PROHIBITION OF HARASSMENT AND DISCRIMINATION AND HARASSMENT COMPLAINT PROCEDURES

A. Purpose: College of the Sequoias is committed to providing an academic and work environment free of unlawful discrimination and harassment. This procedure defines unlawful discrimination and harassment, including sexual harassment, and sets forth a procedure for the investigation and resolution of complaints of discrimination and harassment by or against any staff or faculty member or student within the College.

B. Definition of Unlawful Discrimination: Unlawful discrimination and harassment is defined as discrimination or harassment on the basis of ethnic group identification, national origin, religion, age, sex (i.e. gender) race, color, ancestry, sexual orientation, physical or mental disability, or the perception that a person has one or more of the foregoing characteristics.

C. Definition of Sexual Harassment: Sexual harassment is defined as unwelcome acts of a sexual nature including sexual advances, requests for sexual favors and/or other verbal or physical conduct including written communications of an intimidating, hostile or offensive nature, or action taken in retaliation for the reporting of such behavior when:

1. Submission to such conduct, either explicitly or implicitly, is made a term or condition of an individual’s employment, academic status or progress; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment, promotion, transfer, selection for training, performance or academic evaluation decisions; or
3. Such conduct has the purpose or effect of creating an intimidating, hostile or offensive working or educational environment or substantially interferes with an employee’s work performance or a student’s academic performance; or
4. Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available through the College.

D. Kinds of Sexual Harassment: The definition of sexual harassment encompasses two kinds of sexual harassment.

1. “Quid pro quo” sexual harassment occurs when a person in a position of authority makes education or employment benefits conditional upon an individual’s willingness to engage in or tolerate unwanted sexual conduct.
2. “Hostile environment” sexual harassment occurs when unwelcome conduct based on sex is sufficiently severe or pervasive so as to alter the conditions of an individual’s learning or work environment, unreasonably interferes with an individual’s academic or work performance, or creates an intimidating, hostile, or abusive learning or work environment. The victim must subjectively
perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile.

E. Examples of Sexual Harassment: Sexual harassment can consist of virtually any form or combination of verbal, physical, visual or environmental conduct. It need not be explicit or even specifically directed at the victim. Sexually harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the victim would perceive the conduct as harassment based on sex.

F. Verbal Sexual Harassment: Verbal sexual harassment may include, but is not limited to:

1. Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's protected status;
2. Inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status or sexual orientation;
3. Unwelcome flirting or propositions;
4. Demands for sexual favors;
5. Verbal abuse, threats or intimidation of a sexual nature;
6. Sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular gender or sexual orientation.

G. Physical Sexual Harassment: Physical sexual harassment may include, but is not limited to:

1. Inappropriate or offensive touching;
2. Sexual assault, or coerced sexual intercourse or other sexual acts;
3. Physical interference with free movement or blocking another person;
4. Kissing, patting, fondling, lingering or intimate touches, grabbing, pinching, leering suggestively, unnecessarily brushing against another person;
5. Sexual gestures;
6. Acting in a provocative manner.

H. Visual or Written Sexual Harassment: Visual or written sexual harassment may include, but is not limited to:

1. The display or circulation of offensive, sexually oriented or other discriminatory visual or written materials;
2. Posters, cartoons, drawings, graffiti, or other reading materials of a sexual nature;
3. Computer graphics or electronic media transmissions of a sexual nature.

I. Environmental Sexual Harassment: An academic or work environment that is permeated with sexually oriented talk, innuendo, insults or abuse not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work place. An environment may be hostile if
unwelcome sexual behavior or other harassing behavior based on a protected status is directed specifically at an individual or if the individual merely witnesses unlawful harassment in his or her immediate surroundings.

The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual’s learning or work.

J. Relationships: Romantic or sexual relationships between supervisors and employees or between administrators, faculty or staff members and students are discouraged. There is an inherent imbalance of power and potential exploitation in such relationships. A conflict of interest may arise if the administrator, faculty or staff member must evaluate the student’s or employee’s work or make decisions affecting the employee or student. The relationship may create an appearance of impropriety and lead to charges of favoritism by other students or employees. A consensual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing. By definition, sexual harassment is not within the course and scope of an individual’s employment with the College.

K. Academic Freedom with Respect to Sexually Explicit Materials: A faculty member may use sexually explicit materials or literature in the classroom as a teaching technique to achieve educational objectives or to stimulate dialogue. The faculty member shall state in the course syllabus that such material will be used and the syllabus shall contain a notice to students that they may be excused during the presentation of such materials without consequence to their grade. The faculty member shall also be required to give a copy of the syllabus to the appropriate area dean in addition to the two copies given to the division chair.

To the extent the sexual harassment policy and administrative procedures are in conflict with the College’s policy on academic freedom, the sexual harassment policy and procedures shall prevail. Any dispute arising from such conflict shall be resolved by a committee approved by the Superintendent / President. At least 50 percent of this committee shall be comprised of faculty appointed by the Senate.

Complaint Procedure for Investigation and Resolution of Claims of Harassment

A. Informal Complaint Procedure:

1. The College Complaint Officer as identified below shall undertake, where possible, to informally resolve charges of unlawful discrimination or harassment;
2. The College Complaint Officer shall first advise complainant of his/her rights and obligations under both the formal and informal complaint process. The College Complaint Officer further advises complainant of his/her right to file a formal complaint and explain the procedures for doing so.
3. The College Complaint Officer shall also notify complainant that s/he need not participate in an informal resolution of the complaint and may file a complaint with the Office of Civil Rights of the U.S. Department of Education, the Equal Employment Opportunity Commission or the Department of Fair Employment and Housing.

4. If the complainant declares his/her preference for the informal process, the College Complaint Officer shall have complainant read, date, and sign a document containing the basic of complainant’s allegations and describing the formal/informal procedure and indicating that complainant opted for the informal process.

5. The College Complaint Officer shall assure the complainant that s/he will not be required to confront or work out problems with the person accused of unlawful discrimination or harassment.

6. In attempting to resolve the complaint through informal means, the College Complaint Officer shall not conduct any investigation unless the College Complaint Officer determines that an investigation is necessary due to the seriousness of the charges.

7. Effort at informal resolution may continue after the filing of a formal written complaint.

B. Filing a Complaint:

1. Complaint Form – A complaint may be filed directly with the Chancellor’s Office using the Chancellor’s Office complaint form (see attached). Where a complaint is initially filed with the Chancellor’s Office, Title 5 §59329 requires the Chancellor to immediately forward a copy of the complaint to the College for investigation and response.

2. College Complaint Officer –The College will designate an administrator of each gender to act as the College Complaint Officer. Each College Complaint Officer shall be given training, which is current in the proper methods of receiving, investigating, and processing complaints of unlawful discrimination and harassment. The Complaint Officer is charged with receiving complaints of sexual or other forms of prohibited discrimination or harassment, and coordinating the investigation. The accused shall have the right to select which College Complaint Officer oversees the investigation; however, if the complainant prefers the other College Complaint Officer, the two Officers will coordinate with one another on the investigation.

3. The Complaint Officer may assign the actual investigation to other staff or to an outside person or organization under contract with the College after written notice has been given to the accused and the accused’s union. An outside investigating organization shall be utilized whenever the Complaint Officer is named in the complaint or implicated by the allegations of the complaint.

4. Written Complaint – A student, staff or faculty member who believes he or she has a non–employment based complaint of unlawful discrimination or harassment must make a written or oral complaint to the College Complaint Officer within one year of the date of the alleged discrimination or harassment, or within one year from the date on which the complainant knew or should have known of the facts underlying the complaint.

a. A student, staff or faculty member who believes he or she has an employment–based complaint of unlawful discrimination or harassment
must make a written or oral complaint to the College Complaint Officer within 180 days of the date of the alleged discrimination or harassment, or within 90 days following the expiration of the 180–day period if the complainant first obtained knowledge of the alleged violation after the expiration of the 180 days.

b. If the complainant fails or refuses to file a written complaint, the College Complaint Officer shall ask the complainant for permission to tape record his/her statement and if permission is not granted, the College Complaint Officer shall make a written record of the complainant’s statement and shall give the complainant an opportunity to sign the statement. Any written record of the complainant’s statement shall be in the form of a report and shall be free of subjective interpretation. All complainants must be made aware that failure to reduce a complaint to writing may be a factor when determining his/her credibility or the severity of his/her complaint in an administrative or judicial hearing. The College shall have no obligation to notify the Chancellor’s Office of complaints that have not been placed in writing and signed by the complainant.

c. Any College employee who receives a harassment complaint shall notify the College Complaint Officer immediately.

5. Notice to Accused – The College Complaint Officer will give prompt notice to the person accused of harassment regarding the identity of the complainant, the date, time and place of the alleged incident of harassment, and the nature of the alleged misconduct.

C. Investigation Process:

1. Witness Interviews – The College Complaint Officer shall authorize the investigation of the complaint, and supervise and/or conduct a thorough, prompt and impartial investigation of the complaint.

Prior to commencing any investigation and before interviewing the accused, the Complaint Officer shall notify an accused employee by telephone that a harassment complaint has been lodged against him/her and that s/he is entitled to union representation at any and all meetings with the Complaint Officer or designee, and without divulging names and/or the specifics of the matters in issue, the Complaint Officer shall also immediately notify the President or designee of the employee’s union by telephone to alert the union that the employee may need assistance with regard to a harassment complaint. Within one (1) working day of notice to the accused employee and his/her respective union, or as soon thereafter as possible, the Complaint Officer shall re–contact the accused employee to set a date and time to meet with the accused employee. The College Complaint Officer shall meet with the accused before interviewing any witnesses. At this meeting, the accused shall have the right of Union representation as provided in this section.

The investigation will include interviews with the complainant, persons who may have relevant knowledge concerning the complaint and the accused harasser. The accused and the complainant may recommend witnesses to be interviewed. The process may include interviews with victims of similar conduct.
2. Analysis of Information Gathered – The Complaint Officer will review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment giving consideration to all factual information and the totality of the circumstances, including the nature of the conduct and the context in which the alleged incidents occurred.

3. Written Report – The Complaint Officer will prepare a written report that sets forth the results of the investigation. The written report shall include a description of the circumstances giving rise to the complaint, a summary of the testimony of each witness, an analysis of any relevant data or other evidence collected during the investigation, a specific finding as to whether harassment did or did not occur with response to each allegation in the complaint, and any other appropriate information.

4. Notice to Complainant and Accused – Within ninety (90) days from the date the College received the written complaint or reduced the complainant’s verbal allegations to writing, the Complaint Officer will provide the complainant and the accused with a summary statement of the findings. The summary statement will also include the determination of the Complaint Officer as to whether harassment did or did not occur with respect to the allegations in the complaint, the proposed resolution to the complaint, a statement regarding action taken, if any, and notice of the complainant’s right to appeal to the College’s Board of Trustees and the State Chancellor’s Office.

5. Appeal Process
   a. Board of Trustees – If the complainant is not satisfied with the result of the Complaint Officer’s determination, s/he may within fifteen days, submit a written appeal to the Board of Trustees. The Board of Trustees shall review the original complaint, the investigative report, the Complaint Officer’s decision and the appeal documents. If the Board does not act on the appeal within forty-five (45) days, the Complaint Officer’s decision shall be deemed final. Otherwise, the Board shall issue a written decision within forty-five (45) days after receiving the written appeal. A copy of the decision rendered by the Board shall be forwarded to the complainant and to the State Chancellor’s Office. The decision shall also include notice to the complainant of the right to appeal.

   b. Notice to the Chancellor’s Office – Within 150 days of receiving a written complaint, the College shall forward to the State Chancellor’s Office the complaint, investigative report, notice to the complainant and accused of the final decision of the Complaint Officer, the decision of the Board of Trustees or the date upon which the decision of the Complaint Officer became final, and a copy of the notice to the complainant of his or her appeal rights. If, due to circumstances beyond its control, the College is unable to comply with the 150–day deadline for submission of materials, the College may file a written request with the Chancellor’s Office, within ten (10) days of the deadline, for an extension of time to submit the documents. As set forth in Section 22.5.1.2, the College has no obligation to notify the Chancellor’s Office of complaints that have not been placed in writing and signed by the complainant.

   c. Appeal to State Chancellor’s Office – The complainant may file a written appeal with the State Chancellor’s Office within thirty (30) days of the
date the Board of Trustees issues the final decision or in the event the Board elects to take no action on the appeal within thirty (30) days of the date the Complaint Officer’s decision is deemed approved. The appeal to the Chancellor’s Office shall be processed pursuant to the provisions of the California Code of Regulations, Title 5, Section 59350.

6. Remedial Action
   a. Conclusions – If the College concludes that the charge of harassment has merit, it will provide timely notification to the accused of any corrective action proposed by the College.
   b. Discipline – If harassment occurred, the College shall take disciplinary and/or remedial action against the harasser. The action will be prompt and commensurate with the severity of the offense. If discipline is imposed, the nature of the disciplinary action will not be communicated to the complainant.
   c. Disciplinary actions against faculty, staff and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.
   d. Right to Grieve – An employee accused of harassment shall have the right to file a grievance pursuant to its appropriate collective bargaining agreement regarding violations of or misapplications of interpretations of this procedure. Mediation shall be mandatory for grievances filed under “Harassment Complaint Procedures” if requested by either the College or the Association prior to selecting an arbitrator to hear the grievance. The parties agree to use the State Mediation and Conciliation Service to mediate the dispute. The mediation will be conducted as confidential settlement negotiations such that if the parties fail to reach agreement none of the information or proposals exchanged in the mediation may be used in any subsequent arbitration hearing.
   e. Confidentiality and Prohibition of Retaliation – The College shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties. The College shall also take reasonable steps to protect the complainant from further harassment and to protect the complainant from retaliation as a result of filing the complaint. The College shall take reasonable actions to ensure that neither the accused person nor the accuser, nor his/her representative, shall engage in any retaliation or intimidation toward each other or the witnesses. The College shall make every effort and take all necessary steps in order to protect personnel from the consequences of false accusations relating to sexual harassment.

7. Dissemination of Policy and Procedures – The College’s policy and procedures related to harassment will be provided to all students, faculty members, administration and staff, and will be posted in each department office on campus.

At the time of initial hire, employees will be supplied with a copy of the current harassment policy and harassment complaint procedure of the District; and they will sign a statement (see attached) acknowledging that they have received the policy and procedures. The signed statement will be placed in
the employee’s personnel file. In addition, the most current policy and procedures will be incorporated into the College’s General Catalog and orientation materials for new students.

8. Training – Training of employees should be conducted annually emphasizing the prohibition of harassment in the classroom and work environment and should include a review of the Board Policy 3430 and Administrative Procedure 3430.

References: Education Code sections 2.2.1, 66252, 66282.5; Government Code sections 12900 – 12996; Labor Code sections 1101, 11021; California Code of Regulations, Title 5, Section 59320 42 U.S.C. sections 2000d, 2000e et.seq. (Title VI, VII) 42 U.S.C. section 2000h – 2 (Title IX) Title 5, section 59320, et. seq.

May 12, 2009
ACKNOWLEDGEMENT OF RECEIPT

of

BOARD POLICY 3430,

(PROHIBITION OF UNLAWFUL DISCRIMINATION AND HARASSMENT)

and

ADMINISTRATIVE PROCEDURE 3430
(PROHIBITION OF HARASSMENT AND DISCRIMINATION
AND HARASSMENT COMPLAINT PROCEDURES)

My signature below indicates the following:

1. I have received a copy of Board Policy 3430 (Prohibition of Unlawful Discrimination and Harassment) and Administrative Procedure 3430 (Prohibition of Harassment and Discrimination Complaint Procedures).

2. I (check one):
   ___ have participated
   ___ will participate

   in training offered by the College addressing my responsibilities and obligations related to this topic.

This document will be placed in my personnel file which is kept in the Human Resource Services Office.

PRINTED NAME: ________________________________

SIGNATURE: ________________________________

DATE: ________________________________