, and values.
- Following all applicable laws, regulations, Board Policies, and Administrative Procedures.
- Cultivating and sustaining high academic and professional standards.
- Maintaining a working and learning environment free from harassment, discrimination, and retaliatory conduct.
- Avoiding abusive, bullying, or threatening behavior for communications.
- Demonstrating commitment to equal opportunity in employment and in educational programs and services.
- Maintaining the confidentiality of information about students, staff, and candidates for employment obtained in the course of District employment.
- Protecting District assets by refraining from using District time, supplies, and equipment for non-District activities.
- Refraining from using the goodwill or name of the District for personal gain.
- Demonstrating good judgment in the use of social media and refraining from making statements that could be interpreted as representing the District.
- Demonstrating environmental stewardship and keeping our campus beautiful.

See **BP 5500** for student Standards of Conduct.

Adopted: October 2013

Revised: January 2015

AP 3200 Accreditation

References: *Accreditation Eligibility Requirement 21; Accreditation Standard IV.B.1.i*

I. Overview

Ohlone College is accredited by the Accrediting Commission for Junior and Community Colleges (ACCJC), under the auspices of the Western Association of Schools and Colleges (WASC). ACCJC offices are located at **10 Commercial Boulevard, Suite 204, Novato, CA 94949**; Telephone: 415.506.0234; Fax: 415.506.0238; Email: accjc@accjc.org.

ACCJC describes the nature and purpose of accreditation as follows:

Accreditation as a system of voluntary, non-governmental self-regulation and peer review is unique to American educational institutions. It is a system by which an institution evaluates itself in accordance with standards of good practice regarding goals and objectives; the appropriateness, sufficiency, and utilization of resources; the usefulness, integrity, and effectiveness of its processes; and the extent to which it is achieving its intended outcomes. It is a process by which accreditors provide students, the public, and each other with assurances of institutional integrity, quality, and effectiveness. Accreditation is intended to encourage institutions to plan for institutional improvement in quality and effectiveness.

Under processes established by ACCJC, Ohlone undergoes a cycle of periodic evaluation through institutional self-evaluation and external peer review. The heart of this cycle is conducting a comprehensive and rigorous Self-Evaluation, during which the College appraises itself within the following framework of Eligibility Requirements, Commission Policies and Accreditation Standards:

Eligibility Requirements for Accreditation as established by ACCJC

Commission Policies as established by ACCJC

Accreditation Standards:

- Standard I: Institutional Mission/Effectiveness
 - A. Mission; B. Improving Institutional Effectiveness
- Standard II: Student Learning Programs/Services
 - A. Instructional Programs; B. Student Support Services;
 - C. Library/Learning Support
- Standard III. Resources
 - A. Human; B. Physical; C. Technology; D. Financial
- Standard IV. Leadership and Governance
 - A. Decision-Making Roles/Processes; B. Board/Administrative Organization

ACCJC sets a six-year cycle for evaluation and Reaffirmation of Accreditation. The review process includes four steps: internal evaluation (i.e., institutional Self-Evaluation), external evaluation, Commission review and accreditation action, and continuous institutional improvement. The accreditation process starts with an institutional Self-Evaluation described above. The outcome of the institutional Self-Evaluation process is a written Self-Evaluation Report, which is submitted to the ACCJC.

The nineteen-member ACCJC then determines whether to reaffirm accreditation or impose sanctions.

ACCJC requires that the institution submit a Midterm Report in the third year after the external evaluation visit to report on the progress made to resolve the deficiencies expressed in the recommendations included in the External Evaluation Report. Other reports may be required, including follow-up visits if needed.

The college's Accreditation Liaison Officer, working with the College President, ensures that the Self-Evaluation process and all related reports are completed in a thorough and timely manner.

II. Self-Evaluation Process

The Accreditation Steering Committee, in consultation with the Accreditation Liaison Officer, will establish a Self-Evaluation writing process and timeline that will include a broad representation of the college faculty, staff, and students.

Faculty Senate approved: May 15, 2013

Adopted: October 2013

AP 3250 Institutional Planning and Program Review

Reviewed and completed by the Executive Staff on March 19, 2013 and amended based on Process Assessment Committee recommendations on April 10, 2013 and forwarded to Faculty Senate and College Council for Review. Approved by Faculty Senate on May 1, 2013 and approved by College Council on May 13, 2013.

References:

Accreditation Standard I.B; Title 5 Sections 51008, 51010, 51027, 53003, 54220, 55080, 55190, 55510, and 56270 et seq.

I. Overview

Institutional planning is conducted at both the long-term strategic level and the annual operational level. The planning process includes: regular assessment and review of the mission, vision, and values statements; ongoing program and services review using enhanced data, including the environmental scan; regular assessment and review of college planning and program review; and strengthening the link between program and services review, planning, and resource allocation decisions through the District's budget planning process.

The major plans of the college include the Strategic Plan, Educational Master Plan, District Facilities Master Plan, Information Technology Plan, Staffing Plan and the District's Annual Budget. Each of these planning processes is born of the college mission, vision and values statements and integrates with the goals and objectives set forth in the Strategic Plan. Each planning process also looks to the findings of the environmental scan and to other relevant data, as well as to the program and services reviews. All are linked into the Annual Budget planning process.

Planning is integrated into the work of the College Council and its subcommittees, including the Facilities Committee, Technology Committee and Budget Committee. Planning is also integrated into the work of the Faculty Senate and the President's Process Assessment Committee.

Program and Services Review is an ongoing process involving instructional, student services, and administrative services departments. These reviews tie the goals and objectives of programs and services with the goals and objectives of the College Mission and Strategic Plan. Within the context of a three-year cycle of Program and Services Review, Program Improvement Objectives (PIOs) are developed and updated annually. The PIOs form the bridge from Program and Services Review to budget planning. This process ensures a sustainable program review system to inform the budget process, as well as other college planning processes, on an annual basis, providing vital "grassroots" input to all planning processes.

II. Strategic Planning Cycle

Strategic planning occurs on a cyclical basis every five years and has three main steps: Assessment, Goal Setting, and Goal Implementation.

A. Assessment

1. Environmental Scan

A key element in the Strategic Planning cycle is conducting and documenting an environmental scan of internal and external data and of trends that may assist

college planning. The college's Glossary of Planning Terminology defines environmental scan as "the acquisition and use of information about events, trends, and relationships in the local community and beyond that informs the college of forces and needs relevant to planning future direction. Environmental scanning constitutes a primary mode for institutional learning and self-assessment." The environmental scan is completed by the Office of Institutional Research.. Data from the scan is presented to the President's Staff, the College Council, and the Board of Trustees. .Suggestions for augmentation and/or modification of the data are taken and implemented as appropriate. Once any changes are incorporated, the scan is published on the college website. It is updated regularly as new information becomes available, with any significant changes being brought back for review before publication.

To complement the statistical information contained in the scan, a series of meetings with community groups and leaders is undertaken. At each meeting participants are provided basic information about Ohlone and its mission. Using a brief survey, the community participants are asked for their opinion of how the college is perceived in the community and how the college is meeting community expectations. The information collected in the community meetings is used in creating the vision for the future.

Gap Analysis:

The President's Ad Hoc Environmental Scan Analysis Group, made up of faculty and administrative staff including the College Council faculty co-chair, is charged with extracting key information from the environmental scan data and identifying areas where the college needs to expand or improve its efforts. This information is used in goal setting.

2. Current Goals

Another key element in the assessment phase of the Strategic Planning Cycle is a thorough evaluation of the goals and objectives of the current strategic plan. During November and December of each year, the President, in consultation with the College Council, assesses progress on identified college objectives. Each January the College Council reviews and refines the annual assessment. When the Strategic Plan is being updated the President's Staff reviews the accumulated assessments and the President completes an initial overall assessment and prepares a report for review by College Council.

College Council assesses and updates the college goals each year. Every five years, a college-wide Strategic Planning Summit is conducted and faculty, staff, and students are surveyed.

3. Program and Services Review Results

To incorporate grass-roots ideas and areas of needed improvement from all parts of the college into consideration for new college goals, the results of Program and Services Reviews are considered during the assessment phase in the planning cycle.

B. Setting Goals

1. Assessment and Revision of the College Mission and Values

During the Strategic Plan update every five years, a task force appointed by the College Council reviews the mission statement and values and brings recommendations back to the Council. Proposed changes are reviewed by the college community and ultimately approved by the Board. The College Council considers and discusses the college mission statement in tandem with the review of proposed college goals to ensure every goal and objective is consistent with the statement. Goals are established to reflect college values and are grouped accordingly. Visioning for the college future occurs at this point in the strategic process.

2. Proposed goals and objectives

Using the assessment in Step One, the President and College Council propose a set of goals to be accomplished in the next five-year cycle. The goals are comprehensive and offer all departments of the college an opportunity for involvement in improvement. For each goal, the college community identifies a limited number of objectives that are most effective in achieving the goal. These objectives are stated in measurable terms and include recommended actions and timelines for completion, allowing for the goal to be broken down into annual increments. The College Council may identify specific programs and services to address the objectives. Direction for college-wide improvement from the college community is provided in this manner. The Board of Trustees reviews and approves the new plan at its June meeting. Based on the new plan, the President will work with the College Council to ensure integration of all major college plans with the Strategic Plan Goals and Objectives.

C. Implementation

The next phase in the strategic planning cycle is implementation. In addition to consideration of Programs and Services Review results in setting college goals, programs and services contribute to college improvement by helping to achieve college objectives and by improving key processes within programs and services. Annually, Program and Services Review areas receive data updates and PIOs are identified and/or updated. These are statements of what the program or services needs to improve, as indicated in their PIOs, and why the improvement is needed, and the goals and objectives which they help to accomplish. These statements are accompanied by action plans, resource needs and assessments. In order to carry out PIOs, the college has identified a process to allocate resources on an annual basis to support their accomplishment.

III. Annual Planning Cycle

Annual planning is the means for achieving strategic goals and objectives. Annually, coinciding with budget deadlines, the college engages in a process to determine priority improvements it needs to undertake in order to achieve the college objectives. This process engages all programs and services through the annual development of Program Improvement Objectives (PIOs), within the context of a three-year cycle of comprehensive Program and Services Review. Deans and Directors, working closely with faculty and staff, provide stewardship of the Program and Services Reviews and PIO's in their respective Department/Divisions.

Program and Services Review is an ongoing process involving two levels of analysis:

A. Annual Data Analysis and PIO Updates or Additions

Program data will be regularly updated by the Office of Institutional Research and Planning and distributed to the Program and Services Review areas. Each fall semester, all areas will have the opportunity to review their program data, as well as Student Learning Outcomes and Student Learning Impacts assessments, and update their PIOs. PIO updates or additions should be completed by the end of the fall semester. In the subsequent spring semester PIOs will be linked into the budget planning process as described in AP 3250 Institutional Planning and Program Review.

B. Three-Year Cycle for Comprehensive Analysis, Update and Approval

A comprehensive analysis and update of Program and Services Reviews, including the Launching and Approval process, will be conducted on a three year cycle. The 90 Program and Services Review areas are divided into three groups with approximately 30 conducting the comprehensive review each year.

Department/Programs categorize each PIO into one of three general categories: 1. College-Wide; 2. Cross Division/Department; and 3. Departmental. The purpose of this categorization is to inform the President and the College Council of how the total list of PIOs can be viewed in these general areas for planning purposes.

The President and the Executive Staff review the PIO categorization focusing in particular on College-wide PIOs. The President and Executive Staff create a list of Institutional Improvement Objectives (ILOs), which are then reviewed with the Budget Committee and College Council for input and feedback.

PIOs are a formal item for review at the annual Budget Manager meetings with the Vice President of Administrative Services (VPAS) as the budget for a subsequent year is being developed. These meetings take place in the February-to-April time period. The VPAS documents the results of the Budget Manager meetings and communicates the results to the Budget Committee as the budget development process unfolds.

Prior to the Tentative Budget Approval each June and the Final Budget Approval by the Board of Trustees each September, the President and VPAS review the budget with the College Council and indicate the ILOs and/or PIOs that are receiving specific resource allocations within the proposed budgets.

Faculty Senate approved: May 1, 2013

College Council approved: May 13, 2013

Adopted: October 2013

AP 3310 Records Retention and Destruction

References:

Title 5 Sections 59020-59029 et seq.;

Federal Rules of Civil Procedure, Rules 16, 26, 33, 34, 37, and 45

“Records” means all records, maps, books, papers, data processing output, and documents of the District required by Title 5 to be retained, including but not limited to records created originally by computer and “electronically stored information” (“ESI”), as that term is defined by the Federal Rules of Civil Procedure.

The Office of the President/Superintendent or Designee shall supervise the classification and destruction of records and ESI. The District must preserve ESI and ESI that is relevant to actual or potential litigation pursuant to the Federal Rules of Civil Procedure. The District shall comply with the Federal Rules of Civil Procedure and produce relevant ESI in the form in which it is ordinarily maintained or readily usable. An annual report shall be made to the Board of Trustees regarding the classification and destruction of records and ESI.

Records shall be classified as required by Title 5 and other applicable statutes, federal and state regulations.

Records shall annually be reviewed to determine whether they should be classified as Class 1 – Permanent as listed in Section 59023, Class 2 – Optional as listed in Section 59024, or Class 3 – Disposable as specified in Section 59025.

Class 3 – disposable records shall be maintained for the period required by applicable law or regulation, but in any event shall be retained for at least three college years after the year in which they were originally created.

Destruction is by any method that assures the record is permanently destroyed, e.g. shredding, burning, and pulping.

Adopted: July 2012

AP 3300 Public Records

References: *Government Code Sections 6250 et seq.*

Members of the public may request to inspect or copy public records. A request by a member of the public may be delivered by mail or in person to the Vice President, Administrative Services and/or the Public Relations Officer.

Any request shall identify with reasonable specificity the records that are sought. If additional information is needed, the Vice President, Administrative Services and/or the Public Relations Officer may request it be provided in writing.

Any request to inspect records shall be made sufficiently in advance of the date of inspection to allow staff members time to assemble the records and identify any records that may be exempt from disclosure.

Records that are exempt from disclosure under the Public Records Act or any other provision of law may not be inspected or copied by members of the public. Social security numbers must be redacted from records before they are disclosed to the public.

Members of the public shall be assisted in identifying records or information that may respond to their request. Assistance that will be provided includes: the information technology and physical location in which the records exist; practical suggestions for overcoming denial of access to the records or information; and the estimated date and time when the records will be made available.

Within ten days, Vice President, Administrative Services and/or the Public Relations Officer will determine whether or not the records can be produced and will communicate the determination to the member of the public requesting the record(s).

Some records are exempted and are not subjected to the Public Records Act. The district will consult with counsel when necessary to determine if a particular record is exempted by law.

The most common exemptions for community colleges include:

- Student records (Education Code Section 76243)
- Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding the records clearly outweighs the public interest in disclosure. (Government Code Section 6254(a))
- Records pertaining to pending litigation ...or to claims...until the pending litigation or claim has been finally adjudicated or otherwise settled. (Government Code Section 6254(b))
- Personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy (Government Code Section 6254(c))
- Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination [except for standardized tests provided for by Education Code Sections 99150 et seq.]. (Government Code Section 6254(g).)
- The contents of real estate appraisals or engineering or feasibility estimates and evaluations...relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. (Government Code Section 6254(h)).

- Internet posting of home address or telephone numbers of local elected officials (Government Code Section 6254.21)
- Home addresses and home telephone number of employees of a school district or county office of education (other than to an agent or family member of the employee, to an officer of another school district when necessary, to an employee organization, or to an agency or employee of a health benefit plan.) (Government Code Section 6254.3)
- Records regarding alternative investments (i.e. an investment in a private equity fund, venture fund, hedge fund, or absolute return fund; limited partnership, limited liability company or similar legal structure) involving public investment funds, unless already publicly released by the keeper of the information.
- Information security records, if disclosure of that record would reveal vulnerabilities to, or otherwise increase the potential for an attack on, the District's information technology system.
- Trade secrets as defined in California Civil Code 3426.1.

The district maintains a procedure manual with more detail regarding the processing of requests for public records.

- *Adopted: November 2013*

AP 3410 Nondiscrimination

Nondiscrimination References for Education Programs:

Education Code Sections 66250 et seq., 200 et seq., and 72010 et seq.;

Penal Code Sections 422.55 et seq.;

Title 5 Sections 59300 et seq.;

Accreditation Standard 1.6

Education Programs

The District shall provide access to its services, classes and programs without regard to, national origin, religion, age, gender, gender identity, gender expression, race or ethnicity, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, pregnancy, or because he/she is perceived to have one or more of the foregoing characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics.

All courses, including noncredit classes, shall be conducted without regard to the gender of the student enrolled in the classes. As defined in the Penal Code, “gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

The District shall not prohibit any student from enrolling in any class or course on the basis of gender.

Academic staff, including but not limited to counselors, instructors and administrators shall not offer program guidance to students which differs on the basis of gender.

Insofar as practicable, the District shall offer opportunities for participation in athletics equally to male and female students.

Nondiscrimination References for Employment:

Education Code Sections 87100 et seq.;

Title 5 Sections 53000 et seq.;

Government Code Sections 11135 et seq. and 12940 et seq.

Employment

The District shall provide equal employment opportunities to all applicants and employees regardless of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or status as a Vietnam-era veteran.

All employment decisions, including but not limited to hiring, retention, assignment, transfer, evaluation, dismissal, compensation, and advancement for all position classifications shall be based on job-related criteria as well as be responsive to the District’s needs.

The District shall from time to time as necessary provide professional and staff development activities and training to promote understanding of diversity.

Adopted: October 2011

Revised: June 2012, June 2013

AP 3420 Equal Employment Opportunity

References:

Education Code Sections 87100 et seq.;

Title 5 Sections 53000 et seq. and Sections 59300 et seq.

The EEO plan is a District-wide, written plan that implements the District's EEO Program, includes the definitions contained in Title 5 Section 53001 and addresses the following:

- Submission of plans and revisions to the California Community Colleges Chancellor's Office for review and approval as required.
- The designation of the District employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this Procedure;
- The procedure for filing complaints and the person with whom such complaints are to be filed;
- A process for notifying all District employees of the provisions of the plan and the policy statement required;
- A process for ensuring that District employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of the applicable Title 5 regulations and of state and federal nondiscrimination laws;
- A process for providing annual written notice to appropriate community-based and professional organizations concerning the District's plan and the need for assistance from such organizations in identifying qualified applicants for openings within the District;
- The steps the District will take to promote diversity in its work force;
- Methods for addressing any discrimination that is detected in the District's hiring practices, and;
- Additional steps to address any significant underrepresentation of monitored groups identified in the plan.

The Plan is a public record.

The District shall make a continuous good faith effort to comply with the requirements of the Plan.

Annual Evaluation

- An annual survey of its employees and applicants for employment in order to evaluate progress in implementing the EEO Plan and to provide data needed for required analyses.
- An annual report to the Chancellor's Office of the California Community Colleges on the results of its annual survey of employees. The report shall identify each employee as belonging to one of the following seven job categories:
 - executive/administrative/managerial
 - faculty and other instructional staff
 - professional non-faculty
 - secretarial/clerical
 - technical and paraprofessional
 - skilled crafts; and
 - service and maintenance.

- The opportunity for each employee to identify his/her gender, ethnicity and, if applicable, disability. This opportunity must allow for a person to designate multiple ethnic groups with which he/she identifies. However, the person may only be counted in one group for reporting purposes.

EEO Advisory Committee

- That the District shall establish an EEO Advisory Committee; and
- That the advisory committee shall include a diverse membership whenever possible.

The responsibilities of the Committee shall include but not be limited to the following:

- review and advise on recruitment efforts; job announcements, interview protocols, retention efforts and other aspects of the hiring, retention, and promotion processes that impact the District's ability to attract and retain a diverse faculty and staff;
- advise on implementing the District's obligation to hire faculty and administrators with a demonstrated sensitivity to, and understanding of, the diverse academic, socioeconomic, cultural, disability and ethnic backgrounds of community college students;
- promote communication with community groups and organizations for people with disabilities;
- promote hiring of faculty who have, themselves, graduated from a community college;
- develop communications among departments to foster understanding of the Plan;
- advise the President/Superintendent or designee regarding special training or staff development needs;
- review the Plan and monitor its progress;
- recommend changes needed in the Plan; and
- review and approve the annual written report to the President/Superintendent, the Board of Trustees, and the California Community Colleges Chancellor's Office.

Employment Procedures

Job Analysis and Validation: The Chief Human Resources Officer shall assure that a proper job analysis is performed for every job filled by the District to determine and validate the knowledge, skills, abilities and characteristics an employee must possess to perform the job satisfactorily.

A statement of bona fide essential functions and minimum qualifications shall be developed for all positions.

Job Description: Every job description shall provide a general statement of job duties and responsibilities.

Job specifications shall include functions and tasks; knowledge; skills; ability; and job related personal characteristics, including but not limited to sensitivity to and understanding of the diverse academic, socioeconomic, cultural, linguistic, disability, and ethnic backgrounds of community college students.

Recruitment: Recruitment must be conducted actively within and outside of the District work force.

Open recruitment is mandated for all new full-time and part-time positions, except under limited circumstances involving interim hires.

Recruitment must utilize outreach strategies designed to ensure that all qualified individuals, from all monitored groups, are provided the opportunity to seek employment with the District.

Recruitment for administrative and faculty positions (full and part-time) may include advertisement in appropriate professional journals, job registries and newspapers of general circulation; distribution of job announcements to the EEO Registry, K-12 districts, two and four year colleges, and graduate schools where appropriate candidates might be enrolled; recruitment at conferences, fairs, and professional meetings; notices to institutions and professional organizations that primarily serve members of monitored groups that are underrepresented in the District.

Recruitment for classified positions shall include notice to all District personnel; notice to Employment Development Department; and advertising in area newspapers of general circulation.

Applicant Pools: The application for employment shall afford each applicant an opportunity to identify himself/herself voluntarily as to gender, ethnicity and, if applicable, his/her disability. This information shall be maintained in confidence and shall be used only for research, validation, monitoring, evaluation of the effectiveness of the Plan, or as authorized by law.

After the application deadline has passed, the initial applicant pool shall be analyzed to determine whether the projected representation has been achieved for monitored groups. If these projections have not been met, the District shall immediately determine whether the failure to meet the projected representation of monitored groups in the initial pool was due to discriminatory practices. If not, the hiring process may continue to the next level. If, however, the District determines that discriminatory practices caused the underrepresentation, the District may immediately, and before the selection process continues, consult with legal counsel to determine what, if any, corrective action is required by law.

Once the qualified pool is formed, the pool must again be analyzed. If this analysis reveals adverse impact against any monitored group, the District may immediately, and before the selection process continues, consult with legal counsel to determine what, if any, corrective action is required by law.

Screening and Selection: Screening, selecting and interviewing candidates for all positions shall include thorough and fair procedures that are sensitive to issues of diversity. Procedures to be used include:

- Hiring procedures will be provided to the California Community Colleges Chancellor's Office on request.
- All tests conform to generally applicable legal standards for uniformity.
- A reasonable number of candidates are identified for interview.
- Screening and selection committees are developed that are representative of the District community and campus; include administrators, faculty, and classified staff members; include a diverse membership when possible; do not include applicants or persons who have written letters of recommendation.
- Every screening and selection committee includes an individual trained to monitor conformance with EEO requirements. The Chief Human Resources Officer assures that the screening and selection process conforms to accepted principles and practices, including preparation of job related questions in advance; maintains records of screening checklists and rating scales, which shall be signed and kept on file; maintains notes for all interviews and records relevant factual reasons stating why a candidate was not hired or was not invited to interview; and monitors the hiring process for adverse impact.
- Selection shall be based solely on the stated job criteria.

If the District determines that a particular monitored group is significantly underrepresented with respect to one or more job categories, the District shall take the following additional steps:

- review its recruitment procedures;
- consult with counsel to determine whether there are other, additional measures that may be undertaken that are required and/or permitted by law;
- consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account and implement any such techniques that are feasible;

If significant underrepresentation persists:

- monitor on an on-going basis;
- review each locally-established job qualification to determine if it is job related and
- check consistency with business necessity;
- discontinue the use of any non job related local qualification; and
- continue using job-related local qualifications only if no alternative standard is reasonably available.

Delegation of Authority

- The designation of a single person as the “EEO Officer” charged with overseeing the day-to-day implementation of the EEO Plan and programs.
- Processes and responsibilities when the EEO Officer is named in a complaint or implicated by the allegations in a complaint.

Complaint Procedure

The District must identify to the public and to the California Community Colleges Chancellor’s Office an individual described in Title 5 as the “responsible District officer,” responsible for receiving complaints. Informal charges of unlawful discrimination should be brought to the attention of the responsible District officer. The responsible District officer shall oversee the informal resolution process. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract. An outside investigator must be used when the responsible District officer is named in the complaint or implicated by the allegations in the complaint.

When a person brings charges of unlawful discrimination the officer must:

- Undertake efforts to resolve the charge informally;
- Advise the complainant that he/she need not participate in an informal resolution of the complaint;
- Notify the complainant of the procedures for filing a formal complaint;
- Notify the complainant that he/she may file a complaint with the Office of Civil Rights of the U.S. Department of Education.
- If the complainant, a student or an employee, files a formal complaint, the responsible District officer must also forward a copy of the complaint to the California Community Colleges Chancellor’s Office.

A formal complaint not involving employment, must be processed if it is filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation.

A formal complaint alleging discrimination in employment must be filed within 180 days of the date of the alleged unlawful discrimination, unless the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the initial 180 days.

The complaint must be filed by someone who alleges that he/she has personally suffered unlawful discrimination, or by someone who has learned about unlawful discrimination in his/her official capacity.

When a proper complaint is received, the District will begin an impartial fact-finding investigation, and notify the complainant and the California Community Colleges Chancellor's Office that it is doing so.

When the investigation is done, the results must be set forth in a written report. The written report must 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.

In any case that does not involve employment discrimination, the District must provide the California Community Colleges Chancellor's Office with a copy of the investigative report within ninety days from the date the District received the complaint. The District must also provide the complainant with a copy or summary of the investigative report within ninety days from the date the District received the complaint. The California Community Colleges Chancellor's Office and the complainant must also be provided with a written notice setting forth the determination of the President/superintendent as to whether discrimination 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 Governing Board and the California Community Colleges Chancellor's Office.

In any case that involves employment discrimination, the District must provide the complainant with a copy or summary of the report, and with written notice setting forth the determination of the President/Superintendent or designee as to whether discrimination 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 the complainant's right to appeal to the District's Governing Board and to file a complaint with the Department of Fair Employment and Housing.

If the complainant is not satisfied with the results of the administrative determination, the complainant must be given the opportunity to submit a written appeal to the governing board within fifteen days from the date of the notice of the administrative determination. The Board must review the original complaint, the investigative report, the administrative determination, and the appeal and must issue a final District decision within forty-five days of receiving the appeal.

In any case not involving employment discrimination, a copy of the final District decision must be promptly forwarded to the complainant and the California Community Colleges Chancellor's Office. The complainant must be notified of his/her right to appeal. In any case involving employment discrimination, a copy of the final District decision must be promptly forwarded to the complainant. The complainant must be notified of his/her right to file a complaint with the Department of Fair Employment and Housing.

Where the Board does not act within forty-five days the administrative determination must be deemed approved and must become the final District decision. The District shall promptly notify the complainant and in cases not involving employment discrimination, the California Community Colleges Chancellor's Office, that the Board took no action and the administrative determination

becomes the final District decision. In cases not involving employment discrimination, the complainant must be informed of his/her right to appeal the District's decision to the California Community Colleges Chancellor's Office. In cases involving employment discrimination, the complainant shall be notified of his/her right to file a complaint with the Department of Fair Employment and Housing.

In cases not involving employment discrimination, the complainant must be given the right to file a written appeal with the California Community Colleges Chancellor's Office within 30 days after the Board issues the final District decision, permits the administrative decision to become final or from the date that notice of the District's final decision was provided to the complainant pursuant to Section 59338(b) or (d), whichever is later.

The District should retain and make available the original complaint, and copies of the final decision or a statement indicating the date on which the administrative determination became final, the notice given to complainant, the complainant's appeal of the District's administrative determination, the investigative report and any other information the California Community Colleges Chancellor's Office may require.

Job Announcements

All job announcements shall contain a statement in substantially the following form: The District is an equal opportunity employer. The policy of the District is to encourage applications from ethnic and racial minorities, women, persons with disabilities, and Vietnam-era veterans. No person shall be denied employment because of ethnicity or race, color, sex or gender, age, religion, marital status, disability, sexual orientation, national origin, medical conditions, status as a Vietnam-era veteran, ancestry, or political or organizational affiliation.

Dissemination and Revision of the Plan

All managers and supervisors shall be given copies of the plan as revised from time to time and any guidelines for implementing the plan. Copies of the plan shall be provided to the Faculty Senate and the exclusive representatives of any units of employees.

Statements of nondiscrimination shall be posted at locations where applications for employment are distributed.

Such plans shall be reviewed at least every three years and, if necessary, revised and submitted to the California Community Colleges Chancellor's Office within 90 days of the effective date of the revision or amendment(s). If the California Community Colleges Chancellor's Office determines that the District's policies are not in compliance with Title 5 Sections 59300 et seq., the California Community Colleges Chancellor's Office may require the District to modify its policies.

Adopted: January 2013

AP 3430 Prohibition of Harassment

References:

Education Code Sections 212.5; 44100; 66281.5;

Title IX, Education Amendments of 1972; Title 5, Sections 59320 et seq.;

Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000e

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.

This procedure protects students and 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, District bus, or at a class or training program sponsored by the District at another location.

Definitions

General Harassment: Harassment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, or the perception that a person has one or more of these characteristics is illegal and violates District policy. Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment. For example, repeated derisive comments about a person's competency to do the job, when based on that person's gender, could constitute gender-based harassment. Harassment comes in many forms, including but not limited to the following conduct:

Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race gender, sexual orientation, or other protected status. 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; or sexist, patronizing or ridiculing statements that convey derogatory attitudes based on gender, race nationality, sexual orientation or other protected status.

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. It also includes any physical assault or intimidation directed at an individual due to that person's gender, race, national origin, sexual orientation or other protected status. Physical sexual harassment includes acts of sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability.

Visual or Written: The display or circulation of visual or written material that degrades an individual or group based on gender, race, nationality, sexual orientation or other protected status. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.

Environmental: A hostile academic or work environment exists where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, race, nationality, sexual orientation or other protected status; or gratuitous comments regarding gender, race, sexual orientation, or other protected status that are 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. It can also be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, genders or other protected statuses. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in his/her immediate surroundings, although the conduct is directed at others. 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.

Sexual Harassment: In addition to the above, 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 a person's gender 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 or 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. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it is severe, i.e. a sexual assault.

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/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.

Consensual Relationships

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's 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. In the event that such relationships do occur, the District has the authority to transfer any involved employee to eliminate or attenuate the supervisory authority of one over the other, or of a teacher over a student. Such action by the District is a proactive and preventive measure to avoid possible charges of harassment and does not constitute discipline against any affected employee.

Academic Freedom

Faculty members who wish to use sexually explicit material in the classroom for teaching purposes should consider having the material reviewed by an administrator to determine whether or not their use might violate the district's sexual harassment policy.

Adopted: October 2011

Revised: December 2011, June 2012

AP 3435 Procedures for Handling Complaints of Unlawful Discrimination

Reference: *Title 5, Sections 59300, et seq.*

Introduction and Scope

These are the written procedures for filing and processing complaints of unlawful discrimination at Ohlone Community College District. These procedures incorporate the legal principles contained in nondiscrimination provisions of the California Code of Regulations, title 5, sections 59300 et seq. as well as other state and federal substantive and procedural requirements.

A copy of the written policy on unlawful discrimination will be displayed in a prominent location in the main administrative building or other area where notices regarding Ohlone's rules, regulations, procedures, and standards of conduct are posted.

Authority: 20 U.S.C. § 1681 et seq.; Ed. Code, §§ 66270, 66271.1, 66281.5; Gov. Code, §§ 11135-11139.5; Cal. Code Regs., tit. 5, § 59326. Reference: Cal. Code Regs., tit. 5, §§ 59300 et seq.; 34 C.F.R. § 106.8(b).

Unlawful Discrimination Policy

The non-discrimination policy of the Ohlone Community College District is contained in BP 3410. A copy is available from Human Resources, Room 1203A, Building 1, second floor, Fremont campus, 43600 Mission Boulevard, Fremont, CA 94539, or the Ohlone website.

Informal/Formal Complaint Procedure

Pre-Complaint Discussion

Before filing a formal complaint, the District encourages an individual who has a concern to discuss and try to resolve that concern with the other individual involved when the individual with a concern is comfortable doing so. Many concerns can be resolved quickly through open communication and discussion. Once a formal complaint is filed, strict timelines govern the process, but the complaint process will take much more time as compared to a discussion that might be sufficient to resolve the concern.

If that discussion is unsuccessful or if the individual with the concern is uncomfortable discussing with the other individual, the individual with the concern should discuss and try to resolve the concern with the appropriate Dean with responsibility over the area of concern.

If the individual with the concern is not certain which Dean to contact or if the concern involves a Dean, then the individual with the concern should discuss and try to resolve the concern with the appropriate AVP or VP with responsibility over the area of concern. If the individual with the concern is not certain which AVP or VP to contact, as a general rule, the individual with the concern should contact the following:

- For issues involving the Newark facility or classes, contact the Dean of Kinesiology, Athletics, and the Newark Campus, currently Chris Warden.
- For issues involving students, contact the Interim VP of Student Services, currently Leta Stagnaro.

- For issues involving employees, contact the AVP of Human Resources, currently Shairon Zingsheim.
- For issues involving faculty or instruction, contact the VP of Academic Affairs, currently Leta Stagnaro.
- For issues involving technology or computers, contact the AVP of Information Technology Services, currently Chris Dela Rosa.

The AVP or VP will assist the individual with the concern in trying to find an early resolution of the concern, when possible.

If the concern involves an AVP or VP other than the AVP of Human Resources, the individual should discuss with the AVP of Human Resources. If the concern involves the AVP of Human Resources, the individual should discuss with another AVP or VP with responsibility over the area of concern.

Informal Resolution Process

When a person brings charges of unlawful discrimination to the attention of the District's responsible officer, who is the Associate Vice President of Human Resources, that officer will:

- (1) Undertake efforts to informally resolve the charges;
- (2) Advise the complainant that he or she need not participate in informal resolution;
- (3) Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for doing so;
- (4) Assure the complainant that he or she will not be required to confront, or work out problems with, the person accused of unlawful discrimination;
- (5) Advise the complainant that he or she may file a nonemployment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction.
- (6) If the complaint is employment-related, the complainant should also be advised that he or she may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where such a complaint is within that agency's jurisdiction.

The purpose of the informal resolution process is to allow a complainant to resolve his or her discrimination complaint through a mediation process rather than the formal complaint process. Typically, the informal process will be invoked when there is a simple misunderstanding or the complainant does not wish to file a formal complaint. Resolution of an informal complaint may require nothing more than a clarification of the misunderstanding or an apology from the respondent and an assurance that the offending behavior will cease. Serious allegations of unlawful discrimination may need to be investigated even if the complaining party considers the matter resolved. In an informal process, the district officer shall advise the complainant of his or her rights and responsibilities under both the formal and informal processes. If the complainant declares his or her preference for the informal process, the responsible district officer shall present the complainant with a document that describes the informal/formal process that contains the basics of complainant's allegations of unlawful discrimination. This document will clearly indicate that the complainant opted for the informal resolution process and should be signed and dated by the complainant. The informal resolution process will not be made a predicate to the process and investigation of a formal complaint. If a formal complaint is filed, an investigation must be

completed within the time required unless the complaint is voluntarily rescinded by a complainant as a result of a successful informal resolution.

Efforts at informal resolution need not include any investigation unless the responsible District officer determines that an investigation is warranted. Selecting an informal resolution does not extend the time limitations for filing a formal complaint. Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed, an investigation is required to be conducted pursuant to title 5, section 59334, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. *Even if the complainant does dismiss the complaint, the responsible district officer may require the investigation to continue if he or she so determines.* Any efforts at informal resolution after the filing of a written complaint will not exceed the 90-day period for rendering the administrative determination pursuant to title 5, section 59336.

In employment-related cases, if the complainant also files with the Department of Fair Employment and Housing or with the U.S. Equal Employment Opportunity Commission, a copy of that filing will be sent to the State Chancellor's Office requesting a determination of whether a further investigation under title 5 is required. Unless the State Chancellor's Office determines that a separate investigation is required, the District will discontinue its investigation under title 5 and the matter will be processed through the Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission. However, the District may continue an investigation of the allegations, if the District chooses to do so and if appropriate, but the process will not be under the title 5 processes.

The District will allow for representation where required by law and may allow for representation for the accused and complainant in other circumstances on a case by case basis.

Authority: Cal. Code Regs., tit. 5, §§ 59327, 59328, 59334, 59336, and 59339; *NLRB v. Weingarten, Inc.* (1975) 420 U.S. 251.

Filing of Formal Written Complaint

If a complainant decides to file a formal written unlawful discrimination complaint against the District, he or she must file the complaint on a form prescribed by the State Chancellor. These approved forms are available from the District Human Resources Department, the District website at <http://www.ohlone.edu/org/hr/docs/unlawfuldiscriminationcomplaintform.pdf>, and also at the State Chancellor's website, at <http://www.cccco.edu/SystemOffice/Divisions/Legal/Discrimination/tabid/294/Default.aspx>

The complainant must file the completed form with the responsible District officer or mail the form directly to the State Chancellor's Office of the California Community Colleges. The complainant may choose to do both.

If a complaint of unlawful discrimination is presented in another written format, such as a letter, a district may request that the complainant complete the form. If there is a delay in obtaining a completed form, or the complainant refuses to transfer the information or otherwise complete the form but wishes to pursue the formal complaint process, a district may attach the letter to the form and open a formal investigation. While a complaint filed in an improper form is still procedurally defective under title 5 standards, the merits of the complaint itself may still be valid and must be addressed.

Once a complaint is filed, the individual(s) accused of engaging in prohibited discriminatory conduct should be advised of that filing and the general nature of the complaint. This should occur as soon as possible and in a manner that is appropriate under the circumstances. The District will also advise the accused that an assessment of the accuracy of the allegations has not yet been made, that the complaint will be investigated, that the accused will be provided an opportunity to present his/her side of the matter, and that any conduct that constitutes unlawful retaliation against the complainant or any witnesses must be avoided.

Authority: Cal. Code Regs., tit. 5, §§ 59311 and 59328.

Threshold Requirements Prior to Investigation of a Formal Written Complaint

- When a formal written complaint is filed, it will be reviewed to determine if the complaint meets the following requirements:
- The complaint must be filed on a form prescribed by the State Chancellor's Office. If the complaint is not filed on this form, every effort should be made to have the complaint filed on this form and to obtain complainant's signature. However, where a complainant has indicated that he or she wishes to pursue the formal complaint process, a complaint should not be rejected solely based on the failure to file the complaint on this form.
- The complaint must allege unlawful discrimination prohibited under title 5, section 59300.
- Complaints under Title 5 regulations must be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administrator.
- Under federal law, a complainant who does not meet this definition (such as a third-party complainant) must also be provided access to the informal and formal complaint process, up through the first level of appeal.
- In any complaint not involving employment, the complaint must be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the specific incident or incidents of alleged unlawful discrimination.
- In any complaint alleging discrimination in employment, the complaint shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period will be extended by no more than 90 days following the expiration of that 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of 180 days.

Authority: Cal. Code Regs., tit. 5, § 59328.

Defective Complaint

If a complaint is found to be defective, it will be immediately returned to the complainant with a complete explanation of why an investigation will not be initiated under California Code of Regulations, title 5, section 59300 et seq. The notice will inform the complainant that the complaint does not meet the requirements of section 59328 and will specify in what requirement the complaint is defective. A copy of the notice to the complainant will also be sent to the State Chancellor's Office.

Authority: Cal. Code Regs., tit. 5, §§ 59328, 59332.

Notice to State Chancellor or District

A copy of all formal complaints filed in accordance with the title 5 regulations will be forwarded to the State Chancellor's Office immediately upon receipt, regardless of whether the complaint is brought by a student or by an employee. Similarly, when the State Chancellor's Office receives a complaint, a copy will be forwarded to the District.

Authority: Cal. Code Regs., tit. 5, § 59330.

Administrative Determination

In any case not involving employment discrimination, within 90 days of receiving an unlawful discrimination complaint filed under title 5, sections 59300 et seq., the responsible District officer will complete the investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary¹ of the report to the complainant, and written notice setting forth all the following to both the complainant and the State Chancellor:

(a) for Title 5 complaints under state regulations, the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint, and for complaints under Title IX and other federal civil rights laws, a specific finding as to whether the preponderance of the evidence showed that discrimination occurred with respect to each allegation in the complaint;

(b) a description of actions taken, if any, to prevent similar problems from occurring in the future;²

(c) the proposed resolution of the complaint; and

(d) the complainant's right to appeal to the District governing board and the State Chancellor.

In any case involving employment discrimination, within 90 days of receiving an unlawful discrimination complaint filed under title 5, sections 59300, et seq., the responsible District officer will complete the investigation and forward a copy or summary³ of the report to the complainant, and written notice setting forth all the following to the complainant:

(a) for Title 5 complaints under state regulations, the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with

¹ It is within the District's discretion to choose not to include the entire investigative report; however, a summary of an investigative report should, at the very least, include all of the following:

(a) a description of the circumstances giving rise to the complaint;

(b) for Title 5 complaints under state regulations, a specific finding as to whether there is probable cause to believe the discrimination occurred with respect to each allegation in the complaint, and for complaints under Title IX and other federal civil rights laws, a specific finding as to whether the preponderance of the evidence showed that discrimination occurred with respect to each allegation in the complaint;

(c) a summary and analysis of the relevant evidence (documents, data, or witness testimony) on which the determination rests; and

(d) any other information deemed appropriate by the district.

² If it is determined that discrimination did occur, possible remedies to prevent similar problems from occurring in the future include all the standard District disciplinary actions for students and employees, ranging from undocumented reprimand to termination or expulsion. If formal disciplinary action is inappropriate, other possible remedies include training in the pertinent area(s) of unlawful discrimination, apology, and restricting or forbidding contact between the perpetrator and victim.

³ See footnote 1.

respect to each allegation in the complaint, and for complaints under Title IX and other federal civil rights laws, a specific finding as to whether the preponderance of the evidence showed that discrimination occurred with respect to each allegation in the complaint;

(b) a description of actions taken, if any, to prevent similar problems from occurring in the future⁴;

(c) the proposed resolution of the complaint; and

(d) the complainant's right to appeal to the District governing board and to file a complaint with the Department of Fair Employment and Housing.

The District will keep these documents on file for a period of at least three years after closing the case, and make them available to the State Chancellor upon request.

The Ohlone Community College District recognizes the importance of and is therefore committed to completing investigations and resolving complaints as quickly as possible, consistent with the requirements for a thorough investigation.

Authority: Cal. Code Regs., tit. 5, § 59336.

Complainant's Appeal Rights

Complainants have appeal rights that they may exercise if they are not satisfied with the results of the District's administrative determination. At the time the administrative determination and summary is mailed to the complainant, the responsible District officer or his/her designee shall notify the complainant of his or her appeal rights as follows:

- First level of appeal: The complainant has the right to file an appeal to the District's governing board within 15 days from the date of the administrative determination. The District's governing board will review the original complaint, the investigative report, the administrative determination, and the appeal.
- The District's governing board will issue a final District decision in the matter within 45 days after receiving the appeal. Alternatively, the District's governing board may elect to take no action within 45 days, in which case the original decision in the administrative determination will be deemed to be affirmed and shall become the final District decision in the matter. A copy of the final decision rendered by the District's governing board will be forwarded to the complainant and to the State Chancellor's Office.
- Second level of appeal: The complainant has the right to file an appeal with the California Community College Chancellor's Office in any case not involving employment-related discrimination within 30 days from the date that the governing board issues the final District decision or permits the administrative determination to become final by taking no action within 45 days. (Title 5, section 59339(b) does not provide appeal rights to the State Chancellor in employment-related discrimination cases.) The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board, and a statement under penalty of perjury that no response was received from the governing board within 45 days from that date. In any case involving employment discrimination, the complainant has the right to file a complaint with the Department of Fair Employment and Housing (DFEH) where the case is within the jurisdiction of that agency.

⁴ See footnote 2.

Complainants must submit all appeals in writing.

The title 5 process provides no corresponding appeal rights to any other parties aside from the complainants.

Authority: Cal. Code Regs., tit. 5, §§ 59338 and 59339.

Provision of Information to State Chancellor

In any case not involving employment discrimination, within 150 days of receiving a complaint, the responsible District officer will either:

Forward the following to the State Chancellor:

- A copy of the final District decision rendered by the governing board or a statement indicating the date on which the administrative determination became final as a result of taking no action on the appeal within 45 days.
- A copy of the notice of appeal rights the District sent the complainant.
- Any other information the State Chancellor may require; or

Notify the State Chancellor that the complainant has not filed an appeal with the district governing board and that the District has closed its file.

The District will keep these documents on file for a period of at least three years after closing the case, and in any case involving employment discrimination, make them available to the State Chancellor upon request.

Authority: Cal. Code Regs., tit. 5, §§ 59338 and 59340.

Extensions

If for reasons beyond its control, the District is unable to comply with the 90-day or 150-day deadlines specified above for submission of materials to the complainant and the State Chancellor's Office, the responsible District officer will file a written request that the State Chancellor grant an extension of the deadline. Where an extension is deemed necessary by the District, it must be requested from the State Chancellor regardless of whether or not the case involves employment discrimination. The request will be submitted no later than 10 days prior to the expiration of the deadlines established by title 5 in sections 59336 and/or 59340 and will set forth the reasons for the request and the date by which the District expects to be able to submit the required materials.

A copy of the request for an extension will be sent to the complainant, who will be advised that he or she may file written objections with the State Chancellor within 5 days of receipt.

The State Chancellor may grant the request unless delay would be prejudicial to the investigation. If an extension of the 90-day deadline is granted by the State Chancellor, the 150-day deadline is automatically extended by an equal amount.

Authority: Cal. Code Regs., tit. 5, § 59342.

Additional Details of Ohlone's Policy against Unlawful Sexual and Other Harassment of Employees and Contractors

The following section provides additional guidance on expectations and requirements for interaction with employees and contractors. Many of these concepts may also apply to students, so please comply for all of your interactions with others while on campus or otherwise while representing Ohlone.

Ohlone is committed to providing a workplace free of unlawful sexual harassment as well as unlawful harassment based on such factors as race, religious creed, color, national origin, ancestry, age (over 40), medical condition, marital status, sexual orientation, gender, disability, pregnancy or related medical condition, or any other basis protected by applicable law to the extent protected by applicable law. Ohlone strongly disapproves of and will not tolerate unlawful harassment of employees or contractors by managers, supervisors, contractors or co-workers. Ohlone will also attempt to protect employees and contractors from unlawful harassment by non-employees in the workplace.

Ohlone, as an employer or contracting entity, must take all reasonable steps to prevent discrimination and unlawful harassment from occurring. Sexual or other unlawful harassment in employment violates Ohlone's policy and is prohibited under laws including Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act (FEHA), and the Education Code. FEHA also prohibits harassment of contractors.

Ohlone will not tolerate harassment on the basis of race, color, sex, gender, national origin, ancestry, religion, age (over 40), physical and mental disability, medical condition, marital status, sexual orientation, or pregnancy or related medical conditions. All such conduct is prohibited.

Each and every employee is required to not engage in any behavior or conduct that could be considered sexual harassment or other unlawful harassment.

Each and every manager or supervisor is required to ensure that this policy against sexual or other unlawful harassment is strictly followed. Each manager or supervisor must ensure that each employee is aware of the policy against harassment and that the work environment is free from any behavior or comments that could be considered to create a hostile environment.

Definition of Harassment

Harassment includes verbal, physical or visual conduct that creates an intimidating, offensive or hostile working environment or that unreasonably interferes with job performance. Harassment may also include unwelcome, offensive racial or ethnic slurs, jokes, or other similar conduct.

Sexual Harassment Defined

Federal law defines sexual harassment as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made a term or condition of employment; or (2) submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment.

California law defines sexual harassment as unwanted sexual advances or visual, verbal or physical conduct of a sexual nature. This definition includes many forms of offensive behavior. The following is a partial list:

- Unwanted sexual advances.
- Offering employment benefits in exchange for sexual favors.
- Making or threatening reprisals after a negative response to sexual advances.
- Visual conduct: staring, leering, making sexual gestures, or displaying or sharing of sexually suggestive objects or pictures, cartoons, screensavers, calendars, cards, drawings, writings, photos, or posters.
- Verbal misconduct: making or using derogatory comments, epithets, slurs, sexually explicit jokes, sexually offensive comments, sexually degrading stories, sexual or gender profanity, sexual questions, unwelcome discussion of personal or sex life, sexual rumors, or comments about an employee's body or dress.
- Repeatedly asking a co-worker for a date or relationship after being turned down or told no.
- Verbal sexual advances or propositions.
- Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, or suggestive or obscene letters, notes or invitations.
- Physical conduct: touching, hugging, massaging, standing too close, assaulting, impeding or blocking movements.

All such conduct is prohibited.

It is unlawful for males to sexually harass females or other males, and for females to sexually harass males or other females.

Sexual harassment on the job is unlawful whether it involves co-worker harassment, harassment by a supervisor or manager, or by persons doing business with or for Ohlone.

Even if no one has told an employee that the employee's conduct is offensive, the employee is subject to discipline, up to and including termination, for engaging in unlawful harassment. To minimize the risk of violating the policy against harassment, employees should remember and follow these guidelines:

- An individual may consider touching, hugging, or massaging to be unwelcome or offensive.
- Racial, religious, ethnic, sexual preference, and sexual jokes/epithets, derogatory comments and offensive comments, are to be completely avoided. Such comments on any legally protected basis are prohibited. Legally protected basis include: sex, race, religious creed, color, national origin, ancestry, age (over 40), medical condition, marital status, sexual orientation, gender, disability, pregnancy or related medical condition.
- Compliments to others should be kept general. More specific comments may be perceived as sexually suggestive.
- Drinking impairs good judgment. When at an Ohlone-related social function or when with employees or other individuals associated with Ohlone, drink responsibly.
- Do not behave in a way that you would not want your spouse, significant other, and/or children to see or hear about.

Employees must use good judgment before seeking a romantic relationship with another employee. You are not to repeatedly ask another employee to date, apply pressure to have a relationship or retaliate in any way due to an employee's decision not to date or not to have a relationship.

Preventing Sexual and Other Unlawful Harassment

A program to eliminate sexual and other unlawful harassment from the workplace is not only required by law but is the most practical way to prevent incidents from occurring, or to avoid or limit damages if harassment should occur despite preventive efforts. Ohlone will act to remedy unlawful harassment.

- Supervisors and managers must immediately refer all harassment complaints to the Human Resources Department of Ohlone.
- Ohlone and its representatives will protect the confidentiality of harassment complainants to the extent possible.
- All incidents of sexual or other unlawful harassment that are reported must be investigated.
- If Ohlone determines that sexual or other unlawful harassment has occurred, Ohlone will take immediate and effective remedial action commensurate with the circumstances. Appropriate action will also be taken to deter any future harassment. If a complaint of sexual or other unlawful harassment is substantiated, appropriate disciplinary action, up to and including discharge, will be taken. Ohlone will communicate to the employee or contractor who complained as to appropriate corrective action being taken against the harasser, and Ohlone will take appropriate action to remedy any loss to the employee or contractor resulting from the sexual or other unlawful harassment.

Protection against Retaliation

Ohlone's policy and law prohibit retaliation against any employee, student, or contractor by another employee, by another student, by another contractor, or by Ohlone for opposing unlawful practices prohibited by discrimination laws, for using this complaint procedure or for filing, testifying, assisting or participating in any manner in any investigation, proceeding or hearing conducted by a federal or state enforcement agency.

Prohibited retaliation includes, but is not limited to, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making employment recommendations or contracting decisions, failure to make employment decisions impartially, adversely affecting working conditions or otherwise denying any employment benefits.

Once Ohlone knows of the occurrence of sexual or other unlawful harassment, no further harassment will knowingly be permitted, and Ohlone will not knowingly permit any retaliation against any employee or contractor who complains of sexual or other unlawful harassment or who participates in an investigation. Ohlone policy and law prohibit retaliation against any employee or contractor who opposes sexual or other unlawful harassment. Opposition includes, but is not limited to: seeking advice or assisting or advising any person in seeking advice of an enforcement agency regardless of whether a complaint is filed or, if filed, substantiated; opposing employment practices or other practices that an employee or a contractor reasonably believes to be unlawful; participating in an activity perceived to be opposition to discrimination by an employer covered by the law; or contacting, communicating with or participating in any federal, state, or local human rights or civil rights agency proceedings.

Any report of retaliation by the one accused of harassment, or by coworkers, contractors, supervisors or managers, will also be immediately, effectively and thoroughly investigated in accordance with Ohlone's investigation procedure outlined above. If a complaint of retaliation is substantiated, appropriate disciplinary action, up to and including immediate discharge, will be taken.

Liability for Sexual or Other Unlawful Harassment

Any contractor or employee of Ohlone, whether coworker, supervisor or manager, who is found to have engaged in unlawful sexual or other unlawful harassment is subject to corrective and/or disciplinary action up to and including discharge from employment or termination of contract. An employee who engages in sexual or other unlawful harassment, including any manager who knew about the harassment and took no action to stop it, may be held personally liable for monetary damages.

Additional Enforcement Information

In addition to Ohlone's internal complaint procedure, employees should also be aware that the federal Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment & Housing (DFEH) investigate and prosecute complaints of sexual or other unlawful harassment in employment. DFEH also investigates and prosecutes contractor complaints of unlawful harassment.

Employees who believe that they have been sexually harassed or harassed on other grounds protected by applicable law may file a complaint with the EEOC or with the DFEH. Contractors may file a complaint of unlawful harassment with the DFEH. Both the EEOC and the DFEH serve as neutral fact finders and attempt to help the parties voluntarily resolve disputes.

Damages and remedies such as hiring, reinstatement, back pay, promotion and changes in policies and/or practices may be obtained.

For more information, contact Human Resources or the nearest office of the EEOC or DFEH, as listed in the local telephone book or on the internet. (www.eeoc.gov or www.dfeh.ca.gov).

Equal Employment Opportunity and Reasonable Accommodation

Ohlone is an equal opportunity employer. All recruiting, screening, hiring, training, promotion, transfer and terms and conditions of employment will be conducted without discrimination due to race, religious creed, color, ancestry, age (over 40), sex, medical condition, marital status, disability, sexual orientation, national origin, pregnancy or related medical condition, Vietnam-era veteran status or other veteran protected by The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), and any other basis protected by applicable law to the extent required by law.

To the extent required by applicable law, employment shall not be affected by physical or mental disability where the employee is able to perform the essential duties required by the job (with or without reasonable accommodation.)

To comply with applicable laws ensuring equal employment opportunities to individuals with a disability, Ohlone will make reasonable accommodation(s) for the known physical or mental limitations of an individual with a disability who is an applicant or an employee, unless undue hardship would result, to the extent required by applicable law.

Any applicant or employee who requires an accommodation should contact Human Resources and request such an accommodation. The individual with the disability should specify what accommodation he or she believes is necessary to perform the job. Ohlone will determine possible accommodations, if any, that will help eliminate the limitation. Ohlone will make the accommodation if the accommodation is reasonable and will not impose an undue hardship and if the accommodation will result in the employee being able to perform essential job functions without a direct threat to the health and safety of the employee or others.

Ohlone will maintain confidentiality of all medical information in compliance with disability laws. Such medical information will be maintained in separate files, not the employee's Human Resource file.

This policy of equal employment opportunity applies to all terms and conditions of employment, including but not limited to, recruitment, hiring, training, wages, promotions, demotions, transfers, discipline and terminations.

Employees with questions or concerns about discrimination are encouraged to talk to Human Resources. Ohlone will not allow retaliation against an employee who expresses a concern of discrimination.

Any employee who engages in unlawful discriminatory practices will be subject to discipline, up to and including termination.

Definitions

Definitions applicable to nondiscrimination policies are as follows:

- "Appeal" means a request by a complainant made in writing to the Ohlone Community College District governing board pursuant to title 5, section 59338, and/or to the State Chancellor's Office pursuant to title 5, section 59339, to review the administrative determination of the District regarding a complaint of discrimination.
- "Association with a person or group with these actual or perceived characteristics" includes advocacy for or identification with people who have one or more characteristics of a protected category listed under "Unlawful Discrimination Policy" and title 5, section 59300, participation in a group associated with persons having such characteristics, or use of a facility associated with use by such persons.
- "Complaint" means a written and signed statement meeting the requirements of title 5, section 59328 that alleges unlawful discrimination in violation of the nondiscrimination regulations adopted by the Board of Governors of the California Community Colleges, as set forth at title 5, sections 59300 et seq.
- "Days" means calendar days.
- "Gender" means sex, and includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth. (Ed. Code § 66260.7; Penal Code § 422.56(c).)
- "Mental disability" includes, but is not limited to, all of the following:
 - (1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:
 - (A) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
 - (B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.
 - (C) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.
 - (2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires specialized supportive services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the District.

(4) Being regarded or treated by the District as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the District as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2). (Ed. Code § 66260.5; Gov. Code § 12926(i).)

"Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.⁵ (Gov. Code § 12926(i).)

- "Physical disability" includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) "Major life activities" shall be broadly construed and include physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires specialized supportive services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the District.

(4) Being regarded or treated by the District as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the District as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.⁶ (Gov. Code § 12926(k).)

⁵ If the Americans with Disabilities Act of 1990 definitions would result in broader protection of the civil rights of individuals with a mental or physical disability, or would include any medical condition not included within these definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of the definitions in Government Code section 12926 and is deemed to be included in district policy. (Gov. Code, § 12926(l).)

⁶ See prior footnote.

- “Nationality” includes citizenship, country of origin, and national origin. (Ed. Code § 66261.5.)
- “Race or ethnicity” includes ancestry, color, ethnic group identification, and ethnic background. (Ed. Code § 66261.7.)
- “District” means the Ohlone Community College District or any District program or activity that is funded directly by the state or receives financial assistance from the state.
- “Responsible District Officer” means the officer identified by the District to the State Chancellor's Office as the person responsible for receiving complaints filed pursuant to title 5, section 59328, and coordinating their investigation.
- “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is not limited to, a person's gender, as defined in section 422.56 of the Penal Code. (Gov. Code § 12926(p).) Discrimination on the basis of sex or gender also includes sexual harassment.
- “Sexual harassment” is unlawful discrimination and includes unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the workplace or in the educational setting. Examples include but are not limited to:

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

(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. (Ed. Code § 66262.5 and § 212.5).

Examples of unlawful sexual harassment include but are not limited to:

(1) Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. (Examples of possible sexual harassment that appear in a written form include, but are not limited to: suggestive or obscene letters, notes, invitations. Examples of possible visual sexual harassment include, but are not limited to: leering, gestures, display of sexually suggestive objects or pictures, cartoons, or posters.)

(2) Continuing to express sexual interest after being informed that the interest is unwelcomed.

(3) Making reprisals, threats of reprisal, or implied threats of reprisal following a rebuff of harassing behavior. The following are examples of conduct in an academic environment that might be found to be sexual harassment: threatening to withhold, 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.

(4) Engaging in explicit or implicit coercive sexual behavior within the work 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 that 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.

(7) Awarding educational or employment benefits, such as grades or duties or shifts, recommendations, reclassifications, etc., to any student or employee with whom the decision maker has a sexual relationship and denying such benefits to other students or employees.

- “Sexual orientation” means heterosexuality, homosexuality, or bisexuality. (Ed. Code § 66262.7.)
- “Unlawful discrimination” means discrimination based on a category protected under title 5, section 59300, including retaliation and sexual harassment.

Authority: Gov. Code, § 12926; Cal. Code Regs., tit. 5, §§ 59300, 59311; Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, Office for Civil Rights, January 19, 2001.

Confidentiality of the Process

Investigative processes can best be conducted within a confidential climate. Therefore, the District does not reveal information about such matters except as necessary to fulfill its legal obligations.

Potential complainants are sometimes reluctant to pursue a complaint if their names will be revealed. The inability to reveal the name of a complainant or facts that are likely to reveal the identity of the complainant can severely limit the ability of the District to respond. Complainants must also recognize that persons who are accused of wrongdoing have a right to present their side of the matter, and this right may be jeopardized if the District is prohibited from revealing the name of the complainant or facts that are likely to disclose the identity of the complainant.

If a complainant insists that his or her name not be revealed, the responsible officer should take all reasonable steps to investigate and respond to the complaint consistent with the complainant's request as long as doing so does not jeopardize the rights of other students or employees.

It is also important that complainants and witnesses understand the possibility that they may be charged with allegations of defamation if they circulate the charges outside of the District's process. In general, persons who are participating in a District investigative or disciplinary process that is related to a charge of discrimination are protected from tort claims such as defamation. However, persons who make allegations outside of these processes or who discuss their claims with persons outside of the process may expose themselves to tort claims and damages.

Complainants, witnesses, and those accused of discrimination will all be reminded to maintain confidentiality and may be asked to sign a confidentiality acknowledgement statement.

Where an investigation reveals the need for disciplinary action, the complainant may wish to have information about what disciplinary actions the District took. However, the privacy rights of the persons involved often prevent the District from providing such information. In student disciplinary actions for sexual assault/physical abuse charges, Education Code section 76234 provides that the

victim shall be informed of the disciplinary action, but that the victim must keep the information confidential. Disciplinary actions taken against employees are generally considered confidential.⁷

Authority: Cal. Const. Art. I, § 1; Civil Code § 47; Ed. Code, §§ 76234 and 87740; *Silberg v. Anderson* (1990) 50 Cal.3d. 205; Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, Office for Civil Rights, January 19, 2001.

Notice, Training, and Education for Students and Employees

The Ohlone Community College District's responsible officer shall make arrangements for notifying or training employees and students on the District's unlawful discrimination policy and procedures. Faculty members, members of the administrative staff, and members of the support staff will be provided with a copy of the District's written policy on unlawful discrimination at the beginning of the first quarter or semester of the college year after the policy is adopted.

All District employees will receive this notification or training and a copy of the unlawful discrimination policies and procedures during the first year of their employment. Because of their special responsibilities under the law, supervisors of employees will undergo mandatory training on unlawful sexual harassment within six months of assuming a supervisory position and bi-annually thereafter. In years in which a substantive policy or procedural change has occurred all, District employees will attend a training update and/or receive a copy of the revised policies and procedures.

A training program or informational services will be made available to all students at least once annually. The student training or informational services will include an explanation of the policy, how it works, and how to file a complaint. In addition, a copy of the District's written policy on unlawful discrimination, as it pertains to students, will be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

Authority: Ed. Code, § 66281.5; Gov. Code § 12950.1 ; Cal. Code Regs., tit. 5, §§ 53003, 59324 and 59326. Reference: Cal. Code Regs., tit. 5, §§ 59300 et seq.; 34 C.F.R. § 106.8(b).

Academic Freedom

The Ohlone Community College District reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow any form of unlawful discrimination. It is recognized that an essential function of education is a probing of opinions and an exploration of ideas that may cause some students discomfort. It is further recognized that academic freedom ensures the faculty's right to teach and the student's right to learn. Finally, nothing in these policies and procedures shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

When investigating unlawful discrimination complaints containing issues of academic freedom Ohlone Community College District may consult with a faculty member appointed by the Academic Senate with respect to contemporary practices and standards for course content and delivery.

⁷ Complainants must trust the District to take appropriate action and must understand that the District is generally not at liberty to discuss personnel or student matters, particularly disciplinary matters. In some disciplinary cases, the complainant may be required to testify at a hearing, and would therefore be aware of the proposed disciplinary action. The complainant is to maintain the confidentiality of the disciplinary hearing.

Reference: *Cohen v. San Bernardino Valley College* (1995) 883 F.Supp. 1407, 1412-1414, affd. in part and revd. in part on other grounds, (1996) 92 F.3d 968; Cal. Code Regs., tit. 5, § 59302.

Record Retention

Unlawful discrimination records that are part of an employee's employment records may be classified as Class-1 Permanent records and retained indefinitely or microfilmed in accordance with title 5, California Code of Regulations, section 59022. Unlawful discrimination records of a student that are deemed worthy of preservation but not classified as Class-1 Permanent may be classified as Class-2 Optional records or as Class-3 Disposable records. Class-2 Optional records shall be retained until reclassified as Class-3 Disposable Records. Class-3 Disposable Records shall be retained for a period of three years after being classified as Class-3 Disposable records.

Authority: Cal. Code Regs., tit. 5, § 59020 et seq.

Adopted: September 2011

Revised: May 2012, January 2016

AP 3440 Service Animals

References:

Civil Code Sections 54 et seq.;

Penal Code Section 365.5;

The Americans with Disabilities Act of 1990 – 42 United States Code Sections 12101 et seq.;

28 Code of Federal Regulations Part 35;

28 Code of Federal Regulations Part 36;

34 Code of Federal Regulations Part 104.44(b)

The District will allow an individual with a disability to use a service animal in District facilities and on District campuses in compliance with state and federal law.

The District will allow an individual with a disability to use a miniature horse as a service animal in District facilities and on District campuses if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability and the District has determined, based on the assessment factors provided in this procedure, that a reasonable accommodation can be made.

The District will allow an individual with a disability to be accompanied by his/her service animal in all areas of the District's facilities where members of the public, invitees, clients, customers, patrons, or participants in services, programs or activities, as relevant, are allowed to go.

These procedures shall also be applicable to an individual who is training a service animal.

Service Animal Defined

A "service animal" for purposes of this procedure means any dog (or miniature horse, as provided herein) that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.

The work or tasks performed by a service animal must be directly related to the handler's disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Exceptions

The District may ask an individual with a disability to remove a service animal from the premises if:

- The animal is out of control and the animal's handler does not take effective action to control it; or
- The animal is not housebroken.

If a service animal is excluded under one of these exceptions, the District will give the individual with a disability the opportunity to obtain goods, services, and accommodations or to participate in the service, program, or activity without having the service animal on the premises.

Assessment Factors for Miniature Horses

The District shall consider the following factors:

- The type, size, and weight of the miniature horse and whether the facility can accommodate

these features;

- Whether the handler has sufficient control of the miniature horse;
- Whether the miniature horse is housebroken; and
- Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

Control

The service animal must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

Care or Supervision

The District is not responsible for the care or supervision of the animal.

Inquiries by the District

The District may make two inquiries to determine whether an animal qualifies as a service animal:

- Whether the animal is required because of a disability; and
- What work or task the animal has been trained to perform.

The District will not make either of these inquiries when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

An individual may choose to produce a county service dog license or identification tag as proof that the animal is a service animal. Licensure or certification is not required in order to meet the definition of service animal under this procedure. There are no licensing or certification requirements for miniature horses.

No Surcharge

The District will not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If the District normally charges individuals for damage caused by pets, an individual with a disability may be charged for damaged caused by his or her service animal.

Adopted: July 2012

AP 3500 Campus Safety

References:

Education Code Sections 212, 67380, and 87014;
Penal Code Sections 242, 243, 245, and 422.55;
20 U.S. Code Sections 1232g, 1292(f);
34 Code of Federal Regulations 668.46;
34 Code of Federal Regulations 99.31(a)(13), (14);
Campus Security Act of 1990

A campus safety plan shall be developed and provided to students via the Student Handbook, Ohlone College Catalog, Schedule of Classes, and the Ohlone website.

The Chief of Campus Police Services, Safety and Security prepares and annually updates a report of all occurrences reported to Campus Police Services, Safety and Security of and arrests for crimes that are committed on campus and that involve violence, hate violence*, theft or destruction of property, illegal drugs, or alcohol intoxication, and of all occurrences of noncriminal acts of hate violence* reported to campus authorities. A written report will be submitted to the Board.

Written records of noncriminal acts of hate violence* shall include at least a description of the act of hate violence*, the victim characteristics, and offender characteristics, if known.

***Note:** *Education Code Section 67380 defines “hate violence” as: “any act of intimidation or physical harassment, physical force or physical violence, or the threat of physical force or physical violence, that is directed against any person or group of persons or the property of any person or group of persons because of the ethnicity, race, national origin, sex, sexual orientation, gender identity, gender expression, disability, or political or religious beliefs of that person or group.” Section 67380 requires reporting of both occurrences reported to campus police or safety authorities of and arrests for crimes that involve hate violence (Section 67380(a)(1)(A)) and of “non-criminal acts of hate violence” (Education Code Section 67380(a)(1)(B)).*

For purposes of reporting under the Clery Act, “hate crimes” include domestic violence, dating violence, and stalking.

Adopted: March 2012

Revised: June 2012, June 2013

AP 3501 Campus Security and Access

Reference: *34 Code of Federal Regulations Section 668.46(b)(3)*

During business hours, the District will be open to students, parents, employees, contractors, guests, and invitees. During non-business hours access to all District facilities is by key, if issued, or by admittance via Campus Police Services, Safety and Security. In the case of periods of extended closing, the District will admit only those with prior written approval to all facilities.

Emergencies may necessitate changes or alterations to any posted schedules. Areas that are revealed as problematic will have regular periodic security surveys. Administrators from the Office of the President, Vice President of Academic Affairs, Vice President of Student Services, and Vice President of Administrative Services and other concerned areas review these results. These surveys examine security issues such as landscaping, locks, alarms, lighting, and communications. Additionally, during the academic year, the Chief of Campus Police Services, Safety and Security, the Director of Facilities and maintenance staff shall meet to discuss campus security and access issues of pressing concern.

Adopted: July 2012

AP 3505 Emergency Response Plan

References:

Education Code Sections 32280 et seq. and 71095;
Government Code Sections 3100 and 8607(a);
Homeland Security Act of 2002;
National Fire Protection Association 1600;
Homeland Security Presidential Directive-5;
Executive Order S-2-05;
California Code of Regulations Title 19, Sections 2400-2450;
34 Code of Federal Regulations Section 668.46(b)(13) and (g)

EMERGENCY RESPONSE AND EVACUATION PROCEDURES

General information about the emergency response and evacuation procedures for the District are publicized each year as part of the District's Clery Act compliance efforts and that information is available at the Campus Police Services office on the Fremont campus or on the Ohlone College web site.

All members of the campus community are notified on an annual basis that they are required to notify the Campus Police Service Department, any Responsible Security Official or college district employee of any incident on campus that involves a significant emergency or dangerous situation that may involve an immediate or ongoing threat to the health and safety of students and employees on campus. Campus Police Services has the responsibility of responding to, and summoning the necessary resources, to mitigate, investigate, and document any situation that may cause a significant emergency or dangerous situation. In addition, Campus Police Services has a responsibility to respond to such incidents to determine if the situation does in fact, pose a threat to the community. If so, federal law requires that the institution immediately notify the campus community or the appropriate segments of the community that may be affected by the situation.

Upon confirmation or verification by the District that a legitimate emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on campus, the District will determine the content of the message and will use some or all of the systems described below to communicate the threat to the campus community or to the appropriate segment of the community, if the threat is limited to a particular building or segment of the population. The District will, without delay, take into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the judgment of the first responders (including, but not limited to Campus Police Services) compromise the efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.

In the event of a serious incident that poses an immediate threat to members of the campus community, the District has various systems in place for communicating information quickly. Some or all of these methods of communication may be activated in the event of an immediate threat to the campus community. These methods of communication include network emails, emergency text messages that can be sent to a phone or Personal Digital Assistant (individuals can sign up for this service on the District web site), public address system, District website and emergency messages posted on the electronic billboards at the entrances to the college campuses. The District will post updates during a critical incident on the District web site at www.ohlone.edu. Individuals can call the District's recorded information telephone line at (510) 659-6111 for updates. E-mail messages and updates will be sent out and text messages to those who have signed up with AlertU. The Ohlone Community College District has adopted AlertU as one means of communicating with students, staff, and faculty during a campus emergency, such as a natural disaster or safety threat.

AlertU is a text based mass communication system that is of no cost to participants. AlertU is an "opt in" program and users can "opt out" at anytime.

With AlertU, school administrators can send text alerts to subscribers' mobile devices and communicate critical information in real-time.

There are the three methods for "opting in":

1. Text **OHLONE** to **253788** (AlertU) and reply **Y**
2. Sign up online at www.alertu.org/ohlone
3. Use the sign up form available at <http://www.ohlone.edu/org/security/alertu.html>

The District's Public Information Officer will be responsible for the dissemination of emergency information to the larger community through e-mail, radio, TV alerts, and electronic sign boards.

TESTING EMERGENCY RESPONSE AND EVACUATION PROCEDURES

An evacuation drill is coordinated by Campus Police Services two times a year for all facilities on campus. Students learn the locations of the emergency exits in the buildings and are provided guidance about the direction they should travel when exiting each facility for a short-term building evacuation. Campus Police Services does not establish locations for evacuation in advance because those decisions are affected by time of day, location of the building being evacuated, the availability of the various designated emergency gathering locations on campus, and other factors such as the location and nature of the threat. In both cases, Campus Police Services and District staff on the scene will communicate information to students regarding the developing situation or any evacuation status changes.

Evacuation drills are monitored by Campus Police Services and District administration to evaluate egress and behavioral patterns. Reports are prepared by participating departments which identify deficient equipment so that repairs can be made immediately. Recommendations for improvements are also submitted to the appropriate departments and offices for consideration.

The District conducts numerous announced and unannounced drills and exercises each year and conducts follow-through activities designed for assessment and evaluation of emergency plans and capabilities. Campus Police Services and District administration coordinate announced and unannounced evacuation drills twice annually, as described above, to test the emergency response and evacuation procedures, and to assess and evaluate the emergency evacuation plans and capabilities. For each test conducted, the Campus Police Services Chief or designee will document a description of the exercise, the date, time, and whether it was announced or unannounced. The District will publish a summary of its emergency response and evacuation procedures in conjunction with at least one drill or exercise each calendar year.

PURPOSE

The Emergency Response Plan is the District's planned response to all hazards on or affecting the campus or surrounding community. The plan will be activated by the District President/Superintendent or his/her delegated representative. The emergency response plan details actions and responsibilities for all employees of the District including those on the Emergency Operations Center (EOC) staff.

RESPONSIBILITY

Government Code Sections 3100-3101 state that all employees of the District are declared civil defense workers during emergencies, subject to such defense activities as may be assigned to them. Federal and state regulations further state that all employees of the District must be trained and qualified in specified Federal Emergency Management Agency (FEMA) courses depending on an employee's emergency response responsibilities.

EMERGENCY OPERATIONS CENTER (EOC)

The Emergency Operations Center (EOC) will be activated during emergency situations. The President/Superintendent or his/her designated representative will activate the EOC. The EOC may be staffed by one or more key administrators depending on the situation and response. The EOC staff will direct the District's response to the emergency situation, coordination with outside agencies and requests for outside support. The EOC staff will be aided in their duties by Building Monitors that are trained response personnel from the District employees.

The EOC is composed of key administrators, record keepers, and the individual who is responsible for Administration of Justice. The EOC shall:

- Declare a major emergency in the event of earthquake, explosion, flood, etc.
- Assess the overall disaster based on reports from area managers
- Initiate the emergency notification chain (call back of employees)
- Mobilize any additional staff to heavily damaged areas
- Determine the "All-Clear" when the disaster is over

All press releases will be prepared by the Public Information Officer. In absence of this person, the key administrator will designate an individual responsible for this function.

PREPAREDNESS

The District's preparedness is based on pre-staged supplies, training and awareness, emergency drills, and support agreements with civil and private agencies. All employees of the District will receive training in responding to and managing emergency situations according to federal and state laws and regulations. The best response to emergency situations is preparedness.

EMERGENCY CHAIN OF COMMAND

<u><i>President/Superintendent</i></u>	<u><i>510-659-6200</i></u>
<u><i>VP Academic Affairs/Deputy Superintendent</i></u>	<u><i>510-659-6220</i></u>
<u><i>VP, Administrative Services</i></u>	<u><i>510-659-7307</i></u>
<u><i>VP, Student Services</i></u>	<u><i>510-659-6262</i></u>
<u><i>AVP, Academic Affairs</i></u>	<u><i>510-742-2302</i></u>
<u><i>AVP, Information Technology</i></u>	<u><i>510-659-7390</i></u>
<u><i>AVP, Human Resources</i></u>	<u><i>510-659-6088</i></u>
<u><i>Dean, Research & Planning</i></u>	<u><i>510-659-6064</i></u>
<u><i>Dean, Business Services</i></u>	<u><i>510-659-6060</i></u>
<u><i>Dean, Arts & Social Sciences</i></u>	<u><i>510-659-6216</i></u>
<u><i>Dean, Language & Communication</i></u>	<u><i>510-659-6173</i></u>
<u><i>Dean, Science, Engineering & Math</i></u>	<u><i>510-659-6191</i></u>
<u><i>Dean, Health Sciences</i></u>	<u><i>510-742-3103</i></u>
<u><i>Dean, Business, Technology & Learning Resources</i></u>	<u><i>510-742-3102</i></u>
<u><i>Dean, Counseling</i></u>	<u><i>510-659-6037</i></u>

EMERGENCY ASSEMBLY AREAS

Emergency Designated Assembly areas will be listed in the published plan. Additionally, signs designating the Assembly Areas will be posted. Assembly areas will be subject to change during the construction period.

DAY INSTRUCTORS: RESPONSIBILITIES

1. Coordinate evacuation from classroom if necessary.
2. Assist disabled individuals out of buildings without use of elevators.
3. Assess overall situation in classroom.
4. Initiate first aid if qualified individual is available.
5. Report when students are safe to move to an emergency assembly point or command post.
6. Assist area managers as necessary.
7. Provide special assistance to any disabled individual in the area.

Remember, in the event of a major disaster, every community college employee automatically becomes a civil defense worker under Government Code Sections 3100-3101.

EVENING INSTRUCTORS: RESPONSIBILITIES

1. Coordinate evacuation from classroom if necessary.
2. Assist disabled individuals out of buildings without use of elevators.
3. Assess overall situation in classroom.
4. Initiate first aid if qualified individual is available.
5. Report when students are safe to move to an emergency assembly point or command post.
6. Report via runner any casualties, structural damage, and hazardous material spills and status of volunteer student help control point of command post.

OTHER EMPLOYEES: RESPONSIBILITIES

1. Follow survival instructions.
2. Evacuate area if necessary.
3. Assess immediate problems if possible.
4. Report to area assembly point when safe.
5. Assist area manager, as needed:
 - a. Performing first aid (if qualified)
 - b. Serving as a communication runner, etc.
 - c. Conducting record keeping and note taking

EARTHQUAKE: RESPONSIBILITIES IN CASE OF EARTHQUAKE

Earthquake Survival Instructions

During the earthquake:

- Keep calm—do not run or panic.
- Remain where you are - indoors or outdoors.
- If indoors, stay indoors. Take cover under desk, table, or bench or in doorways, halls, or against inside walls. Stay away from glass windows or sky lights. Do not use elevators. Do not run outdoors! You may be hit by falling debris or live electrical wires. Be aware that furniture moves in an earthquake.
- If outdoors, get away from buildings. Go to clear areas and stay away from walls, utility poles, and downed wires that could cause serious injury or death.
- Do not run through or outside buildings. The greatest point of danger is just outside doorways and close to outer walls.

- Protect yourself FIRST, then after shaking stops protect and/or help others.

After the earthquake:

- If qualified, give first aid to anyone who is injured. If not, assure that first aid is given by qualified person.
- Wear shoes (flat heeled, preferable) in areas near fallen debris and broken glass.
- Clean up debris, glass, and spilled medicines as well as any flammable liquids, bleaches, and gasoline.
- Restrict phone use to emergencies only.
- Be prepared for aftershocks. These are usually smaller than the main quake, but some may be large enough to do additional damage to structures weakened during the main shock.

EXPLOSIONS: RESPONSIBILITIES IN CASE OF EXPLOSION

In the event of an explosion in the building, employees should:

- Take cover under tables, desks, or other such objects that will give protection against flying glass and debris.
- Set off fire alarm. Stay at the fire alarm, if safe to do so.
- Phone emergency/switchboard number - extension __ or dial 911.
- After the affects of the explosion have subsided, determine if evacuations are necessary.
- If evacuation is necessary, exit building as directed. Seek out any disabled persons and provide assistance. Assign blind students a guide. Assist wheelchair students or assign them a guide to get them to lobby near elevator.
- Upon leaving the building, proceed to designated emergency assembly areas and await further instructions.

FIRE: RESPONSIBILITIES IN CASE OF FIRE.

- Use fire alarm box and stay at the box until emergency personnel arrive if fire is too large to fight.
- If you are not near an alarm box, phone Emergency/Switchboard or Fire Department – 911
- If fire can be easily extinguished, attempt to do so after notification is made.
- Seek out and assist disabled persons in the area.
- Evacuate the building if necessary, closing fire doors.
- If evacuated, proceed to designated emergency area for further instructions. Be prepared to account for all persons in your class under your control.

EVACUATION: RESPONSIBILITIES IN CASE OF EVACUATION

The purpose of any evacuation will be to empty a building or area of all occupants as quickly and safely as possible.

- Building Evacuation: In most cases that require the evacuation of only one building (fire, explosion, bomb threat), occupants should proceed to a clear or safe area near the evacuated building as shown on emergency evacuation route posted in classrooms.
- General Evacuation: When orders are given to evacuate a building (such as after an earthquake or major disaster), occupants should proceed to the main evacuation assembly areas (lower level parking lots or the Palm Bosque).
- Key administrators or other emergency personnel will be available to direct evacuees to clear or safe areas.

- Evacuation of disabled persons will be given the highest priority. They should be evacuated by the most expeditious and safe means available. Turn lights on and off to alert hard of hearing to the emergency. Assign a guide to blind students. Carry pencil and paper to write messages, if necessary.
- Wheelchair students should be assisted to area near elevator if working. If not working, make arrangements to carry them down.
- When evacuating building, occupants should walk, remain quiet, grasp handrails, and follow all other emergency instructions.
- Occupants will gather in the emergency assembly area and await further instructions.
- Do not re-enter the building until instructed to do so by Command Post personnel.

BOMB THREATS: RESPONSIBILITIES IN CASE OF BOMB THREATS

Employees receiving a bomb threat or discovering a bomb or similar device should immediately notify the switchboard by dialing 6111 or 911.

- If a bomb threat is received by phone, ask:
 - When is the bomb going to explode?
 - Where is the bomb right now?
 - What kind of bomb is it?
 - What does it look like?
 - Why did you place the bomb?
- Keep the caller on the phone as long as possible. Record the following information for emergency personnel:
 - Time of call
 - Date of call
 - Exact words of person
 - Sex, age
 - Speech pattern
 - Background noises
- If a bomb threat is received by mail, employees should:
 - Not handle the envelope or package
 - Leave the immediate area
 - Notify the switchboard (extension 6111 or 911) and stop anyone from entering the area or handling the written note.
- If a suspicious object is discovered, the employee should:
 - Not attempt to touch or move the object or use any radio equipment.
 - Evacuate immediate area only.
 - Notify the switchboard (extension 6111 or 911) and await further instructions from operator.

CHEMICAL SPILL: RESPONSIBILITIES IN CASE OF CHEMICAL SPILL

- Any campus spillage of a dangerous chemical shall be reported immediately. Phone the switchboard, extension 6111 or 911.
- When reporting, be specific about the nature of the involved material and the campus location. The switchboard will contact the necessary specialized authorities and medical personnel.
- Vacate the affected area at once and seal it off to prevent further contamination of others.

- Anyone who may be contaminated because they were in the immediate area affected by the spill is to avoid contact with others as much as possible, remain in the vicinity, and give their names to the Director of Facilities Services or his/her designee. Required first aid and clean up by specialized authorities should be initiated at once.
- If necessary, because of the danger involved or if directed to do so by the District personnel, activate the building fire alarm system and follow the remaining steps.
- Evacuate the building by quickly walking to the nearest exit, alerting people as you go. Leave the elevators for disabled persons and assist them as necessary.
- Direct any disabled persons to the elevator areas when they are located on floors above or below ground level until further direction is received from District personnel. Assist disabled individuals in exiting the building on ground level floors.
- Flash the lights on and off to alert deaf or hard-of-hearing students. Write notes to explain what is happening. Assign a guide for blind students. Assign an assistant for wheelchair students.
- Once outside, move to a clear area at least 50 feet away from the affected building. If fumes are present, move cross wind, not upwind. Keep the walkways clear for emergency vehicles.
- To the best of your ability and without re-entering the building, assist District personnel in their attempt to determine that everyone has been evacuated safely.
- An emergency command post will be established. Keep clear of the command post unless there is important information to report.
- Do not return to a building until told to do so or until it is announced that all is clear.

REPORTING EMERGENCIES NOT PREVIOUSLY COVERED:

- The quickest and easiest way to obtain professional help for any type of emergency not specifically covered by these procedures is to phone the operator for assistance. Dial extension 6111 or 911.
- When calling, stay calm and carefully explain the problem and location to the operator. If the switchboard number is busy call 9-1-1 during daytime hours, during evening hours call extension 6111 or 911.
- Quickly notify the dean or immediate supervisor of the emergency and begin to take the appropriate action warranted by the situation.
- If a sign language interpreter is needed to facilitate communication between off-campus hospital personnel and an injured deaf person, arrangements can be made by calling COMMEND - Communication Medical Emergency Network for the deaf at 1-800-422-7444 or LIFESIGNS at 1-800-633-8883 v/tdd.

REMAIN CALM – HELP OTHERS REMAIN CALM.

Adopted: June 2012

AP 3510 Workplace Violence Plan

References:

Cal/OSHA; Labor Code Sections 6300 et seq.;
Title 8 Section 3203;
Code of Civil Procedure Section 527.8;
Penal Code Sections 273.6, 626.9, 626.10, and 12021

The District is committed to providing a safe work environment that is free of violence and the threat of violence.

Responding to Threats of Violence

The top priority in this process is effectively handling critical workplace incidents, especially those dealing with actual or potential violence.

Violence or the threat of violence against or by any employee of the District or any other person is unacceptable.

Should a non-employee on District property demonstrate or threaten violent behavior, he/she may be subject to criminal prosecution.

Should an employee, during working hours, demonstrate or threaten violent behavior he/she may be subject to disciplinary action and criminal prosecution.

The following actions are considered violent acts:

- Striking, punching, slapping or assaulting another person.
- Fighting or challenging another person to fight.
- Grabbing, pinching or touching another person in an unwanted way whether sexually or otherwise.
- Engaging in dangerous, threatening or unwanted horseplay.
- Possession, use, or threat of use, of a firearm, knife, explosive or other dangerous object, including but not limited to any facsimile firearm, knife or explosive, on District property, including parking lots, other exterior premises, District vehicles, or while engaged in activities for the District in other locations, unless such possession or use is a requirement of the job.
- Threatening harm or harming another person, or any other action or conduct that implies the threat of bodily harm.
- Bringing or possessing any dirk, dagger, ice pick, or knife having a fixed blade longer than 2½ inches upon the grounds, unless the person is authorized to possess such a weapon in the course of his/her employment, has been authorized by a District employee to have the knife, or is a duly appointed peace officer who is engaged in the performance of his/her duties.

Any employee who is the victim of any violent threatening or harassing conduct, any witness to such conduct, or anyone receiving a report of such conduct, whether the perpetrator is a District employee or a non-employee, shall immediately report the incident to his/her supervisor or other appropriate person.

- *Chief of Campus Police Services: 510-659-6111*
- *Vice President, Student Services: 510-659-6262*
- *Vice President, Administrative Services: 510-659-7307*

- *Vice President, Academic Affairs:* 510-659-6220
- *Associate Vice President, Human Resources and Training:* 510-659-7355
- *District President/Superintendent:* 510-659-6200
- *Local Police or 911:* Fremont Police Department, 510-790-6800; Newark Police Department, 510-578-4237

No one, acting in good faith, who initiates a complaint or reports an incident under this policy will be subject to retaliation or harassment.

Any employee reported to be a perpetrator will be provided both due process and representation before disciplinary action is taken.

In the event the District fears for the safety of any person, including the perpetrator, at the scene of the violent act, appropriate law enforcement personnel will be called.

Adopted: March 2012

AP 3515 Reporting of Crimes

References:

Penal Code Section 245; Education Code Section 212; 87014 ; Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998; 20 U.S.C. § 1232g; 34 C.F.R. 668.46; 34 C.F.R. 99.31(a)(13), (14); Campus Security Act of 1990

Members of Ohlone College who are witnesses or victims of a crime should immediately report the crime to Campus Police Services.

In the event an employee is assaulted, attacked or menaced by a student, the employee shall notify his or her supervisor as soon as practical after the incident. The supervisor of any employee who is attacked, assaulted or menaced shall assist the employee to promptly report the attack or assault to Campus Police Services. The supervisor himself or herself shall make the report if the employee is unable or unwilling to do so.

The District shall publish warnings to the campus community about crimes that are considered to represent a continuing threat to other students and employees in a manner that is timely and will aid in the prevention of similar crimes. The information shall be disseminated by the Chief of Campus Police Services in a manner that aids the prevention of similar crimes.

The District shall annually collect and distribute statistics concerning crimes on campus. All college staff with significant responsibility for student and campus activities shall report crimes about which they receive information.

The District shall publish an Annual Security Report every year by October 1 that contains statistics regarding crimes committed on both campuses for the previous three years. The Annual Security Report shall also include policies pertaining to campus security, alcohol and drug use, crime prevention, the reporting of crimes, sexual assault, victims' assistance program, student discipline, campus resources and other matters. The District shall make the report available to all current students and employees. The District will also provide prospective students and employees with a copy of the Annual Security Report upon request. A copy of the Annual Security Report can be obtained by contacting Campus Police Services.

The District may disclose the final results of disciplinary proceedings to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense, regardless of the outcome. The District may also disclose to anyone, the final results of a disciplinary proceeding in which it concludes that a student violated school policy with respect to a crime of violence or non-forcible sex offense. The offenses that apply to this permissible disclosure are:

- Arson;
- Assault offenses;
- Burglary;
- Criminal homicide – manslaughter by negligence;
- Criminal homicide – murder and non-negligent manslaughter;
- Destruction, damage, or vandalism of property;
- Kidnapping or abduction;
- Robbery;
- Forcible sex offenses.

The disclosure may only include the final result of the disciplinary proceeding with respect to the alleged criminal offense. The District shall not disclose the name of any other student, including a victim or witness, unless the victim or witness has waived his or her right to confidentiality.

Adopted: December 2009

AP 3516 Registered Sex Offender Information

References:

Penal Code 290, 290.01, 290.95; 34 CFR 668; Campus Sex Crimes Prevention Act 42 U.S.C. § 14071j; 20 U.S.C. § 1092(f)(1)(I); 20 U.S.C. § 1232g(b)(7)(A)

The District shall include in its Annual Security Report a statement advising the campus community where information pertaining to registered sex offenders may be obtained:

Sex offenders are required to register with the police in the jurisdiction in which they reside and at institutions of higher learning if they are students there or if they work there as employees, contractors, or volunteers. A sex offender who is an employee or volunteer in the District must disclose his or her status as a registrant upon his or her application or acceptance of the position if he or she 1) would be working directly and in an unaccompanied setting with minor children on more than an incidental and occasional basis or have supervision or disciplinary power over minor children, or 2) would be working directly and in an accompanied setting with minor children and his or her work would require touching minor children on more than an incidental basis.

A sex offender who must register for committing a crime against a minor victim under the age of 16 is prohibited from serving as an employer, employee, contractor, or volunteer in any capacity in which the sex offender would be working directly and in an unaccompanied setting with minor children on more than an incidental and occasional basis or involving having supervision or disciplinary power over minor children.

Sex offenders who may be required to register should do so at: Campus Police Services, Safety and Security, 43600 Mission Blvd., Building 20, Fremont, CA 94539, (510) 659-6111, Monday – Friday, 8:00 am – 6:00 pm.

Information concerning registered sex offenders can be obtained from: Campus Police Services, Safety and Security, 43600 Mission Blvd., Building 20, Fremont, CA 94539, (510) 659-6111, Monday – Friday, 8:00 am – 6:00 pm.

Ohlone Community College District Campus Police Department shall not release information regarding a sex offender, unless the person seeking the information has signed a statement, on a form provided by the Department of Justice, stating that he or she is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the campus community to protect themselves and their children from sex offenders, and that he or she understands it is unlawful to use the information received to commit a crime against any registered sex offender or to engage in illegal discrimination or harassment of a registered sex offender. The department will maintain the signed statement in its records for a period of five years.

The Ohlone Community College District Campus Police Department will release the following information regarding a registered sex offender: (1) full name; (2) known aliases; (3) gender; (4) race; (5) physical description; (6) photograph; (7) date of birth; (8) crimes resulting in registration; and (9) The date of last registration or reregistration.

Adopted: December 2009

AP 3518 Child Abuse Reporting

References:

Penal Code Sections 261, 264.1, 273a, 273d, 285, 286, 288, 288a, 289, 647a, and 11164-11174.3; Welfare and Institutions Code Sections 300, 318, and 601; Family Code Sections 7802, 7807, 7808, 7820-7829, 7890, and 7892

Ohlone Community College District recognizes the responsibility of its staff to report to the appropriate agency when there is a reasonable suspicion that an abuse or neglect of a child may have occurred. Mandated reporters include faculty, educational administrators and classified staff. Volunteers are not mandated reporters, but are encouraged to report suspected abuse or neglect of a child.

Child abuse is defined as physical abuse, neglect, sexual abuse and/or emotional maltreatment. This procedure addresses the sexual assault, sexual exploitation, and/or sexual abuse of a child; the willful cruelty or unjustifiable punishment of a child; incidents of corporal punishment or injury against a child; abuse in out-of-home care; and the severe and/or general neglect of a child (definitions contained in Penal Code Section 11165).

“Reasonable suspicion” occurs when “it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position drawing when appropriate on his or her training and experience, to suspect child abuse” (Penal Code Section 11166[a]).

A child protective agency is a police or sheriff’s department, a county probation department, or a county welfare department. School district police or security departments are not child protective agencies (Penal Code Section 11165.9).

Any person not mandated by law to report suspected child abuse has immunity unless the report is proven to be false and the person reporting knows it is false, or the report is made with reckless disregard of the truth or falsity of the incident (Penal Code Section 11172(a)). Reporting is an individual responsibility. An employee making a report cannot be required to disclose his or her identity to the employer (Penal Code Section 11166(h)). However, a person who fails to make a required report is guilty of a misdemeanor punishable by up to six (6) months in jail and/or up to a \$1,000 fine (Penal Code Section 11172e).

Mandated reporters must report immediately any reasonable suspicion of child abuse to a local child protective agency and follow up with a written report within 36 hours. Reports of child abuse may be made with Campus Police Services (510-659-6111, Fremont campus or 510-742-2311, Newark campus) or Alameda County Child Protective Services (510-483-9300). The written report may be mailed or submitted by facsimile or electronic transmission.

Child abuse reporting forms are available at Campus Police Services.

No mandated reporter who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by the Penal Code. Any person other than a child care custodian reporting a known or suspected instance of child abuse shall not incur any liability as a result of making any report of child abuse, unless it can be proven that a false report was made and the person knew that the report was false. (Penal Code Section 11172a)

When an official of the District releases a minor pupil to a peace officer for the purpose of removing the minor from the campus, the District official shall take immediate steps to notify the parent or guardian regarding the release of the minor to the officer, and regarding the place to which the minor is reportedly being taken (Education Code Section 87044), except when a minor has been taken into custody as a victim of suspected child abuse, as defined in Section 11165 of the Penal Code, or

pursuant to Section 305 of the Welfare and Institutions Code. In those cases, the official shall provide the peace officer with the address and telephone number of the minor's parent or guardian.

Non-accidental physical injury is considered to be a health and safety emergency, and parental consent is not required for release of student information under the Family Education Rights and Privacy Act, or the California Student Records Act (Ed Code Sections 76200 et seq.).

Information relevant to the incident of child abuse may be given to an investigator from a child protective agency who is investigating the known or suspected cause of child abuse (Penal Code Section 11167b).

The District shall provide a mandated reporter with a statement informing the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Penal Code Section 11166 and of his or her confidentiality rights under subdivision (d) of Penal Code Section 11167. The District shall provide a copy of Penal Code Sections 11165.7, 11166, and 11167 to the employee. Prior to commencing his or her employment and as a prerequisite to that employment, employee shall sign and return the statement to the District. The signed statements shall be retained by the District (Penal Code Section 11166.5).

The District will distribute this procedure to all employees.

Adopted: December 2009

AP 3520 Local Law Enforcement

References:

Education Code Section 67381;

34 Code of Federal Regulations Section 668.46

The District, on behalf of each campus or center, has a written agreement with local law enforcement agencies. The agreement clarifies operational responsibilities for investigations of Part I violent crimes, defined by law as willful homicide, forcible rape, robbery, aggravated assault, arson, and vehicle theft occurring at each location.

The written agreement designates which law enforcement agency has operational responsibility for violent crimes and delineates the specific geographical boundaries of each agency's operational responsibility, including maps as necessary.

The written agreements required by the Board policy are public records and are made available for inspection by members of the public upon request to Campus Police Services.

Campus Police Services maintains a close working relationship with the Fremont and Newark Police Departments. Campus Police Services occasionally works with other law enforcement agencies, including the Alameda County Sheriff's Department. Meetings may be held between the leaders of these agencies on both a formal and informal basis. Campus Police Services and the Fremont and Newark Police Departments communicate regularly on the scene of incidents that occur in and around the campus area. When incidents arise that require joint investigative efforts, resources, crime related reports and exchanges of information, Campus Police Services will work closely with The Fremont and Newark Police Departments. There is a written memorandum of understanding between Campus Police Services and the Fremont Police Department and the Newark Police Department.

In response to a call, Campus Police Services will take the required action, dispatching an officer or asking the victim to file an incident report. All incident reports received by Campus Police Services are forwarded to the Vice President of Administrative Services and to the Vice President of Student Services for matters involving students for review and potential action. Campus Police Services may investigate a report when it is deemed appropriate.

Crimes should be reported to Campus Police Services to ensure inclusion in the annual crime statistics and to aid in providing timely warning notices to the community, when appropriate.

Community members, students, faculty, staff, and guests are encouraged to report all crimes and public safety related incidents to Campus Police Services in a timely manner. To report a crime or an emergency on the Fremont or Newark campus, call Campus Police Services by dialing 9-1-1. To report a non-emergency security or public safety related matter, on the Fremont campus call Campus Police Services at (510) 659-6111 and on the Newark campus call Campus Police Services at (510) 742-2311.

The Ohlone Community College District Campus Police Services have complete police authority to apprehend and arrest anyone involved in illegal acts on-campus and areas immediately adjacent to the campus. If minor offenses involving District rules and regulations are committed by a student, Campus Police Services may also refer the individual to the Vice President of Student Services. Major offenses such as rape, murder, aggravated assault, robbery, and auto theft are reported to the local law enforcement and the Campus Police Services Department and local law enforcement work

together to solve these serious felony crimes. Campus Police Services personnel work closely with local, state, and federal police agencies. The Campus Police Services Department is also a part of the local 911 Emergency System.

Security officials have the authority to ask persons for identification and to determine whether individuals have lawful business at the District. Security officials do not possess arrest powers. Criminal incidents are referred to the local law enforcement officers who have jurisdiction on the campus. The District maintains a highly professional working relationship with the Fremont and Newark Police Departments. All crime victims and witnesses are strongly encouraged to immediately report the crime to the Campus Police Services Department. Prompt reporting will assure timely warning notices on-campus and timely disclosure of crime statistics.

In aligning this procedure with the intent of the codes and regulations referenced above: Campus "Pastoral Counselors" and Campus "Professional Counselors," when acting as such, are not considered to be a campus security officers and are not required to report crimes for inclusion into the annual disclosure of crime statistics. As a matter of policy, they are encouraged, if and when they deem it appropriate, to inform persons being counseled of the procedures to report crimes on a voluntary basis for inclusion into the annual crime statistics.

As defined in the regulations and codes referenced above:

- A Pastoral Counselor is an employee of a District who is associated with a religious order or denomination, recognized by that religious order or denomination as someone who provides confidential counseling and who is functioning within the scope of that recognition as a pastoral counselor.
- A Professional Counselor is an employee of a District whose official responsibilities include providing psychological counseling to members of the District's community and who is functioning within the scope of his or her license or certification.

Adopted: December 2009

Revised: July 2012

AP 3530 Weapons on Campus

References:

Penal Code Sections 626.9 and 626.10

Firearms, knives, explosives or other dangerous objects, including but not limited to any facsimile firearm, knife or explosive, are prohibited on any District campus or at any District center, or in any facility of the District.

Activities involving firearms or other weapons conducted under the direction of District officials or as authorized by an official law enforcement agency shall be reported to Campus Police Services before taking place.

Any person who believes that he or she may properly possess a firearm or other weapon on campus or in a District center or other facility of the District must promptly notify Campus Police Services.

Bringing or possessing any ice pick, or knife having a fixed blade longer than 2 1/2 inches upon the grounds is prohibited, unless the person is authorized to possess such a weapon in the course of his or her employment, has been authorized by a District employee to have the knife, or is a duly appointed peace officer, who is engaged in the performance of his or her duties.

Adopted: January 2010

AP 3540 Sexual Assaults on Campus (or Campus Events)

References:

Education Code Sections 67385, 67385.7 and 67386;

20 U.S. Code Section 1092(f);

34 Code of Federal Regulations Section 668.46(b)(11)

Any sexual assault or physical abuse, including, but not limited to, rape, domestic violence, dating violence, sexual assault, or stalking, as defined by California law, whether committed by an employee, student, or member of the public, occurring on District property, 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 or at another location, or on an off-campus site or facility maintained by the District, or on grounds or facilities maintained by a student organization, is a violation of District policies and regulations, and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. (See also AP 5500 titled Standards of Student Conduct.)

"Sexual assault" includes but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

"Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a romantic or intimate relationship will be determined based on the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

"Domestic violence" includes felony or misdemeanor crimes of violence committed by:

- a current or former spouse 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;
- by a person similarly situated to a spouse of the victim under California law; or
- any other person against an adult or youth victim who is protected from that person's acts by California law.

"Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or to suffer substantial emotional distress.

It is the responsibility of each person involved in sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

"Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity.

These written procedures and protocols are designed to ensure victims of domestic violence, dating violence, sexual assault, or stalking receive treatment and information. (For physical assaults/violence, see also AP 3500, 3510, and 3515.)

All students, faculty members or staff members who allege they are the victims of domestic violence, dating violence, sexual assault or stalking on District property shall be provided with information regarding options and assistance available to them. Information shall be available from Campus Police Services, which shall maintain the identity and other information about alleged sexual assault victims as confidential unless and until the Chief of Campus Police Services is authorized to release such information.

The Chief of Campus Police Services shall provide all alleged victims of domestic violence, dating violence, sexual assault or stalking with the following:

- A copy of the District's policy and procedure regarding domestic violence, dating violence, sexual assault or stalking;
- A list of personnel on campus who should be notified and procedures for such notification, if the alleged victim consents. Those that would be notified would be: President/Superintendent, Vice President of Student Services, and the Mental Health Counselor.
- Information about the importance of preserving evidence and the identification and location of witnesses;
- A description of available services, and the persons on campus available to provide those services if requested. Services and those responsible for provided or arranging them include:
 - transportation to a hospital, if necessary; (Campus Police Services)
 - counseling by the Student Health Center, or referral to a counseling center and/or Employee Assistance Program (EAP); (Student Health Center)
 - a list of other available campus resources or appropriate off-campus resources. (Campus Police Services)
- The victim's option to:
 - notify proper law enforcement authorities, including on-campus and local police;
 - be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
 - decline to notify such authorities;
 - the rights of victims and the institution's responsibilities regarding orders of protection, no contact orders, or similar lawful orders issued by a court;
 - Information about how the district will protect the confidentiality of victims; and
 - Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.
- A description of each of the following procedures:
 - criminal prosecution;
 - civil prosecution (i.e., lawsuit);
 - District disciplinary procedures, both student and employee;
 - modification of class schedules;
 - tutoring, if necessary.

The Mental Health Counselor should be available to provide assistance to District law enforcement unit employees regarding how to respond appropriately to reports of sexual violence.

The District will investigate all complaints alleging sexual assault under the procedures for sexual harassment investigations described in AP 3435, regardless of whether a complaint is filed with local law enforcement. All alleged victims of domestic violence, dating violence, sexual assault, or stalking on District property shall be kept informed, through Campus Police Services of any ongoing investigation. Information shall include the status of any student or employee disciplinary proceedings or appeal; alleged victims of domestic violence, dating violence, sexual assault, or stalking are required to maintain any such information in confidence, unless the alleged assailant has waived rights to confidentiality.

A complainant or witness who participates in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the District's student conduct policy at or near the time of the incident, unless the District determines that the violation was egregious, including but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic honesty.

In the evaluation of complaints in any disciplinary process, it shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:

- The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.
- The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.

In the evaluation of complaints in the disciplinary process, it shall not be a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity under any of the following circumstances:

- The complainant was asleep or unconscious.
- The complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity.
- The complainant was unable to communicate due to a mental or physical condition.

The District shall maintain the identity of any alleged victim or witness of domestic violence, dating violence, sexual assault, or stalking on District property, as defined above, in confidence unless the alleged victim or witness specifically waives that right to confidentiality. All inquiries from reporters or other media representatives about alleged domestic violence, dating violence, sexual assaults, or stalking on District property shall be referred to the District's Public Information Office, which shall work with Campus Police Services to assure that all confidentiality rights are maintained.

Additionally, the Annual Security Report will include a statement regarding the District's programs to prevent sexual assault, domestic violence, dating violence, and stalking and procedures that should be followed after an incident of domestic violence, dating violence, sexual assault, or stalking has been reported, including a statement of the standard of evidence (preponderance of evidence) that

will be used during any district proceeding arising from such a report. The statement must include the following:

- A description of educational programs to promote the awareness of rape, acquaintance rape, other forcible and non-forcible sex offenses, domestic violence, dating violence, or stalking;
- Procedures to follow if a domestic violence, dating violence, sex offense, or stalking occurs, including who should be contacted, the importance of preserving evidence to prove a criminal offense, and to whom the alleged offense should be reported;
- Responses to stranger and non-stranger sexual assault;
- The preliminary victim interview, including the development of a victim interview protocol, and a comprehensive follow-up victim interview, as appropriate;
- Contacting and interviewing the accused;
- Seeking the identification and location of witnesses;
- Information on a student's right to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that campus personnel will assist the student in notifying these authorities, if the student so requests, and the right to decline to notify these authorities;
- Written information and notification for students about existing on- and off-campus counseling, mental health, victim advocacy, legal assistance or other services for victims and contact information;
- Participation of victim advocates and other supporting people;
- Investigating allegations that alcohol or drugs were involved in the incident;
- The role of the institutional staff supervision;
- A comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases;
- Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement;
- Procedures for campus disciplinary action in cases of an alleged domestic violence, dating violence, sexual assault, or stalking including a clear statement that:
 - Such proceedings shall provide a prompt, fair, and impartial resolution;
 - Such proceedings shall be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and

- how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
- The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and
 - Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding resulting from an alleged domestic violence, dating violence, sexual assault or stalking, the procedures for the accused and victim to appeal the results of the disciplinary proceeding, of any changes to the results that occur prior to the time that such results become final, and when such results become final. Compliance with this paragraph does not violate the Family Educational Rights and Privacy Act. For the purposes of this paragraph, the outcome of a disciplinary proceeding means the final determination with respect to the alleged domestic violence, dating violence, sex offense, or stalking and any sanction that is imposed against the accused.
- A description of the sanctions the campus may impose following a final determination by a campus disciplinary proceeding regarding rape, date rape, or other forcible or non-forcible sex offenses, domestic violence, dating violence, or stalking.

Education and Prevention Information

Campus Police Services shall:

- Provide, as part of each campus' established on-campus orientation program, comprehensive prevention and outreach education and information about domestic violence, dating violence, sexual assault, or stalking. The information shall be developed in collaboration with campus-based and community-based victim advocacy organizations, and shall include the District's sexual assault policy and prevention strategies including empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction.
- Outreach programs shall be provided to make students aware of the institution's policy including posting sexual violence prevention and education information on the campus website, www.ohlone.edu regarding domestic violence, dating violence, sexual assault and stalking.
- Outreach programs shall include a process for contacting and informing the student body, campus organizations, athletic programs, and student groups about the institution's overall sexual assault policy, the practical implications of an affirmative consent standard, and the rights and responsibilities of students under the policy.

Adopted: January 2010

Revised: June 2012, June 2013, July 2015

AP 3550 Drug Free Environment and Drug Prevention Program

References:

Drug Free Schools and Communities Act Amendment of 1989;
20 U.S. Code Sections 1011i; 1091(r); 1092(f)(1)(H); 1092(k);
34 Code of Federal Regulations 86.1 et seq.;
Federal Drug-Free Workplace Act of 1988, 41 U.S. Code Sections 8101-8106;
California Drug-Free Workplace Act, Cal. Gov. Code 8355;
California Business & Professions Code Section 25608(a)

The District is committed to providing its employees and students with a drug free workplace and campus environment. The District's drug-free commitment emphasizes prevention and intervention through education. The goal is to empower students and employees to make informed decisions about substance use and abuse to allow each to be healthy and productive and maximize each person's potential.

The President/Superintendent shall assure that the District distributes annually to each student the information required by law and complies with other legal requirements.

The District prohibits the unlawful possession, use, sale, or distribution of illicit drugs and alcohol by students and employees on the District's property or as part of any of the District's activities, including but not limited to field trips, activities or workshops.

The unlawful manufacture, distribution, sale, dispensing, possession or use of alcohol or any controlled substance is prohibited on District property, during District-sponsored field trips, activities or workshops, and in any facility or vehicle operated by the District. Under Business & Professions Code Section 25608(a), any person who possesses, consumes, sells, gives, or delivers to any other person, any alcoholic beverage in or on any public building, campus, or any of the District grounds is guilty of a misdemeanor, except as provided for in AP 3560, *Alcoholic Beverages*, or except as expressly authorized by Business & Professions Code Section 25608. As a condition of employment, each employee is required to comply with these requirements.

Every person who consumes any alcoholic beverage must be at a minimum, 21 years of age. Ohlone will enforce the prohibition of underage drinking and the prohibition of unlawful drugs.

Consequences for Violations

Violation of this prohibition will result in the District taking appropriate action and imposing applicable legal sanctions under local, State, or Federal law for unlawful possession or distribution of illicit drugs and alcohol, up to and including termination of employment for employees, expulsion and/or other discipline of students, loss of and ineligibility for financial aid for students, and referral to federal, state, local and/or campus law enforcement for criminal law citation, arrest and/or prosecution of both employees and students, and/or as permitted by law, may require satisfactory participation in programs, including but not limited to an alcohol or drug abuse assistance or rehabilitation program.

Health Risks

The health risks associated with the use of illicit drugs and the abuse of alcohol include:
Death including by alcohol poisoning or drug overdose,
Risk of addiction and withdrawal symptoms including pain, convulsions and depression,
Liver, heart, kidney, pancreas, and brain damage and/or loss of brain cells,

Impaired judgment and resulting safety and health risks including accidents, unwanted pregnancies or sexually transmitted diseases, and aggressive or violent behavior,
Impaired performance including drowsiness, impaired memory, and impaired concentration,
Sexual dysfunctions,
Harm to a fetus, including spontaneous abortions, premature labor, and detached placentas,
Psychological problems including depression, anxiety, paranoia, panic reactions, psychosis and hallucinations,
Seizures,
Strokes, cardiac arrest or cardiovascular problems,
Lung damage or illnesses, bronchitis, or respiratory arrest, and
Needle-related illnesses and complications such as hepatitis, HIV, muscle and nervous tissue death necessitating limb amputation, and infections.

Employee Notification of Workplace Criminal Drug Statute Violation

As a condition of employment, employees must notify the District within five days of any conviction for violating a criminal drug statute while in the workplace. The District is required to inform any agencies that require this drug-free policy within ten days after receiving notice of a workplace drug conviction. An employee who is convicted will receive discipline from Ohlone and/or Ohlone will require satisfactory participation in a drug abuse assistance or rehabilitation program.

Assistance, Resources and Referrals

Drug or alcohol counseling, treatment, or rehabilitation or re-entry programs or referrals are available to employees or students. The district provides confidential referrals through an Employee Assistance Program (EAP) for employees and their families needing assistance with drug or alcohol abuse. Please contact Shairon Zingsheim, Associate Vice President, Human Resources for more information or visit the Human Resources website for information on contacting CONCERN EAP. Students should contact the Student Health Center or the Vice President of Student Services, Dr. Ron Travenick, for resources or for assistance. The Student Health Center also provides counseling, alcohol and drug abuse education information, and resources for students. For further information, please contact Sally Bratton or other staff at the Student Health Center (Building 7, (510) 659-6258) or visit: <http://www.ohlone.edu/org/healthcenter/>.

Online resources of possible interest:

www.alcoholscreening.org/

www.aa.org/ for Alcoholics Anonymous

<http://www.drugabuse.gov/nidamed/> for National Institute of Drug Abuse (NIDA)

<http://www.drugabuse.gov/scienceofaddiction/brain.html> for NIDA handout on biology of addiction

<http://www.niaaa.nih.gov/Publications/PamphletsBrochuresPosters/English/default.htm> for National Institute on Alcohol Abuse and Alcoholism, NIAAA

<http://www.nlm.nih.gov/medlineplus/substanceabuseproblems.html> for MedlinePlus, substance abuse problems

<http://familydoctor.org/familydoctor/en/diseases-conditions.html> for familydoctor.org, for tobacco, alcohol and drugs patient education downloads

<http://rethinkingdrinking.niaaa.nih.gov/> for NIAAA website – offers drinking habits assessment and management tools for anyone who drinks

<http://www.recovery.org> – Addiction recovery programs

Adopted: January 2012

Revised: January 2014, July 2015

AP 3560 Alcoholic Beverages

References:

Business and Professions Code Sections 24045.4, 24045.6, and 25608, 25658 (a)(b)
34 Code of Federal Regulations Section 668.46(b)

The possession, sale or the furnishing of alcohol on campus is governed by California state law and these procedures. The possession, sale, consumption or furnishing of alcohol is controlled by the California Department of Alcohol and Beverage Control. However, the enforcement of alcohol laws on-campus is the primary responsibility of Campus Police Services. The campus has been designated "Drug free" and only under certain circumstances is the consumption of alcohol permitted. The possession, sale, manufacture or distribution of any controlled substance is illegal under both state and federal laws. Such laws are strictly enforced by Campus Police Services. Violators are subject to disciplinary action, criminal prosecution, fine and imprisonment. It is unlawful to sell, furnish or provide alcohol to a person under the age of 21. The possession of alcohol by anyone under 21 years of age in a public place or a place open to the public is illegal. It is also a violation of this policy for anyone to consume or possess alcohol in any public or private area of campus without prior District approval. Organizations or groups violating alcohol or substance policies or laws may be subject to sanctions by the District.

Alcoholic beverages on campus are permitted if:

- The alcoholic beverage is for use during a non-college event at a performing arts facility built on district property and leased to a nonprofit public benefit corporation.
- The alcoholic beverage is for use during a fundraiser held to benefit [a nonprofit corporation] that has obtained a license under the Business and Professions Code to do so provided that no alcoholic beverage can be acquired, possessed or used at any athletic contest sponsored by the District.
- The alcoholic beverage is possessed, consumed, or sold, pursuant to a license or permit obtained under this division for special events held at the facilities of a public community college during the special event. "Special event" means events that are held with the permission of the governing board of the community college district that are festivals, shows, private parties, concerts, theatrical productions, and other events held on the premises of the public community college and for which the principal attendees are members of the general public or invited guests and not students of the public community college.

Adopted: January 2010

Revised: July 2012

AP 3570 Smoking on Campus

References:

*Government Code Sections 7596, 7597, and 7598; Labor Code Section 6404.5;
Title 8, Section 5148*

Ohlone College is a designated **smoke-free district**. Smoking is prohibited in all college vehicles, buildings, indoor and outdoor facilities, disabled and general use parking lots, and all open areas of district property.

Adopted: January 2010 (previously Ohlone Regulation 10.1.1)

Amended: August 2013

AP 3720 Computer and Network Use

References:

17 U.S. Code Sections 101 et seq.; Penal Code Section 502, Cal. Const., Art. 1 Section 1; Government Code Section 3543.1(b); Federal Rules of Civil Procedure, Rules 16, 26, 33, 34, 37, 45

The District Computer and Network systems are the sole property of Ohlone College. They may not be used by any person without the proper authorization of the District. The Computer and Network systems are for District instructional and work related purposes only.

This procedure applies to all District students, faculty and staff and to others granted use of District information resources. This procedure refers to all District information resources whether individually controlled or shared, stand-alone or networked. It applies to all computer and computer communication facilities owned, leased, operated, or contracted by the District. This includes personal computers, workstations, mainframes, minicomputers, and associated peripherals, software and information resources, regardless of whether used for administration, research, teaching or other purposes.

Conditions of Use

Individual units within the District may define additional conditions of use for information resources under their control. These statements must be consistent with this overall procedure but may provide additional detail, guidelines and/or restrictions. Use of District funds by individual units to purchase hardware, software and peripherals must be pre-approved by the Information Technology Department.

Legal Process

This procedure exists within the framework of the District Board Policy and state and federal laws. A user of District information resources who is found to have violated any of these policies will be subject to disciplinary action up to and including but not limited to loss of information resources privileges; disciplinary suspension or termination from employment or expulsion; and/or civil or criminal legal action.

Copyrights and Licenses

Computer users must respect copyrights and licenses to software and other on-line information.

Copying - Software protected by copyright may not be copied except as expressly permitted by the owner of the copyright or otherwise permitted by copyright law. Protected software may not be copied into, from, or by any District facility or system, except pursuant to a valid license or as otherwise permitted by copyright law.

Number of Simultaneous Users - The number and distribution of copies must be handled in such a way that the number of simultaneous users in a department does not exceed the number of original copies purchased by that department, unless otherwise stipulated in the purchase contract.

Copyrights - In addition to software, all other copyrighted information (text, images, icons, programs, etc.) retrieved from computer or network resources must be used in conformance with applicable copyright and other law. Copied material must be properly attributed. Plagiarism of computer information is prohibited in the same way that plagiarism of any other protected work is prohibited.

Integrity of Information Resources

Computer users must respect the integrity of computer-based information resources.

Modification or Removal of Equipment - Computer users must not attempt to modify or remove computer equipment, software, data, or peripherals that are owned by others without proper authorization.

Unauthorized Use - Computer users must not interfere with others access and use of the District computers. This includes but is not limited to: the sending of chain letters or excessive messages, either locally or off-campus; printing excess copies of documents, files, data, or programs, running grossly inefficient programs when efficient alternatives are known by the user to be available; unauthorized modification of system facilities, operating systems, or disk partitions; attempting to crash or tie up a District computer or network; and damaging or vandalizing District computing facilities, equipment, software or computer files.

Unauthorized Programs - Computer users must not intentionally develop or use programs which disrupt other computer users or which access private or restricted portions of the system, or which damage the software or hardware components of the system. Computer users must ensure that they do not use programs or utilities that interfere with other computer users or that modify normally protected or restricted portions of the system or user accounts. The use of any unauthorized or destructive program will result in disciplinary action as provided in this procedure, and may further lead to civil or criminal legal proceedings.

Unauthorized Access

Computer users must not seek to gain unauthorized access to information resources and must not assist any other persons to gain unauthorized access.

Abuse of Computing Privileges - Users of District information resources must not access computers, computer software, computer data or information, or networks without proper authorization, or intentionally enable others to do so, regardless of whether the computer, software, data, information, or network in question is owned by the District. For example, abuse of the networks to which the District belongs or the computers at other sites connected to those networks will be treated as an abuse of District computing privileges.

Reporting Problems - Any defects discovered in system accounting or system security must be reported promptly to the appropriate system administrator so that steps can be taken to investigate and solve the problem.

Password Protection - A computer user who has been authorized to use a password-protected account may be subject to both civil and criminal liability and or loss of computing privileges if the user discloses the password or otherwise makes the account available to others without permission of the system administrator.

Usage

Computer users must respect the rights of other computer users. Attempts to circumvent these mechanisms in order to gain unauthorized access to the system or to another person's information are a violation of District procedure and may violate applicable law.

Unlawful Messages - Users may not use electronic communication facilities (e.g. email, web pages and District-owned social network accounts) to send defamatory, fraudulent, harassing, obscene,

threatening, or other messages that violate applicable federal, state or other law or District policy, or which constitute the unauthorized release of confidential information.

Commercial Usage - Electronic communication facilities may not be used to transmit commercial or personal advertisements, solicitations or promotions (see Commercial Use, below). Some public discussion groups have been designated for selling items by the District and may be used appropriately, according to the stated purpose of the group(s).

Information Belonging to Others - Users must not intentionally seek or provide information on, obtain copies of, or modify data files, programs, or passwords belonging to other users, without the permission of those other users.

Rights of Individuals - Users must not release any individual's (student, faculty, and staff) personal information to anyone without proper authorization.

User identification - Users shall not send communications or messages anonymously or without accurately identifying the originating account or station.

Political, Personal, and Commercial Use - The District is a non-profit, tax-exempt organization and, as such, is subject to specific federal, state and local laws regarding sources of income, political activities, use of property and similar matters.

Political Use - District information resources must not be used for partisan political activities where prohibited by federal, state, or other applicable laws.

Personal Use - District information resources should not be used for personal activities not related to appropriate District functions, except in a purely incidental manner.

Commercial Use - District information resources should not be used for commercial purposes. Users also are reminded that the ".cc" and ".edu" domains on the Internet and the statewide Internet infrastructure have rules restricting or prohibiting commercial use, and users may not conduct activities not appropriate within those domains.

Nondiscrimination

No user shall use the District network and computer resources to transmit any message, create any communication of any kind, or store information which violates any District procedure regarding discrimination or harassment, or which is defamatory or obscene, or which constitutes the unauthorized release of confidential information.

Disclosure

No Expectation of Privacy - The District reserves the right to monitor all use of the District network and computer to assure compliance with these policies. Users should be aware that they have no expectation of privacy in the use of the District network and computer resources. The District will exercise this right only for legitimate District purposes, including but not limited to ensuring compliance with this procedure and the integrity and security of the system.

Possibility of Disclosure - Users must be aware of the possibility of unintended disclosure of communications.

Retrieval - It is possible for information entered on or transmitted via computer and communications systems to be retrieved, even if a user has deleted such information.

Public Records - The California Public Records Act (Government Code Sections 6250 et seq.) includes computer transmissions in the definition of “public record” and nonexempt communications made on the District network and computer must be disclosed if requested by a member of the public.

Litigation - Computer transmissions and electronically stored information may be discoverable in litigation.

Dissemination and User Acknowledgment

All users shall be provided copies of these procedures and be directed to familiarize themselves with them.

Additional Procedures titled “Systems Use Requirements” are located at <http://www.ohlone.edu/org/infotech/systemsusepolicy.html>. These additional requirements are an extension of these procedures and must be adhered to at all times.

Adopted: June 2013

AP 3725 District Cellphone Usage Stipend

The District requires some individuals or positions to be available beyond their scheduled work hours, to access critical systems off campus, regularly check messages, and/or to be available anywhere either before, during, and/or after work hours as part of the responsibilities of their job.

In lieu of providing eligible employees with cellphones and pay for the monthly cellular services, the District will provide the employee a stipend to cover a portion of their monthly expense. The sole purpose of this stipend is to compensate the employee for the reasonable use of their personal phones and services for District-related business/activity.

The employee with the accorded stipend shall have the sole responsibility in maintaining a service contract with a telecommunications carrier (such as AT&T, T-Mobile, and Verizon) and shall have the sole responsibility for acquiring and upgrading his or her smartphone. The District will not be involved with the personal service contracts of employees with telecommunications carriers as the phone and the service are still personally owned by the employee including the monthly payment of the services. Furthermore, the employee with a cellphone usage stipend must have an active smartphone and service contract with a telecommunications carrier before any stipend is provided.

The District has the right to cancel the cellphone stipend of a particular employee at any time in the case of changing job responsibilities, separation of the employee from the District, or non-compliance of an employee with the purpose for which the stipend is intended.

To efficiently monitor the implementation of this procedure, all approved stipends expire on the last day of the fiscal year, and the employees will need to fill out the form and seek authorization from their department directors, deans, their division vice president, and IT Services on annual basis.

Criteria for Cellphone Usage Reimbursement

A District employee may be provided with cellphone usage stipend if their job responsibilities or functions meet the following requirements:

- (a) **On Call Availability.** The employee is required to be on call a majority of the time to be contacted in the event of an emergency, health, safety, or service need.
- (b) **Out of Office.** The job requires working outside the employee's designated office, requires contact with vendors, service providers, and other third-party maintenance to address issues and emergencies, and needs to be available.
- (c) **Off Campus Mobility.** The job requires a significant working off campus during an employee's regular working hours, and it is imperative to the operations of the District that the employee be immediately accessible to receive and/or make frequent business calls during those times.

An employee meeting these requirements is eligible for a \$50.00 monthly stipend.

Employee Responsibilities

An employee requesting a stipend shall:

- (a) Have an active service contract with a telecommunications carrier while receiving the stipend and establish himself/herself as the sole billing party with the telecommunications carrier.
- (b) Be fully responsible for the monthly service contract with the telecommunications carrier regardless of cost, services availed, and coverage.

- (c) Be responsible for purchasing, maintaining, and upgrading their smartphones, including insurance and repairs.
- (d) Be responsible for any accessory or auxiliary equipment needed for his or her smartphone.
- (e) Ensure the telecommunications carrier has significant coverage for his or her primary residence and other off campus locations the employee frequents.
- (f) Exert an effort to answer calls, messages, emails, and/or other methods the employee is contacted through the smartphone.
- (g) Notify the appropriate department head within five (5) working days in the event the eligibility criterion is no longer applicable for the employee.
- (h) Provide a copy of the billing statement upon request to validate service from a telecommunications carrier or other purposes required.
- (i) Recognize that the District-related data or information on his or her smartphone is still District-owned and protected and shall agree to implement security procedures exclusively for District-related data and information.
- (j) Follow appropriate board policy and administrative policy in rendering overtime work for classified staff.
- (k) Fill out the cellphone usage stipend form to receive this stipend and seek appropriate approval on an annual basis.

Procedure for Receiving the Stipend

1. Employee fills out the form.
2. Employee sends the completed form to their department head/dean.
3. Employee sends the completed form to their division vice president.
4. Employee sends the completed form to the AVP of IT Services.
5. AVP of IT Services sends the approved form to the Payroll office.
6. Payroll office processes the stipend.

Payroll and IT Services keep a copy of the fully signed/approved form.

Exceptions

District Issued Phones

The District recognizes that a cellphone usage stipend may not be appropriate for some eligible employees. In lieu of this reimbursement, the District may issue phones to departments, in which case the responsibility of managing the distribution and maintenance of these phones shall reside with the department head. Along with other District-owned communication technologies, District-owned cellphones shall at all times be located on District premises (including transit from one location to another). The approval of the president/division vice president is needed before an employee may take the District-issued phone from District premises.

There is a reasonable expectation that administrators are on call most of the time. In view of this expectation, administrators are not entitled to a cellphone stipend. The District, through IT Services, may issue a smartphone to an administrator who is required to answer calls and/or be online after normal work hours, holidays, and/or vacation.

Adopted: September 2016