DATE: December 19, 2002

TO: Board of Trustees

FROM: Dr. Philip R. Day, Jr., Chancellor

SUBJECT: POLICY MANUAL
Amending the SFCCD Policy Manual by Adding Section 1.12 Unlawful Discrimination Policy and Deleting Sections 3.29 – Sexual Harassment – Employees, Section 5.08 – Sexual Harassment – Students, and Section 5.07 – Equal Educational Opportunity for Students
(Resolution No. 021219-P1)

BACKGROUND INFORMATION:

Title 5 provisions of the California Code of Regulations relating to unlawful discrimination policies have undergone review and revision at the state level. The State Chancellor’s Office has promulgated a model policy which includes language required by state statute, federal law and Title 5 and which the State Chancellor’s Office advises must be included in a District’s policy. This recommended policy relates to both employees and students. Moreover, the policy includes provisions prohibiting sexual harassment, thus eliminating the necessity of maintaining the two current separate policies (P.M. 3.29 and P.M. 5.08) relating to employees and students, respectively in the area of sexual harassment. The recommended policy also provides for an equal educational opportunity for students thereby also eliminating the need for the current policy (P.M.5.07) relating to the same topic. The San Francisco Community College District, however, has additional categories of non-discrimination beyond those of the state; and these have been added to the proposed policy. Notice of these proposed changes were given at the November 21, 2002 Regular Board meeting. Moreover, the Board, by unanimous vote at this November meeting, directed that other additional categories of non-discrimination be added to the proposed Section 1.12 Unlawful Discrimination Policy.

The Board is now being asked to take action to actually adopt and delete these policies as previously noticed.
RECOMMENDATION:

WHEREAS: Notice was given at a prior meeting (November 21, 2002) that proposed amendments to the San Francisco Community College District Policy Manual would be acted upon at the December 19, 2002 meeting of the Board of Trustees by: adding Section 1.12 – Unlawful Discrimination Policy and Deleting Sections 3.29 – Sexual Harassment – Employees, Section 5.08 – Sexual Harassment – Students, and Section 5.07 – Equal Educational Opportunity for Students.

AND WHEREAS: At the November 21, 2002 Board meeting, the Board, by motion made by Trustee Julio Ramos and seconded by Trustee Natalie Berg, unanimously amended the proposed amendment to the Unlawful Discrimination Policy – Section 1.12 by directing the inclusion of the additional categories of non-discrimination; namely: lesbian, gay, bisexual, transgender and questioning.

RESOLVED: That SFCCD Policy Manual Section 1.12 – Unlawful Discrimination Policy shall be added to read as follows, and that Section 3.29 Sexual Harassment – Employees, Section 5.08 Sexual Harassment – Students and Section 5.07 –Equal Educational Opportunity For Students be deleted: (NOTE: Additions or substitutions are indicated by **bold italic** and deletions are indicated by strike over.) (See following pages).

Ronald Lee, Originator
P.M. 1.12 UNLAWFUL DISCRIMINATION POLICY

The policy of the San Francisco Community College District is to provide an educational and employment environment in which no person shall be unlawfully denied full and equal access to, the benefits of, or be unlawfully subjected to discrimination on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability in any program or activity that is administered by, funded directly by, or that receives any financial assistance from the State Chancellor or Board of Governors of the California Community Colleges.

Nor shall any such persons be denied full and equal access to, the benefits of, or be subjected to discrimination on the basis of marital status*, medical conditions*, gender identity*, domestic partner status*, AIDS/HIV status*, status as a Vietnam-Era veteran*, or status as a lesbian, gay, bisexual, transgender* or questioning* person in any District program or activity.

The policy of the San Francisco Community College District is to provide an educational and employment environment free from unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment.

Employees, students, or other persons acting on behalf of the District who engage in unlawful discrimination as defined in this policy or by state or federal law may be subject to discipline, up to and including discharge, expulsion, or termination of contract.

In so providing, the San Francisco Community College District hereby implements the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed Code, Section 66250 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12100 et seq.) and the Age Discrimination Act (42 U.S.C. Section 6101).

*These categories are not subject to the State Chancellor’s jurisdiction.

Definitions

Definitions applicable to nondiscrimination policies are as follows:

- “Appeal” means a request by a complainant made in writing to the San Francisco 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.
- “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, section 59300 et seq.

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1. If the federal statutes cited herein would result in broader protection of the civil rights of individuals than that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of Title 5, section 59300, as cited in this Policy.
“Day” means calendar days.

“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).

“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.

“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 make the achievement of the major life activity difficult.
      (iii) “Major life activities” shall be broadly construed and includes 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.

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2 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 should be included in District policy. (Gov. Code, Section 12926(1).)
(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.\(^3\)

- “District” means the San Francisco Community College District or any District program or activity that is funded directly by the state or receives financial assistance from the state. This includes any organization associated with the District or its college(s) that receives state funding or financial assistance through the District.

- “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.

- “Sexual harassment” is unlawful discrimination in the form of 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, and includes but is 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 verbal sexual harassment include, but are not limited to: leering, gestures, display or sexually aggressive 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 or harassing behavior. The following are examples of conduct in an academic environment that might be found to be sexual harassment: implying 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.

- “Unlawful discrimination” means any complaint of unlawful discrimination based on a category protected under Title 5, section 59300, including sexual harassment, harassment based on a protected group status as set forth in this Policy, and retaliation.

\(^3\) Ibid.
Retaliation

It is unlawful for anyone to retaliate against someone who files an unlawful discrimination complaint, who refers a matter for investigation or complaint, who participates in an investigation of a complaint, who represents or serves as an advocate for an alleged victim or alleged offender, or who otherwise furthers the principles of this unlawful discrimination policy.

Notices

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

Responsible District Officer

The San Francisco Community College District will identify a specific administrator to the State Chancellor’s Office and to the public as the single District officer responsible for receiving all unlawful discrimination complaints filed pursuant to Title 5, section 59328, and for coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the District. Such delegation procedures will be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

Administrators, faculty members, other District employees, and students shall direct all complaints of unlawful discrimination to the responsible District officer.

Students and Employees Notice, Training, and Education

The San Francisco Community College District’s responsible officer shall make arrangement for or provide training to 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.