

Item 3.2, Attachment 2: Summary and Analysis of Proposed Regulatory Action

Board of Governors of the California Community Colleges
Proposed Revisions to Title 5 Regulations Concerning Unlawful Discrimination

Section 59300, et seq. governs the unlawful discrimination process for California community college students and staff. The regulations outline the responsibilities of the Chancellor's Office and districts, and the rights of students and staff. The proposed changes to Section 59300, et seq. are summarized and analyzed below.

SECTION 59300. PURPOSE.

Amended this section by adding a reference to state and federal law and deleted the legal citations in the body of the section. Inserted the citations to state and federal law in the authority section. Added the prohibition of retaliation. Added protected classes or perceived characteristics to update this section with current state law. Added catch-all language to include any other characteristic protected under federal and state law.

SECTION 55311. DEFINITIONS

Deleted individual definitions of protected classes and characteristics for consistency and to rely instead upon definitions in state and/or federal law.

Added a definition to "unlawful discrimination" in response to comments received.

SECTION 59320. DISTRICT RESPONSIBILITIES.

Amended this section by deleting the list of perceived classes or characteristics, as they are currently listed in Sections 59300 and 59311. Amended the section by removing unnecessary language for clarity.

SECTION 59327. INFORMAL RESOLUTION.

Amended subdivision (a) to remove the requirement that districts shall undertake informal efforts for all complaints. Added language that districts may undertake informal resolution under certain conditions. Deleted subdivisions (a)(1) through (a)(4) as the subdivisions are repetitive and already in place in other sections.

Amended subdivision (b) by removing unnecessary language for clarity.

Amended subdivision (c) to clarify that written or verbal complaints may be informally resolved. Requires that informal complaints be resolved unless the complainant dismisses the complaint.

Amended subdivision (d) to require that informal resolution of written and verbal complaints shall be completed within 90 days unless an extension of time is taken.

SECTION 59328. COMPLAINTS OF UNLAWFUL DISCRIMINATION.

Amended subdivision (a) to expand the list of possible complainants.

Added subdivision (b) to clarify that complaints to a responsible employee under state law and Title IX shall also be filed with the responsible district officer.

Amended subdivision (c) to clarify that complaints shall be submitted to the correct district officer and not the Chancellor's Office. Removal of the Chancellor's Office promotes efficiency and helps streamline the process, as the district is required to investigate complaints within 90 days.

Amended subdivision (d) to remove the requirement that complaints must be filed on a written form. Added language that complaints may be requested to be in writing on a form provided by the Chancellor or district.

Added subdivisions (e) and (e)(1) to clarify that verbal complaints must be accepted and documented in writing. Subdivision (e)(1) also requires districts to take appropriate steps to ensure accuracy of the documentation.

Amended subdivisions (f), (f)(1), and (f)(2) by reorganizing rights of students into one subdivision.

Amended subdivisions (g), (g)(1), and (g)(2) by reorganizing rights of employment complainants into one subdivision.

Deleted subdivisions (f), (f)(1), and (f)(2) on employment complainant's rights to avoid a repetitive and unnecessary subdivision that was reorganized into subdivision (g).

SECTION 59330. NOTICE TO CHANCELLOR.

Repealed Section 59330 to avoid duplication. Section 59330 was incorporated into Section 59340 and is no longer needed.

SECTION 59334. DISTRICT INVESTIGATION.

Amended subdivision (a) for clarity and efficiency by deleting unnecessary and burdensome notice requirements to the Chancellor.

Added subdivision (b) - (b)(5) to reorganize the section for consistency. Amended subdivision (b)(4) to replace the probable cause standard with the preponderance of the evidence standard that is currently used by districts.

SECTION 59336. ADMINISTRATIVE DETERMINATION.

Amended subdivision (a) to remove noticing requirements to the Chancellor to promote efficiency and consistency.

Amended subdivision (a)(1) to update pronouns and replace the probable cause standard with the preponderance of the evidence standard.

Amended subdivision (a)(2) and (b) for clarity by striking out unnecessary language.

Amended subdivision (b)(1) to update pronouns and replace the probable cause standard with the preponderance of the evidence standard.

Amended subdivision (b)(2) for clarity and consistency.

Added subdivision (c)-(c)(3) to require districts to provide certain information to respondents.

SECTION 59337. TITLE IX AND STUDENT DISCIPLINE PROCEDURES.

Added Section 59337 as a new section to this subchapter.

Added subdivision (a) to notify districts that they must follow the federal Title IX procedures for complaints that meet the standards and definitions under Title IX.

Added subdivisions (b)-(b)(3) to include requirements set forth by current California case law involving student sexual misconduct cases that are not subject to Title IX.

Added subdivision (c) to indicate how indirect cross-examinations shall be conducted.

Added subdivision (d) to allow districts to offer live hearings or neutral decision-makers for any other student disciplinary proceedings.

SECTION 59338. FINAL DISTRICT DECISION; APPEALS TO THE LOCAL GOVERNING BOARD.

Amended subdivision (a) for clarity and to extend the time to appeal to a local governing board from fifteen (15) to thirty (30) days. Added the respondent's right to appeal.

Moved provisions of subdivision (d) and (d)(1) to subdivision (a)(1) and (a)(2). Removed noticing requirements to the Chancellor for consistency.

Amended subdivision (b) to clarify district's responsibilities and to remove noticing requirements to the Chancellor.

Removed subdivision (d) to avoid having repetitive sections in Section 59338. Subdivision (d) was moved to subdivision (a) for consistency.

SECTION 59339. APPEAL TO THE CHANCELLOR.

Amended subdivision (a) by removing unnecessary language without affecting the substance of the section. Added specific references to the required notices to appeal to the Chancellor.

Amended subdivision (b) by removing unnecessary language without affecting the substance of the section.

Added subdivision (c) by requiring districts to provide any relevant documents to the Chancellor in the event of an appeal under subdivision (a).

SECTION 59340. DISCLOSURES TO THE CHANCELLOR.

Amended subdivision (a)-(a)(6) to remove mandatory noticing requirements to the Chancellor. Replaced mandatory language with permissive language.

Added subdivision (b)-(b)(4) to include a mandatory annual reporting requirement. Subdivision provides information on what data districts must submit to the Chancellor.

Amended subdivision (c) to require a five year retention period for all discrimination complaints. Deleted repetitive language on providing the Chancellor information upon request.

SECTION 59342. EXTENSIONS; FAILURE TO COMPLY.

Amended subdivision (a) to allow districts to self-certify a one-time extension up to 45 days without Chancellor's Office approval.

Added subdivisions (a)(1)-(a)(3) to articulate the conditions in which a district may self-certify a one-time extension up to 45 days.

Added subdivision (b) to require districts to notify the complainant when a self-certified extension is granted.

Added subdivision (c) to require districts to notify the complainant no later than 10 days of the administrative determination deadline.

Amended subdivision (d) to allow districts to request additional extensions from the Chancellor after the first 45-day extension.

Amended subdivision (e) to determine when the Chancellor may grant an extension request.

Amended subdivision (f) by removing unnecessary language.

SECTION 59350. CHANCELLOR'S REVIEW.

Amended subdivision (a) and added subdivisions (a)(1)-(a)(4) to provide clarity on the specific issues to review on during the Chancellor's appeal.

Amended subdivision (b) to provide a 90 day timeframe for the Chancellor to review appeals. Deleted language on the reasonable cause standard for consistency.

Deleted subdivision (c) to remove the reasonable cause standard.

SECTION 59352. REMAND.

Amended subdivision (a) to remove the reasonable cause standard. Added language on when the Chancellor may remand a matter back to a district.

Added subdivisions (a)(1)-(a)(3) to specify when the Chancellor may remand a matter back to a district.

Added subdivision (b) to specify a 60-days timeframe for districts to review a remanded matter.

Added subdivision (c) to notify non-employment complainants of the right to appeal to the Chancellor.

SECTION 59356. FORMAL RESOLUTION.

Repealed section 59356 to remove the probable cause standard and to remain consistent with section 59352.