

## Chapter 3 - General Institution

### AP 3435 Discrimination and Harassment Investigations

#### References:

Education Code Section 66281.5; Government Code 12950.1; Title 5 Sections 59320, 59324, 59326, 59328; and 59300 et seq.; 34 C.F.R. Section 106.8(b)

#### I. Introduction:

The College must ensure that its programs and activities are available to all persons without unlawful discrimination. The College shall investigate complaints of discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking or retaliation in its programs and activities, in accordance with these procedures.

#### II. Filing a Written or Verbal Complaint

Complaints of unlawful discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking or retaliation, may be written or verbal, and shall be filed by a student, an employee, a parent of a minor, or an individual with legal authority on behalf of a student or employee, who alleges that the student or employee or has suffered unlawful discrimination.

Any complaints to a responsible employee shall be forwarded to the Title IX Coordinator or designee.

Written complaints shall be provided to the Title IX Coordinator or designee. Written complaints may be completed electronically at:  
<http://www.mtsac.edu/discriminationcomplaint>

The complainant may be requested, but shall not be required, to submit the complaint on a form prescribed by the Chancellor Office's or the College.

Verbal complaints shall be lodged with the Title IX Coordinator or designee. The Title IX Coordinator or designee shall record the verbal complaint in writing. The College shall take appropriate steps to ensure the writing accurately reflects the facts alleged by the complainant.

#### In any complaint not involving employment:

- 1) The complaint shall be filed within one (1) 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;

- 2) The College shall advise student complainants that they may file their nonemployment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction.

#### In any complaint alleging discrimination in employment

- 1) The complaint shall be filed within three (3) years of the date the alleged unlawful discrimination occurred;
- 2) Advise complainants that they may file the complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies.

### III. Confidentiality

Information regarding investigations may be shared on a “need to know” basis with other College employees, and with law enforcement, except for some limited exceptions. The Title IX Coordinator, or designee, shall endeavor to honor any request for confidentiality; however, the Title IX Coordinator 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 Title IX Coordinator, or designee, receives all complainant requests for confidentiality involving cases of Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking and Retaliation, and determines if the request can be honored under the facts and circumstances of the particular case.

### IV. Informal Resolution

When charges of discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking or retaliation are brought to the attention of the Title IX Coordinator, the district may undertake efforts to informally resolve the charges with the complainant’s consent. The College must advise complainants that they need not participate in informal resolution.

Efforts at informal resolution may include, but are not limited to rearrangement of work/academic schedules, obtaining apologies, providing informal counseling and/or training, etc. Informal resolutions may not include an investigation. The Title IX Coordinator, or designee, determines when an investigation is warranted.

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 after a written or verbal complaint is made shall be completed within ninety (90) days.

#### **V. Investigation Procedures**

Upon receiving a complaint, the College shall notify the complainant that the College 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:

1. a description of the circumstances giving rise to the complaint;
2. a summary of the testimony provided by each witness, including the complainant and any available witnesses identified by the complainant in the complaint;
3. an analysis of any relevant data or other evidence collected during the course of the investigation;
4. a specific finding as to whether each factual allegation in the complaint occurred based on the preponderance of the evidence standard; and
5. any other information deemed appropriate by the district.

#### **VI. Investigation Participation**

All employees are required to cooperate with a College investigation into allegations of discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking or retaliation. Lack of cooperation impedes the ability of the College to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the College of its obligation to investigate. The College will conduct an investigation if it is discovered that prohibited conduct is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed.

#### **VII. Administrative Determination**

In any case not involving employment discrimination, within ninety (90) days of receiving a complaint, the College shall complete its investigation and forward a copy or summary of the report and written notice to the complainant setting forth all of the following:

1. the Title IX Coordinator or their designee's determination as to whether unlawful discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking or retaliation occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard;

2. In the event 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;
4. the complainant's right to appeal to the College governing board and the State Chancellor's Office; and
5. the respondent's right to appeal to College governing board any disciplinary sanction imposed upon the respondent.

In any case involving employment discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking or retaliation, 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:

1. The Title IX Coordinator's or their designee's determination as to whether discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking or retaliation occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard;
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 governing board and to file a complaint with Department of Fair Employment and Housing.

In any case involving unlawful discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking or retaliation, when a district provides the complainant with any information, the College shall also provide to the respondent the following:

1. The Title IX Coordinator'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 misconduct by students, the respondent's right to appeal to the local governing board any disciplinary sanction imposed upon the respondent.

## **VIII. Appeal Rights**

If the complainant is not satisfied with the results of the administrative determination, the complainant, or respondent in student sexual misconduct, dating violence, domestic violence, or stalking cases, may submit a written appeal to the College's Board of Trustees within thirty (30) days from the date of the

administrative determination. The College's Board of Trustees shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision within forty-five (45) days after receiving the appeal.

The College's Board of Trustees review on appeal is limited to the following issues:

- 1) Whether there was a procedural error in violation of this subchapter;
- 2) Whether there was a defect in the investigation;
- 3) Whether new evidence not unavailable during the investigation despite the complainant's or respondent's due diligence would substantially impact the outcome of the investigation;
- 4) Whether correct legal standards were applied; and
- 5) Whether the district's determination was an abuse of discretion.

If the governing board does not act within forty-five (45) days the administrative determination shall be deemed approved on the forty-sixth (46) day and shall become the final district decision. (2) The district shall promptly notify the complainant and the respondent of the board's action, or if that the board took no action and that the administrative determination is deemed approved.

In any case not involving employment discrimination, the district shall promptly forward to the complainant, and the respondent, a copy of the final district decision rendered by the governing board, if any, and notice of the complainant's right to appeal the district's decision to the Chancellor.

In any case involving employment discrimination, the district shall promptly forward to the complainant a copy of the final district decision rendered by the governing board that includes the complainant's right to file a complaint with the Department of Fair Employment and Housing (DFEH), where the case is within the jurisdiction of that agency.

## **IX. Extensions**

If the College is unable to comply with the 90-day deadline, the district may extend the time to respond by up to 45 additional days. An extension may be taken only once without permission from the Chancellor's Office, and must be necessary for one of the following reasons:

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

The College shall send a written notice to the complainant, and to a respondent who is aware of an investigation, indicating the necessity of an extension, the

justification for the extension, and the number of days the deadline will be extended.

Notice of an extension shall be sent to the complainant, and to a respondent who is aware of an investigation, no later than 10 days prior to the initial time to respond.

The College may request additional extensions from the Chancellor Office after the initial 45-day extension. A copy of the extension request shall be sent to the complainant, and to a respondent who is aware of an investigation. The complainant and respondent may each file a written objection with the Chancellor Office within five (5) days of receipt.

The Chancellor Office may grant the extension for good cause, unless delay would be unduly prejudicial to the complainant or investigation.

If the College fails to comply with the requirements of the Chancellor's Office, the Chancellor's Office may proceed to review the case based on the original complaint and any other relevant information.

#### **X. Disclosures to the Chancellor's Office**

Upon request of the Chancellor's Office, the College shall provide copies of all documents related to a discrimination complaint, including the following:

- 1) the complaint;
- 2) any investigative report, unless subject to the attorney-client privilege;
- 3) the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final;
- 4) the notice to the complainant;
- 5) the complainant's appeal of the district's administrative determination; and
- 6) any other non-privileged documents or information the Chancellor's Office requests.

The College shall provide to the Chancellor's Office an annual report with the following information:

- 1) the numbers of employment and non-employment discrimination complaints and informal charges received in the previous academic year,
- 2) the number of complaints and informal charges resolved in the previous academic year,
- 3) the number of complaints of unlawful discrimination received in the previous academic year, and the number of those complaints that were sustained in whole or in part, and the nature of allegations substantiated and unsubstantiated in the previous academic year,
- 4) any other information requested by the Chancellor's Office.

**Districts shall retain all records arising from informal discrimination charges and formal discrimination complaints for a period of five (5) years after closing a case.**

Filing a Timely Complaint

~~The College strongly encourages employees and students who believe they are being harassed or discriminated against to file a complaint within 30 days of the alleged incident. All supervisors and managers have a mandatory duty to report incidents of harassment and discrimination; the existence of a hostile, offensive or intimidating work environment, and acts of retaliation.~~

Communicating that the Conduct is Unwelcome

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

Oversight of Complaint Procedure

~~The Chief Human Resources Officer, or his/her designee, is the "responsible College officer" charged with receiving complaints of discrimination or harassment, and coordinating their investigation.~~

~~The actual investigation of complaints may be assigned to the Chief Human Resources Officer, or his/her designee, to other staff or to outside persons or organizations under contract with the College. This shall occur whenever the Chief Human Resources Officer, or his/her designee, is named in the complaint or implicated by the allegations in the complaint.~~

Where to File a Complaint

~~A student or employee who believes he or she has been discriminated against or harassed in violation of the College's policy and procedures may make a complaint orally or in writing, 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.~~

~~If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the College, he or she must file the complaint on a form prescribed by the Chancellor's Office of the California Community Colleges. These approved forms are available from the Chief Human Resources Officer or his /her designee and at the following URL: [www.cccco.edu/divisions/legal/discrimination/discrimination.htm](http://www.cccco.edu/divisions/legal/discrimination/discrimination.htm).~~

~~The completed form must be filed with any of the following:~~

~~the Chief Human Resources Officer, or his/her designee;~~

~~(identify others, including the Chief Student Services Officer, the Administrative Services/Risk Management Office (?), and College President/CEO); and/or~~

~~the Chancellor's Office of the California Community Colleges.~~

~~Employee complainants shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH) and complaints filed with the EEOC and/or the DFEH should be forwarded to the Chancellor's Office of the California Community Colleges. Any College employee who receives a harassment complaint shall notify the Chief Human Resources Officer, or his/her designee, immediately.~~

### Intake and Processing of the Complaint

~~Upon receiving notification of a harassment or discrimination complaint, the Chief Human Resources Officer, or his/her designee, shall:~~

- ~~• Undertake efforts to uniformly resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules, obtaining apologies, providing informal counseling and/or training, etc.;~~
- ~~• Advise the complainant that he or she need not participate in an informal resolution of the complaint, as described above, and that he or she may file a complaint with the Office of Civil Rights of the U.S. Department of Education. The Chief Human Resources Officer, or his/her designee, shall also notify the Chancellor's Office of the California Community Colleges of the complaint.~~
- ~~• Authorize the investigation of the complaint, and supervise and/or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. Where complainants opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. In the case of a formal complaint, the investigation will include interviews with the complainant, the accused, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.~~
- ~~• Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.~~
- ~~• Set forth the results of the investigation in a written report. The written report shall include a description of the circumstances giving rise to the complaint, a summary of the testimony of each witness, an analysis of any relevant data or other evidence~~



~~collected during the investigation, a specific finding as to whether discrimination did or did not occur with respect to each allegation in the complaint, and any other appropriate information.~~

~~• Provide the complainant and accused with a copy or summary of the investigative report within ninety days from the date the College received the complaint. The complainant and accused shall also be provided with a written notice setting forth the determination of the Chief Human Resources Officer, or his/her designee, as to whether harassment or other discriminatory conduct did or did not occur with respect to each allegation in the complaint; a description of action taken, if any, to prevent similar problems from occurring in the future; the proposed resolution of the complaint; and notice of the parties' rights to appeal to the College's Board of Trustees and the Chancellor's Office of the California Community Colleges. The results of the investigation and the determination as to whether harassment or other discriminatory conduct occurred shall also be reported to the accused, and the appropriate academic or administrative official(s). Reports to the complainant shall be prepared so as not to violate any applicable privacy rights of the accused.~~

#### Investigation of the Complaint

~~The College shall promptly investigate every complaint of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. As set forth above, where the complainant opts for an informal resolution, the Chief Human Resources Officer, or his/her designee, may limit the scope of the investigation as appropriate. The College 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.~~

~~Investigation Steps: The College will fairly and objectively investigate harassment and discrimination complaints utilizing the following steps: interviewing the complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses, if any; reminding all individuals interviewed of the College's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion.~~

~~Timeline for Completion: The College will undertake its investigation promptly and as swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report within 90 days of the College receiving the complaint.~~

~~Cooperation Encouraged: All employees are expected to cooperate with a College investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of the College to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the~~

~~College of its obligation to investigate. The College will conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed.~~

#### ~~Discipline and Corrective Action~~

~~If harassment, discrimination, and/or retaliation occurred in violation of the policy or procedure, the College shall take disciplinary action against the accused and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense. If discipline is imposed, the nature of the discipline will not be communicated to the complainant.~~

~~Disciplinary actions against faculty, staff and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.~~

~~The College shall also take reasonable steps to protect the complainant from further harassment and/or discrimination and to protect the complainant and witnesses from retaliation as a result of communicating the complaint and/or assisting in the investigation. The College shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the extent possible without impeding the College's ability to investigate and respond effectively to the complaint.~~

#### ~~Appeals~~

~~If the complainant is not satisfied with the results of the administrative determination, he or she may, within 15 days, submit a written appeal to the Board of Trustees. The Board of Trustees shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board of Trustees shall issue a final College decision in the matter within 45 days after receiving the appeal. A copy of the decision rendered by the Board of Trustees shall be forwarded to the complainant and to the Chancellor's Office of the California Community Colleges. The complainant shall also be notified of his or her right to appeal this decision.~~

~~If the Board of Trustees does not act within 45 days, the administrative determination shall be deemed approved and shall become the final decision of the College in the matter.~~

~~The complainant shall have the right to file a written appeal with the Chancellor's Office of the California Community Colleges within 30 days after the Board of Trustees issues the final College decision or permits the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Section 59350 of Title 5 of the California Code of Regulations.~~

~~In any case involving employment discrimination, including workplace harassment, the complainant may, at any time before or after the issuance of the final decision of the~~

~~College, file a complaint with the Department of Fair Employment and Housing. In such cases, the complainant may also file a petition for review with the Chancellor's Office of the California Community Colleges within 30 days after the governing board issues the final decision or permits the administrative decision to become final.~~

~~Within 150 days of receiving a formal complaint, the College shall forward to the Chancellor's Office of the California Community Colleges the original complaint, the investigative report, a copy of the written notice to the complainant setting forth the results of the investigation, a copy of the final administrative decision rendered by the Board of Trustees or indicating the date upon which the decision became final, and a copy of the notification to the complainant of his or her appeal rights. If, due to circumstances beyond its control, the College is unable to comply with the 150-day deadline for submission of materials, it may file a written request for an extension of time no later than ten days prior to the expiration of the deadline.~~

#### Dissemination of Policy and Procedures

~~College Policy and Procedures related to harassment will be provided to all students, faculty members, members of the administrative staff and members of the support staff, and will be posted on campus.~~

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

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