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# Civil Rights Policy: II. Prohibited Conduct



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CMC prohibits the following conduct:

# Discrimination, Harassment, and Sexual Harassment: Educational and Work Environments

The applicable definitions and standards for evaluating whether [behavior / conduct] constitutes Discrimination, Harassment, or Sexual Harassment depend upon whether the circumstances relate to the College's Educational or Work Environments, which are defined as follows:

- The "Educational Environment" includes, but is not limited to, all of the College's academic, co-curricular, and other programs and activities, including, but not limited to, admission, financial aid, academics and research, athletic programs and other student activities, and residential life.
- The "Work Environment" is focused on those areas of the College's operations and activities that fall within the traditional purview of employment law.

## Educational Environment

### Discrimination

In the Educational Environment, "Discrimination" refers to the treatment of a person or persons adversely based on the person or persons' Protected Status. Adverse treatment means actions which have a substantial and material adverse impact on a Complainant's participation in educational programs, activities, opportunities or benefits. Minor or trivial actions or conduct, although frustrating or offensive, do not constitute adverse treatment.

Examples of Possible Discrimination:

- A staff member refuses to allow a student's sign language interpreter to participate in a conversation about the student's financial aid package.

### Harassment

In the Educational Environment, Harassment refers to unwelcome verbal, physical or visual conduct, based upon a person or persons' Protected Status, which is sufficiently severe, persistent, or pervasive that it: 1) unreasonably interferes with a Claimant's participation in educational programs, activities, opportunities or benefits; or 2) creates a hostile or abusive educational environment. A person can commit harassment without intending to create these outcomes.

In evaluating the severity, persistence, or pervasiveness of the conduct, the College considers whether the target(s) of the conduct, as well as an objectively reasonable person considering the conduct from the perspective of the target(s), would find the conduct to be severe, persistent, or pervasive. In some instances, a single act may be sufficiently severe as to be prohibited by this Policy.

Academic Freedom. Without diluting any of the protections set out above, the College recognizes the uniqueness of the Educational Environment and the importance of encouraging and protecting academic freedom. For this reason, expression which occurs in the context of academics, education, and/or research are broadly protected by the principles of academic freedom.

Examples of Possible Harassment:

- A professor's derogatory comments, slurs, or jokes during class about a particular race which makes it too difficult for a student of that racial background to attend or participate in class.
- A coach continually denigrating a particular student athlete due to the student's inability to practice at certain times because of the student's religious beliefs.

## Sexual Harassment

In the Educational Environment, Sexual Harassment is a specific form of Harassment involving unwelcome conduct of a sexual nature (such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature). As described above, Sexual Harassment can be based upon a Hostile Environment (i.e., sufficiently severe, persistent, or pervasive that it unreasonably interferes with a Claimant's education). In addition, Sexual Harassment may also be based upon Quid Pro Quo Harassment.

Quid Pro Quo Sexual Harassment occurs when a person or persons' ability to participate in or benefit from the College's educational programs, activities, opportunities or benefits is expressly or impliedly conditioned upon submission to the unwelcome conduct of a sexual nature.

Examples of Quid Pro Quo Sexual Harassment:

- A professor promises a student a favorable grade if the student will go on a date with the professor.
- A staff member tells a student that they can help the student obtain a summer internship if the student gives the staff member a body massage.

Additional examples of harassment are listed in the next section regarding Discrimination and Harassment in the Work Environment.

## Work Environment

### Discrimination

In the Work Environment, “Discrimination” refers to the treatment of a person or persons unfavorably based on the person or persons’ Protected Status. Adverse treatment includes, but is not limited to, hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and other terms or conditions of employment. Minor or trivial actions or conduct, although frustrating or offensive, do not constitute adverse treatment.

Examples of Discrimination:

- A supervisor refuses to promote a qualified employee of a certain ethnicity without a valid business purpose.
- A professor refuses to allow a colleague on a committee due to a belief that the colleague’s recent marriage or divorce will impact the colleague’s availability for committee duties.

## Harassment

In the Work Environment, Harassment refers to unwelcome verbal, physical or visual conduct, based upon a person or persons’ Protected Status, which (1) creates an intimidating, hostile or offensive working environment; (2) unreasonably interferes with a person’s work performance; or (3) otherwise adversely affects a person’s employment opportunities. A person can commit harassment without intending to create these outcomes.

In evaluating the conduct, the College considers whether a reasonable person subjected to the discriminatory conduct would find, as the target(s) did, that the harassment altered working conditions that made it more difficult to do their job. A single incident of harassing conduct maybe is sufficient to demonstrate the existence of a hostile work environment if the harassing conduct has reasonably interfered with the persons’ work performance or created an intimidating, hostile or offensive working environment.

Examples of Harassment:

- While at work, a colleague continually refers to another colleague by their physical features instead of by their name despite requests not to do so.
- An employee displays posters in their workspace which put down a religion which the employee’s co-worker belongs to.

## Sexual Harassment

In the Work Environment, Sexual Harassment is a specific form of Harassment involving unwelcome conduct of a sexual nature (such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature). Sexual Harassment can be based upon a Hostile Environment (i.e., created an intimidating, hostile or offensive working environment that interferes with a Claimant’s ability to perform their job as usual) or based upon Quid Pro Quo Harassment.

Quid Pro Quo Sexual Harassment occurs when someone conditions a job, promotion, or other

work benefit on an individual's submission to sexual advances or other conduct based on sex.

Examples of Quid Pro Quo Sexual Harassment:

- A male supervisor who expresses sexual interest in males provides extended lunch hours to male subordinates who give the supervisor hugs at the beginning and end of shifts.
- A female supervisor offers to support a male subordinate's promotion so long as the male employee goes to dinner and a movie with the supervisor.

Additional Examples of Sexual Harassment:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Leering, gestures, or displaying sexually suggestive objects, pictures, cartoons, or posters
- Derogatory comments, epithets, slurs or jokes
- Graphic comments, sexually degrading words, or suggestive or obscene messages or invitations
- Physical touching or assault, as well as impeding or blocking movements

## Stalking

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person under similar circumstances and with similar identities to the targeted person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. A "course of conduct" means two or more acts; acts are broadly defined to include conduct that is direct, indirect, or through third parties, by any action, method, device, or means, which involves following, monitoring, observing, surveilling, threatening, or otherwise communicating to or about, or interfering with the property of, the targeted person. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking may include, but is not limited to:

- Non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, texts, letters, notes, gifts, or any other communications that are undesired and place another person in fear;
- Using Global Positioning Systems (GPS) to monitor a victim;
- Pursuing, following, waiting, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the victim;
- Surveillance or other types of observation, including staring or "peeping";
- Trespassing;
- Vandalism;
- Verbal or physical threats;

- Gathering information about an individual from friends, family, or co-workers;
- Threats to harm self or others;
- Lying to others about the victim; or
- Cyber-stalking, including but not limited to, the use of online, electronic, or digital technologies, including:
  - Unauthorized posting of pictures, messages, or information about the Claimant on websites, Internet sites, social networking sites, or bulletin boards or in chat rooms;
  - Sending unwanted/unsolicited email, texts, or talk requests; or
  - Posting private or public messages on Internet sites, social networking sites, or bulletin boards.

## Intimate Partner Violence

Intimate Partner Violence refers to any act of violence or threatened act of violence, sexual or otherwise, against a person who is or has been involved in a sexual, dating, domestic or other intimate relationship with that person. It is often referred to as dating violence or domestic violence, both of which are described below.

Intimate partner violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate partner violence may take the form of threats, assault, property damage, violence, or threat of violence to one's self, one's sexual or romantic partner, or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientation and does not discriminate by racial, social, or economic background.

“Dating Violence” is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person subjected to such violence. Whether there was such a relationship will be determined based on, among other factors, the Claimant's and Respondent's statements, and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the parties involved in the relationship.

“Domestic Violence” is a felony or misdemeanor crime of violence committed by:

1. A current or former spouse or intimate partner of the victim;
2. A person with whom the victim shares a child in common;
3. A person who is cohabiting with, or has cohabitated with, the victim as a spouse or intimate partner;
4. A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
5. Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence has

occurred.

The College recognizes that sexual harassment, sexual assault, sexual exploitation, stalking, and retaliation all may be forms of intimate partner violence when committed by a person who is or has been involved in a sexual, dating, or other social relationship of a romantic or intimate nature with the Claimant.

## Prohibited Relationships by Persons in Authority

Engaging in a sexual or other intimate relationships in which one party maintains a direct supervisory or evaluative role over the other party do not necessarily constitute a form of prohibited Harassment or Sexual Misconduct. However, such relationships do present special concerns related to the potential for such misconduct and are therefore prohibited as described below.

In general, this prohibition extends includes all sexual or other intimate relationships between students and their employers, supervisors, professors, coaches, advisors or other College employees.

Similarly, College employees (faculty and staff) who supervise or otherwise hold positions of authority over others are prohibited from having a sexual or other intimate relationship with an individual under their direct supervision.

The College does not wish to interfere with private choices regarding personal relationships when such relationships do not interfere with the goals and policies of the College. However, faculty, administrators, and others who educate, supervise, evaluate, employ, counsel, coach or otherwise guide students or directly supervise subordinates should understand the fundamentally asymmetrical nature of the relationship they have with students or subordinates.

Intimate or sexual relationships where there is differential in power or authority produce risks for every member of our community and undermine the professionalism of faculty and supervisors. In either context, the unequal position of the parties presents an inherent element of risk and may raise sexual harassment concerns if one person in the relationship has the actual or apparent authority to supervise, evaluate, counsel, coach, or otherwise make decisions or recommendations as to the other person in connection with their employment or education at the college.

In addition, sexual relations between persons occupying asymmetrical positions of power, even when both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals as to the consensual nature of the relationship. Similarly, these relationships may impact third parties based on perceived or actual favoritism or special treatment based on the relationship.

Therefore, persons with direct supervisory or evaluative responsibilities who contemplate having

Therefore, persons with direct supervisory or evaluative responsibilities who contemplate beginning or are involved in such relationships are required to promptly:

1. Disclose the circumstances to their own supervisor.
2. Where feasible and practicable, coordinate with the supervisor to develop, implement, and maintain any appropriate reassignment or other protocols to have the effect of discontinuing or eliminating any direct role as a supervisor of the subordinate employee.
3. When not feasible or practicable, avoiding or discontinuing the relationship.

Failure to fully or timely comply with these requirements is a violation of this Policy by the person in authority, who may be subject to disciplinary action, up to and including termination for cause.

Finally, any member of the CMC community who was subjected to discrimination or harassment based on a person of authority's failure to abide by the terms of this Policy may file a complaint under the Discrimination and Harassment Policy and/or this Policy.

## Sexual Misconduct

The College prohibits all forms of Sexual Misconduct, including non-consensual sexual intercourse, non-consensual sexual contact, sexual exploitation, stalking, and intimate partner violence, as further defined below ("Sexual Misconduct"). Sexual misconduct may occur irrespective of a person's sex, gender/gender identity, sexual orientation or dating/marital status. In other words, anyone can be the target of Sexual Misconduct.

All forms of Sexual Misconduct refer to sexual acts perpetrated without a person's affirmative consent (which is described below and is a necessary component of all sexual activity).

### Non-Consensual Sexual Intercourse

Non-consensual sexual intercourse is any sexual intercourse, however slight, with any object (e.g. penis, object, finger, hand), by a person upon a person, that is without consent or by force. Sexual intercourse includes vaginal or anal penetration and oral copulation (mouth to genital contact or genital to mouth contact) no matter how slight the penetration or contact.

### Non-Consensual Sexual Contact

Non-Consensual Sexual Contact is any intentional sexual touching, however slight, with any object, by a person upon a person, when such touching is without his or her consent or by force. Sexual contact includes intentional contact with the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth, or any other part of the body that is touched in a sexual manner.

# Sexual Exploitation

Sexual Exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- Surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Non-consensual possession, sharing, or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- Exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances;
- Knowingly exposing another individual to a sexually transmitted disease, virus, or infection without the other party's knowledge;
- Prostitution or engaging in non-consensual sexual activity for personal benefit of yourself or a third party through force or intimidation; or
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

# Affirmative Consent

**Affirmative Consent:** Affirmative consent is an affirmative, conscious, and voluntary decision by each participant to engage in mutually agreed-upon (and the conditions of) sexual activity.

Affirmative consent is required for any sexual activity to occur between two or more individuals. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time.

Neither the lack of protest or resistance nor silence constitutes consent, and consent may be withdrawn at any time. It is the responsibility of each person involved in sexual activity to make sure they have affirmative consent from the other.

Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

It is not a valid excuse that Respondent believed the Claimant consented if the Respondent's belief in affirmative consent arose from:

- Respondent's intoxication or recklessness; or
- Respondent's failure to take reasonable steps, in the circumstances known to the accused at that time, to ascertain whether the Claimant affirmatively consented.

The following factors are used to evaluate whether affirmative consent was present in relation to alleged Sexual Misconduct:

- **Informed and reciprocal:** All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.
- **Freely and actively given:** Consent cannot be obtained through the use of force, coercion, threats, intimidation, or pressuring, or by taking advantage of the incapacitation of another individual.
- **Mutually understandable:** Communication regarding Consent consists of mutually understandable words or actions that indicate an unambiguous willingness to engage in (and the conditions of) sexual activity. In the absence of clear communication or outward

demonstration, there is no consent. Consent may not be inferred from silence, passivity, lack of resistance, or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.

- **Not indefinite:** Consent may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate Consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of Consent can be an expressed “no” or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain, or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated Consent before continuing any further sexual activity.
- **Not unlimited:** Consent to one form of sexual contact does not constitute Consent to all forms of sexual contact, nor does Consent to sexual activity with one person constitute Consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.
- **Not forced:** Consent is not valid if it is obtained through the use or threat of force. Force is the use or threat of physical violence or intimidation to overcome an individual’s freedom of will to choose whether or not to participate in (and the conditions of) any sexual activity. For the use of force to be demonstrated, there is no requirement that a Claimant resist the sexual advance or request. However, resistance by the Claimant will be viewed as a clear demonstration of no consent.
- **Not coerced:** Consent obtained through coercion is not valid. Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against that person’s will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to “out” someone based on sexual orientation, gender identity or gender expression, and threatening

SOMEONE BASED ON SEXUAL ORIENTATION, GENDER IDENTITY OR GENDER EXPRESSION, AND THREATENING self-harm if the other party does not engage in the sexual activity. When someone indicates, verbally or physically, that they do not want to engage in a particular sexual activity, that they want to stop a particular activity, or that they do not want to go past a certain point of sexual interaction, continued activity or pressure to continue beyond that point is coercive.

## Capacity to Consent

To affirmatively consent to sexual activity, one must be of legal age, which in the State of California is defined as age 18. Accordingly, sexual contact with an individual under 18 years of age is deemed by law to be nonconsensual and is also a violation of this Policy.

## Incapacitation

Incapacitation: In addition to being of legal age, an individual must have the capacity to give affirmative consent.

Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if they are:

- Asleep;
- Unconscious;
- Unable to understand the fact, nature or extent of sexual activity due to the impact of drugs, alcohol or medication;
- Unable to communicate due to a mental or physical condition; or
- Otherwise unaware that sexual activity is occurring.

Incapacitation may result from the use of alcohol or drugs. However, consumption of alcohol or other drugs alone is insufficient to establish incapacitation. In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence, stalking, or intimate partner violence and does not diminish one's responsibility to obtain consent.

The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol or drugs impacts an individual's

quires an assessment of how the consumption of alcohol or drugs impacts an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments; or
- Capacity to appreciate the nature and the quality of the act.

Finally, evaluating incapacitation also requires an assessment of whether a Respondent knew, or should have known, that the Claimant was incapacitated. This assessment is conducted using an objective reasonable person standard. A Respondent's lack of awareness of the Claimant's incapacity is no excuse if an objective, reasonable person would have been aware of Claimant's incapacity.

## Retaliation

It is a violation of College Policy to retaliate, intimidate, or seek retribution in any way against an individual because he or she raised allegations of discrimination, harassment, sexual misconduct, or other Prohibited Conduct, or because an individual otherwise cooperated or participated in the administration of these Policies. The College recognizes that retaliation can take many forms, may be committed by or against an individual or a group, and that a Claimant, Respondent, or third party may commit or be the subject of retaliation.

The College will take prompt action to investigate any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting potential misconduct under these Policies is also entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

## False Reporting

It is a violation of College Policy to file a knowingly false or malicious complaint of Discrimination, Harassment, Sexual Misconduct, or other Prohibited Conduct under this Handbook. A report or complaint alleging false reporting by another individual may be pursued pursuant to the Procedures set forth in this Handbook for reporting Prohibited Conduct. A report or complaint that was made in good faith does not constitute either False Reporting or Retaliation under this Handbook.

## Violations of Terms of Interim Measures

Any willful failure to follow a condition imposed upon a Party as an "Interim Measure" under this Policy.

## Attempts

The College treats an attempt to commit any Prohibited Conduct as if that attempt had been completed. An attempt is an incomplete act or effort to achieve something.

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