

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.

For Title IX coordinators and those serving on student discipline hearing panels involving Title IX sexual harassment complaints, individuals will receive training on (1) the definition of sexual harassment under Title IX; (2) the scope of the District's education program or activity; (3) how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution process, as applicable; (4) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; (5) issues of relevance and how to apply the rape shield protections for complainants; (6) any technology used at a live hearing. All training materials must be published on the District's website.

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); 34 C.F.R. 106.45(b)(1)(iii)

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 verbal or written allegation of discrimination and/or harassment 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. "Unlawful discrimination" means unfair or unequal treatment harassment against persons or groups, or those associated with them on the basis of an actual or perceived characteristic related to 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 any other protected characteristic protected under state or federal law. 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.

- f. "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.

- g. "Title IX Sexual Harassment" is defined as (1) any instance of *quid pro quo* harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; (3) any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA). The Clery Act defines sexual assault as rape, fondling, incest and statutory rape. VAWA defines stalking as engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) Fear for his or her safety or the safety of others; or (b) Suffer substantial emotional distress.
- h. "Affirmative Consent" means an affirmative, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity.
- i. "Supportive measures" means individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. Supportive measures can include transfer of one party or another to different classes, counseling services, or other academic or transcript adjustments.

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. Districts shall advise student complainants that they may file their nonemployment-based complaint with the Office of Civil Rights (OCR) where such a complaint is within that agency's jurisdiction.. The District will also accept complaints from a parent or minor, or an individual with legal authority, on behalf of a student or employee, who alleges that the student or employee has suffered unlawful discrimination.

In any complaint alleging discrimination in employment, the complaint shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period should be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days. Complainants alleging discrimination in employment shall be advised that they may file the complaint with the EEOC and/or DFEH where the complaint is within the jurisdiction of those agencies.

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. While the approved complaint form is desirable, the District will still process complaints even if they are not on the approved complaint form, provided they meet other requirements for processing. Verbal complaints shall be lodged with the responsible district officer or designee, who shall record the verbal complaint in writing and take appropriate steps to ensure the writing accurately reflects the facts alleged by the complainant. 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.

For students alleging sexual harassment, sexual assault, sexual violence, sexual exploitation or stalking, please see additional requirements outlined in Student Services Procedure 3027, Board Policy 2002, and Administrative Procedure 2002.

California Code of Regulations, Title 5, 59328,
Education Code Section 66281.8

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, if appropriate;
- b. Advise the complainant that they need not participate in informal resolution.
- c. Provide the complainant with a copy of this procedure.
- d. Advise the complainant that he or she need not participate in informal resolution;
- e. 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
- f. 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).

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. Efforts at informal resolution may, but need not include an investigation. The responsible district officer determines when an investigation is warranted.

- g. 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 a written or verbal complaint is made. The investigation must be completed unless the matter is informally resolved and the complainant dismisses the complaint. The District may proceed with an investigation notwithstanding an informal resolution. Any efforts at informal resolution a written or verbal complaint is made shall be completed within the 90-days.

Both parties should be advised that they may be accompanied by a representative throughout the unlawful discrimination/sexual harassment complaint process. With respect to students complaining of sexual harassment, sexual assault, sexual violence, sexual exploitation or stalking, please see additional requirements outlined in Student Services Procedure 3027, Board Policy 2002, and Administrative Procedure 2002.

California Code of Regulations, Title 5, 59327, 59334, 59336
California Code of Regulations, Title 5, 59328
Education Code Section 66281.8

9. Title IX Sexual Harassment Complaints

Upon receipt of a complaint, the Title IX officer must determine whether the complaint fits the definition of a "Title IX Sexual Harassment Complaint," i.e. whether the complaint alleges quid pro quo sexual harassment by a District employee; whether the complaint alleges conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; or would constitute sexual assault (as defined by the Clery Act) or stalking (as defined by VAWA). The complaint must also allege conduct in the school's education program or activity, i.e. locations, events or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the District. Title IX applies to all of the District's programs or activities, whether such programs or activities occur on-campus or off-campus. However, it only applies to conduct that occurs in the United States, not to any incident that occurs on foreign soil, including during a school-sponsored study abroad program or other activity. If it is determined that the complaint meets one of these three criteria, it will be processed according to the specific requirements under Title IX (outlined below). Lastly, Title IX only applies to those who are currently participating in a District activity, or attempting to participate in a District activity. Therefore, complaints by former students or employees will not be processed as Title IX sexual harassment complaints. If a complaint does not meet these criteria, then the District must dismiss the complaint for purposes of Title IX. However, the District may still address such allegations as outlined elsewhere in this policy.

10. Investigation upon Filing of a Formal Written or Verbal 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.
- e. If the complainant does not wish to file a formal written complaint, the District will still process a verbal complaint, provided that the complaint satisfies other requirements for processing. The Title IX officer receiving such a complaint will document the fact that the complainant declined to file a formal written complaint, and shall reduce the oral complaint to writing, and ensure the accuracy of the written summary with the complainant.

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.

With respect to students complaining of sexual harassment, sexual assault, sexual violence, sexual exploitation or stalking, please see additional requirements outlined in Student Services Procedure 3027, Board Policy 2002, and Administrative Procedure 2002.

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. Additional requirements for students complaining of sexual harassment, sexual assault, sexual violence, sexual exploitation or stalking are outlined in Student Services Procedure 3027, Board Policy 2002, and Administrative Procedure 2002.

Revised Sexual Harassment Guidance: Harassment of Students by School Employees,
Other Students, or Third Parties, Title IX, Office of Civil Rights;
Education Code Section 66281.8

12. 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

13. 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

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.

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

14. **Additional Procedural Requirements for Investigation of Title IX Sexual Harassment Complaints**

a. Notice to Respondent

In all cases, the investigator will provide written notice to the accused individual, providing them with (1) a description of the alleged violation(s); (2) the date and location of the alleged incident(s); (3) the identity of the parties; and (4) a required date and time for the individual to contact the investigator to respond to the allegations. Both the complainant and the respondent must be informed in writing of their right to have an advisor or their choice present for the investigatory interview, and to review evidence obtained during the investigation. In addition, with respect to investigations involving allegations of Title IX sexual harassment, the written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the investigation process/appeal process. Lastly, the notice must include a statement informing the parties of any provision of the institution's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the investigation/appeal/hearing process.

b. Investigation of Allegations/Mediation

The investigator will conduct interviews to determine whether Title IX sexual harassment has occurred. Interviews shall be conducted with the complainant, any witnesses, and the respondent(s). The investigator shall also review relevant documentation and other evidence. Both the complainant and the respondent are permitted to have an advisor present during the interview. However, the advisor may not disrupt the investigation process and may not coach or answer on behalf of the party being interviewed. Investigations should generally result in resolution within 90 calendar days after a complaint has been made, barring unexpected delays.

For allegations determined to be minor in nature, a voluntary alternative to the formal investigation and hearing process, as mutually agreed upon by the District and the respondent, and any other involved individual as appropriate. The District, will select a trained mediator to assist the parties in attempting resolving the allegation. The District may also utilize the services of an external mediator.

c. Review of evidence

Before concluding the investigation, the investigator must provide the parties and their advisors, if any, equal opportunity to inspect and review any evidence obtained during the investigation that is directly related to the allegations raised in a formal complaint, even if the investigator has not relied on that evidence in reaching a determination. All inculpatory and exculpatory evidence must be included, except as provided for by law, and except for

a party's medical, psychological, or similar treatment records, unless the party has provided a voluntary and consensual release for such records. The evidence must be provided to the parties in an electronic format or a hard copy, and the parties must be given 10 calendar days to submit a written response, which the investigator must consider before the completion of the investigative report. To the extent possible, the District shall use an electronic platform that prevent the downloading of the materials. Prior to permitting the review of such evidence, the investigator must obtain a signed nondisclosure agreement from the reviewing party to prevent the circulation of the evidence subject to inspection and review.

34C.F.R.106.45(b)

15. District Investigation

Upon receiving a complaint that is properly made in accordance with these rules, the District shall notify the complainant that the District will commence an impartial fact-finding investigation of the allegations contained in the complaint.

The results of the investigation shall be set forth in a written report that shall include the following:

- a. A description of the circumstances giving rise to the complaint;
- b. A summary of the testimony provided by each witness, including the complainant and any available witnesses identified by the complainant in the complaint;
- c. An analysis of any relevant data or other evidence collected during the course of the investigation;
- d. A specific finding as to whether each factual allegation in the complaint occurred based on the preponderance of the evidence standard; and
- e. Any other information deemed appropriate by the District.

Administrative Determination

- a. Non-employment related matters

In any case not involving employment discrimination, 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 or summary of the report and written notice to the complainant setting forth all of the following:

Notice to Complainant

- 1) 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, based on a preponderance of the evidence standard;

- 2) In the event a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar problems from occurring in the future;³
- 3) The proposed resolution of the complaint; and
- 4) The complainant's right to appeal to the District Governing Board and the State Chancellor.
- 5) In matters involving student sexual misconduct, the respondent's right to appeal to the District's Governing Board any disciplinary sanction imposed upon the respondent.

b. Employment related matters

In any case involving employment discrimination, within 90 days of receiving a complaint, the District shall complete its investigation and forward a copy or summary of the report and written notice to the complainant setting forth all the following:

Notice to Complainant

- 1) The chief executive officer's or their designee's determination as to whether discrimination occurred with respect to each allegation in the complaint, based on the preponderance of the evidence standards.
- 2) If a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future;
- 3) The proposed resolution of the complaint; and
- 4) The complainant's right to appeal to the District's governing board and to file a complaint with the Department of Fair Employment and Housing.

c. Notice to Respondent

In any case involving unlawful discrimination when a District provides the complainant with any information pursuant to this section, the District shall also provide to the respondent the following:

- 1) The chief executive officer's or their designee's determination as to whether unlawful discrimination occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard;
- 2) The proposed resolution of the complaint, including any disciplinary action against the respondent; and
- 3) In matters involving Title IX misconduct, the respondent's right to appeal to the local governing board any disciplinary sanction imposed upon the respondent.

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.

With respect to students complaining of sexual harassment, sexual assault, sexual violence, sexual exploitation or stalking, please see additional requirements outlined in Student Services Procedure 3027, Board Policy 2002, and Administrative Procedure 2002.

California Code of Regulations, Title 5, 59336;
59334(b); Education Code Section 66281.8

16. Additional Findings Requirements for Title IX Sexual Harassment Investigations

At the conclusion of the Title IX Sexual Harassment investigation, the investigator must create an investigative report that fairly summarizes relevant evidence. The investigator must send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy for their review and written response. The final investigative report must be provided at least 10 days before any hearing so the parties have time to review and provide written responses.

34 C.F.R. 106.45(b)(5)(vii)

17. Retaliation Prohibited

Retaliation is prohibited against any individual for exercising rights under Title IX or this process, including the participating in or refusing to participate in the filing of a complaint, the investigation, or any proceeding or hearing.

Examples of prohibited retaliation include intimidation, threats, coercion, or discrimination, and specifically include bringing charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same fact or circumstances as a report or complaint of sex discrimination or sexual harassment.

18. Requirements for Title IX Sexual Harassment Disciplinary Proceedings

If the investigation findings result in any proposed discipline for either students or employees of the District, the employee/student will be entitled to a hearing, which must include the following elements.

- a. The Hearing Authority must be free from conflict of interest or bias and must have received training on (a) how to serve impartially (b) issues of relevance and how to rule on relevance objections; (c) how to apply the rape shield protections provided for complainants; and (d) any technology to be used at the hearing.
- b. Every witness at the hearing must be subject to cross-examination by the parties' advisors.
- c. The Hearing Authority must allow a party's advisor to directly and in real time present all relevant questions and follow up questions to another party or witness. Cross-examination must come from a party's advisor and may not come directly from a party.
- d. If a party does not have an advisor for the hearing, the District/College must provide that party with an advisor at no cost, for the purpose of conducting cross-examination on behalf of the party, or, in the discretion of the District/College, for the duration of the hearing in general.

- e. If a party or witness does not submit to live cross-examination, the panel or hearing officer cannot rely on any statement made by that party or witness when making the decision about the respondent's responsibility. This includes statements made during the investigation process.
- f. Police reports, sexual assault nurse examiner (SANE) reports, medical reports, and other documents and records may not be relied on to the extent they contain the statements of a party or witness who has not submitted for cross-examination. In addition, where the evidence is a text exchange or an email thread and one party has refused to submit to cross-examination, but the other has not, the panel or hearing officer may rely only upon the statements made by the party who was cross-examined. However, the panel or hearing officer is not prevented from relying on a description of the words allegedly used by a respondent if they constitute part of the alleged sexual harassment at issue because the verbal conduct does not constitute the making of a factual assertion to prove or disprove the allegations of sexual harassment.
- g. The panel/hearing officer cannot draw any inference regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- h. Questions posed to parties and witnesses at the hearing must be relevant. Before a complainant, respondent, or witness answers a cross-examination or other question, the panel/hearing officer must determine whether the question being asked is relevant and, upon objection on relevance grounds, provide an explanation as to any decision to exclude a question as not relevant.
- i. Questions relating to a complainant's prior sexual behavior are deemed not relevant, unless the questions are offered to prove someone else was responsible for the alleged conduct or offered to prove consent.
- j. At the request of either party, the District/College must provide for the entire hearing to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.

Additional requirements and details regarding disciplinary appeals are contained within applicable collective bargaining agreements, handbooks, and other District/College policies and procedures, depending on whether the respondent is a student, a faculty member, a classified employee, or a manager/supervisor.

34 C.F.R. 106.45(b)(6); 34 C.F.R. 106.45(b)(7)

19. Additional Requirements for Student Sexual Misconduct Investigations

In cases of student sexual misconduct that are not subject to Title IX, when an accused student is subject to severe disciplinary sanctions (e.g. suspension or expulsion), and the credibility of witnesses was central to the investigative findings, District student discipline procedures must provide the following:

- a. An opportunity for the accused student to cross-examine witnesses indirectly at a live hearing, either in person or by videoconference; and
- b. A live hearing conducted by a neutral decision-maker other than the investigator.
- c. For purposes of this section, "indirect" cross-examination shall be conducted as follows:
 - 1) Any question to the witness shall be asked by a neutral party appointed by the District for the sole purpose of asking questions. The neutral party

- shall not be the accused student, the accused student's representative, or a member of the hearing panel; and
- 2) The accused student may submit written questions before and during the cross-examination, including any follow-up questions. The neutral party asking questions shall not exclude any questions unless there is an objection to the question by the hearing panel.

With respect to students complaining of sexual harassment, sexual assault, sexual violence, sexual exploitation or stalking, please see additional requirements outlined in Student Services Procedure 3027, Board Policy 2002, and Administrative Procedure 2002.

Title 5 CCR Section 59337;
Student Services Procedure 3027;
Education Code Section 66281.8

20. **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 30 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. Respondents in complaints involving student sexual misconduct must be notified of their right to appeal any disciplinary sanction imposed on them to the Governing Board.
- c. 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, along with the complainant's right to appeal to the State Chancellor's Office (for non-employment related matters), and the respondent. For cases involving employment discrimination, the notice shall include the complainant's right to file a complaint with the Department of Fair Employment and Housing.
- d. 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.
- e. Upon notification of the filing of an appeal with the State Chancellor's Office, districts must provide all relevant, non-privileged documentation upon the request of the Chancellor's Office.

Complainants must submit all appeals in writing.

21. **Appeals Involving Title IX Sexual Harassment Complaints**

For any disciplinary hearing involving allegations of Title IX sexual harassment, both the complainant and the respondent shall have the right to appeal the decision of the Hearing Authority to the Governing Board.

a. **Grounds for Appeal**

Under the August, 2020 Title IX regulations, for any sexual harassment complaint governed by Title IX, as defined above, both the complainant and the respondent have the right to appeal the findings of the Hearing Authority to the Governing Board. The grounds for appeal of decisions on Title IX determinations made by the Hearing Authority are limited to the following:

- 1) Procedural irregularity that affected the outcome;
- 2) New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome; and
- 3) The Title IX Coordinator, investigator, or decision-maker had a general or specific conflict of interest or bias against the complainant or respondent that affected the outcome.

b. **Procedures for Appeal**

- 1) As outlined above, following the decision of the Hearing Authority, both complainant and respondent will be advised of the findings of the Hearing Authority and the right to appeal.
- 2) Either respondent or complainant have the right to submit an appeal and request for review by the Governing Board within 30 days of date of the Hearing Authority's decision.
- 3) When the complainant is appealing the Hearing Authority's decision, the respondent shall be advised of that fact, advised of the date of the Governing Board's meeting to consider the appeal, and shall be given a right to respond. When the respondent is appealing the Hearing Authority's decision, the complainant shall be advised of that fact, advised of the date of the Governing Board's meeting to consider the appeal, and shall be given a right to respond to the Board.
- 4) Arrangements shall be made to keep respondent and complainant separate during the Governing Board's consideration of the appeal.
- 5) Both respondent and complainant shall be given the same length of time to make oral presentations to the Board.
- 6) In considering the appeal, the Governing Board shall review a description of the charges, notices, evidence, findings, and a copy of the proposed decision. The Governing Board shall consider no evidence other than that evidence received in the hearing process.
- 7) A District representative shall make a brief statement to the Governing Board.
- 8) The appellant and respondent may then make a brief statement to the Governing Board.
- 9) The statements shall be limited to five (5) minutes.

- 10) Upon completion of these statements, the Governing Board will have an opportunity to ask questions of both the District representative and the appellant and respondent.
- 11) The Governing Board will then dismiss the parties, and privately deliberate as to a decision.
- 12) The Governing Board shall issue a statement of decision to either uphold the underlying decision or modify that decision. If the Governing Board's decision is to modify the decision, it must include legal and factual support for that decision. Including findings of fact and a determination that the accused party did or did not commit the act(s) charged, a finding that the act did or did not constitute a violation of policy, and a decision as to whether the discipline proposed by the District would be upheld or modified. The Governing Board may also recommend further investigation. Pursuant to Education Code section 72122, regardless of whether the matter is heard in open or closed session, the final action of the Governing Board shall be taken in open session, and the result of that action shall be a public record. The name of the individuals involved, however, shall not be released.
- 13) The Chancellor's Office will send a written statement of the Governing Board's decision via certified or registered mail to the parties' last known address within three (3) working days of the hearing.
- 14) The decision of the Governing Board is final, and not subject to further appeal.

34 C.F.R. 106.45(b)(7); 34 C.F.R. 106.45(b)(8)

22. 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

23. 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

24. **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

25. **Record Retention for Title IX Sexual Harassment Complaints**

For any complaints involving allegations of Title IX sexual harassment, as defined above, the District must maintain documentation for seven (7) years, as required below:

- a. Investigations, including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the institution's education program or activity;
- b. Any appeal and the result therefrom;
- c. Any informal resolution; and
- d. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.
- e. Records of any actions (including any supportive measures) taken in response to a report or formal complaint of sexual harassment. In each instance, the institution must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the institution's education program or activity.
- f. If no supportive measures were provided to the complainant in a Title IX sexual harassment matter, the President/Designee must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

34 C.F.R. 106.45(b)(10)

Historical Annotation
Adopted 3/5/02
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Sixth Revision 7/14/15
Seventh Revision: 3/23/21

Related Board Policies
Board Policy 2001, 2002 Revised 5/6/03

Related Procedures:
Management, Supervisory and Confidential Employees Personnel Manual 2.2