



Pima County Community College District Administrative Procedure

<i>AP Title:</i>	Procedure for Complaints of Discrimination, Harassment and Retaliation
<i>AP Number:</i>	AP 5.10.03
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<i>Sponsoring Unit/Department:</i>	Human Resources
<i>Policy Title(s) & No(s).:</i>	Equal Employment Opportunity, ADA, Non-Discrimination and Anti- Harassment (including Sexual Harassment), BP 5.10
<i>Legal Reference:</i>	Title VI & VII of the 1964 Civil Rights Act; Title IX of the Education Amendments of 1972; Executive Order 11246; Age Discrimination in Employment Act of 1975; Rehabilitation Act of 1973, Sections 503 & 504; Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA); Americans with Disabilities Act of 1990 as amended; Equal Pay Act of 1963; Arizona Civil Rights Act of 1965
<i>Cross Reference:</i>	

PURPOSE

The purpose of this Administrative Procedure (AP) is to implement Board Policy 5.10, (BP 5.10), which prohibits discrimination, harassment and retaliation, as these terms are defined below.

The College will take prompt and appropriate action to thoroughly investigate a complaint that BP 5.10 or this AP have been violated, to correct any discrimination harassment or retaliation that is determined to have occurred, and, if necessary, to discipline any individual who is found to have engaged in conduct that constitutes discrimination, harassment or retaliation.

SECTION 1: Definitions and Concepts

1.1 Discrimination

Discrimination occurs when an individual is treated adversely based on a protected classification. Protected classifications are race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity or other legally protected category. The failure to provide reasonable religious or disability accommodations when required by law, College policy, or College AP also constitutes discrimination.

The College is committed to protecting the full and frank exchange of ideas. Discrimination does not include the use of materials about or discussion of race, color, religion, sex, national origin, or other protected classifications for scholarly purposes appropriate to the academic context, such as class discussions or meetings.

1.2 Harassment

Harassment is a specific form of discrimination. Harassment is unwelcome behavior based on a protected classification that:

- has the purpose or effect of creating an intimidating, hostile, or offensive employment or educational environment or
- has the purpose or effect of unreasonably interfering with an employee's work performance, an individual's employment opportunities, a student's academic performance, or a student's ability to receive the benefits of a College program or activity.

Prohibited harassment may take the form of, but is not limited to, offensive slurs, jokes, and other offensive or abusive oral, written, computer-generated, visual or physical conduct that is aimed at, or that adversely impacts, an employee or student because of his or her inclusion in a protected classification. It may also include negative stereotyping, including negative references about a person's language or accent.

The most common type of harassment is sexual harassment. Sexual harassment is a form of sex discrimination and may involve individuals of the same sex or different sex. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or a student's status;
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions, or academic decisions affecting the individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, a student's academic performance, or a student's ability to receive the benefits of a College program or activity or has the purpose or effect of creating an intimidating, hostile or offensive work or academic environment. This may include:
 - unwelcome sexual touching, advances or propositions;
 - lewd comments, sexual jokes and offensive personal references;
 - leering, demeaning, insulting, intimidating or sexually suggestive comments about an individual's dress or body;
 - the display in the workplace of demeaning, insulting, intimidating or sexually suggestive objects or pictures including nude photographs;
 - demeaning, insulting, intimidating or sexually suggestive written records or electronically transmitted images;
 - unwelcome touching

Sexual harassment does not include conduct of a socially acceptable nature. Nor does it refer to the use of materials or discussion related to sex and/or gender for scholarly purposes appropriate to the academic context, such as class discussions or meetings.

In determining whether the conduct at issue is sufficient to be harassment in violation of BP 5.10 or this AP, the conduct will be analyzed from the objective

standpoint of a “reasonable person.” No violation of BP 5.10 or this AP will be found if the conduct would not create a hostile or offensive environment when judged from the context of a reasonable person facing similar circumstances.

1.3 Retaliation

Retaliation occurs when adverse action is taken against an employee or student as a result of the employee’s or student’s good faith participation in a protected activity. Retaliation becomes a separate complaint that can be claimed even if the original discrimination complaint was not substantiated. Retaliation can involve any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits and any other term or condition of employment.

Protected activities include (a) raising or reporting or filing allegations of discrimination, harassment or retaliation and/or (b) participating in any review or investigation of a claim of discrimination, harassment or retaliation.

Adverse action is any action that (a) materially affects an individual’s terms and conditions of employment or a student’s academic status, or (b) is reasonably likely to deter that individual or others from engaging in a protected activity.

1.4 Complainant and Respondent

“Complainant” is the person making the complaint that he or she is the subject of discrimination. “Respondent” is the person whose alleged conduct is the subject of concern under this AP.

1.5 Student

“Student” means a person who is either (a) admitted to the College as a student or (b) registered or participating in College continuing education classes.

1.6 Employee

“Employee” includes a College employee as well as a person who has filed an application for employment with the College.

1.7 Contractor

“Contractor” An agent or other non-employee of the College who is working on College-related business, including but not limited to: custodial workers, contracted consultant, food service personnel, bookstore staff.

1.8 Due Process

For the complainant, due process means having a reasonable opportunity to tell his or her version of events. For the respondent, due process means receiving reasonable notice of allegations and a reasonable opportunity to tell his or her version of events.

SECTION 2: Discrimination, Harassment and Retaliation are Prohibited

The College prohibits discrimination, harassment and retaliation as set out in BP 5.10 and this AP. This prohibition against engaging in discriminatory conduct applies to College employees, students, contractors, vendors and other agents of the College, and to anyone participating in a College-sponsored program or activity.

Conduct that constitutes discrimination, harassment, or retaliation may result in a written warning or directive and/or discipline, including, but not limited to, possible termination of employment, suspension or expulsion of a student, or exclusion of an individual from a College program or activity. Nonemployees may be directed to discontinue the discriminatory conduct and are subject to such other consequences as are appropriate for the circumstances.

SECTION 3: Duty to Create an Environment Free of Discrimination, Harassment and Retaliation

All members of the College community are responsible for participating in the creation of an educational and/or work environment that is free from discrimination, harassment and retaliation.

SECTION 4: Duty of Administrators, Supervisors and Instructors to Report Possible Discrimination, Harassment and Retaliation

Employees of the College who (a) are administrators, (b) supervise employees, students, contractors, vendors or other agents of the College, or (c) instruct or advise students are required to immediately report possible discrimination, harassment or retaliation to the EEO/AA & ADA Office or the Vice President of Student Affairs as appropriate. See Section 5 below.

The duty to report arises whenever one of the above-designated employees (a) witnesses possible discrimination, harassment or retaliation or (b) is provided with written or verbal notice or otherwise learns of possible discrimination, harassment or retaliation.

SECTION 5: Filing a Complaint of Discrimination, Harassment or Retaliation

If an employee or student believes that he or she has been the victim of discrimination, harassment, or retaliation, he or she is encouraged to promptly report or file a complaint about the incident as detailed below.

College employees shall cooperate with an authorized investigation and act in accordance with the Code of Conduct as contained in the Personnel Policy statements.

5.1 Report or Complaint against Student

If the person alleged to have violated BP 5.10 and this AP is a student, the report or complaint should be made and investigated by the appropriate Vice President of Student Affairs. The College's Student Code of Conduct (including timelines) applies in these situations. If such a report or complaint is made to the EEO/AA & ADA Office, it shall be transferred to the appropriate Vice President of Student Affairs. During the investigation of a report or complaint made against a student, the Vice President of Student Affairs shall consult with the EEO/AA & ADA Officer and the College's Title IX Coordinator, as appropriate.

5.2. Report or Complaint against the Chancellor, an Executive Administrator, the EEO/AA & ADA Officer, or the Title IX Coordinator

5.2.a Report or Complaint against the Chancellor

If the person alleged to have violated BP 5.10 and this AP is the Chancellor, the complaint shall be reported to the Chair of the Governing Board or the College's Attorney, who shall inform each other. The Board Chair and the College's Attorney shall inform the other members of the Governing Board. The investigation of the facts concerning an alleged violation by the Chancellor shall be conducted by an independent, third party reviewer who shall report the results to the Governing Board and the College's Attorney.

5.2.b Report or Complaint against an Executive Administrator

If the person alleged to have violated BP 5.10 and this AP is an Executive Administrator, the complaint shall be reported to the head of the Human Resources Department, the Compliance and Ethics Hotline, or the College's Attorney, who shall inform the Chancellor.

5.2.c Report or Complaint against the EEO/AA & ADA Officer or the Title IX Coordinator

If the person alleged to have violated BP 5.10 and this AP is the EEO/AA & ADA Officer or the Title IX Coordinator, the report or complaint shall be reported to the head of the Human Resources Department.

5.3 Student Report or Complaint of Disability Discrimination

A student who wishes to make a report or complaint of disability discrimination shall do so using the procedures (and timelines) set out in AP 3.46.06.

5.4 Report of Complaint Against a Contractor

If the person alleged to have violated BP 5.10 and this AP is a Contractor engaged by the College, the report or complaint will be made to and investigated by the Executive Vice Chancellor for Finance and Administration.

5.5 All Other Reports or Complaints

In all cases other than those set out in subsections 5.1 through 5.3 above, a report or complaint of discrimination, harassment or retaliation shall be made or referred to the College's EEO/AA & ADA Office.

5.6 Time for Making Report or Complaint

To be considered timely, a report or complaint must be made or filed within 90 calendar days of the alleged incident of discrimination, harassment, or retaliation. If the alleged discrimination, harassment or retaliation is of an ongoing nature, the report or complaint must be filed within 90 calendar days of the most recent incident.

Reports or complaints received by the College that are outside of the 90 calendar day timeline may, at the discretion of the EEO/AA & ADA Officer and Chief Human Resources Officer, (a) be investigated in the same manner as if a timely report or complaint had been made or filed, (b) be reviewed, but in a different manner than would have occurred had the report or complaint been timely, or (c) not be processed further. In addition, recommendations and/or remedies resulting from an investigation may differ based on whether a report or complaint was timely.

5.7 Contacting the College's EEO/AA & ADA Officer and Title IX Coordinator

The College's EEO/AA & ADA Officer may be contacted via e-mail, telephone or in person at:

EEO/AA & ADA Officer
Building C, Room 241
Pima Community College District Offices
4905 E. Broadway Blvd
Tucson, AZ 85709-1310
(520) 206-4539

The College's Title IX Coordinator may be contacted via email, telephone or in person at:

Title IX Coordinator
Building B, Room 204
Pima Community College District Offices
4905 E. Broadway Blvd
Tucson, AZ 85709-1100
(520) 206-4973

SECTION 6: Investigation of Reports or Complaints of Discrimination, Harassment or Retaliation by the College's EEO/AA & ADA Office

6.1 Assignment of an EEO/AA & ADA Investigator and Prompt Investigation

In cases investigated by the EEO/AA & ADA Office, the EEO/AA & ADA Officer shall conduct an investigation or assign an EEO/AA & ADA Investigator to conduct an investigation into any timely filed written report or complaint of discrimination, harassment or retaliation. Subject to the approval of the Chief

Human Resources Officer, the EEO/AA & ADA Officer may also investigate any verbal, informal timely report or complaint of discrimination, harassment or retaliation.

Investigations will be completed promptly, generally within 45 to 60 calendar days of receipt of the report or complaint to allow time for due process. If the investigation cannot be concluded in the 45 to 60 calendar day timeframe, the Complainant, Respondent and appropriate Administrator(s) will be kept informed of the status of the investigation and anticipated date of conclusion.

6.2 Course of Investigation

Investigations shall be conducted in a manner that provides the complainant and respondent due process. Any investigation may include the EEO/AA & ADA Investigator meeting and interviewing the Complainant and the Respondent, interviewing and/or consulting with other persons, reviewing pertinent documents, and/or making any other appropriate inquiries. Subject to the approval of the Chief Human Resources Officer, an EEO/AA & ADA Investigator may require the Complainant and Respondent to both submit an affidavit under oath that the factual statements made in the affidavit are true and correct.

No adverse determination will be made against a Respondent prior to the Respondent being informed about the allegations contained within the report or complaint and having the opportunity to respond to those allegations.

At the commencement of, or at any time during the course of an investigation, interim measures may be imposed in order to protect all parties until the investigation is completed, including, but not limited to, the EEO/AA & ADA Investigator issuing a temporary directive to a Respondent or other person relating to conduct that may constitute discrimination, harassment or retaliation. In addition, the Chief Human Resources Officer may impose on a Respondent or other person a Paid Investigatory Leave as referenced by the Personnel Policy Statement for College Employees.

6.3 Cooperation of all Employees

Employees, as a condition of employment, and students, as a condition of continuing student status, are required to cooperate with, and provide truthful information to, the College during an investigation of a complaint alleging discrimination, harassment, or retaliation.

Time spent participating in a College investigation at the request of the Human Resources Department which includes the EEO/AA & ADA Office is work time.

6.4 Support

At any interview or meeting held as part of an investigation, the Complainant and Respondent may be accompanied by a person of their choice who is not an attorney. The person accompanying either the Complainant or the Respondent will be allowed to be present during the interview or meeting but may not actively participate in any manner in the interview or meeting. If the individual is a College employee, time spent accompanying either the Complaint or Respondent shall be considered time worked.

6.5 Confidentiality

Every reasonable effort will be made to protect the privacy and confidentiality of all parties involved in the investigation, consistent with and subject to the College's need to investigate the report or complaint and/or implement decisions made in order to resolve the report or complaint or remedy conduct that is determined to constitute discrimination, harassment or retaliation. No representative of the College is authorized to promise complete confidentiality to any person who possesses information relevant to the investigation of a report or complaint, including the Complainant.

Documentation resulting from any investigation shall be maintained as confidential in the EEO/AA & ADA Office. Access to documents or any other kind of information related to a complaint is permitted only for College officials with a "need to know" or as allowed or required by law.

6.6 Good Faith Allegations

No adverse action will be taken against an individual who makes a good faith allegation of discrimination, harassment, or retaliation, even if an investigation fails to substantiate the allegation.

6.7 Withdrawal of a Report or Complaint

A Complainant may withdraw a report or complaint at any time. The College, however, has the discretion to continue an investigation and take appropriate remedial action regardless of such withdrawal.

SECTION 7: Findings, Recommendations, Disciplinary and Corrective Action

At the close of an investigation, the EEO/AA & ADA Office may make one of the following determinations, and related recommendations concerning each allegation of discrimination, harassment, or retaliation:

- Unable to confirm that the Respondent violated BP 5.10 and this AP. (In some cases, the determination may be that the Respondent did not violate BP 5.10 and this AP.) In such a case, the recommendations shall include a recommendation that the matter be closed.
- Unable to confirm that the Respondent violated BP 5.10 and this AP (or a violation did not occur), but Respondent's conduct may have violated another College policy or AP. In such a case, the EEO/AA & ADA Investigator shall refer the matter to the employee's administrative supervisor and/or Employee Relations for further review. The EEO/AA & ADA Investigator may also make recommendations concerning possible action to remedy the matter and/or recommendations to prevent possible retaliation in the future.
- The Respondent violated BP 5.10 and this AP. The EEO/AA & ADA Investigator shall (a) refer the matter to the employee's administrative supervisor and Employee Relations for further action, and (b) make recommendations concerning possible action to remedy the violation or violations that were found to have occurred and make recommendations to prevent possible retaliation in the future.
- If the Respondent is a visitor, vendor, or volunteer and the EEO/AA & ADA Investigator finds that the Respondent violated this BP 5.10 and this AP, the EEO/AA & ADA Investigator may make recommendations to the appropriate administrator/supervisor and, if applicable, Employee Relations concerning possible action to remedy the matter.

A Respondent who has been found to have engaged in conduct that involves discrimination, harassment, or retaliation may be subject to written warnings or directives and/or disciplinary action, up to and including termination of employment for a Respondent who is an employee and/or suspension or expulsion

of a Respondent who is a student. The Respondent may also be required to participate in training and/or counseling.

Disciplinary action may be taken against any person who knowingly files a false claim of discrimination, harassment, or retaliation, who knowingly provides false testimony during an investigation, or who intentionally interferes with an investigation.

SECTION 8: Appeal

Either or both the Complainant and/or the Respondent have the right to appeal to the EEO/AA & ADA Officer a decision of the EEO/AA & ADA Investigator. The appeal must be in writing, must be filed within ten (10) calendar days of the issuance of the EEO/AA & ADA Investigator's decision, and must include all supporting materials and arguments that the person bringing the appeal believes support the appeal. Decisions not appealed within such time are deemed final.

The EEO/AA & ADA Officer will conduct any additional fact-finding the EEO/AA & ADA Officer deems necessary and shall issue a written decision on the appeal, providing a copy to all parties involved. Normally this decision will be made within thirty (30) calendar days from the date the appeal was received, but this time period may be extended in appropriate circumstances. The written decision of the EEO/AA & ADA Officer shall be final.

If the EEO/AA & ADA Officer participated in a significant fashion in the original investigation, the appeal shall be handled by the Chief Human Resources Officer.

If the investigator is the Chief Human Resources Officer, any appeal shall be handled by the Chancellor or designee.

SECTION 9: Right to Make Complaints to Outside Agency

In addition to use of the College's internal procedures referenced by this AP, College employees and students have the right to file claims of discrimination, harassment, or retaliation with outside agencies. At the time this AP was adopted, the timeframe for filing a charge with the Arizona Civil Rights Division was 180 days from the last act of discrimination, harassment or retaliation. The timeframe for filing a charge with the Equal Employment Opportunity Commission was 300 calendar days from the last act of discrimination, harassment or retaliation. These time frames for filing a charge with the ACRD and EEO generally will not be

extended while the Complainant attempts to resolve a dispute through the College's internal grievance procedure. A Complainant should verify these timeframes with the applicable agency.

External agencies include:

United States Department of Education
Office for Civil Rights (OCR)
1244 Speer Blvd., Suite 310
Denver, Colorado 80204-3582
Phone: (303) 844-5695
Fax: (303) 844-4303
Email: OCR.Denver@ed.gov

The Office of the Arizona Attorney General
Civil Rights Division (ACRD)
402 W. Congress Street, Suite S215
Tucson, Arizona 85701-1367
Phone: (520) 628-6500
TDD: (520) 628-6872

The United States Equal Employment Opportunity Commission
(EEO/AA/ADAC)
3300 N. Central Avenue, Suite 690
Phoenix, Arizona 85012-2504
Phone: (602) 640-5000
Phone: (800) 669-4000
TTY: (800) 669-6820
Fax: (602) 640-5071