

UNLAWFUL DISCRIMINATION AND UNLAWFUL HARASSMENT

1. General

This is the written procedure for filing and processing complaints of unlawful discrimination and unlawful harassment at Contra Costa Community College District. The procedure incorporates the legal principles contained in unlawful discrimination provisions of the California Code of Regulations, Title 5, sections 59300 et seq. as well as other state and federal substantive and procedural requirements.

A copy of the written policy and procedure on unlawful discrimination and unlawful harassment will be displayed in a prominent location in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

California Code of Regulations, Title 5, 59326
Education Code, 66281.5; 20 U.S.C. 1681
California Code of Regulations, Title 5, 59300; 34 C.F.R. 106.8(b)

Workforce Investment Act- Title I – Financially Assisted Program/Activity

If you think that you have been subjected to discrimination under a WIA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either the Chief Human Resources Officer for the District, or the Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210. If you file your complaint with the District, you must wait either until the District issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the District does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the District to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the District).

If the District does give you a written Notice of Final action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

29 C.F.R. 37.30 Workforce Investment Act 1998

2. Notice, Training, and Education

The Contra Costa Community College District's Chief Human Resources Officer (or designee) is responsible for providing training to employees, and students on the District's unlawful discrimination and unlawful harassment policy and procedure.

Designated District employees will receive training and a copy of the unlawful discrimination and harassment policies and procedures during the first year of their employment. Because of their special responsibilities under the law, supervisors will undergo mandatory training every two years. Thereafter, in years in which a substantive policy or procedural change has occurred all District employees will attend a training update and receive a copy of the revised policy and procedure.

Training for academic staff will emphasize potential unlawful harassment in the classroom environment.

An online training program will be made available to all students. Any student training should include an explanation of the policy in existence, how it works, and how to file a complaint. In addition, a copy of the District's written policy and procedure on unlawful discrimination and unlawful harassment, as it pertains to students, will be available on the District's website and in the College catalogs.

Education Code, 66281.5;
California Code of Regulations, Title 5, 59300, 59326, 59324
34 C.F.R. 106.8(b)

3. Definitions

Definitions applicable to nondiscrimination policy and procedure are as follows:

- a. "Appeal" means a request by a complainant made in writing to a community college district governing board pursuant to section 59338 and/or to the Chancellor's Office pursuant to section 59339 to review the administrative determination of a community college district regarding a complaint of discrimination or harassment.
- b. "Complaint" means a written and signed statement meeting the requirements of section 59328 which alleges unlawful discrimination in violation of this subchapter.
- c. "Days" means calendar days unless otherwise specified.
- d. "Designated District Officer" means the district officer identified by the District to the Chancellor's Office as the person responsible for receiving complaints filed pursuant to Section 59328 and coordinating their investigation.
- e. "Discrimination on the basis of sex" means sexual harassment or discrimination on the basis of gender.
- f. "Unlawful Harassment" means harassment based on gender, race, color, religion, ancestry, medical condition, genetic information, marital status, sex, gender identity, gender expression, military or veteran status, national origin, disability, sexual orientation, age, or the perception that a person has one or more of these characteristics. Such harassment is illegal and violates District policy. Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment. For example, repeated derisive comments about a person's competency to do the job, when based on that person's gender, could constitute gender-based harassment. Harassment comes in many forms, including but not limited to the following conduct:

Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on any person's race, gender, sexual orientation or other protected status. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats or intimidation; whistling, or sexual gestures or sexist, patronizing or ridiculing statements that convey derogatory attitudes based on gender, race, nationality, sexual orientation or other protected status.

Physical: Inappropriate or offensive touching, assault, or physical interference with free movement. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, pinching, or unnecessarily brushing against or blocking another person. It also includes any physical assault or intimidation directed at an individual due to that person's gender, race, national origin, sexual orientation or other protected status.

Visual or Written; Leering or Staring: The display or circulation of visual or written material that degrades an individual or group based on gender, race, nationality, sexual orientation or other protected status. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions. Examples of leering or staring include looking at a person's body up and down, suggestive glances/winks, prolonged/inappropriate eye contact, and/or inappropriate focus on a particular area of the body.

Environmental: A hostile academic or work environment exists where it is permeated by sexual innuendo, insults or abusive comments directed at an individual or group based on gender, race, nationality, sexual orientation or other protected status; or gratuitous comments regarding gender, race, sexual orientation, or other protected status that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment. It can also be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, genders or other protected statuses. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in his or her immediate surrounding, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct unreasonably interferes with an individual's learning or work.

- g. "Sexual Harassment" in addition to the above, means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the workplace or in the educational setting, and includes but is not limited to:
- 1) Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. (Examples of sexual harassment which appear in a written form include, but are not limited to: suggestive or obscene letters, notes, and invitations. Examples of verbal and visual sexual harassment include, but are not limited to: leering, gestures, display of sexually aggressive objects or pictures, cartoons, or posters.)
 - 2) Continuing to express sexual interest after being informed that the interest is unwelcome.
 - 3) Making reprisals, threats of reprisal, or implied threats of reprisal following a rebuff of harassing behavior. The following are examples of this type of sexual harassment within the work place or educational setting: implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied.
 - 4) Engaging in explicit or implicit coercive sexual behavior within the work environment which is used to control, influence, or affect the employee's career, salary, and/or work environment.
 - 5) Engaging in explicit or implicit coercive sexual behavior within the educational environment that is used to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student.
 - 6) Offering favors or educational or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.

Sexually harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable

person of the same gender as the victim would perceive the conduct as sufficiently offensive to negatively impact the academic or work environment.

Education Code Sections 212.5, 66281.5
California Code of Regulations, Title 5, 59311, 59320
Revised Sexual Harassment Guidance: Harassment of Students by School Employees,
Other Students, or Third Parties Title IX, Office of Civil Rights
Title VII, Civil Rights Act of 1964, 42 U.S.C.A. Section 2000e

4. **Responsible District Officer**

The Contra Costa Community College District has identified the Chief Human Resources Officer as the single District officer responsible for receiving unlawful discrimination complaints filed pursuant to section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the District. Such delegation procedures will be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

California Code of Regulations, Title 5, 59324; 34 C.F.R. 106.8

5. **Filing a Complaint**

An individual who believes he/she has been unlawfully discriminated against or unlawfully harassed in violation of this procedure in any program or activity that is funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges may, in those complaints not involving employment, initiate a complaint as soon as possible, but at least within one year of the date of the alleged harassment or the date on which the complainant knew or should have known of the facts underlying the complaint. In complaints involving employment, the complainant must initiate a complaint as soon as possible, but at least within 180 days of the date of the alleged unlawful discrimination or unlawful harassment, or 90 days after expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the 180 days expired.

If a complainant decides to file a formal written complaint, he or she should file the complaint on the approved form available from District Human Resources Website or the Student Services Office at the colleges. The completed form must be filed in the District Human Resources Office, Employee Relations Unit. For complaints filed under federal civil rights laws, the complainant does not have to allege that he or she personally suffered unlawful discrimination.

The individual or individuals that allegedly engaged in the prohibited conduct should be advised on the charges against them at the earliest possible time.

California Code of Regulations, Title 5, 59328

6. **Importance of Filing a Timely Complaint**

Since failure to report harassment and discrimination impedes the District's ability to stop the behavior, the District strongly encourages employees and students who believe they are being unlawfully harassed to file a complaint promptly. The District also strongly encourages the filing of such complaints within 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 harassment, the existence of a hostile, offensive or intimidating work environment, and acts of retaliation and/or discrimination.

7. Importance of Communicating that the Conduct is Unwelcome

The District further encourages students and staff, where appropriate, to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste and/or inappropriate.

8. Informal/Formal Complaint Procedure¹

When a person brings charges of unlawful discrimination or unlawful harassment to the attention of the District's responsible officer or designee, that officer will:

- a. Undertake efforts to informally resolve the charges;
- b. Provide the complainant with a copy of this procedure.
- c. Advise the complainant that he or she need not participate in informal resolution;
- d. Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for filing a formal complaint; and
- e. Advise the complainant that he or she may file a complaint with the Office of Civil Rights of the U.S. Department of Education (OCR).
- f. If the complaint is employment-related, the complainant should also be advised that he or she may file a complaint with the Department of Fair Employment and Housing (DFEH).

Efforts at informal resolution need not include any investigation unless the responsible District officer determines that an investigation is warranted by the seriousness of the charges. Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant to Section 59334 and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. Any efforts at informal resolution after the filing of a written complaint will not exceed the 90-day period for rendering the administrative determination pursuant to Section 59336.

Both parties should be advised that they may be accompanied by a representative throughout the unlawful discrimination/sexual harassment complaint process.

California Code of Regulations, Title 5, 59327, 59334, 59336
California Code of Regulations, Title 5, 59328

¹ The purpose of the informal resolution process is to allow an individual who believes she/he has been unlawfully discriminated against or sexually harassed to resolve the issue through a mediation process rather than the formal complaint process. Typically, the informal process will be invoked when there is a simple misunderstanding or the complainant does not wish to file a formal complaint. Resolution of an informal complaint may require nothing more than a clarification of the misunderstanding or an apology from the respondent and an assurance that the offending behavior will cease. The district officer should advise the complainant of his or her rights and responsibilities under both the formal and informal processes. If the complainant declares his or her preference for the informal process, the responsible district officer should present the complainant with a document that describes the informal/formal process that contains the basics of complainant's allegations of unlawful discrimination. This document should clearly indicate that the complainant opted for the informal resolution process and should be signed and dated by the complainant. The informal resolution process will not be made a predicate to the process and investigation of a formal complaint. If a complaint is filed, an investigation must be completed within the time required unless it is voluntarily rescinded by a complainant as a result of a successful informal resolution.

10. **Investigation upon Filing of a Formal Written Complaint**

When a formal written complaint is filed an investigation will be initiated if the complaint meets the following requirements:

- a. The complaint must allege unlawful discrimination or unlawful harassment prohibited under Section 59300.
- b. The complaint must be filed by one who alleges that he or she has personally suffered unlawful discrimination/harassment or by one who has learned of such unlawful discrimination/harassment.
- c. The complaint must be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination or harassment.
- d. In complaints involving employment, the complaint must be filed within 180 days of the date of the alleged unlawful discrimination or unlawful harassment, or 90 days after expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the 180 days expired.

Defective complaints will be immediately returned to the complainant with a complete explanation of why an investigation could not be initiated under Title 5, California Code of Regulations, Section 59300 et seq.

The District shall promptly investigate every complaint of unlawful discrimination or unlawful harassment. No claim of workplace or academic discrimination or harassment shall remain unexamined. The District will fairly and objectively investigate unlawful discrimination/harassment complaints utilizing the following steps: interviewing the complainant(s), interviewing the alleged harasser(s); identifying and interviewing witnesses, if any; reminding all individuals interviewed of the District's no-retaliation policy; considering whether any involved person should be removed from the location pending completion of the investigation; reviewing personnel/academic files of the involved parties and other relevant documentation; reaching a conclusion as to the allegations and any appropriate disciplinary and remedial action; and ensuring that all recommended action is carried out in a timely fashion.

All employees are expected to cooperate with a District investigation into allegations of unlawful discrimination or unlawful harassment. 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 unlawful discrimination or unlawful harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed.

California Code of Regulations, Title 5, 59328

11. **Investigation Guidelines**

A student or employee who complains of sexual harassment will not be required to work out the problem directly with the alleged harasser, and certainly not without appropriate involvement of the Chief Human Resources Officer.

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, Office of Civil Rights

12. **Notice to Chancellor or District**

Immediately upon receiving a complaint filed in accordance with the regulations, the District will forward a copy of the formal complaint to the State Chancellor's Office. Similarly, when the State Chancellor's Office receives a complaint filed in accordance with the regulations a copy will be forwarded to the District.

California Code of Regulations, Title 5, 59330

13. **Complainant's Right to Confidentiality**

The District should inform the complainant that if he or she requests that their name not be revealed it may limit the District's ability to respond. The District should inform the complainant that the law protects them against retaliation for filing an unlawful discrimination or unlawful harassment complaint.

If the complainant insists that his or her name should not be revealed, the District should take all reasonable steps to investigate and respond to the complaint consistent with the complainant's request as long as doing so does not jeopardize the rights of other students and employees. 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.

Revised Sexual Harassment Guidance: Harassment of Students by School Employees,
Other Students, or Third Parties, Title IX, Office of Civil Rights

14. **Right to Privacy**

If an employee or student is disciplined or dismissed as a result of an unlawful discrimination or unlawful harassment charge, Education Code Section 87740 requires that confidentiality be maintained as to the discipline or dismissal and the reasons therefore. In a disciplinary action for a sexual assault/physical abuse charge, Education Code Section 76234 provides that the victim shall be informed of the results of the disciplinary action within three days, but further states that the victim shall keep that information confidential. In addition, an individual's right to privacy is not only protected by the laws of the state, but is deemed an inalienable right under Article I, Section 1 of the California Constitution. Therefore, it is the policy of the Contra Costa Community College District that persons provided with protected information in conjunction with an unlawful discrimination or unlawful harassment complaint may be required to sign a confidentiality agreement.²

California Const. Art. I;
Education Code 76234, 87740

² In cases of severe discipline, such as suspension or termination, the complainant would in all likelihood be required to testify at a hearing on the subject, and would therefore be aware of the proposed discipline. In the less severe cases, however, it is incumbent on the district to advise the complainant of the seriousness of the privacy issue. In cases of severe discipline, such as suspension or termination, the complainant would in all likelihood be required to testify at a hearing on the subject, and would therefore be aware of the proposed discipline. In the less severe the complainant should be able to trust the district to take appropriate action and understand that the district is not at liberty to discuss personnel matters. If a disclosure is made to the accuser, a district should require that the accuser keep the information confidential, otherwise the district exposes itself to possible litigation.

15. **Administrative Determination**

Within ninety (90) days of receiving an unlawful discrimination or unlawful harassment complaint filed under Title 5, sections 59300 et seq., the District will complete its investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all the following to both the complainant and the Chancellor:

- a. The determination of the chief executive officer or his/her designee as to whether discrimination or harassment did or did not occur with respect to each allegation in the complaint;
- b. A description of actions taken, if any, to prevent similar problems from occurring in the future;³
- c. The proposed resolution of the complaint; and
- d. The complainant's right to appeal to the District Governing Board and the State Chancellor.

For complaints filed under federal civil rights laws, the administrative determination will be made based on a preponderance of the evidence standard.

California Code of Regulations, Title 5, 59336

16. **Complainant's Appeal Rights**

Complainants have appeal rights that they may exercise if they are not satisfied with the results of the District's administrative determination. At the time the administrative determination and summary is mailed to the complainant the District will notify the complainant of his or her appeal rights as follows:

- a. First level of appeal: The complainant has the right to file an appeal to the District's Governing Board within 15 days from the date of the administrative determination. The District's Governing Board will review the original complaint, the investigative report, the administrative determination, and the appeal.
- b. The District's Governing Board will issue a final District decision in the matter within 45 days after receiving the appeal. Or, the District's Governing Board may elect to take no action within 45 days, in which case the original decision in the administrative determination will be deemed to be affirmed and shall become the final District decision in the matter. A copy of the final decision rendered by the District's Governing Board will be forwarded to the complainant, the respondent and to the State Chancellor's Office.
- c. Second level of appeal: The complainant has the right to file an appeal with the California Community College Chancellor's Office in any case not involving employment related discrimination within 30 days from the date that the Governing Board issues the final District decision or permits the administrative determination to become final by taking no action within 45 days.⁴

³ If it is determined that discrimination did occur, possible remedies to prevent similar problems from occurring in the future include all the standard district disciplinary actions for students and employees, ranging from undocumented reprimand to termination or expulsion. If formal disciplinary action is inappropriate, other possible remedies include, training in the pertinent area(s) of unlawful discrimination, apology, and restricting or forbidding contact between the perpetrator and victim.

⁴ The Department of Fair Employment and Housing (DFEH) has final jurisdiction over employment-related cases. Therefore, the State Chancellor's Office has agreed to accept DFEH decisions and generally will not accept appeals in employment discrimination cases. However, in limited circumstances the State Chancellor's Office will intervene, such as when intervention might bring about a resolution at the informal level or when some unique aspect of community college governance is at issue and the expertise of the State Chancellor's Office is needed.

- d. In any case involving employment discrimination the complainant may at any time before or after the final District decision is rendered file a complaint with the Department of Fair Employment and Housing (DFEH). In addition, the complainant may file a petition for review with the Chancellor within thirty (30) days of the Board's final disposition of the complaint. The Chancellor shall have discretion to accept or reject any such petition for review.

Complainants must submit all appeals in writing.

California Code of Regulations, Title 5, 59338, 59339

17. Forward to Chancellor

Within 150 days of receiving a complaint, the District will forward the following to the Chancellor:

- a. A copy of the original complaint, the investigative report, a copy of the written notice to the complainant setting forth the results of the investigation and the final District decision rendered by the District's Governing Board or a statement indicating the date on which the administrative determination became final as a result of taking no action on the appeal within 45 days.
- b. A copy of the notice of appeal rights the District sent the complainant.
- c. Any other information the Chancellor may require.

California Code of Regulations, Title 5, 59338, 59340

18. Extensions

If for reasons beyond its control, the District is unable to comply with the 90-day or 150-day deadlines specified above for submission of materials to the complainant and the State Chancellor's Office, the District will file a written request that the Chancellor grant an extension of the deadline. The request will be submitted no later than 10 days prior to the expiration of the deadlines established by Title 5 in sections 59336 and/or 59340 and will set forth the reasons for the request and the date by which the District expects to be able to submit the required materials.

A copy of the request for an extension will be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt.

The Chancellor may grant the request unless delay would be prejudicial to the complainant. If the Chancellor grants an extension of the 90-day deadline the 150-day deadline is automatically extended by an equal amount.

California Code of Regulations, Title 5, 59342

19. Record Retention

Unlawful discrimination records that are part of an employee's employment records may be classified as Class-1 permanent records and retained indefinitely or microfilmed in accordance with Title 5, California Code of Regulations, Section 59022. Unlawful discrimination records of a student that are deemed worthy of preservation but not classified as Class-1 permanent may be classified as Class-2 optional records or as Class-3 disposable records, to be retained for a period of three years.

California Code of Regulations, Title 5, 59020