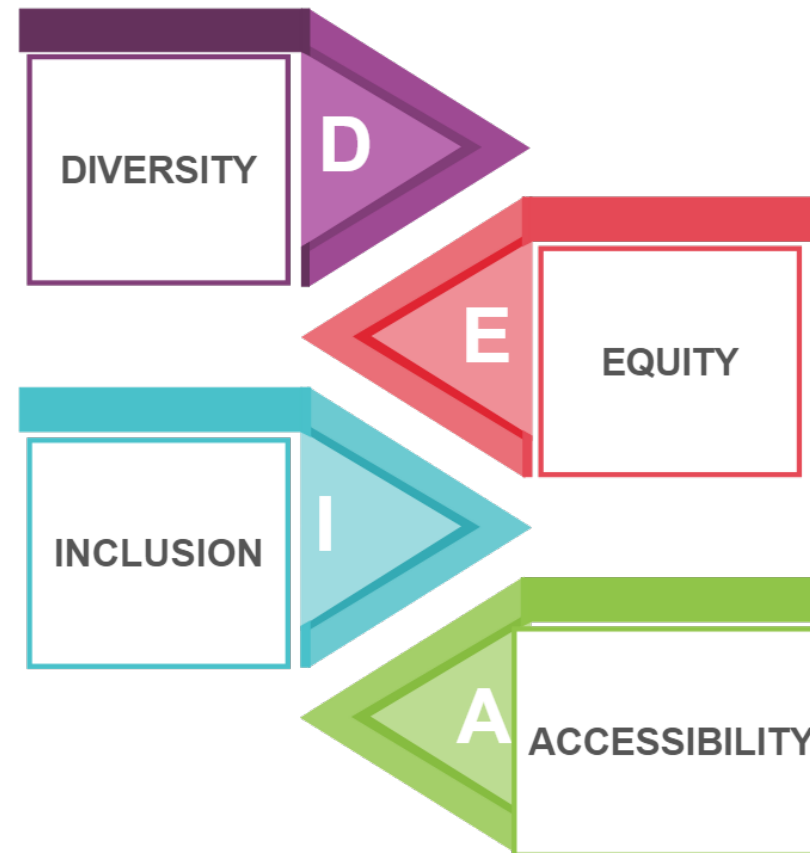


# *DEIA in Evaluations*

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January 24, 2024  
SWACC Meeting

Presented by:  
**Emily Lynch Morissette**  
**MCDUGAL BOEHMER FOLEY**  
**LYON MITCHELL & ERICKSON**  
- A PROFESSIONAL CORPORATION -





## Disclaimer:

The following information is designed to be a general guide and should NOT be considered legal advice. For questions about specific situations, please consult an attorney.

# Presentation Overview

1. Lawsuits
2. Regulations
3. Competencies
4. Criteria



# New and Revised Title 5 Regulations

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- 1 > **§ 52510. Definitions**
- 2 > **§ 53400. Scope.**
- 3 > **§ 53401. Applicability to Community Services and Contract Classes.**
- 4 > **§ 53425. Ability to Work with Diverse Individuals and Communities.**
- 5 > **§ 53601. Chancellor's Publication of DEIA Competencies and Criteria.**
- 6 > **§ 53602. Advancing Diversity, Equity, Inclusion, and Accessibility in Evaluation and Tenure Review Processes.**
- 7 > **§ 53605. Classification-Specific DEIA Obligations.**



# Lawsuits



REGARDING DEIA STANDARDS IN EVALUATION AND TENURE REVIEW  
OF DISTRICT EMPLOYEES

# Johnson v. Watkin, No 1:23-cv-00949- ADA-CBD (E.D. Cal. 2023.)

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Daymon Johnson is employed by Kern Community College District as a full-time Professor of History at Bakersfield College.



The plaintiff alleged that the competency standards, which require professors to be evaluated in part on their success in integrating DEIA-related concepts in the classroom, will require him to espouse DEIA principles with which he disagrees, or be punished.



Mr. Johnson sued to challenge the DEIA Competencies and Criteria Recommendations enacted by the Chancellor's office, claiming the regulations violated the First and Fourteenth Amendments.



He moved to enjoin the policy.

# Governing Statutory and Regulatory Regime in Johnson v. Watkin

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Education Code Section 87732 states that no regular employee or academic employee may be dismissed except for one or more of the following causes:

- Immoral or unprofessional conduct;
- Dishonesty;
- Unsatisfactory performance;
- Evidence unfitness for service...
- Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the community colleges or by the governing board of the community college district employing him or her....

BP 3050: Institutional Code of Ethics

- Be civil
- Not participate in or accept, condone, or tolerate physical or verbal forms of aggression, threat, harassment, ridicule or intimidation

# Johnson v. Watkin, No 1:23-cv-00949- ADA-CBD (E.D. Cal. 2023.) (Cont'd.)

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The magistrate found that there was ample evidence of intent to engage in speech and conduct that the Bakersfield Community College District concludes is inconsistent with Education Code Sections 87732 and 87735.

The magistrate found that Plaintiff has stated his intent to engage in similar political speech that another instructor was punished in part for.

The magistrate found that Plaintiff had been warned by District that if he posts on social media the District will investigate any further complaints of harassment and bullying, and if applicable, discipline.



# Johnson v. Watkin, No 1:23-cv-00949- ADA-CBD (E.D. Cal. 2023.) (Cont'd.)

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Although Defendants' aim of promoting diversity, equity, inclusion, and accessibility in California's system of community colleges undoubtedly is important and Defendants are entitled to encourage their employees to embrace these tenets, Plaintiff has shown a likelihood of success on the merits that the regulatory scheme Defendants have put in place to advance these interests is contrary to the First Amendment's guarantee of freedom of speech in the academic arena.



Accordingly, it was recommended Plaintiff's motion for preliminary injunction be granted in part and that Defendants' motions to dismiss be denied.

# Palsgaard v. Christian, 1:23-cv-01228 (E. D. Cal. 2023.)

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Six tenured professors represented by the Foundation for Individual Rights and Expression (“FIRE”) sued the State Center Community College District.



The professors claim that the faculty CBA, based on the DEIA guidelines forces professors to espouse and enact ideologies in their teaching that they may not hold.



They claim that refusing to do so causes them to risk termination.

# Palsgaard v. Christian and Bargaining

# Mandatory Subjects Of Bargaining

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“The scope of representation **shall be limited to** matters relating to wages, hours of employment, and other terms and conditions of employment.”

Government Code § 3543.2(a)

# Mandatory Subjects Of Bargaining

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Govt. Code § 3543.2(a), “other terms and conditions of employment” are:

- ▶ Health and welfare
- ▶ Leaves
- ▶ Transfer and reassignment policies
- ▶ Safety conditions of employment
- ▶ Class size
- ▶ Procedures to be used for the evaluation of employees
- ▶ Organizational security
- ▶ Procedures for processing grievances, and
- ▶ Alternative compensation or benefits for employees adversely affected by pension limitations

# Title 5 Regulations



REGARDING DEIA STANDARDS IN EVALUATION AND TENURE REVIEW  
OF DISTRICT EMPLOYEES



# Scope

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Implements provisions of the Education Code that govern the minimum qualifications for employment in a community college district as:



5 CCR § 53400.

# Applicability to Community Services and Contract Classes

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Community service classes, and contract classes that are not credit or non-credit offerings are exempt from the provisions of this chapter, except those provisions related to the advancement of DEIA principles.



# Applicability of Amendments

- **Notwithstanding changes** that may be made to the minimum qualifications established in this division,
- or to the implementing discipline lists adopted by the Board of Governors,
- **the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications....**



16<sup>th</sup> EDITION

## Minimum Qualifications for Faculty and Administrators in California Community Colleges

California Community Colleges Chancellor's Office | Daisy Gonzales, PhD, Acting Chancellor

# Chancellor's Publication of DEIA Competencies and Criteria

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- The DEIA guidance will be maintained to include current **and emerging** evidence-based practices developed within the CCC or described in DEIA-related scholarship.

# Advancing DEIA in Evaluation and Tenure Review Processes



District governing boards are required to adopt policies for the evaluation of employee performance, including tenure reviews, that **requires demonstrated, or progress toward, proficiency** in the locally-developed DEIA competencies or those published by the Chancellor.



The evaluation must include consideration of the employee's demonstrated, or progress toward, proficiency in DEIA-related competencies that enable work with diverse communities.

# Advancing DEIA in Evaluation and Tenure Review Processes (Cont'd)

**Include**

Districts must include the DEIA competencies and criteria as a minimum standard for evaluating the performance of all employees.

**Ensure**

Ensure that evaluators have a consistent understanding of how to evaluate employees on DEIA competencies and criteria.

**Set**

Set clear expectations regarding employee performance related to DEIA principles, appropriately tailored to the employee's classification.



# Advancing DEIA in Evaluation and Tenure Review Processes (Cont'd)

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Place significant emphasis on DEIA competencies in employee evaluation and tenure review processes to:

- support employee growth,
- development and
- career advancement.

Ensure an evaluation process that provides employees an opportunity to demonstrate their understanding of:

- DEIA and
- anti-racist competencies.

# Classification-Specific DEIA Obligations

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# Faculty

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# Real Life Faculty Example:

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The College shall provide course **success data** disaggregated by race/ethnicity to the faculty member, and if any of the groups represented in this data shows consistently **lower success rates**, the faculty member will provide a **brief self-assessment** of how they will **adjust the teaching and learning process** for these groups. Included in this assessment will be any **plan of action** for course completion percentages that fell below 40%.

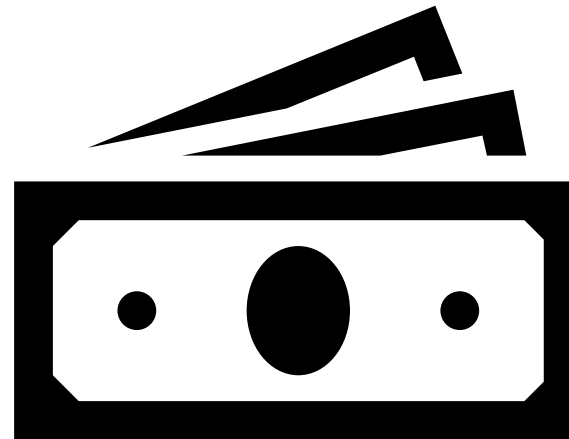
The self-evaluation shall also include a description of the **faculty member's teaching, learning, and professional practices** that specifically support diversity, equity, inclusion, and access in the educational **environment to improve equitable outcomes** and course completion for all students, and, if applicable, **a list of any DEIA-related professional development** activities completed by the faculty member.

# Administrators

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Educational and other Administrators must include DEIA and anti-racist principles into:

- existing policies and practices,
- funding allocations,
- decision-making,
- planning, and
- program review processes.



# Staff Members

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- Staff members must promote and incorporate culturally affirming DEIA and anti-racist principles to nurture and create:

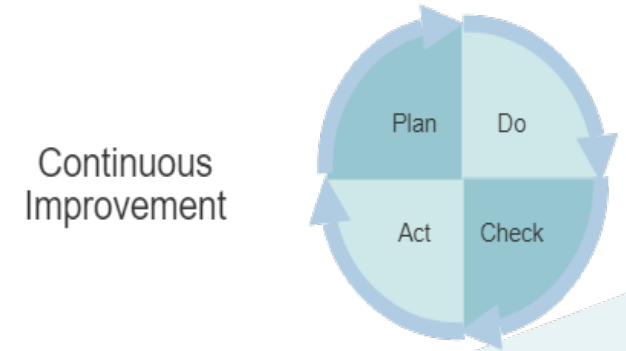




# Sample DEI Competencies and Criteria

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- Not exhaustive, a baseline
- Not final
- May be updated to ensure continuous improvement of the evaluation and tenure review processes to support student success
- Is a starting point

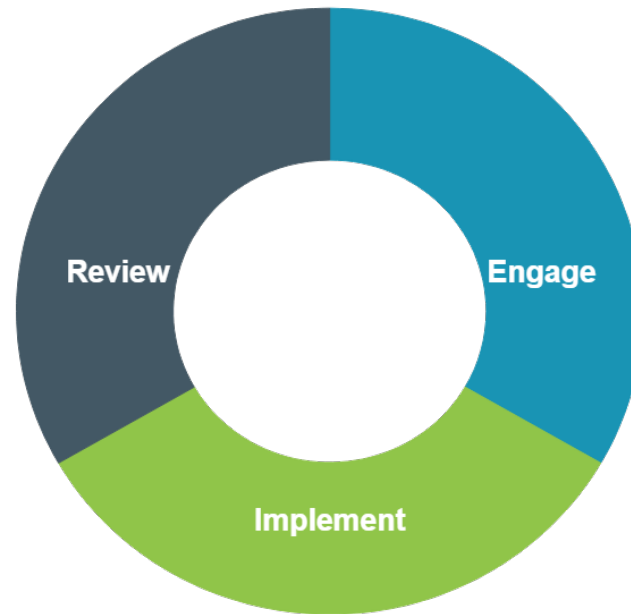


# Local Process for Embedding DEIA Competencies and Criteria

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May include but is not limited to:

- Conducting a review of existing local evaluation and tenure practices
- Engaging with stakeholders
- Implementing local processes that incorporate DEIA competencies and criteria and assessment



# DEIA Competencies

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The skills, knowledge, and behaviors that all CCC employees must demonstrate to work, teach, and lead in a diverse environment that celebrates and is inclusive of diversity.

# DEIA Competencies Categories into Major Themes

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# Theme: Cultural Competency Description

## Evaluation Form

Name:	Faculty and Staff	Date:		Department:	
Title:		Product Evaluated:	Cultural Competency	Number of times used:	

Circle the most appropriate number for each statement below. A rating of one (1) indicates the highest level of agreement with the statement, five (5) the lowest.

Criteria		Agree.....Disagree					
1.	Acknowledges that cultural and social identities are diverse, fluid, and intersectional.	1	2	3	4	5	N/A
2.	Demonstrates an ongoing awareness and recognition of racial, social, and cultural identities with fluency regarding their relevance in creating structures of oppression and marginalization.	1	2	3	4	5	N/A
3.	Demonstrates an understanding of the lived experiences of culturally diverse students, employees, and communities in the District and uses that understanding to contribute to student success, equity, and inclusion.	1	2	3	4	5	N/A
4.	Seeks DEI and anti-racist perspectives and applies knowledge to problem solving, policies, and processes to create respectful, DEI-affirming environments (e.g., campus and classroom environments that are inclusive, promotes equity, and affirms diversity.)	1	2	3	4	5	N/A

# Themes: Self-Reflection, and Self-Improvement Description

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## Self-Reflection

- Engages in self-assessment of one's:
  - own commitment to DEIA and internal biases and
  - seeks opportunities for growth to
    - acknowledge and
    - address the harm caused by internal biases and behavior.

## Self-Improvement

- Demonstrates a commitment to continuous improvement as it relates to one's:
  - DEIA and anti-racism knowledge,
  - skills, and
  - behaviors to mitigate any harm caused to minoritized communities.



# Theme: Diversity, Equity and Inclusion Pedagogy & Curriculum Description



## Evaluation Form

Name: Faculty Date: Department:

Title: Product Evaluated: Diversity, Equity and Inclusion Pedagogy & Curriculum Number of times used:

Circle the most appropriate number for each statement below. A rating of one (1) indicates the highest level of agreement with the statement, five (5) the lowest.

Criteria		Agree.....Disagree					
1.	Promotes and incorporates DEI and anti-racist pedagogy.	1	2	3	4	5	N/A
2.	Accommodates for diverse learning styles and utilizes holistic assessment methods.	1	2	3	4	5	N/A
3.	Participates in training to incorporate culturally affirming pedagogy.	1	2	3	4	5	N/A

# Themes: Data and Diversity, Equity and Inclusion & Mission Description

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## Data

- Uses data to uncover inequitable outcomes measured through equity-mindedness that calls out racialized patterns in:
  - the data,
  - policies, and
  - practices to inform strategies to improve equitable student outcomes and success.

## Diversity, Equity and Inclusion Pedagogy & Curriculum

- Articulates the importance and impact of DEIA and anti-racism as part of the institution's greater mission.

# Diversity, Equity and Inclusion Criteria

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During the evaluation and tenure review process, employees will be able to demonstrate that they have met the DEIA competencies using concrete examples based on DEIA criteria as follows.

# Criteria: Service

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- Advocates for and advances DEIA and anti-racist goals and initiatives.
- Leads DEIA and anti-racist efforts by participating in DEIA groups, committees, or community activities that promote systemic and cultural change to close equity gaps and support minoritized groups.
- Contributes to student life on campus and supports diverse students beyond the classroom.

# Criteria: Service (Cont'd)

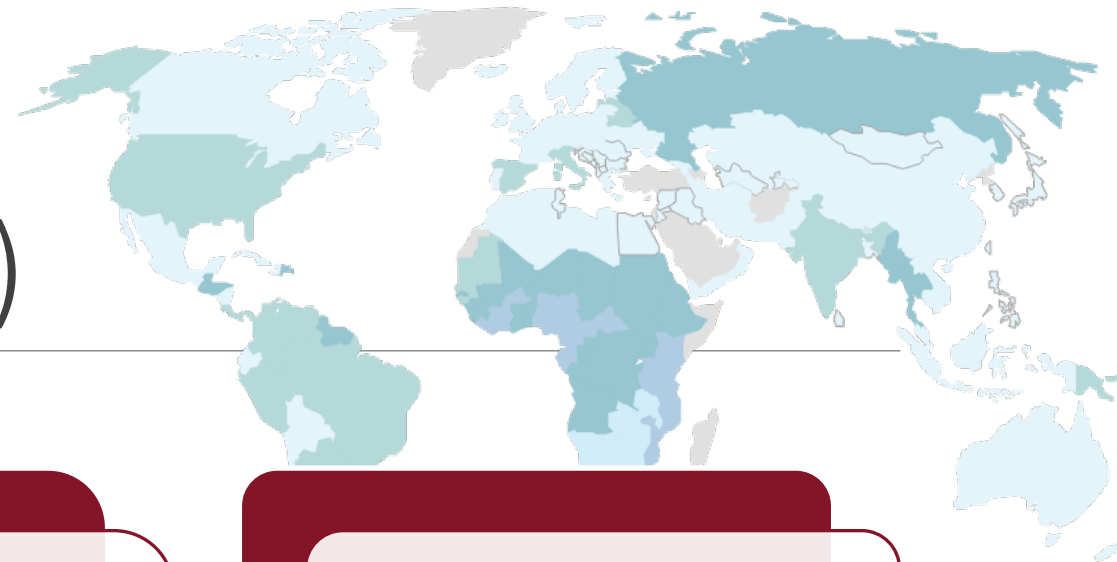
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Understands and applies asset-based student-centered practices and activities that recognize students' lived experiences, strengths, and capabilities and empowers students to take ownership of their learning experience.

Commits to the success of minoritized students by providing specific opportunities to access educational pathways and opportunities for academic and career success.

# Criteria: Service (Cont'd)

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Develops and implements student programs and activities that incorporate a race-conscious and intersectional lens and equips students to engage with the world.

Creates an inclusive learning and working environment by valuing differences and recognizes the ideological disproportionate impacts on historically minoritized racial groups.

Contributes to DEIA and anti-racism research and scholarship.

# Examples

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- Use warm handoffs
- Be sensitive to students' lived experiences
- Make room for students' needs
- Belief that all students are expected to succeed
- Holistic approach that addresses the whole student
- DEIA discussions on the agenda
- Use Guided Pathways
- Gender inclusive language and pronouns
- Social-belonging
- Communication guide

# Criteria: Self-Assessment

## Evaluation Form

Name:	Faculty and Staff	Date:		Department:	
Title:		Product Evaluated:	Self-Assessment	Number of times used:	

Circle the most appropriate number for each statement below. A rating of one (1) indicates the highest level of agreement with the statement, five (5) the lowest.

Criteria		Agree.....Disagree					
1.	Participates in a continuous cycle of self-assessment of one's growth and commitment to DEI and acknowledgement of any internalized personal biases and racial superiority or inferiority.	1	2	3	4	5	N/A
2.	Demonstrates the implementation of DEI and anti-racism practices in teaching and/or service in the evaluation process.	1	2	3	4	5	N/A
3.	Assesses student outcomes and progress to close equity gaps as outlined in the Vision for Success.	1	2	3	4	5	N/A



# Criteria: Diversity, Equity and Inclusion Environment and Connected to Mission

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## Diversity, Equity and Inclusion Environment

- Promotes and contributes to:
  - a diverse,
  - inclusive, and
  - anti-racist environment for:
    - students,
    - colleagues and
    - community members.

## Connected to Mission

- Articulates the connection of DEIA and anti-racist efforts to the institution's mission and the Vision for Success.

# Criteria: Pedagogy/Curriculum



## Evaluation Form

Name: Faculty

Date:

Department:

Title:

Product Evaluated:

Pedagogy/Curriculum

Number of times used:

Circle the most appropriate number for each statement below. A rating of one (1) indicates the highest level of agreement with the statement, five (5) the lowest.

Criteria		Agree.....Disagree					
1.	Develops and implements a pedagogy and/or curriculum that promotes a race-conscious and intersectional lens and equips students to engage with the world as scholars and citizens.	1	2	3	4	5	N/A
2.	Develops and implements a pedagogy that promotes equitable access.	1	2	3	4	5	N/A
3.	Develops and implements a pedagogy that fosters an anti-racist and inclusive environment for minoritized students.	1	2	3	4	5	N/A
4.	Demonstrates an ability to teach culturally affirming pedagogy.	1	2	3	4	5	N/A

# Examples

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- Low-cost and zero-cost textbooks
- Open educational resources
- Accessible textbooks and materials
- Using illustrations and photos that show diverse people



# Criteria: Employee Interactions

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Recruits, hires, and retains diverse faculty and staff from minoritized communities and diverse backgrounds.

Introduces new employees to the institution and system's focus on DEIA and antiracism and the expectations for their contribution.

Promotes and contributes to a respectful, diverse, and equitable campus and work environment.

# Criteria: Employee Interactions (Cont'd)

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Engages in supportive behaviors and attitudes to foster a positive and inclusive campus and work environment.

Demonstrates the ability and willingness to communicate effectively with people of diverse backgrounds and experiences to create a collaborative community.

Considers and includes diverse perspectives and opinions.

**QUESTIONS?**

**THANKS!**

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