

Reporting and Filing Complaints

The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in unlawful discrimination (including harassment and retaliation) based on any category protected under Title 5 of the California Code of Regulations. Any person who has suffered unlawful discrimination, harassment, or retaliation may file a formal or informal complaint of unlawful discrimination.¹

A formal complaint is an official statement filed verbally or in writing with the District or the California Community Colleges Chancellor's Office that alleges unlawful discrimination in violation of the District's Board Policies and Administrative Procedures (See BPs/APs 3410 (non-discrimination), 3430 (prohibition of harassment)). An informal complaint is any of the following: (1) A written allegation of unlawful discrimination, harassment, or retaliation that falls outside the timelines for a formal complaint; or (2) a written complaint alleging unlawful discrimination, harassment, or retaliation filed by an individual who expressly indicates that they do not want to file a formal complaint.

Informal Complaints

Any person may submit an informal complaint to the Office of Title IX, Diversity, and Inclusion or any other District or college administrator. Administrators receiving an informal complaint shall immediately notify the Office of Title IX, Diversity, and Inclusion in writing of all pertinent information and facts alleged in the informal complaint.

A primary purpose of the informal complaint and resolution process is to stop the alleged incident from continuing and prevent it from reoccurring. In and of itself, resolution of an informal complaint does not have disciplinary implications for respondents. However, if the behavior/incident persists, formal investigation may be warranted.

Upon receipt of an informal complaint, the Office of Title IX, Diversity, and Inclusion will notify the person bringing the informal complaint of their right to file a formal complaint, if the incident falls within the timeline for a formal complaint, and explain the procedure for doing so. The Complainant may later decide to file a formal complaint, if within the timelines to do so. If the individual chooses not to file a formal complaint, or if the alleged conduct falls outside the timeline to file a formal complaint, the Office of Title IX, Diversity, and Inclusion shall consider the allegations contained in the informal complaint and determine the appropriate course of action. This may include efforts to informally resolve the matter, or a fact-finding investigation.

The Office of Title IX, Diversity, and Inclusion will explain to any individual bringing an informal complaint that the Office of Title IX, Diversity, and Inclusion may decide to initiate an investigation, even if the individual does not wish the Office of Title IX, Diversity, and Inclusion to do so. The Office of Title IX, Diversity, and Inclusion shall not disregard any

¹ For sexual harassment under Title IX, please refer to the appropriate District Board Policies and Administrative Procedures, including BP and AP 3540 on Sexual and Gender-Based Misconduct.

allegations of unlawful discrimination, harassment, or retaliation solely on the basis that the alleged conduct falls outside the deadline to file a formal complaint.

Formal Complaints

Formal Complaints must be filed with the Office of Title IX, Diversity, and Inclusion unless the party submitting the Formal Complaint alleges unlawful discrimination, harassment, or retaliation against the responsible district officer, in which case it should be submitted directly to the Superintendent/President.

A primary distinction between the informal and formal complaint process is that the investigation of a Formal Complaint is conducted to determine whether or not the respondent has violated District board policy on non-discrimination, prohibition of harassment, and/or sexual and gender-based misconduct. A violation of District board policies may result in disciplinary action.

Formal Complaints should be submitted verbally or in writing to the Office of Title IX, Diversity, and Inclusion. Written complaints may be submitted on the online report form listed on the website for Title IX, Diversity, and Inclusion or may be submitted in writing directly to the Director of Title IX, Diversity, and Inclusion.

If any party submits a verbal allegation of unlawful discrimination, the District will summarize the allegations provided on behalf of the Complainant for the purposes of the investigation and treat it as a Formal Complaint. In no instance will the District reject an allegation of unlawful discrimination, harassment, or retaliation on the basis that it was not submitted in writing or on the recommended form.

A Formal Complaint must meet each of the following criteria:

1. It must allege facts with enough specificity to show that the allegations, if true, would constitute a violation of District policies or procedures prohibiting unlawful discrimination, harassment, or retaliation;
2. The complainant must file any Formal Complaint not involving employment within one (1) year of the date of the alleged unlawfully discriminatory, harassing, or retaliatory conduct or within one (1) year of the date on which the complainant knew or should have known of the facts underlying the allegation(s) of unlawful discrimination, harassment, or retaliation; and
3. The complainant must file any Formal Complaint alleging unlawful discrimination, harassment, or retaliation in employment within one hundred eighty (180) days of the date of the alleged unlawful discrimination, harassment, or retaliation, except that this period shall be extended by no more than ninety (90) days following the expiration of the one hundred eighty (180) days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the one hundred eighty (180) days.

If the Formal Complaint does not meet the requirements set forth above, the Office of Title IX,

Diversity, and Inclusion will promptly return it to the complainant and specify the defect. If the sole defect is that the Formal Complaint was filed outside the applicable proscribed timeline, the Office of Title IX, Diversity, and Inclusion will handle the matter as an informal complaint.

Oversight of Complaint Procedure: The Director of Title IX, Diversity, and Inclusion is the responsible District officer charged with receiving complaints of discrimination or harassment, and coordinating their investigation.

The actual investigation of complaints may be assigned by the Director of Title IX, Diversity, and Inclusion to the Investigator, other staff or to outside persons or organizations under contract with the District. Investigations shall be assigned to outside persons or organizations whenever the Office of Title IX, Diversity, and Inclusion and/or Human Resources is named in the complaint or implicated by the allegations in the complaint.

Who May File a Complaint: Any individual (including a parent of a minor, or a person with legal authority on their behalf) who partakes in the programs, benefits, or services provided by the District who believes they have been unlawfully discriminated against, harassed, or retaliated against in violation of this procedure and the related policy.

Where to File a Complaint: Any allegations of a violation of these policies and procedures may be submitted orally or in writing to the Office of Title IX, Diversity, and Inclusion.

Employment-Related Complaints

Complainants filing employment-related complaints shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH).

Complaints filed with the EEOC or the DFEH should be forwarded to the California Community Colleges Chancellor's Office.

Any District administrator who receives an unlawful discrimination, harassment, or retaliation complaint shall notify the Office of Title IX, Diversity, and Inclusion immediately.

Filing a Timely Complaint: Since failure to report unlawful discrimination, harassment, or retaliation impedes the District's ability to stop the behavior, the District strongly encourages anyone who believes they are subject to a violation of relevant District policies to file a complaint. The District also strongly encourages the filing of such complaints within thirty (30) days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the District's ability to investigate and remediate.

All supervisors and managers have a mandatory duty to report incidents of unlawful discrimination, harassment, or retaliation.

The District will investigate complaints involving acts that occur off campus if they are related to an academic or work activity or if the harassing conduct interferes with or limits a student's or employee's ability to participate in or benefit from the school's programs or activities.

Communicating that the Conduct is Unwelcome: The District further encourages students

and employees to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste or inappropriate.

Intake and Processing of the Complaint: Upon receiving notification of an unlawful discrimination complaint, the Office of Title IX, Diversity, and Inclusion shall:

1. Determine whether or not efforts to informally resolve the charges (including but not limited to mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling, training, etc.) are appropriate;
2. Advise all Parties that they need not participate in an informal resolution of the complaint, as described above, and they have the right to end the informal resolution process at any time. However, circumstances may necessitate the complaint being elevated to the formal process;
3. Advise a student Complainant that they may file a complaint with the Office for Civil Rights of the U.S. Department of Education and employee complainants may file a complaint with the Department of Fair Employment and Housing. All Complainants should be advised that they have a right to file a complaint with local law enforcement, if the act complained of is also a criminal act. The District must investigate even if the Complainant files a complaint with local law enforcement. In addition, the District should ensure that Complainants are aware of any available resources, such as counseling, health, and mental health services. The Office of Title IX, Diversity, and Inclusion may notify the California Community Colleges Chancellor's Office of the Complaint; and
4. To the extent possible, take interim steps to minimize exposure to and protect a Complainant from coming into contact with an accused individual. The Office of Title IX, Diversity, and Inclusion should notify the complainant of their options to avoid contact with the accused individual and allow students to change academic situations as appropriate. The District may prohibit the accused individual from having any contact with the Complainant pending the results of the investigation. When taking steps to separate the Complainant and accused individual, the District shall minimize the burden on the Complainant. For example, it is not appropriate to remove Complainants from classes or housing while allowing accused individuals to remain.

Investigation

The Office of Title IX, Diversity, and Inclusion shall:

1. Authorize the investigation of the complaint, and supervise or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. Where Complainants opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. In the case of a formal complaint, the investigation will include interviews with the Complainant, the

accused, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.

2. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes a violation of the District's Board Policies on non-discrimination and prohibition of harassment, giving consideration to all factual information and the totality of the circumstances, including the nature and the context in which the alleged incidents occurred.

Investigation of the Complaint: The District shall promptly investigate every complaint and claim of unlawful discrimination, harassment, or retaliation. No claim of workplace or academic unlawful discrimination, harassment, or retaliation shall remain unexamined. This includes complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, on a District bus, or at a class or training program sponsored by the District at another location. The District shall promptly investigate complaints of unlawful discrimination, harassment, or retaliation that occur off campus if the alleged conduct creates a hostile environment on campus. The District shall notify the Complainant that the District will commence an impartial fact-finding investigation of the allegations contained in the complaint.

As set forth above, where the Complainant opts for an informal resolution, the Office of Title IX, Diversity, and Inclusion may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the Complainant's age; whether there have been other harassment complaints about the same individual; and the accused individual's rights to receive information about the allegations if the information is maintained by the District as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. The District will inform the Complainant if it cannot maintain confidentiality.

Investigation Steps: The District will fairly and objectively investigate unlawful discrimination, harassment, or retaliation complaints. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes unlawful discrimination, harassment, and retaliation, and that they understand how the District's grievance procedures operate. Investigators may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigators may use the following steps: interviewing the Complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses and evidence identified by each Party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District's policies prohibiting retaliation; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing

personnel/academic files of all involved parties, if appropriate; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion. When the District evaluates the complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that unlawful discrimination, harassment, or retaliation has occurred.

Timeline for Completion: The District will undertake its investigation promptly and as swiftly as possible. The District shall use reasonable and diligent efforts to conduct unlawful discrimination, harassment, or retaliation investigations and prepare a written report within ninety (90) calendar days of receiving the complaint, unless there are extenuating circumstances that prohibit the timeliness of the completion of the investigation. If an extenuating circumstance exists that prohibits the completion of an investigation within ninety (90) calendar days, the District will inform the parties in writing of such delay.

Cooperation Expected: All employees are expected to cooperate with a District investigation into allegations of unlawful discrimination, harassment, or retaliation. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a Complainant or witnesses does not relieve the District of its obligation to investigate. The District will conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed. No employee will be retaliated against as a result of lodging a complaint or participating in any workplace investigation.

Written Report

The results of the investigation of a complaint shall be set forth in a written report that will include at least all of the following information:

1. A description of the circumstances giving rise to the Formal Complaint;
2. A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
3. A summary of the testimony provided by each individual interviewed by the investigator;
4. An analysis of relevant data or other evidence collected during the course of the investigation, including a list of relevant documents;
5. A specific finding as to whether there is preponderance to believe that unlawful discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint; and
6. Any other information deemed appropriate by the District.

The Written Report is confidential and will only be released to the District Disciplinary Officer for the purposes of deciding if appropriate disciplinary action will be taken in the event the Office of Title IX, Diversity, and Inclusion determines a District board policy violation.

Confidentiality of the Process

Investigations are best conducted within a confidential climate. Therefore, the District does not reveal information about ongoing investigations except as necessary to fulfill its legal obligations. The District will keep the investigation confidential to the extent possible, but it

cannot guarantee absolute confidentiality because release of some information on a “need-to-know-basis” is essential to a thorough investigation and to protect the rights of accused students and employees during the investigation process and any ensuing discipline.

Administrative Determination

When an investigation has been completed following a formal unlawful discrimination complaint, the Complainant and Chancellor of the California Community Colleges will receive written notice in accordance with Title 5. The written notice will include:

1. The determination of the Office of Title IX, Diversity, and Inclusion as to whether a violation of relevant District Board Policy occurred with respect to each allegation in the complaint based on a preponderance of the evidence standard;
2. In the event a District policy violation is substantiated, a description of actions taken, if any, to prevent similar violations from occurring in the future;
3. The proposed resolution of the complaint;
4. The Complainant's right to appeal to the District's Board of Trustees and the California Community Colleges Chancellor's Office; and
5. This process is separate from any District disciplinary procedures or any appeals stemming from the disciplinary process. All parties have the right to appeal sanctions through the appropriate District disciplinary officer.²

Appeals

If the Complainant is not satisfied with the results of the administrative determination, they may, within thirty (30) days, submit a written appeal to the California Community Colleges Chancellor's Office. The Chancellor's Office shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Chancellor's Office shall issue a final District decision in the matter within ninety (90) days after receiving the appeal. A copy of the decision rendered by the Chancellor's Office shall be forwarded to the parties and to the District.

Remand

The California Community College Chancellor's Office may remand any matter to the District for any of the following reasons: to cure defects in the investigation or in procedural compliance; to consider new evidence not available during the investigation despite the Complainant's due diligence that would substantially impact the outcome of the investigation; or to modify or reverse a decision of the District's Board of Trustees based upon misapplication of an applicable legal standard or an abuse of discretion.

If the California Community College Chancellor's Office remands a matter to the District, the District shall take necessary action and issue a decision after remand within 60 days. In any case not involving employment discrimination, the Complainant may appeal the District's amended determination to the California Community College Chancellor's Office within 30 days by following the appeal procedures above.

² Please refer to the appropriate District Board Policies, Administrative Procedures, and bargaining unit agreements (if applicable) regarding disciplinary processes for students and employees.

In any case involving workplace unlawful discrimination, the complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the Department of Fair Employment and Housing.

Extension of Time

If the District is unable to comply with the ninety (90) day investigation timeline, it may grant itself one forty-five (45) day extension without permission from the California Community Colleges Chancellor's Office for any of the following reasons:

- a need to interview a party or witness who has been unavailable;
- a need to review or analyze additional evidence, new allegations, or new complaints related to the matter; or
- to prepare and finalize an administrative determination.

The District shall send a written notice to the Complainant and to a Respondent who is aware of an investigation indicating the necessity of an extension, the justification for the extension, and the number of days the deadline will be extended. The District shall send this notice no later than 10 days prior to the initial time to respond.

The District may request additional extensions from the California Community Colleges Chancellor's Office after the initial 45-day extension. The District shall send a copy of the extension request to the Complainant and to a Respondent who is aware of an investigation. The Complainant and Respondent may each file a written objection with the California Community Colleges Chancellor's Office within 5 days of receipt.

Disclosures to the California Community Colleges Chancellor's Office

Upon request of the California Community Colleges Chancellor's Office, the District shall provide copies of all documents related to a discrimination complaint, including the following: the original complaint, any investigative report unless subject to the attorney-client privilege, the written notice to the Complainant setting forth the results of the investigation, the final administrative decision rendered by the Board or a statement indicating the date upon which the decision became final, and a copy of the notification to the Complainant of his/her/their appeal rights, the Complainant's appeal of the District's administrative determination, any other non-privileged documents or information the Chancellor requests.

The District shall provide to the California Community Colleges Chancellor's Office an annual report with the following information: the number of employment and non-employment discrimination complaints and informal charges received in the previous academic year; the number of complaints and informal charges resolved in the previous academic year; the number of complaints of unlawful discrimination received in the previous academic year, and the number of those complaints that were sustained in whole or in part; and any other information requested by the Chancellor.

File Retention

The District will retain on file for a period of at least five (5) years after closing the case copies of:

1. The original complaint;

2. The investigatory report;
3. The summary of the report if one is prepared;
4. The notice provided to the complainant, of the District's administrative determination and their right to appeal;
5. Any appeal; and
6. The District's final decision.

The District will make all relevant, non-privileged documents available to the Chancellor of the California Community Colleges upon request of the Chancellor.

Where the complaint allegation consists of Sexual and Gender-Based Misconduct (including, but not limited to sexual harassment, stalking, intimate partner violence, and sexual assault), as defined by Title IX of the Education Amendments of 1972, please refer to District Board Policy and Administrative Procedure 3540.

Dissemination of Policy and Procedures

District policy and procedures will be provided to all students, faculty members, members of the administrative staff and members of the support staff and will be posted on campus and on the District's website.

When hired, employees are required to sign that they have received the policy and procedures, and the signed acknowledgment of receipt is placed in each employee's personnel file. In addition, these policies and procedures are incorporated into the District's course catalogs and orientation materials for new students.

Training

By January 1, 2021, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees. All new employees must be provided with the training and education within six months of their assumption of their position. After January 1, 2021, the District shall provide sexual harassment training and education to each employee once every two years. An employee who received this training and education in 2019 is not required to have refresher training until after two years thereafter.

The training and education required by this procedure shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment, a review of "abusive conduct," and harassment based on gender identity, gender expression, and sexual orientation. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. Supervisor's harassment training must also address potential exposure and liability for employers and individuals, supervisor's obligation to report sexual harassment, discrimination, and retaliation when they become aware of it, appropriate remedial measures to correct harassing behavior.

The District will maintain appropriate records of the training provided, including the names of the supervisory employees trained, the date of training, sign in sheets, copies of all certificates of attendance or completion issued, the type of training provided, a copy of all written or recorded training materials, and the name of the training provider. If the training is provided by webinar, the District will maintain a copy of the webinar, all written materials used by the training and all written questions submitted during the webinar, and document all written response or guidance the trainer provided during the webinar. The District will retain these records for at least two years.

The District will also provide training to students who lead student organizations. The District should provide copies of the sexual harassment policies and training to all District law enforcement unit employees.

In years in which a substantive policy or procedural change has occurred, all District employees will attend a training update or receive a copy of the revised policies and procedures.

Participants in training programs will be required to sign a statement that they have either understood the policies and procedures, their responsibilities, and their own and the District's potential liability, or that they did not understand the policy and desire further training.

Education and Prevention for Students

In order to take proactive measures to prevent sexual harassment and violence toward students, the District will provide preventive education programs and make victim resources, including comprehensive victim services, available. The District will include such programs in their orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, the District's policies and disciplinary procedures, and the consequences of violating these policies. A training program or informational services will be made available to all students at least once annually.

The education programs will also include information aimed at encouraging students to report incidents of sexual violence to the appropriate District and law enforcement authorities. Since victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of District or campus rules were involved, the District will inform students that the primary concern is for student safety and that use of alcohol or drugs never makes the victim at fault for sexual violence. If other rules are violated, the District will address such violations separately from an allegation of sexual violence.

References:

- 20 U.S. Code Sections 1681 et seq.;
- Education Code Sections 212.5, 231.5, 66281.5, and 67386;
- Government Code Section 12950.1;
- Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et seq.;
- Title 2 Sections 11023 and 11024;

34 Code of Federal Regulations Section 106.8(b)

El Camino College

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