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Board Policies

Macomb Community College

UNLAWFUL HARASSMENT

I. Policy Prohibiting Unlawful Harassment

A. Harassment Prohibited

It is the policy of Macomb Community College to maintain an academic and work environment free of harassment based on sex, race, color, national origin, religion, disability, age, marital status, pregnancy, height or weight (hereinafter "unlawful harassment"). Harassment based on these characteristics diminishes individual dignity, impedes equal employment and educational opportunity and is contrary to the standards and goals of the College. Harassment based on sex, race, color, national origin, religion, disability, age, marital status, pregnancy, height or weight will not be tolerated at Macomb Community College.

An employee or student of Macomb Community College shall not harass an employee or student of the College, an applicant for employment or enrollment at the College, a person employed on the premises of the College under an independent contract for services or a participant in a College-sponsored program on the basis of sex, race, color, national origin, religion, disability, age, marital status, pregnancy, height or weight. This Policy and the law prohibit harassment on the basis of these characteristics. This Policy and the law also prohibit retaliation for having brought a complaint of unlawful harassment, having opposed unlawful harassment and/or for having participated in the complaint or investigation procedure.

B. Unlawful Harassment Defined

1. Sexual Harassment

For purposes of this Policy, the term "sexual harassment" means:

(a) unwelcome sexual advances, requests for sexual favors, and other verbal or physical acts of a sexual nature when (i) it is explicitly or implicitly suggested that submission to or rejection of the acts will be a factor in academic or employment decisions, evaluations or status, including participation in College-sponsored activities, or (ii) they are used as a factor for employment or academic decisions; or

(b) unwelcome verbal or physical acts that are based on sex, have no professionally appropriate relationship to the subject matter of a course, and are so severe and pervasive that they objectively either (i) have the effect of unreasonably interfering with an individual's work or academic performance, or (ii) create an intimidating, hostile or offensive learning or working environment.

2. Racial and Other Types of Unlawful Harassment

The College prohibits verbal or physical acts based on race, color, national origin, religion, disability, age, marital status, pregnancy, height or weight that have no professionally appropriate relationship to the subject matter of a course and are so severe and pervasive that they objectively either (i) unreasonably interfere with an individual's work or academic

performance, or (ii) create an intimidating, hostile or offensive learning or working environment.

3. Examples

The Appendix to this Policy provides examples to illustrate types of conduct and communication that are prohibited under this Policy Prohibiting Unlawful Harassment. The examples are not designed to be, and should not be construed as being, exhaustive of the types of conduct that may violate this Policy or the law.

4. Totality of the Circumstances

Not every act that might be offensive to an individual will be considered harassment and/or a violation of this Policy Prohibiting Unlawful Harassment. In determining whether an act or series of acts constitutes harassment, the totality of the circumstances that pertain to a given incident, including the nature, frequency, intensity, location and duration, will be closely reviewed in context, with due consideration given to the protection of individual rights, including speech guaranteed by the First Amendment to the United States Constitution. Although repeated incidents generally create stronger evidence of prohibited harassment, a serious incident, even if isolated, can be sufficient.

5. Germane Classroom Speech

Macomb Community College recognizes that the academic setting is distinct from the typical workplace in that latitude is required in determining the appropriate content of academic material. Thus, speech in the classroom that is germane to course content is not subject to this Policy. However, regular use of profane, vulgar, or obscene language in the classroom that is not germane to course content (and thus educational purpose) as measured by professional standards is prohibited by College policy and may lead to the imposition of discipline. Reasonable care must be exercised in applying this Policy to avoid violation of First Amendment rights.

C. Persons and Settings Covered

Unlawful harassment by an employee or student of Macomb Community College of an employee or student of the College, an applicant for employment at the College, a person employed on the premises of the College under an independent contract for services, or a person participating in or attending a College-sponsored program is unacceptable whether it takes place on or off a campus. This prohibition against acts of unlawful harassment by employees or students shall not be construed to be a condonation of harassment committed by vendors, independent contractors, or visitors to a campus.

D. Conformity with Collective Bargaining Agreements

To the extent of any conflict between this policy and an applicable collective bargaining agreement, the collective bargaining agreement shall govern.

II. Complaint Procedure

Any person who feels she or he has been subjected to unlawful harassment, is aware of conduct prohibited under the College's Policy Prohibiting Unlawful Harassment, or feels that she or he has been retaliated against for complaining about, opposing, or participating in the complaint or investigation procedure should promptly bring the matter

to the attention of the Affirmative Action Officer or the Provost.

III. Investigation Procedure

Reports of unlawful harassment are taken seriously by the College and will be investigated. The specific action taken in any particular case depends on the nature and gravity of the conduct reported, and may include investigation, intervention, mediation and disciplinary process.

If a complaint alleges facts sufficient to suggest a violation of the College's Policy Prohibiting Unlawful Harassment, the administrator in charge of the division or unit in which the alleged harasser is assigned or enrolled shall investigate the complaint. The Office of Human Resources shall be responsible for answering questions and disseminating information about unlawful harassment and the College's Policy Prohibiting Unlawful Harassment and shall advise and assist the administrator in charge of the investigation of a complaint.

Procedural due process appropriate to the case shall be afforded to the alleged harasser. A thorough and impartial investigation will generally include:

1. Interviewing of the complainant, both at the time the complaint is initially presented and at the time the complaint is reduced to writing;
2. Interviewing the alleged harasser and reducing his or her statement to writing;
3. Interviewing all witnesses identified by the complainant or the alleged harasser or other potential witnesses who may have observed the conduct alleged or who may possess knowledge regarding the allegation under investigation and reducing their statements to writing, either by requesting that the witnesses do so or by reducing their statements to writing to be signed or otherwise acknowledged by the witnesses;
4. Reviewing any documentary or other evidence submitted by the complainant or the alleged harasser;
5. Making a written determination of the validity of the complaint.

IV. Procedure for Resolving the Complaint

A. If Violation Found

If the administrator in charge determines that a violation of the College's Policy Prohibiting Unlawful Harassment has occurred, the administrator in charge and/or other appropriate administrators shall take prompt and appropriate remedial action to stop the harassment, seek to prevent its recurrence and may take disciplinary measures against those responsible. Such remedial action may include:

1. Progressive disciplinary action;
2. Restoration to an individual of any employment or student benefits or status impaired unlawful as a result of the unlawful harassment or the exercise of the right to make a complaint of harassment, to oppose unlawful harassment, or to participate in an investigation under this policy;
3. Removal from the individual's personnel or student record or other records of the College of any documents containing adverse or negative references to the complainant flowing from the policy violation;
4. Referral of any individual, including the harasser or the complainant, or both, to counseling;
5. At the option of the complainant and if practicable, reassignment or

transfer to an equivalent position or class section;

6. Other appropriate measures to assure that any individual adversely affected by the filing of a complaint, participation in any complaint proceeding, or opposition to unlawful harassment is restored to the position or status held prior to the policy violation;

7. Removal of the effects of the policy violation in the work place or study environment, such as the removal of offensive graffiti, posters or other means of harassment, the elimination of offensive remarks, and/or the elimination of unwanted physical contact;

8. Other appropriate measures to assure that this policy, and the College's commitment to enforcing its Policy Prohibiting Unlawful Harassment, is reiterated in the work place or study environment, such as republication of the policy and in-service training relating to the policy.

B. If No Violation Found

If the administrator in charge determines that no violation of the College's Policy Prohibiting Unlawful Harassment has occurred, the administrator in charge should:

1. Inform the complainant and the alleged harasser of the results of the investigation and the reasons for the finding of no policy violation;

2. Advise the complainant and the alleged harasser that the College is committed to the enforcement of its Policy Prohibiting Unlawful Harassment and will not tolerate unlawful harassment or retaliation of any sort;

3. Notwithstanding the determination that no policy violation has occurred, advise all individuals that there will be no retaliation for making a complaint of harassment, opposing unlawful harassment, or participating in an investigation under the College's Policy Prohibiting Unlawful Harassment;

4. Advise the complainant to contact the Affirmative Action Officer or the Provost in the event of a future violation;

5. Take appropriate measures to assure that this policy, as well as the College's commitment to enforcing its Policy Prohibiting Unlawful Harassment, is reiterated in the work place or study environment such as republication of the policy and in-service training relating to the policy.

C. If No Determination Possible

If the administrator in charge determines there is insufficient information from which to make a determination whether a policy violation has occurred, the administrator in charge should:

1. Inform the complainant and the alleged harasser of the finding that no determination can be made;

2. Advise the complainant and the alleged harasser that the College is committed to the enforcement of the College's Policy Prohibiting Unlawful Harassment and will not tolerate unlawful harassment or retaliation of any sort;

3. Notwithstanding the determination that there is insufficient information from which to determine that a policy violation has occurred, advise all individuals that there will be no retaliation for making a complaint of unlawful harassment, opposing unlawful harassment, or participating in an investigation under the College's Policy Prohibiting Unlawful Harassment;

4. Advise the complainant to contact the Affirmative Action Officer or the

Provost in the event of a future violation;

5. Take appropriate measures to assure that the College's Policy Prohibiting Unlawful Harassment, as well as the College's commitment to enforcing the College's Policy Prohibiting Unlawful Harassment, is reiterated in the work place or study environment, such as republication of the policy and in-service training relating to the policy.

V. Protection Against Retaliation

Retaliation against an individual who in good faith reports, objects to or provides information in an investigation about behavior that may violate the College's Policy Prohibiting Unlawful Harassment are against the law, violates the College's Policy Prohibiting Unlawful Harassment and will not be tolerated. Individuals who believe they have been retaliated against for reporting, objecting to or providing information about behavior that may violate the College's Policy Prohibiting Unlawful Harassment should report such retaliation in a manner consistent with the Complaint Procedure outlined above.

VI. Confidentiality

The College recognizes the importance of confidentiality. The College will respect, and all involved parties are expected to also respect, the confidentiality and privacy of individuals reporting or accused of prohibited harassment to the extent reasonably possible. Complaints of harassment, as well as all notes, statements and written conclusions of any harassment investigation are confidential and must not be publicly disclosed. Examples of situations where confidentiality cannot be maintained include circumstances when the College is required by law or contract to disclose information (such as in response to legal process) and when disclosure is required by the College's interests in protecting the rights of others. Individuals found to have violated the confidentiality of this process may be subject to discipline up to and including discharge or expulsion.

VII. Appendix

In *Downey v Charlevoix County Board of County Road Commissioners*, 227 Mich App 621 (1998), a 45 year old male heavy equipment operator for the Charlevoix County Road Commission named James Downey suffered from a depressive disorder. Downey alleged that the manager of the Road Commission, Larry Hamlin, frequently used the phrase "old guys", tried to make the work environment "miserable" for the older employees, would "pick on" older employees and gave younger employees preferential treatment, and said that older workers were lazy or "excess baggage." Downey also produced testimony that his direct supervisor, Tim Parsel, made several derogatory remarks concerning the direction Downey was taking for his depressive disorder and made fun of Downey one day because he was taking Prozac. The Michigan Court of Appeals held that these facts, if believed by a jury, could sustain Downey's claim that he was subjected to a hostile work environment based on his age and disability.

In *Shrout v Black Clawson Company*, 689 F Supp 774 (WD Ohio, 1988), a female employee named Barbara Shrout temporarily engaged in voluntary consensual sexual relationship with her supervisor, Edward Lewis. After Shrout terminated the relationship, Lewis attempted to force Shrout to submit to his sexual advances by withholding performance evaluations and salary reviews that were necessary prerequisites to obtaining salary increases. In addition, Lewis made sexual remarks to Shrout, left sexual materials on her desk, touched her intimately, splashed water on her and "looked down [her] blouse and up [her] skirt." The Court held that this behavior, combined with the employer's failure to make a reasonable attempt to remedy it, sustained Shrout's sexual harassment claim.

In *Moore v KUKA Welding Systems*, 171 F3d 1073 (CA 6, 1999), Gerald Moore was the only African-American working on the shop floor. One of Moore's co-workers called him a nigger in front of a supervisor, another co-worker used the term "nigger-rigging" to represent poor workmanship, co-workers frequently told racially-derogatory jokes, someone wrote the phrase "kill all niggers" on a bathroom wall, and Moore was asked to

drive a white employee somewhere. Although acknowledging that the evidence was not overwhelming, the Court found sufficient evidence to support the jury's verdict that the plaintiff had been subjected to hostile environment racial harassment.

In *EEOC v R & R Ventures*, 244 F3d 334, 85 FEP Cases 553 (CA 4, 2001), the Court held that a reasonable jury could conclude that the manager of a fast-food restaurant created a sexually hostile work environment for teenage female employees by describing his sex life, discussing sexual positions with his employees, regularly asking employees about their sex lives, making inappropriate sexual remarks and commenting on the female employees' physical appearance. The inappropriate sexual remarks included telling a female employee that she gave him a "cheap thrill" when she bent over, asking an employee whether she liked to be spanked and commenting that women were stupid as compared to men. The offending comments continued even after an employee asked the manager to stop making the comments. The Court noted that the severity of the manager's alleged conduct was exacerbated because the manager was "an adult male in a supervisory position over young women barely half his age" and "engaged in a systematic effort to cripple the self-esteem of the teenagers who assisted him at the store."

In *Dowdy v Bower*, 1998 U.S. App LEXIS 11792 (1998), a business owner asked a female employee named Summer Dowdy to photocopy her breasts, bragged about the size of his penis, offered to give Dowdy a raise if she would provide sexual favors to him, and encouraged Dowdy to have sexual intercourse with two persons and/or another woman. The owner also subscribed to several pornographic magazines that were available to all the employees in the office. Once, a pornographic homosexual magazine was placed in Dowdy's desk with a "post-it" note affixed to one of the pages. The note, which was placed on a page depicting a nude man with an erect penis, said "Summer, this is for you." In addition, other employees bragged to Dowdy about their sexual prowess, asked her intrusive questions about her sexual experiences, and suggested that she participate in lewd sexual acts. The Court ruled that this conduct, if proved at trial, could sustain Dowdy's hostile environment sexual harassment claim.

In *Van Steenburgh v The Rival Company*, 171 F3d 1155 (CA 8, 1999), an employee named Van Steenburgh alleged that her supervisor, a man with whom she had enjoyed a good working relationship, stated that he was interested in seeing Van Steenburgh socially. The supervisor repeatedly confronted Van Steenburgh in private and proposed that she engage in a romantic relationship with him; touched her on several occasions; followed her to a drugstore and asked her to go somewhere where they could be alone; repeatedly entered her office and asked her to have an affair with him; hugged her at the workplace; told her that he wished he could take her away from her husband; touched her breast; and grabbed her leg under the table while he, Van Steenburgh and their spouses were playing cards. Finally, after Van Steenburgh rebuffed his attempt to put his arms around her, the supervisor got angry, stating, "You owe me and you're going to pay." The supervisor subsequently announced in front of other employees that he had decided to place someone else above Van Steenburgh on the production line, and verbally abused Van Steenburgh when she protested. The circuit court upheld a jury's determination that Van Steenburgh had suffered hostile environment sexual harassment.

Approved by the Board of Trustees
Macomb Community College
August 15, 1994
Revised March 18, 2003

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