

Chapter 3 - General Institution

AP 3410 Prohibition of Discrimination

References:

Education Code Sections 212.5, 44100, and 66281.5; Title IX, Education Amendments of 1972; Title 5 Sections 59300 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e; Board Policy 3435, 5500, 7360, 7365, 7700; Administrative Procedures 5500, 5520.

I. Introduction:

These written procedures and protocols are designed to ensure that individuals or groups subject to Discrimination receive resources and information. All students, employees, or third parties who allege that they that they have been subjected to Discrimination shall be provided with information regarding options and assistance available to them. Information shall be available at Human Resources, Campus Safety, Student Health Services, and Student Life.

II. Jurisdiction:

Any Discrimination, as defined by BP 3410, Prohibition of Discrimination, whether committed by an employee, student, or member of the public, occurring on campus is subject to applicable employee or student discipline procedures. Incidents that occur off campus may be subject to applicable employee or student discipline procedures. The College may resolve incidents of Discrimination through informal or formal procedures, as applicable.

This jurisdiction also includes, but is not limited to the College's main campus, any other property used by the College, and off-campus conduct and/or actions, including, but not limited to electronic activity (such as e-mail, texting, telephone contact, social media), when the Director of EEO Programs, or designee, determines that the off-campus conduct affects, disrupts, interferes or otherwise has the potential to have a continued adverse effect on students, employees, or third parties on-campus.

III. Duty to Report

All Employees are Responsible Employees. Any employee who knows or has reason to know of incidents that infringe upon BP 3410 shall promptly inform the Director of EEO Programs. Employees are required to disclose all information, including the names of the Parties, even where the person has requested anonymity.

The Director of EEO Programs will determine whether such confidentiality is appropriate given the circumstances of each such incident.

In cases of Discrimination that include incidents of Sexual Misconduct (including incest, sexual assault, sexual battery, sexual exploitation and rape), Dating Violence, Domestic Violence, or Stalking, see AP 3540 for the appropriate reporting procedures.

IV. Director of EEO Programs

The Director of EEO Programs is the College official responsible for oversight and implementation of DFEH, OCR, and EEOC compliance and management of all Discrimination complaints.

V. Confidentiality

Information regarding a complaint may be shared on a “need to know” basis with other campus employees, and with law enforcement, except for some limited exceptions. The Director of EEO Programs shall endeavor to honor any request for confidentiality; however, the Director of EEO Programs shall also weigh requests for confidentiality against the College’s duty to provide a safe and nondiscriminatory environment for all members of the Campus community. Confidentiality, therefore, cannot be ensured. The Director of EEO Programs, or designee, receives all Complainant requests for confidentiality involving cases of Discrimination, and determines if the request can be honored under the facts and circumstances of the particular case.

VI. Administrative Process:

1. Notice:

Once notice of Discrimination has been received by the Director of EEO Programs, or designee, the Complainant will be contacted to schedule a meeting with the Director of EEO Programs, or designee, and provided the following:

- a. A copy of the College’s Board Policies and Administrative Procedures regarding Discrimination.
- b. A list of campus and local support services and resources available to Complainant, including confidential and health services.
- c. A formal written complaint form and notification of the right to file a complaint.
- d. The option to notify proper law enforcement authorities, including on-campus and local law enforcement, if applicable.

2. Interim Remedies:

The Complainant will be given the opportunity to identify and discuss reasonable interim remedies, as appropriate.

The College will work with Students and Employees to ensure their safety and promote their well-being. Sometimes this assistance will take the form of immediate interim actions or remedies to support and protect the involved Students, Employees, or Third Parties in the immediate aftermath of an incident or while an investigation or disciplinary action is pending.

The Director of EEO Programs may determine remedies, such as, but not limited to, remedies relating to adjusting academic schedules, Campus Safety escort

services, restrictions on the Respondent pending investigation, and other remedies to promote the well-being, safety, and restoration of the campus community. Complainant shall be notified of any interim remedies.

3. Informal Resolution:

The Complainant may seek informal resolution to a complaint. Efforts at informal resolution need not include any investigation unless the Director of EEO Programs, or designee, determines that an investigation is warranted by the seriousness of the charges.

If informal resolution is determined to be appropriate, the Director of EEO Programs, or designee, will undertake efforts to informally resolve the charges, including but not limited to rearrangement of work/academic schedules, obtaining apologies, providing informal counseling and/or training, etc. The Director of EEO Programs, or designee, will also:

- (1) Advise the complainant that he or she need not participate in informal resolution;
- (2) Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for doing so;
- (3) Assure the complainant that they will not be required to confront, or work out problems with, the person accused of Discrimination;
- (4) Advise the complainant that they may file a non employment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR), U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where such a complaint is within that agency's jurisdiction.

Selecting an informal resolution does not extend the time limitations for filing a formal complaint. 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 AP 3435, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. Even if the complainant does dismiss the complaint, the Director of EEO Programs, or designee, may require the investigation to continue if he or she determines that the allegations are serious enough to warrant an investigation.

4. Formal Resolution and Investigation:

Where informal resolution is inappropriate or not sought by Complainant, or the Complainant submits a formal written complaint, the Director of EEO Programs, or assigned investigator, shall conduct an investigation in accordance with AP 3435, Discrimination and Harassment Investigations.

The standard of evidence applied to investigations of allegations of Discrimination is the Preponderance of the Evidence, that is, the greater weight

of the evidence. In applying this standard, the investigator will consider whether the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side.

5. Communication:

Complainants shall be kept informed of any ongoing investigation by the Director of EEO Programs, or the assigned investigator. Information may include the status of any student or employee disciplinary proceedings or appeal.

All inquiries from reporters or other media representatives about alleged Discrimination shall be referred to the College's Public Information Officer, which shall work with College officials to assure that all confidentiality rights are maintained.

Campus Safety will be responsible for maintaining the College's Annual Security Report, which includes a statement regarding the College's programs to prevent Discrimination and procedures that should be followed after an offense occurs. The Annual Security Report does not include any personally identifying information, but does include statistics of reported crimes, including, but not limited to Hate Crimes.

VII. Advisors

Both the Complainant and the Respondent may elect to be accompanied by an Advisor, including a collective bargaining representative, as permitted by existing bargaining agreements, to any meeting(s) or interview(s). The advisor's role is limited to observing and consulting with and providing support to the Complainant or Respondent. An Advisor may not participate in the investigation on the behalf of the Complainant or Respondent.

VIII. Concurrent Proceedings

College administrative proceedings are independent from criminal court, civil court, or other administrative proceedings. Discipline may be instituted against an individual also charged in civil or criminal courts based on the same facts that constitutes the alleged violation of applicable Board Policy. The College may proceed before, concurrently with, or after any judicial, criminal, or administrative proceedings. In cases of Discrimination, the College shall proceed with investigation without undue delay, in accordance with federal and state law requirements, and College Policies and Procedures.

IX. Retaliation

Any form of Retaliation against anyone who has complained of or formally reported Discrimination or has participated in an investigation of such a complaint, regardless of whether the complaint is substantiated, will not be tolerated, and violates Board Policy 7700, this procedure, and applicable law.

X. Education and Prevention

The Director of EEO Programs in partnership with Human Resources, Campus Safety, Student Health Services, and Student Life will develop as part of the College's established on-campus orientation program, education and prevention information about Discrimination. Information regarding Discrimination will be posted on the College's internet website and in other prominent locations. A copy of BP 3410, Prohibition of Discrimination, shall be provided to each employee at the time of hire.

A training program or informational services will be made available to all students at least once annually. The student training or informational services shall include an explanation of the policy, how it works, and how to file a complaint.

XI. Academic Freedom

To the extent the discrimination policies and procedures are in conflict with the College's policy on academic freedom, the discrimination policies and procedures shall prevail. If a faculty member wishes to use sexually explicit materials in the classroom as a teaching technique, the faculty member must review that use with the Department Chairperson and Division Dean who may consult with the Human Resources Office to determine whether or not this infringes upon the discrimination and harassment policies.