

Sexual Harassment Policy

Overview and Purpose of Sexual Misconduct Policy

Board Policy (BP) 3-120 and BP 19-60 provides that employees and students shall not be subjected to unlawful discrimination and/or harassment on the basis of sex/gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion or sexual orientation in employment conditions or educational programs or activities.

Sexual misconduct: defined, includes a broad range of behavior such as:

- Inappropriate physical touching, sexual exploitation
- Sexual intercourse without consent
- Other forms of sexual violence
- Sexual Harassment

Sexual misconduct may be a crime. Sexual misconduct by anyone is unacceptable and will be addressed in a timely fashion and with serious consequences by PCC.

This policy and procedure are PCC's grievance procedure required by Title IX. This policy and procedure are designed to provide students charged with sexual misconduct with due process while ensuring a reporting party's protections under Title IX and providing prompt and equitable resolution of charges. This policy and procedure also applies for Title VII in relation to employment.

When the accused party (respondent) to a discrimination and/or harassment complaint is a student, an Administrator/Professional Technical employee(s), Faculty and Adjunct Instructor(s), classified employee(s) (PCC employees), authorized volunteer(s), guest(s) or visitor(s) within Pueblo Community College (PCC) these procedures will apply.

Definitions

Sexual Misconduct offenses include, but are not limited to:

- Sexual harassment
- Non-consensual sexual contact (or attempts to commit same)
- Non-consensual sexual intercourse (or attempts to commit same)
- Sexual exploitation

Sexual Harassment is:

Unwelcome, gender-based verbal or physical conduct that is:

- sufficiently severe, persistent, or pervasive that it has the effect of unreasonably interfering with, denying or limiting someone the ability to participate in or benefit from PCC's educational program and/or activities, or work activities, and

- the unwelcome behavior is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

There are three types of Sexual Harassment:

1. **Quid pro quo sexual harassment** exists when there are:

- unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, and
- submission to or rejection of such conduct results in adverse educational or employment action; or
- affects the terms or conditions of education or employment, or activities with the college.

2. **Hostile Environment** includes any situation in which there is harassing conduct that is sufficiently severe, persistent, or pervasive that it alters the conditions of employment or limits, interferes with or denies educational benefits or opportunities, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.

The determination of whether an environment is "hostile" must be based on all of the circumstances. These circumstances could include, but are not limited to:

- Frequency of the conduct
- Nature and severity of the conduct
- Whether the conduct was physically threatening
- Whether the conduct was humiliating
- Effect of the conduct on the alleged victim's mental or emotional state
- Whether the conduct was directed at more than one person
- Whether the conduct arose in the context of other discriminatory conduct
- Whether the conduct unreasonably interfered with the alleged victim's educational or work performance
- Whether a statement is a mere utterance of an epithet which engenders offense in an employee or student, or offends by mere discourtesy or rudeness
- Whether the speech or conduct deserves the protections of the 1st Amendment

3. **Retaliatory harassment** is any adverse employment or educational action taken against a person because of the person's perceived participation in a complaint or investigation of discrimination or sexual misconduct.

Sexual Contact

Sexual contact is consensual contact which can occur when dating, for example. This is mutually agreed upon by both parties who are consenting adults. When it crosses the line and becomes a problem is when the sexual contact is non-consensual. Sexual contact defined is any deliberate sexual touching, however slight, of a person's body (including but not limited to mouth, genitalia, groin, breasts, buttocks, or clothing covering those areas), or causing a person to touch his or her own sexual or intimate parts, may be considered sexual contact.

Non-consensual sexual contact is:

- Any intentional sexual touching however slight, with any object, by any individual upon any individual, that is without consent and/or by force.

Non-consensual sexual intercourse is:

•Any sexual penetration however slight, with any object, by any individual upon any individual, that is without consent and/or by force. Among women, non-consensual intercourse may include vaginal, oral, or anal penetration by a male using his penis. It also may include vaginal, oral or anal penetration by a male or female using their fingers or an object. Among men, non-consensual intercourse may include oral or anal penetration by a male using his penis. It also may include oral or anal penetration by a male or female using their fingers or an object.

Consent:

- Must be clear, knowing and voluntary.
- Is active, not passive. Silence, in and of itself, cannot be interpreted as consent.
- Can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
- In order to give effective consent, one must be of legal age.
- To any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.

Force

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes resistance or produces consent.

Coercion

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Sexual activity

Sexual activity with someone whom one should know to be—or based on the circumstances should reasonably have known to be—mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this procedure.

Incapacitation

Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent. Incapacitation could result from mental disability, sleep, involuntary physical restraint, or from the ingestion of rape drugs. Possession, use and/or distribution of any of these substances, including, but not limited to Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another person is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>.

Having sex with someone whom you know to be, or should know to be, incapacitated (mentally or physically) is a violation of this procedure.

Use of alcohol or other drugs will never function as a defense to a violation of this procedure.

Sexual exploitation

Sexual exploitation occurs when anyone takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy
- Prostituting another person
- Non-consensual video or audio-taping of sexual activity
- Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex)
- Engaging in voyeurism
- Knowingly transmitting a sexually transmitted infection (STI) or human immunodeficiency virus (HIV) to another person
- Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation
- Viewing or possessing child or adult pornography at work or on college owned property

Examples of Sexual Misconduct

Sexual Misconduct or Harassment includes, but is not limited to:

- An attempt to coerce an unwilling person into a sexual relationship.
- To repeatedly subject a person to egregious, unwelcome sexual attention.
- To punish a refusal to comply with a sexual based request.
- To condition a benefit on submitting to sexual advances.
- Sexual violence which is defined as threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person.
- Violence between those in an intimate relationship.
- Stalking that is gender-based which is defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.
- Gender-based bullying which is defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (excluding speech or conduct otherwise protected by the 1st Amendment).
- Gender expression/stereotyping which is defined as simplistic generalizations about gender attributes, differences, and roles of individuals and/or groups. Stereotypes rarely communicate accurate information about others. When people automatically apply gender assumptions to others regardless of evidence to the contrary, they are perpetuating gender stereotyping.

- Hazing which is defined as acts likely to cause physical or psychological harm or social ostracism to any person within the college community on the basis of gender, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity.
- Discrimination which is defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender.
- Intimidation that is gender-based which is defined as implied threats or acts that cause a reasonable fear of harm in another.

While a particular interaction must be offensive to both a reasonable person and to the complainant to be defined as harassment, PCC employees and other persons of authority should be sensitive to questions about mutuality of consent that may be raised and to the conflict of interests that are inherent in personal relationships that result from professional and educational interactions. Harassment is particularly damaging when it exploits the educational dependence and trust between students and faculty/staff. When the authority and power inherent in faculty/staff relationships with students, whether overtly, implicitly, or through misinterpretation, is abused in any way, there is potentially great damage to the individual student, to the accused individual, and to the climate of the institution.

It is the policy of the State Board for Community Colleges and Occupational Education that none of its employees or its Board members shall engage in any activity or relationship that places them in a conflict of interest between their official activities and any other interest or obligation. Conflict of interest requires all employees to disqualify themselves from participating in a decision when a personal interest is present; therefore, SP 3-70a, Relationships, requires all employees involved in an amorous relationship to excuse themselves from any authority or evaluative role with respect to the other person. [Please refer to SP 3-70a for more information and disclosure requirements.](#)

Complaint Procedures

Reporting an Incident of Sexual Misconduct

Anyone can request advice and information about possible ways to proceed and to put the college on notice. PCC shall investigate complaints pursuant to [SP 3-50b](#) and [SP 4-31a](#), Civil Rights Grievance and Investigation Process for Employees and Students.

Reporting a Complaint

PCC can only respond to allegations of misconduct if it is aware of the misconduct. Further, PCC can more effectively investigate the sooner the allegation is brought to its attention. Any employee, student, authorized volunteer, guest or visitor who believes that he or she has been subjected to sexual misconduct, or believes someone else who is a part of the PCC community is being subjected to sexual misconduct, shall contact the Title IX Coordinator when the alleged victim and/or respondent is a student, employee(s), authorized volunteer, guest(s) or visitor(s). Complete the [PCC Complaint Form – Civil Rights](#).

Retaliatory Acts

It is a violation of this procedure to engage in retaliatory acts against any employee or student who reports an incident of sexual misconduct, or any employee or student who testifies, assists

or participates in a proceeding, investigation or hearing relating to such allegation of sexual misconduct.

Risk Reduction Tips

Risk reduction tips can often take a complainant-blaming tone, even unintentionally. With no intention to complainant-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce risk in experiencing a non-consensual sexual act.

Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- Make any limits known as early as possible.
- Tell a sexual aggressor "NO" clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.
- If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:
- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

Title IX Myths

Myth: Title IX requires that male athletic opportunities be decreased to provide opportunities for female programs.

Title IX is designed to create parity in athletics, as well as other educational opportunities and experiences for men and women. Title IX does not require schools to cut men's athletic programs. Each school determines how it will comply with Title IX regulations.

Myth: Title IX applies only to discrimination against women.

While Title IX has been used mostly by women seeking to protect their rights, Title IX also serves to protect the rights of men. Title IX requires that males and females receive fair and equal treatment in all areas of education.

Myth: Gender bias in science, medicine, and engineering is not prohibited by Title IX.

The under-representation of women in science, medicine, and engineering may violate Title IX. Educational institutions are required to provide women in these disciplines resources, support, and promotional opportunities comparable to their male colleagues.

Myth: Advocates for victims of Title IX who file complaints of discrimination for others are not protected from retaliation under Title IX.

The U.S. Supreme Court has broadened the interpretation of Title IX to protect from retaliation whistle-blowers who accuse educational institutions of sex discrimination. The court is of the opinion that reporting incidents of discrimination is integral to Title IX enforcement and would be discouraged if retaliation against those who report it goes unpunished.