



# ADJUNCT FACULTY GUIDE TO FEDERAL REGULATIONS CIVIL RIGHTS AND YOUR CLASSROOM

December 2018

Maricopa County Community College District

---

Melissa Flores; Associate General Counsel Sr

Chandler-Gilbert | Estrella Mountain | GateWay | Glendale | Mesa  
Paradise Valley | Phoenix | Rio Salado | Scottsdale | South Mountain

---

This resource provides explanations of policies regarding interaction with students within instructional context.

It was generated in cooperation with the legal department of MCCCDC and Maricopa Adjunct Support to provide a resource for adjunct faculty and instructors for common questions and to more accurately understand the rights and responsibilities of students.

With this knowledge and clear understanding, the classroom can function more effectively by applying workable and legal classroom structures for teachers and students.

Maricopa Community Colleges  
2411 W. 14<sup>th</sup> Street  
Tempe, AZ 85281  
[www.maricopa.edu](http://www.maricopa.edu)

---

## Table of Contents

<b>I. ATTENDANCE PROCEDURES AND POLICIES .....</b>	<b>4</b>
A. TAKING ROLL .....	4
B. INSTRUCTOR’S ATTENDANCE POLICY .....	4
<b>II. EXCUSED ABSENCES .....</b>	<b>4</b>
A. PREGNANT AND PARENTING STUDENTS.....	4
B. PROCESS FOR EXCUSING ABSENCES DUE TO PREGNANCY OR PARENTING: .....	5
C. WHAT DOES IT MEAN TO BE A “PARENTING” STUDENT?.....	5
D. STUDENT ATHLETES .....	5
E. JURY DUTY AND VOTING .....	6
F. MEDICAL ABSENCES .....	6
<b>III. ATTENDANCE RECORDKEEPING.....</b>	<b>7</b>
A. REPORTING ATTENDANCE – ONLINE COURSES .....	7
<i>Last Day of Attendance (LDA)</i> .....	7
B. 45TH DAY .....	7
<i>Last Day of Attendance (LDA)</i> .....	7
<b>IV. STUDENT RECORDS - FERPA.....</b>	<b>8</b>
A. THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974 (FERPA).....	8
B. RIGHTS GUARANTEED UNDER FERPA.....	8
<b>V. KEEPING, SHARING, AND PRESERVING STUDENT RECORDS.....</b>	<b>8</b>
A. CONFIDENTIAL RECORDS.....	8
B. EMAIL .....	8
C. SOLE POSSESSION RECORDS .....	8
D. SHARING STUDENT RECORDS.....	9
<b>VI. PROTECTING CIVIL RIGHTS IN THE CLASSROOM .....</b>	<b>9</b>
A. RETALIATION.....	9
B. ACCOUNTABILITY.....	9
<b>VII. FREE SPEECH .....</b>	<b>10</b>
A. THE FIRST AMENDMENT.....	10
B. FREE SPEECH IN A CLASSROOM.....	10
C. RELIGIOUS ACCOMMODATION PROCEDURE: .....	10
D. RELIGIOUS ACCOMMODATION REQUESTS .....	11
<i>When Faculty Deny an Accommodation</i> .....	12
<b>VIII. SEARCH &amp; SEIZURE (CELL PHONES).....</b>	<b>12</b>
A. CELL PHONES .....	12
B. AVOID POSSESSION OF STUDENT’S PROPERTY.....	12
C. REASONABLE POLICIES.....	12
<i>Sample Policy Language</i> .....	12
<b>IX. TITLE IX .....</b>	<b>13</b>
A. PREGNANT AND PARENTING STUDENTS.....	13
B. MANDATORY REPORTERS .....	13
<i>Syllabus Statement</i> .....	13
<i>Required Syllabus Statement</i> .....	13
<b>X. AMERICANS WITH DISABILITIES ACT/SECTION 504 OF THE REHABILITATION ACT.....</b>	<b>14</b>

---

A.	DEFINITION OF DISABILITY.....	14
B.	DISABILITY RESOURCES SERVICES.....	14
C.	ACADEMIC ADJUSTMENTS.....	14
D.	REASONABLE ACCOMMODATIONS.....	14
E.	MATERIAL ALTERATION/CHANGE TO CLASS.....	15
<b>XI.</b>	<b>SYLLABUS STATEMENT .....</b>	<b>15</b>
A.	SYLLABUS STATEMENT .....	15
<b>XII.</b>	<b>FEDERAL FINANCIAL AID AND CLASSROOM IMPACT .....</b>	<b>15</b>
A.	FINANCIAL AID.....	15
	<i>Academic Attendance</i> .....	16
B.	INTELLECTUAL PROPERTY.....	16
	<i>Work for hire:</i> .....	16
<b>XIII.</b>	<b>ACADEMIC FREEDOM .....</b>	<b>17</b>
A.	WHAT DOES ACADEMIC FREEDOM DO?.....	17
B.	WHAT ACADEMIC FREEDOM DOESN'T DO? .....	17

---

# ADJUNCT FACULTY— WORKING WITH STUDENTS IN YOUR CLASSROOM

## I. ATTENDANCE PROCEDURES AND POLICIES

### A. Taking roll

There is nothing wrong with calling roll at the start of each class period. Likewise, there is nothing wrong with passing around a pre-printed roll for students to sign or checkmark their attendance, so long as the roll contains only one date of attendance. Rolls with multiple dates of attendance should not be utilized if the roll is passed around to the class. The issue here isn't the disclosure of your students' names, rather it is the disclosure of the attendance record for students, which are usually tied to grades (based on attendance policies).

### B. Instructor's attendance policy

Instructors are permitted to have their own class attendance policies and to tie attendance to grades through such things as participation points or grade reduction for excessive absences—provided such action is permissible under their academic program. This notwithstanding, an instructor's attendance policy **MUST** comply with the law specific to civil rights protections in the classroom. The law will always trump a faculty member's attendance policy. The following information will address absences that, by law, must be excused by the instructor.

EXAMPLE: An instructor has an attendance policy where starting on the third (3rd) absence—regardless of whether it is excused or not—the student's grade drops by a half a letter grade. Student X misses class four (4) times due to complications with her pregnancy. The instructor applies the attendance policy and reduces the student's grade by one half letter grade because while the absence is excused, the grade penalty still applies. Title IX provides protection for pregnant students. Since there are academic advantages given to students based on class attendance, the student must not be penalized for the absences and the grade must be restored the half letter grade.

## II. EXCUSED ABSENCES

### A. Pregnant and Parenting Students

*(See also, Section III for more on Title IX in general)*

A student cannot be penalized for pregnancy or pregnancy-related conditions, even if a professor has a specific attendance requirement. A professor must excuse absences due to pregnancy or any pregnancy-related condition, for as long as a doctor says it is necessary to be absent, even if there is no leave policy for students with other conditions. Instructors cannot second guess or challenge a doctor's determination. When a pregnant (or parenting) student returns to school, the student must be reinstated to the status held before the leave, which means if there are academic advantages given to students based on class attendance, a returning student must be given the opportunity to make up the credit and work missed during the pregnancy-related absence (or pregnancy-related condition). Title IX requires that colleges ensure faculty and staff comply with the law and not discriminate against pregnant and parenting students.

Title IX provides that the college must allow pregnant students to continue participating in off campus elements to their program of study. The college may not require students to disclose pregnancy status, and the college cannot require a doctor's note for continued participation,

---

unless the college requires a doctor's note for all students with a medical condition requiring treatment from a physician. If a note is required, the college cannot second-guess the doctor's decision. Questions or concerns regarding off-campus elements to a program of study should be directed to the college's Title IX Coordinator. This means that an instructor **MUST**:  
Excuse absences due to pregnancy or childbirth for as long as a doctor says it is necessary.  
Allow the student to return to the same academic and extracurricular status as before the absence or medical leave began, which should include giving the student an opportunity to make up any work missed while out.

Understand the Title IX requirements related to excused absences/medical leave. Instructors may not refuse to allow a student to submit work after a deadline missed because of pregnancy or childbirth. If an instructor's grading is based in part on class participation or attendance and a student misses class because of pregnancy or childbirth, the student should be allowed to make up the participation or attendance credits she didn't have the chance to earn.

Provide pregnant students with the same special services it provides to students with temporary medical conditions.

**B. Process for excusing absences due to pregnancy or parenting:**

The student should be directed to work with the Disability Resources & Services Office when in need of accommodations for absences, even if the absences have already occurred.

**C. What does it mean to be a “parenting” student?**

This term does not permit a student to secure class attendance accommodations if they cannot find childcare or if a child is sick with a cold. This designation is for such things as lactating students (needing to pump or to breastfeed their child), serious medical conditions of the newborn, or other situations, as identified by the Title IX Coordinator. Title IX does not only apply to women; so for this reason, instructors should be mindful of male student who are parenting and consider allowing excused absences for a child's serious medical condition.

**EXAMPLE**

A pregnant student comes to you to inform you that her due date falls around midterms. She asks if she can be excused from class and allowed to make up the midterm exam, if her baby arrives during such time. Must you grant her request? Title IX protects pregnant students and, in this situation, the student should work with DRS and the instructor to excuse the absence(s) due to childbirth and to make up any missed work/exams during that time. The student may not receive any academic penalty for missing class.

Questions regarding pregnant and parenting students in your classroom should be directed to your college's Title IX Coordinator.

**D. Student Athletes**

Absences from class due to participation on an MCCCDC sports team are identified as “official” absences (See Common Pages, 2.3.2 (1)(A)). Student athletes, as part of their commitments to their inter-collegiate team(s) may find themselves absent from class. As long as the absences is directly related to travel or team participation in a game or other competition (related to their association with an MCCCDC intercollegiate program), the absence would be excused and not subject to the instructor's attendance policy. Since sport game/competition schedules are set in advance, it is advised to identify somewhere in the course syllabus or

---

disclosures that any student athlete registered for the class should make the instructor aware of any team (or sport) related absences that will occur during the semester.

## **E. Jury Duty and Voting**

**Jury Duty:** Absences from class due to jury duty are identified as “official” absences (See Common Pages, 2.3.2 (1)(A)). Instructors may request appropriate documentation to verify the jury duty. The common pages require that a student make prior arrangements with instructors for make-up work. If those prior arrangements have been made, the student should not be penalized for turning in the work late.

### **EXAMPLE**

A student presents you with a letter from the superior court calling her for jury duty. While the initial notification does not conflict with your class, she is subsequently selected for jury duty and is expected to be involved in a 4-day trial. This trial will require she miss two (2) class periods. You request your student provide you with documentation demonstrating she is serving on a jury, which she does. The student does not, however, make prior arrangements with you to turn in work done while she was serving as a juror. How do you proceed? The student should still have the absences excused, but may face a penalty for turning in the work late.

**Voting:** Arizona state law (ARS §15-1895) states that community colleges may have policies to allow excused absences from class for the period of voting. Arizona state law §16-402 requires employers grant employees paid time off work to vote if there are not at least three (3) consecutive hours between the time the polls open or close and the beginning and end of their regular work shift. In these cases, the employer may determine what time is taken off and the employee must request the time off in advance of the day of voting. The best practice is to employ the same standard for students, which will make it a case-by-case review whether to grant an excused absence for voting.

### **EXAMPLE**

A student enrolled in your 9-10:30 am class has asked for an excused absence so he can vote. The reason proffered is that he has your class until 10:30 and then must be at work by 11:30. He works until 4:00. Should you allow the absences? While the choice is yours to grant the excused absence, there is no legal requirement to do so, since the Arizona polls stay open until 7:00 pm, and that allows the student a three-hour window in which to vote.

## **F. Medical Absences**

Students who are absent from class due to medical issues may be able to have the absences categorized as “excused,” based on the reason for the medical absence. If the student has a chronic medical condition or otherwise qualifies for can receive, as an accommodation, absences from class. If such accommodations have been granted, instructors would have information from the Disability Resources & Services office outlining the accommodations. If a student is absent for medical reasons but does not have an accommodation for said absence, the instructor may choose to excuse it. An instructor may request a doctor’s note from the student, but if this is done, it must be done for all students in similar circumstance.

### **EXAMPLE**

One of your students comes to you after having missed three (3) class periods. The student lets you know that he has been in the hospital for the past two (2) weeks. The student has no attendance accommodation but asks if you would be willing to excuse the absences if he brings his hospital discharge paperwork. He does so. You can choose to excuse the absences

---

if you so desire. There is no legal requirement to do so; but you must be consistent in your approach with all similarly situated students.

### **III. ATTENDANCE RECORDKEEPING**

#### **A. Reporting Attendance – Online Courses**

##### *Last Day of Attendance (LDA)*

Reporting an accurate last date of a student’s attendance is vital—not only to ensure a student gets the grade he or she earns, but also to ensure the District returns unearned federal financial aid back to the government within the legally required timeframe. While MCCCCD is considered non-attendance taking, the Code of Federal Regulations 668.22 states that the US Department of Education will consider an institution “attendance taking” if their Learning Management System (Canvas, ILearn, Socrates, etc.) tracks academic activity. MCCCCD uses both Canvas and Rio Learn; and both track academic activity. That means, for purposes of the federal reporting, Maricopa is “attendance taking” for online courses. Federal regulations outline that instructors adhere to a consistent approach to non-participation and must withdraw students after 14 days of non-participation/non-attendance. Logging into the class is not enough to establish attendance in a class.

Instructors should reach out to non-participating student after every missing assignment and/or lack of participation in academically-related activities, each week of the course, particularly to inform them that due to their lack of participation, they may be dropped from the class. Faculty should withdraw students when, after repeated attempts to engage the student in the class (via email, in-person meetings, or whatever the instructor feels is appropriate), the student fails to academically attend class, after 14 calendar days of non-attendance.

##### **EXAMPLE**

Student X registers for and attends Chem 100. Eager to learn everything, the student works ahead and completes more than half of the course within the first two weeks of the semester or block of classes. In the third week, the student stops participating. What should an instructor do? Since Federal financial aid is earned weekly, the instructor should be mindful of the student and remind the student that the course is not designed for such action and that if the student does not continue to participate, the instructor has to withdraw the student. The student does not participate in the fourth week of the class. The instructor withdraws the student and reports the last date of attendance as the date the student stopped participating in the class.

#### **B. 45th DAY**

The 45th day is a snap shot of attendance across the district for most classes, including online. Rosters are certified as correct on this day, so an instructor needs to withdraw students who a) have never participated or b) have stopped participating. Withdrawing students includes reporting a last day of attendance.

##### *Last Day of Attendance (LDA)*

Last day of attendance for students should be reported throughout the entire semester. Reporting a LDA is required at any point in the semester when a student withdraws or is withdrawn for lack of academic attendance. There is no legal or regulatory impediment to reporting LDA prior or subsequent to the 45-day certification of a roster.

##### **EXAMPLE**



---

As you prepare to certify your rosters on the 45th day of the semester, you have three (3) students who have stopped academically attending. It is absolutely necessary and proper to withdraw the students and report their last date of attendance.

## **IV. STUDENT RECORDS - FERPA**

### **A. The Family Educational Rights and Privacy Act of 1974 (FERPA)**

FERPA is a federal law that protects the privacy of student education records. FERPA applies to all schools (K-12 and post-secondary) that receive funds from the Department of Education. The FERPA provides for certain rights with respect to a student's educational records. These rights transfer from parent to the student him/herself when he or she reaches the age of 18 OR attends a school beyond the high school level, regardless of their age. Students to whom the rights have transferred are "eligible students."

### **B. Rights Guaranteed Under FERPA**

The right to inspect and review their education records maintained by the school.

The right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the student has the right to place a statement with the record setting forth his or her view about the contested information.

The right to grant (or deny) permission to release any information from their education record. However, FERPA allows schools to disclose those records, without consent, in certain circumstances.

## **V. KEEPING, SHARING, AND PRESERVING STUDENT RECORDS**

### **A. Confidential Records**

FERPA protects a student's academic record and the personally identifiable information therein safe from unauthorized disclosure. In general, education records are records about current and former students that are maintained by public, private, and parochial schools. Education records contain information about a student, such as: a student's name, address, and telephone number; a parent's or guardian's name and contact information; grades and test scores; health and immunization records; discipline reports; documentation of attendance; schools attended; courses taken; awards conferred, and degrees earned. Email that directly identifies a student by name and addresses specifics about the student's education—such as disciplinary information—is protected under FERPA as it is maintained by our institution, so be careful what you type about your students and to whom you write the emails. Specific assignments, tests, papers, and other work is not maintained by the District as part of the student's educational record and can be discarded after the semester is over.

### **B. Email**

Remember to be careful what you say (and to whom you say it) via email regarding a student as this information can be requested and disclosed as part of a student's educational record.

### **C. Sole Possession Records**

Sole possession records are just that—records that an instructor keeps in his or her sole possession that are not shared with or shown to anyone. These records are typically used as memory aids for the instructor. When sole possession records adhere to the aforementioned

---

definition, they are excluded from the definition of education records and are, therefore, not protected under FERPA. These records lose “sole possession” status as if the records are shown to anyone. These notes may be discoverable via subpoena, so best practice is to ensure the records (if you keep sole possession notes) are appropriate and discard them after the semester.

#### **D. Sharing Student Records**

Calls from parents/partners/spouses seeing educational information: Many times parents/partners/spouses will phone or email instructors to inquire as to the progress, grades, attendance (and other things) of students. FERPA does not consider instructor observations to be part of the educational record; but grades are maintained, so while an instructor may not share grade related information with a third party (absent a signed FERPA release to do so), an instructor may choose to answer questions about the student, such as whether the student appears sleepy in class, whether the student stays the entire class period, etc. It is not advisable for an instructor to engage in such behavior—since it makes the possibility of an actual FERPA violation more likely, but the instructor has the discretion to do so. NOTE: FERPA release of information MUST be in writing. The form is online at [https://district.maricopa.edu/sites/district/files/compliance/ferpa/ferpa\\_release\\_form.pdf](https://district.maricopa.edu/sites/district/files/compliance/ferpa/ferpa_release_form.pdf)

Dual Enrollment students: Dual enrollment students (enrolled in high school and in a college-level class) are considered owners of their educational record, regardless of their age, when it comes to their college educational record. Typically a dual enrollment student will be taking classes that count for dual credit (high school and college) at the high school itself; but if the student is at the college—taking a class from a college instructor—any third party requests for information relative to the student’s academic record should be directed back to the student, since the student owns his or her educational record at the post-secondary level.

## **VI. PROTECTING CIVIL RIGHTS IN THE CLASSROOM**

### **A. Retaliation**

IMPORTANT NOTE: All civil rights issues carry with them a prohibition against retaliation by the instructor or any other member of the college/District community. This prohibition is outlined in MCCCDC policy as well as federal and state law.

Retaliation occurs whenever the instructor (or academic/student leadership) punishes the student for doing something that is legally protected.

For example, it is unlawful to retaliate against students for engaging in a protected activity, such as:

- filing or being a witness in an official investigation, charge, complaint, or lawsuit
- communicating with academic instructor (or academic leadership) about discrimination, including harassment
- answering questions during an investigation of alleged harassment or discrimination
- resisting sexual advances, or intervening to protect others, or
- requesting accommodation for a disability or for a religious practice/sincerely held belief.

### **B. Accountability**

Engaging in a protected activity, however, does not shield a student from conduct and/or academic reviews, if motivated by non-retaliatory and non-discriminatory reasons that would otherwise result in such consequences. Always consult academic leadership in these situations.

---

## VII. FREE SPEECH

### A. The First Amendment

The Constitution protects speech no matter how offensive the content. Restrictions on speech by public colleges amount to government censorship, in violation of the Constitution. Such restrictions deprive students of their right to invite speech they wish to hear, debate speech with which they disagree, and protest speech they find bigoted or offensive. An open society depends on liberal and open education, and the whole enterprise of liberal education is founded on the principle of free speech. But the right to free speech is not just about the law; it's also a vital part of our civic education. As Supreme Court Justice Robert Jackson wrote in 1943 about the role of schools in our society: "That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." Remarkably, Justice Jackson was referring to grade school students. Inculcating constitutional values — in particular, the value of free expression — should be nothing less than a core mission of any college.

Is an instructor's free speech in the classroom the same as academic freedom? Although the Supreme Court has identified the protections of academic freedom as significant, it has not declared that academic freedom is coterminous with the First Amendment's free speech provision. The American Association of University Professors (AAUP) has issued statements regarding academic freedom. That statement provides that faculty are "entitled to full freedom in research and in the publication of the results....to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. . ." In other words, in order for the faculty member to be protected by academic freedom in the classroom, the speech must be germane to the subject matter of the course.

Are nonverbal symbols protected speech under the First Amendment? Symbols of hate are constitutionally protected if they're worn or displayed before a general audience in a public place — say, in a march or at a rally in a public park. The Supreme Court has ruled that the First Amendment protects symbolic expression, such as swastikas, burning crosses, and peace signs because it's "closely akin to 'pure speech.'" Nonverbal symbols are not protected under the First Amendment if used to directly threaten an individual

### B. Free speech in a classroom

There is a general agreement that that students are coming to campuses both with less tolerance for differing points of view and less respect for free speech than used to be the case. There is First Amendment protection in the classroom, so long as the speech is not disruptive to the classroom. Consult your academic administrator before addressing speech issues in the classroom.

### C. Religious accommodation procedure:

The civil rights laws enforced by the Office for Civil Rights (OCR) protect all students, regardless of religious identity, from discrimination on the basis of race, color, national origin, sex, disability, and age; but none of the laws that OCR enforces expressly address religious discrimination. Under the U.S. Department of Justice's jurisdiction, Title IV of the Civil Rights Act of 1964 prohibits discrimination on the basis of religion in public institutions of higher education. This means religious accommodations must be considered when requested by the student.

---

Title VII defines “religion” broadly to include “all aspects of religious observance and practice as well as belief.” 42 U.S.C. § 2000e(j). The sincerity of a stated religious belief is not typically in dispute. This is the same definition for both employees and students—a set of attitudes, beliefs, or practices that permeate a person’s life.

The law prescribes broad protection.

Religion includes not only traditional, organized religions but also religious beliefs that are new, uncommon, or that may even seem illegal or unreasonable to others and typically concerns “ultimate ideas about life, purpose and death,”

Social, political, or economic philosophies, as well as preferences, are not religious beliefs

#### **D. Religious accommodation requests**

In both employment and education, religious accommodations may be requested and must be provided unless such accommodation is an undue hardship or materially alters the student’s course.

Undue Hardship and/or Materially Altered classroom environment must be based on objective evidence, not mere speculation about hardship. It is more than just the presence of ordinary administrative costs. Materially changes the purpose or curriculum of the class, causes a diminished efficiency in the classroom environment (curriculum or pedagogy), materially changes the terms of the class, the classwork, or the curriculum, impairs classroom safety, or conflicts with another law or regulation.

Undue Hardship and/or Materially Altered classroom environment is not an instructor preference, simply a conflict with a classroom or department attendance policies/expectations, worrying that “everyone will want it,” vague statements about how the accommodation will cause disruption in the classroom environment, or automatically denying a request.

Procedure for Requesting a Religious Accommodation in the Classroom can be found [here](https://cdn.maricopa.edu/documents/pdf/legal/Religious-Accommodation-Policy-and-Form.pdf) (see: <https://cdn.maricopa.edu/documents/pdf/legal/Religious-Accommodation-Policy-and-Form.pdf>)

All students may request a religious accommodation by making a written request for an accommodation to the appropriate faculty member. (Preferably at least two (2) week before the requested absence from class).

Faculty members will submit the request to the dean or department chair and review the request within a reasonable time, possibly requesting additional information, if needed.

The faculty member will inform the student of the decision and will sign the request form (disposition).

EXAMPLE: You teach a hospitality course that works with various hotels in the city. As part of your course requirements, you have a dress and grooming standard for your students. This semester you have a student, Joseph, who wears dreadlocks. You inform him that if he does not cut his hair, he will not be able to participate in the hotel experiences (and will likely fail the class) due to his violation of the dress and grooming standard. Joseph informs you that he is Rastafarian and cannot cut his hair based on his sincerely held religious belief. Joseph is instructed to fill out the religious accommodation request. In consultation with the academic leadership, you review the request alongside the dress and grooming standard and the hotel

---

partner requirements for participation. Since employees of the hotel are also allowed to make religious accommodation requests, you should work with the hotel partner to find an appropriate accommodation for Joseph.

*When Faculty Deny an Accommodation*

The District Compliance Office must review the reasons for the denial within 72 hours (3 business days) after the denial.

## VIII. SEARCH & SEIZURE (CELL PHONES)

### A. Cell Phones

In college classrooms, cell phones can become a serious distraction that interferes with learning. According to a University of New Hampshire study, college students check their phones between one and five times during class. In addition, "Faculty Focus" reports that usage during class harms students' grades and distracts classmates from learning. However, this hasn't stopped 88 percent of college students from texting when the instructor is writing on the board, during group activities or during in-class work time.

### B. Avoid Possession of Student's Property

Instructors should not take a student's cell phone or otherwise "touch" or "take" a student's property, mostly because by taking possession, the instructor becomes responsible for that property.

### C. Reasonable Policies

Instructors are allowed to create "no cell phone" policies in their classrooms as long as they are reasonable in their approach and these policies are approved by the academic department. The most important thing to consider is whether the policy will have a penalty attached to violations or not.

*Sample Policy Language*

**Prohibition Policy** (no penalty attached)

"Cell phones: Please turn off or put your phone on 'airplane' or 'do not disturb' mode. Many studies have found a cell phone to be an impediment to learning in class. Cell phone use is a distraction to all members of the class—especially yourself. In addition, cognitive and behavioral scientists have found that electronic devices can erode ability to concentrate. Notably, the ability to focus is highly correlated with educational and occupational success. In addition, many college students report feeling addicted to their cell phones. Consider this class to be an oasis from your device. Use of cell phones in class is disrespectful to both the instructor and to your classmates who are distracted by the sights and sounds of you on your phone. In my class respect is a two-way street. If you want respect you give respect."

**Prohibition Policy** (penalty attached)

"Cell Phones: Do not fool around on your cell phone or any other device during this class. Feel free to use a laptop, but ONLY for class related work. Everyone can tell when you are doing something off topic and distracting on your devices, including me. If you do this, I will call you on it, and there will be consequences proportionate to the offense ranging from a verbal warning to being asked to leave, or in flagrant cases, getting a zero on the assignment or test we're doing. If you need to monitor your cell phone, e.g. because of an ongoing family emergency or health issue, please talk to me about it ahead of time so that I can accommodate you with the least disruption possible."

---

“Expectations. I also expect you to do your part to maintain a class environment of respect, and civility. This includes refraining from texting, non-class computer use, or other disruptive behaviors. You have the right to be treated with respect by me and your classmates, and an obligation to respect others even when you disagree with their views. Failure to conduct yourself appropriately may lead to being withdrawn from the course. Cell phones, iPods, laptop computers, calculators or any other electronic devices may only be used during lecture or lab if specifically indicated by the instructor. Students using screens during class will be asked to put them away; persistent screen use will result in expulsion from class.”

## **IX. TITLE IX**

Title IX of the Education Amendments of 1972 ("Title IX") is a Federal civil rights law that prohibits, in educational programs and activities, discrimination on the basis of sex, which includes pregnant and parental status. Title IX Protections extend into the classroom, with respect to:

### **A. Pregnant and parenting students**

(See also, Section I for information regarding absences):

Pregnant and parenting students are protected under Title IX. Pregnant students are free to choose whether they are going to continue in a class or in a particular program of study. As long as the student is made aware of the dangers, if any, associated with the class or program of study, she should be able to decide whether to continue. When a student's program of study contains a clinical placement where there may be a negative effect on the pregnancy (i.e. radiology clinic or hospital clinical placement), please consult with your academic administrator.

### **B. Mandatory Reporters**

Please be aware all MCCCDC faculty members (residential and adjunct) are “mandatory reporters,” which means that if a student tells you about a situation involving sexual harassment, sexual assault, dating violence, domestic violence, or stalking you must share that information with your college's Title IX Coordinator. Although you have to make that notification, the student will control how the case will be handled, including whether or not to pursue a formal complaint. The goal is to make sure you are aware of the range of options available to students and that the student has access to the resources needed.

#### *Syllabus Statement*

It is always a good idea to put a Title IX compliance/information statement on your course syllabus. This statement will inform your students of the college/District's responsibility under Title IX, their rights under the law, that instructors are mandatory reporters, and where to go if they have questions or concerns about Title IX.

Required Syllabus Statement (Do not change or modify this statement in any way):

#### **Title IX**

In accordance with Title IX of the Education Amendments of 1972, MCCCDC prohibits unlawful sex discrimination against any participant in its education programs or activities. The District also prohibits sexual harassment—including sexual violence—committed by or against students, university employees, and visitors to campus. As outlined in District policy, sexual harassment, dating violence, domestic violence, sexual assault, and stalking are considered forms of "Sexual Misconduct" prohibited by District policy.

---

District policy requires all college and District employees in a teaching, managerial, or supervisory role to report all incidents of Sexual Misconduct that come to their attention in any way, including but not limited to face-to-face conversations, a written class assignment or paper, class discussion, email, text, or social media post. Incidents of Sexual Misconduct should be reported to the college Title IX Coordinator. For a list of Title IX Coordinators, click [here](#). Reports may also be reported at: <https://district.maricopa.edu/consumer-information/reporting>.

## **X. AMERICANS WITH DISABILITIES ACT/SECTION 504 OF THE REHABILITATION ACT**

### **A. Definition of Disability**

A student with a physical or mental impairment that causes substantial limitation to the ability to perform one or more major life activities may qualify for an accommodation or academic adjustment under Section 504 of the 1973 Rehabilitation Act, the Americans with Disabilities Act of 1990 (ADA), and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA).

### **B. Disability Resources Services**

Any employee who receives a request for academic adjustment must refer the student to the DRS Office. The DRS Office alone is responsible for evaluating documentation and determining eligibility and academic adjustments. All situations shall be considered on an individual, case-by-case basis, and all requests for academic adjustments from qualified students with a disability shall be considered by DRS. DRS may exercise its right to require additional documentation.

### **C. Academic Adjustments**

Academic Adjustments are determined by the DRS Office through an interactive process with the eligible student and instructors. The DRS Office will give priority to the request of the student, but will also consider the instructor's perspective when it is offered. The interactive exchange may continue during the course of the year, and the DRS may make reasonable alterations in approved academic adjustments based on input from the student and the instructor. Academic adjustments determined by the DRS Office are required, except when the institution subsequently determines that an adjustment would alter an academic requirement that is essential to the instruction being pursued by the student or to a directly related licensing requirement. MCCCDC is not required to provide "best" or "most desired" accommodations but rather a reasonable accommodation sufficient to meet accessibility needs. Instructors cannot choose to deny granted accommodations once the accommodations are granted by DRS.

### **D. Reasonable Accommodations**

Reasonable accommodations are modifications or adjustments to the tasks, environment or to the way things are usually done that enable individuals with disabilities to have an equal opportunity to participate in an academic program or a job (U.S. Department of Education, 2007). Broad categories of accommodations include changes to the application process to ensure an equal opportunity to apply for program enrollment, changes that enable a student with a disability to perform the essential functions of the academic program, and changes that

---

enable a student with a disability to enjoy equal benefits and privileges of the program (e.g., access to training).

#### **E. Material Alteration/change to Class**

In the event the instructor believes the modification determined by DRS would alter an academic requirement that is essential to the instruction being pursued by the student, or to a directly related licensing requirement, the instructor will first meet with the director of the DRS office within three working days of receipt of the determination and attempt to resolve the issue informally. If the faculty member's concern remains unresolved, within three (3) days of the above meeting, he or she may submit a written request to the college's chief academic officer (or a comparably qualified administrator designated by the college president) for his or her academic judgment on the question.

## **XI. SYLLABUS STATEMENT**

It is a good idea to place an ADA/504 statement in your course syllabus. This statement will inform your students of the college/District's responsibility under the ADA/504, their rights under the law, and the process for securing accommodations and classroom academic adjustments.

### **A. Syllabus Statement**

*DO NOT CHANGE OR MODIFY THIS STATEMENT IN ANY WAY*

ADA Academic Adjustments/504 Accommodations

In accordance with the Americans with Disabilities Act, the Maricopa County Community College District (MCCCD) and its associated colleges are committed to providing equitable access to learning opportunities to students with documented disabilities (e.g. mental health, attentional, learning, chronic health, sensory, or physical). Each class/term/semester that a student is in need of academic adjustments/accommodations, the qualified student is required to work with the Disability Resources & Services Office (DRS) at their individual college(s). Contact with the DRS should be made as soon as possible to ensure academic needs are met in a reasonable time. New and returning students must request accommodations each semester through DRS Connect online services. To learn more about this easy process, please contact your local DRS office.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations, you are welcome to contact DRS at [insert DRS office phone number] or [insert web address]. The DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions qualifying for accommodations/ academic adjustments. Reasonable accommodations are established through an interactive process between you, your faculty, and DRS; and only those academic adjustments/reasonable accommodations granted by the DRS are recognized by the college and District. It is the policy and practice of the MCCCD to create inclusive and accessible learning environments consistent with federal and state law.

## **XII. FEDERAL FINANCIAL AID AND CLASSROOM IMPACT**

### **A. Financial Aid**

Many students are on financial aid, and their attendance, performance, and completion can impact the continuation of their aid.



---

### *Academic Attendance*

Due to federal financial aid funding requirements, instructors of online and hybrid courses must track student academic attendance for each week of instruction for the course, as defined by the academically-related activities because students earn their federal financial aid each week of the semester, even though it is distributed at the beginning of the semester.

For the purposes of determining the last day of attendance according to the Code of Federal Regulations, 34, 668.22(l)(7)(i), the following is a list of activities that constitute "academic attendance/ "attendance at an academically-related activity" for online classes.

Submitting an academic assignment (regardless of whether or not it is graded);

Taking an exam (regardless of whether or not it is graded), an interactive tutorial, or computer-assisted instruction;

Attending a study group that is assigned by the institution;

Participating in an online discussion about academic matters;

Initiating contact with a faculty member to ask a question about the academic subject studied in the course and;

Physically attending a class/guest lecture/meeting where there is an opportunity for direct interaction between the instructor and students.

Question: if a student is enrolled in an online class and attends an optional, in-person Guest Lecture or other academically-related conference or event, could this be considered "academic attendance?" Optional, in-person meetings or lectures can count as academic attendance regardless of whether they are graded for their attendance or not.

### **B. Intellectual Property**

*Work for hire:* The "work-for-hire" doctrine is a statutory exception to the general ownership provisions of the copyright law. It is a way of allocating whether an employee or an employer is the author, and thus copyright holder, of work performed in the course of employment. The work-for-hire provision entitles an employer to assert ownership over materials prepared by its employees acting within the "scope of their employment": See Appendix B, 17 U.S.C. §101 (Definitions) and §201 (Ownership of Copyright). Generally, faculty scholarly work is not considered work-for-hire. Those instances where faculty work is considered work-for-hire are those where the administration provides the specific authorization or supervision for the preparation of the work.

Examples of work-for-hire where works are institution-directed, or assigned as an institutional responsibility, are a recruitment brochure written by an admissions director, an affirmative action report written by a department chair, a catalog for the university art museum's most recent exhibit written by an art professor (which would presumably be outside the art professor's normal scope of employment).

Example: If a marketing instructor for an automotive science program writes an curriculum brochure, the copyright to that document belongs to the District. The brochure was prepared by an "employee" in the "scope of employment." Thus, copyright is owned by the employer, and the employer has the right to revise, edit and translate the brochure, release it to the public, discard it, etc., whatever the employer chooses.

Copyright on Campus: For more information on copyright, please see:  
<http://www.copyright.com/learn/media-download/copyright-on-campus/>

---

## **XIII. ACADEMIC FREEDOM**

Academic freedom has become an expectation at American colleges and universities, but it is a tricky concept largely because courts define it more narrowly than do most members of campus communities. In addition, courts are still developing the constitutional dimensions of the academic freedom right. This presents yet another challenge to problem solving and decision-making in this area.

### **A. What Does Academic Freedom Do?**

Academic freedom means that both faculty members and students can engage in intellectual debate without fear of censorship or retaliation.

Academic freedom establishes a faculty member's right to remain true to his or her pedagogical philosophy and intellectual commitments. It preserves the intellectual integrity of our educational system and thus serves the public good.

Academic freedom gives both students and faculty the right to study and do research on the topics they choose and to draw what conclusions they find consistent with their research, though it does not prevent others from judging whether their work is valuable and their conclusions sound.

Academic freedom gives faculty members and students the right to challenge one another's views, but not to penalize them for holding them.

Academic freedom protects a faculty member's authority to assign grades to students, so long as the grades are not capricious or unjustly punitive. More broadly, academic freedom encompasses both the individual and institutional right to maintain academic standards.

Academic freedom gives faculty members substantial latitude in deciding how to teach the courses for which they are responsible.

### **B. What Academic Freedom Doesn't Do?**

Academic freedom does not mean a faculty member can harass, threaten, intimidate, ridicule, or impose his or her views on students.

Neither academic freedom nor "residential" status protects an incompetent teacher from losing his or her job. Academic freedom thus does not grant an unqualified guarantee of lifetime employment.

Academic freedom does not protect faculty members from colleague or student challenges to or disagreement with their educational philosophy and practices.

Academic freedom does not protect faculty members from non-university penalties if they break the law. It also does not provide protection for violating the law.

Academic freedom does not give students or faculty the right to ignore college or university regulations.

Academic freedom does not protect students or faculty from disciplinary action, but it does require that they receive fair treatment and due process.

---

Academic freedom does not protect faculty members from sanctions for professional misconduct, though sanctions require clear proof established through due process. See, <https://www.insidehighered.com/views/2010/12/21/defining-academic-freedom>