

# RULE

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## 6Hx23-2.011 SEXUAL HARASSMENT AND RELATIONSHIPS POLICY AND DEFINITIONS

### I. POLICY:

Sexual harassment constitutes discrimination on the basis of sex and is a violation of this Rule. The College shall not tolerate such conduct. Any employee or student who is found to have violated this Rule shall be disciplined and such discipline shall range from one or more of the following: counseling, attendance at a sexual harassment seminar, written admonishment, suspension or dismissal.

### II. DEFINITIONS:

#### A. Sexual harassment is defined as:

Conduct including but not limited to, an employee's or a student's unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, sexually related jokes, and/or display of pornographic material in the workplace or an academic or student setting (An academic or student setting includes: all settings on campus, off-campus clinical programs, off-campus courses, and off-campus College-sponsored events), when

- (1) submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment or an individual's treatment as a student;
- (2) submission or rejection of such conduct by an individual is used as the basis for employment decisions or the treatment of a student, affecting the employee or student; or
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or a student's academic performance or creating a sexually intimidating, hostile or offensive working or academic environment.

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- B. Except as provided in Paragraph V., the term “staff” shall include faculty/instructors and all other College employees. In Paragraph V. the term “staff” shall include all College employees other than faculty/instructors.

### III. EMPLOYEE RELATIONSHIPS:

This Rule applies to all employees. No employee shall engage in sexual harassment.

- A. In the supervisor-instructor/staff context, the term sexual harassment has a broader impact. The fundamental element of such behavior is the inappropriate personal attention, including romantic and/or sexual relationships with a staff member by a supervisor or other employee who is in a position to affect a staff member's career advancement or working conditions. The supervisor-instructor/staff relationships are professional in nature; inappropriate behavior as defined above is unprofessional and undermines the essential atmosphere necessary in the workplace. This unprofessional behavior is subject to discipline.
- B. This Rule applies to consensual as well as non-consensual supervisor-staff or staff-staff romantic and/or sexual relationships where the supervisor or staff member is in a position to affect a staff member's career advancement or working conditions.
- C. Supervisor-instructor/staff or staff-staff relationships should at all times be professional and any conduct by an employee which unnecessarily or unreasonably creates a sexually intimidating, hostile or offensive working environment in violation of the rights of others is inappropriate, unacceptable and is subject to discipline.

### IV. STUDENT RELATIONSHIPS:

This Rule applies to all students. No student shall engage in sexual harassment.

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- A. The student-student relationship, the student-instructor relationship and the student-staff relationship should at all times be respectful of the rights of the others, and any conduct by a student which creates a sexually intimidating, hostile or offensive environment violates the College's Sexual Harassment Rule and may be subject to discipline. For this purpose, staff not only includes College staff, but all employees of clinics and agencies affiliated with a College clinical program or course.
- B. Students having a consensual romantic and/or sexual relationship with a faculty or staff member who is in a position to determine a student's grade or otherwise affect a student's academic progress or environment may be subject to discipline.

## V. INSTRUCTOR/STAFF-STUDENT RELATIONSHIPS:

This Rule applies to instructor/staff-student relationships.

- A. In the instructor/staff-student context, the term sexual harassment also has a broader impact. The fundamental element of such behavior is the inappropriate personal attention, including romantic and/or sexual relationships with a student by an instructor or staff member who is in a position to determine a student's grade or otherwise affect the student's academic progress or environment. Since the instructor/staff-student relationship is one of professional and client, the above inappropriate behavior is unacceptable in a college because it is a form of unprofessional behavior which seriously undermines the atmosphere of trust essential to the academic setting and is subject to discipline.
- B. This Rule applies to consensual as well as non-consensual instructor/staff-student romantic and/or sexual relationships, where the instructor or staff member is in a position to determine a student's grade or otherwise affect a student's academic progress or environment. In general, however, this Rule will be strictly enforced, with the severest penalty imposed, in any instance where the involved student is enrolled in the

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instructor's class at the time of the inappropriate behavior. See IX.C. infra.

- C. This Rule is not intended to apply when an instructor is legitimately exercising academic freedom in teaching in the classroom when the subject matter taught or discussed is appropriate to the course being taught. Nevertheless, the instructor/staff-student relationship should at all times be professional and any conduct by an instructor or staff member which unnecessarily or unreasonably creates a sexually intimidating, hostile or offensive academic environment in violation of the rights of others is inappropriate and unacceptable and is subject to discipline.
- D. Students having a consensual romantic and/or sexual relationship with a faculty or staff member who is in a position to determine a student's grade or otherwise affect a student's academic progress or environment may be subject to discipline.

## VI. RETALIATION:

It is a violation of this Rule to retaliate or to take reprisal against any person who has filed a complaint or who has complained about sexual harassment based on the fact that the employee or student raised an issue about sexual harassment to his/her supervisor, to any other supervisor or manager of the College, to any Associate/Assistant Provost or Provost, or to any other person, entity or any human rights agency. It is also a violation of this Rule to retaliate against any person involved in the investigation (including witnesses) of a complaint.

If any reprisals or retaliatory actions occur, these should be reported immediately. Any such reports will be investigated by the College Attorney or his designee. Reprisals and retaliatory actions will be dealt with through appropriate disciplinary action and steps will be taken to prevent the recurrence of sexual harassment, reprisal, and/or retaliation.

## VII. REPORTING, INVESTIGATION AND RESOLUTION:

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All students and employees are responsible for promptly reporting sexual harassment. The College has established the following procedure for reporting, investigating and resolving complaints of sexual harassment and retaliation and has provided a list of some examples of conduct which violate this Rule. (See Exhibit attached hereto.)

**A. DUTY TO REPORT:**

1. Complaints of sexual harassment by students or employees are to be promptly reported to individuals designated by the President and published at the beginning of Session I of each year in the College's annual Supplement to the Faculty, Staff and Student Handbook or such other publication as the President may determine. The complaint may be reported to any one of the individuals designated, regardless of what site the reporting person is associated with. The individual receiving the complaint shall promptly notify the College Attorney.
2. Supervisors are to promptly report any conduct that may appear to involve sexual harassment as provided herein.

**B. INVESTIGATION:**

Immediately upon receipt of a complaint, the College Attorney will have the responsibility for and will direct each investigation of sexual harassment. In directing the investigation, the College Attorney may designate other persons to conduct and aid in the investigation and in making such designations, the College Attorney will be sensitive to the gender of the complaining party and reporting relationships.

Upon completion of the investigation, the results of the investigation will be submitted to the President or designee for determination of what action, if any, is appropriate. The complaining party will be advised of the results of the investigation.

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C. RESOLUTION OF A COMPLAINT:

Resolution of a complaint may be accomplished in various ways. The complaint may be resolved by intervention, corrective action taken by the President or designee, or by official disciplinary procedures.

D. DISCRIMINATION GRIEVANCE:

The victim of the sexual harassment may also bring a discrimination grievance which shall be processed in accordance with Rule 6Hx23-1.34.

E. DUTY TO REPORT ANY RECURRENCE:

Complaints of any recurrence of conduct involving sexual harassment or retaliation are to be promptly reported as provided herein.

VIII. FALSE COMPLAINTS:

Any person who knowingly files a false complaint of sexual harassment or retaliation against another shall be subject to disciplinary action, including dismissal.

IX. DISCIPLINE/PROCEDURE:

A. Remedial or disciplinary action will depend on the nature of the incident, but such discipline shall range from one or more of the following: counseling, attendance at a sexual harassment seminar, written admonishment, suspension or dismissal.

B. 1. Career service employees may be subject to disciplinary action as provided for in the Career Service Manual, Board of Trustees' Disciplinary Rule 6Hx23-2.19 relating to career service employees and/or Sections 120.569 and 120.57 of the Florida Statutes.

2. Administrative staff and faculty members may be subject to disciplinary action as provided in the Rules of the

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Department of Education, State Board of Community Colleges Rules 6A-14.0411(4) and/or 6A-14.0411(6).

3. All instructors who violate this policy by having consensual or non-consensual romantic and/or sexual relationships with a student presently enrolled in his/her class, will be dismissed, pursuant to the Rules of the Department of Education, State Board of Community Colleges Rules 6A-14.0411(4) and/or 6A-14.0411(6).
4. Students may be subject to disciplinary action as provided for in Board of Trustees' Rule 6Hx23-4.35.

**X. REPORT OF ACTION TAKEN:**

The College shall report to the person making the complaint of the action taken by the College in regard to any sexual harassment or any reprisal or retaliation.

**XI. CONFIDENTIALITY/PUBLIC RECORDS:**

Subject to certain statutory exemptions, College employee records are generally by law subject to public disclosure upon request of a member of the public under Chapter 119 of the Florida Statutes. Records are provided only upon an appropriate request. The College may not volunteer disclosure of such records. Student identifiable records are generally protected from the public disclosure law and will be protected as provided in Florida Statutes and under the Buckley Amendment.

**XII. PUBLICATION:**

The College shall publish and make available to all students and employees its Sexual Harassment Rule or pertinent parts thereof and examples of sexual harassment which are prohibited conduct. The attached Exhibit to this Rule is a list of some of the examples that may be used to describe the acts which are considered in violation of this Rule. This list is not intended to be all inclusive.

Specific Authority: 240.319(2) & (3), 240.319(4)(h) & (l), F.S.

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Law Implemented: Titled "VII of the Civil Rights Acts of 1964", as amended; the Florida Human Rights Acts of 1977, as amended; Title IX of the Educational Amendments Act of 1972, as clarified by the Civil Rights Restoration Act of 1988; EEOC Regulation 29 C.F.R. Section 1604.11 and 34 C.F.R. Section 106 et seq.; 240.319(4)(h) & (l); 6A-14.0262 (7)(e) & (8), 6A-14.0247(6).

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## EXHIBIT TO SEXUAL HARASSMENT RULE

The following are some examples of sexual harassment and retaliation in the workplace or an academic or student setting (an academic or student setting includes: all settings on campus, off-campus clinical programs, off-campus courses, and off-campus College-sponsored events) which violate the College's policy. The list is not intended to be all inclusive.

- A. Physical assault of a sexual nature, including intentional sexual physical conduct such as touching, pinching, patting, grabbing, brushing against another employee's or a student's body, or poking another employee 's or a student's body.
- B. An employee's or student's unwanted sexual advances, propositions or other sexual comments, such as:
  - (1) sexually-oriented gestures, jokes, or comments about a person directed at or made in the presence of any employee or student who indicates or has indicated in any way that such conduct in his or her presence is unwelcome;
  - (2) preferential treatment or a promise of preferential treatment to any employee or student for submitting to sexual conduct, including soliciting or attempting to solicit any employee or student to engage in sexual activity for compensation or academic reward; and/or
  - (3) subjecting or threatening to subject any employee or student to unwelcome sexual attention or conduct or intentionally making performance of the employee's job or student's academic work more difficult because of that employee's or student's sex.
- C. Sexual or discriminatory displays of publications and sexual objects anywhere in the College's workplace, classroom or student area by College employees or students, such as:
  - (1) displaying pictures, posters, calendars, graffiti, objects or other materials that are sexually suggestive, sexually demeaning, or pornographic, or bringing into the College's environment or possessing any such material to read, display or view; and/or

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(2) reading, or otherwise publicizing in the College's environment, materials that are in any way sexually revealing, sexually suggestive, sexually demeaning or pornographic.

Excluded from the prohibition of the above are any publications, displays, pictures, or any other material of a sexual nature utilized by any faculty member or student in the legitimate exercise of teaching and learning appropriate to the course being taught and approved in the normal administrative process.

- D. This Rule applies to consensual as well as non-consensual supervisor-staff or staff-staff romantic and/or sexual relationships where the supervisor or staff member is in a position to affect a staff member's career advancement or working conditions.
- E. In the supervisor-instructor/staff context, the term sexual harassment has a broader impact. The fundamental element of such behavior is the inappropriate personal attention, including romantic and/or sexual relationships with a staff member by a supervisor or other employee who is in a position to affect a staff member's career advancement or working conditions. The supervisor-instructor/staff relationships are professional in nature; inappropriate behavior as defined above is unprofessional and undermines the essential atmosphere necessary in the workplace. This unprofessional behavior is subject to discipline.
- F. Supervisor-staff or staff-staff relationships should at all times be professional and any conduct by an employee which unnecessarily or unreasonably creates a sexually intimidating, hostile or offensive working environment in violation of the rights of others is inappropriate and unacceptable and is subject to discipline.
- G. In the instructor/staff-student context, the term sexual harassment also has a broader impact. The fundamental element of such behavior is the inappropriate personal attention, including romantic and/or sexual relationships with a student by an instructor or staff member who is in a position to determine a student's grade or otherwise affect the student's academic advancement or conditions. Since the instructor/staff-student relationship is one of professional and client, the above inappropriate behavior is unacceptable in a college because it is a form of unprofessional behavior which seriously undermines the atmosphere of trust essential to the academic setting and is subject to discipline.
- H. An instructor having a consensual or non-consensual romantic and/or sexual relationship with a student, when the student is enrolled in the instructor's class at

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the time of the romantic and/or sexual relationship, violates this policy, notwithstanding that the instructor did not influence (positively or negatively) the student's grade or otherwise affect the student's academic advancement or conditions.

- I. The instructor/staff-student relationship should at all times be professional and any conduct by an instructor or staff member which creates a sexually intimidating, hostile or offensive environment is inappropriate and unacceptable and is subject to discipline. Excluded from the above prohibition is the instructor's legitimate exercise of academic freedom in teaching in the classroom when the subject matter taught or discussed is appropriate to the course being taught and the instructor is not unnecessarily or unreasonably creating a sexually intimidating, hostile, or offensive academic environment in violation of the rights of the student.
- J. The student-student relationship, the student-instructor relationship and the student-staff relationship should at all times be respectful of the rights of the others, and any conduct by a student which creates a sexually intimidating, hostile or offensive environment violates the College's Sexual Harassment Rule and may be subject to discipline. For this purpose, staff not only includes college staff, but all employees of clinics and agencies affiliated with a college clinical program or course.
- K. Students having a consensual romantic and/or sexual relationship with a faculty or staff member who is in a position to determine a student's grade or otherwise affect a student's academic advancement or conditions may be subject to discipline.
- L. Retaliation for sexual harassment complaints, such as:
  - (1) disciplining, changing work assignments of, providing inaccurate work information to, or refusing to cooperate or discuss work-related or academic matters with any employee or student because he or she has complained about or resisted harassment, discrimination or retaliation or has participated in an investigation regarding a complaint; and/or
  - (2) intentionally pressuring, falsely denying, lying about or otherwise covering up or attempting to cover up conduct such as that described in any item above.