

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)

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

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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I. Introduction:

These written procedures and protocols are designed to ensure that the College carries out a timely, thorough, and impartial investigation into complaints of Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking and Retaliation. The College strongly encourages students, employees, and third parties who believe they are being subjected to Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation to file a complaint as soon as possible after an incident occurs. Furthermore, students, employees, and third parties are encouraged to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste and/or inappropriate

II. Filing of a Formal Written Complaint

If a complainant decides to file a formal written complaint of Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation against a student, employee, or third party, the complaint may file the complaint on a form available in Human Resources or online at:

https://cm.maxient.com/reportingform.php?MtSanAntonioCollege&layout_id=1

The completed form may be submitted to the College either via mail, electronically, or in person to Human Resources at Mt. San Antonio College.

If a complainant decides to file a formal written Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation complaint against the College, he or she must file the complaint on a form prescribed by the State Chancellor. These approved forms are available from the College and also at the State Chancellor's website, as follows:

<http://www.cccco.edu/ChancellorsOffice/Divisions/Legal/Discrimination/tabid/294/Default.aspx>

The completed form must be filed with the College representative or mailed directly to the State Chancellor's Office of the California Community Colleges.

If a complaint of Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation is presented in another written format, such as a letter, the College may request that the complainant complete the appropriate form. If there is a delay in obtaining a completed form, or the complainant refuses to transfer the information or otherwise complete the form, but wishes to pursue the formal complaint process, the College may attach the letter to the form and open a formal investigation. While a complaint filed in an improper form is still procedurally defective under title 5 standards, the merits of the complaint itself may still be valid and must be addressed.

Once a complaint is filed, the individual(s) accused of engaging in Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation should be advised of that filing and the general nature of the complaint. This should occur as soon as possible and in a manner that is appropriate under the circumstances. The College will also advise the accused that an assessment of the accuracy of the allegations has not yet been made, that the complaint will be investigated, that the accused will be provided an opportunity to present their side of the matter, and that any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.

III. Oversight of Complaint Procedure

The Director of EEO Programs/Title Coordinator, or their designee, is charged with receiving complaints of Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking and Retaliation, and coordinating their investigation.

The actual investigation of complaints may be assigned to the Director of EEO Programs/Title Coordinator, or his/her designee, to other staff or to outside persons or organizations under contract with the College. This shall occur whenever the The Director of EEO Programs/Title Coordinator, or designee, is named in the complaint or implicated by the allegations in the complaint.

IV. Threshold Requirements Prior to Investigation of a Formal Written Complaint

When a formal written complaint is filed it will be reviewed to determine if the complaint meets the following requirements:

- The complaint should be filed on a form prescribed by the College. If the complaint is not filed on this form, every effort should be made to have the complaint filed on this form and to obtain complainant's signature. However, where a complainant has indicated that they wish to pursue the formal complaint process, a complaint should not be rejected solely based on the failure to file the complaint on this form.
- The complaint must allege Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation prohibited under title 5, section 59300.

- The complaint may be filed by anyone who alleges that they have personally been subjected to Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation or by one who has learned of such conduct in their capacity as a student, employee, or third party.
- In any complaint not involving employment, the complaint must be filed within one year of the date of the alleged incident or within one year of the date on which the complainant knew or should have known of the facts underlying the specific incident or incidents.
- 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 will be extended by no more than 90 days following the expiration of that 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of 180 days. Complaints received after 180 days, but within one year of the most recent alleged incident will be reviewed and considered.

V. Threshold Requirements Prior to Investigation of a Formal Written Complaint

If a complaint is found to be defective it will be immediately returned to the complainant with a complete explanation of why an investigation will not be initiated under California Code of Regulations, title 5, section 59300 et seq. The notice will inform the complainant that the complaint does not meet the requirements of section 59328, and shall specify in what requirement the complaint is defective. A copy of the notice to the complainant will also be sent to the State Chancellor's Office.

VI. Notice to State Chancellor or District

A copy of all formal complaints filed in accordance with the title 5 regulations will be forwarded to the State Chancellor's Office immediately upon receipt, regardless of whether the complaint is brought by a student, employee, or third party. Similarly, when the State Chancellor's Office receives a complaint a copy will be forwarded to the College.

VII. Investigation Procedures

Director of EEO Programs/Title Coordinator, or designee, may 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, may limit the scope of the investigation or 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 College will fairly and objectively investigate Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking and Retaliation complaints utilizing the following steps: interviewing the complainant(s); interviewing respondent(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; and reviewing personnel/academic files of all involved parties.

The investigator will conduct a review the factual information gathered through the investigation to determine whether the alleged conduct constitutes Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation. The investigator will consider 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.

The investigator will 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, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation did or did not occur with respect to each allegation in the complaint, and any other appropriate information.

The results of the investigation and the determination as to whether the alleged conduct occurred shall also be communicated to the complainant, the respondent, and the appropriate academic or administrative official(s). Communication shall be prepared so as not to violate any applicable privacy rights of the complainant and the respondent.

VIII. Investigation Participation

All employees are expected 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.

IX. Administrative Determination

In any case not involving employment related Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation, within 90 days of receiving a complaint filed under title 5, sections 59300 et seq., Director of EEO Programs/Title IX Coordinator, or designee, will do the following:

a.) Send to the State Chancellor:

1. a copy of the investigative report;
2. the determination of the Vice President of Human Resources, or designee, as to whether a preponderance of evidence indicates Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation occurred with respect to each allegation in the complaint;

3. a description of actions taken, if any, to prevent similar problems from occurring in the future;
4. the proposed resolution of the complaint; and
5. the complainant's right to appeal to the College Board of Trustees and the State Chancellor.

b.) Send to the complainant:

- a. A copy or summary of the investigation report;
- b. the determination of the Vice President of Human Resources, or designee, as to whether a preponderance of evidence indicates Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation occurred with respect to each allegation in the complaint;
- c. a description of actions taken, if any, to prevent similar problems from occurring in the future;
- d. the proposed resolution of the complaint; and
- e. the complainant's right to appeal,
 - i. for students and third parties, to the College Board of Trustees and the State Chancellor.
 - ii. for employees, to the College Board of Trustees and to file a complaint with the Department of Fair Employment and Housing.

c.) Send to the respondent:

- a. A summary of the investigation report;
- b. the determination of the Vice President of Human Resources, or designee, as to whether a preponderance of evidence indicates Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation occurred with respect to each allegation in the complaint;
- c. a description of actions taken, if any, to prevent similar problems from occurring in the future; and
- d. the proposed resolution of the complaint;

X. Complainant's Appeal Rights

Complainants have appeal rights that they may exercise if they are not satisfied with the results of the College's administrative determination. At the time the administrative determination is mailed to the complainant, Director of EEO Programs/Title IX Coordinator, or designee, shall notify the complainant of his or her appeal rights as follows:

- First level of appeal: The complainant has the right to file an appeal to the College's Board of Trustees within 15 days from the date of the administrative determination. The College's Board of Trustees will review the original complaint, the investigative report, the administrative determination, and the appeal.
- The College's Board of Trustees will issue a final College decision in the matter within 45 days after receiving the appeal. Alternatively, The College's Board of Trustees 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 College decision in the matter. A copy of the final decision rendered by The College's Board of Trustees will be forwarded to the complainant and to the State Chancellor's Office.

- 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 College decision or permits the administrative determination to become final by taking no action within 45 days.¹ The appeal must be accompanied by a copy of the decision of The College's Board of Trustees or evidence showing the date on which the complainant filed an appeal with the governing board, and a statement under penalty of perjury that no response was received from the governing board within 45 days from that date. In any case involving employment discrimination, the complainant has the right to file a complaint with the Department of Fair Employment and Housing (DFEH) where the case is within the jurisdiction of that agency.

Complainants must submit all appeals in writing.

Under title 5 there are no corresponding appeal rights to any other parties aside from the complainant(s).

XI. Provision of Information to State Chancellor

In any case not involving employment discrimination, within 150 days of receiving a complaint, Director of EEO Programs/Title IX Coordinator, or designee, will either:

Forward the following to the State Chancellor:

- A copy of the final College decision rendered by the 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.
- A copy of the notice of appeal rights the College sent the complainant.
- Any other information the State Chancellor may require; or notify the State Chancellor that the complainant has not filed an appeal with the district governing board and that the District has closed its file.

The College will keep these documents on file for a period of at least three years after closing the case, and in any case involving employment discrimination, make them available to the State Chancellor upon request.

XII. Extensions

¹ The Department of Fair Employment and Housing (DFEH) has final jurisdiction over employment-related cases. In addition, title 5, section 59339(b) does not provide appeal rights to the State Chancellor in employment-related discrimination cases.

If for reasons beyond its control, the College 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, Director of EEO Programs/Title IX Coordinator, or designee, will file a written request that the State Chancellor grant an extension of the deadline. Where an extension is deemed necessary by the College, it must be requested from the State Chancellor regardless of whether or not the case involves employment discrimination. 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 College expects to be able to submit the required materials.

A copy of the request for an extension will be sent to the complainant, who will be advised that he or she may file written objections with the State Chancellor within 5 days of receipt.

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

XIII. Discipline and Corrective Action

If Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation occurred in violation of applicable policies or procedures, the College may take disciplinary action against the respondent and any other remedial action it determines to be appropriate. The action will be timely, 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 Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking or Retaliation and to protect the complainant and witnesses from retaliation.

XIV. 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 Director of EEO Programs/Title IX Coordinator, or designee, shall endeavor to honor any request for confidentiality; however, the Director of EEO Programs/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 Director of EEO Programs/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.

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.~~

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~~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.~~

Reviewed: June 25, 2013

Reviewed: December 6, 2014

Reviewed: June 9, 2015

Reviewed: August 17, 2016

AP 3435 Discrimination and Harassment Complaints and Investigations

References:

20 U.S. Code Sections 1681 et seq.;
Education Code Sections 212.5, 231.5, 66281.5, and 67386;
Government Code Section 12950.1;
Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et seq.;
Title 2 Sections 11023 and 11024;
34 Code of Federal Regulations Section 106.8(b)

NOTE: *This procedure is **legally required**. Local practice may be inserted. The following is an illustrative example.*

NOTE: *In order to comply with Department of Fair Employment and Housing (“DFEH”) regulations, Districts adopting this policy should also adopt AP 3410 Nondiscrimination and AP 3430 Prohibition on Harassment.*

NOTE: *DFEH Regulations require any employer whose workforce contains 10 percent or more of persons who speak a language other than English as their spoken language to translate its harassment, discrimination and retaliation policies into every language that is spoken by at least 10 percent of the workforce. In order to comply with this requirement, Districts should translate BP 3410 Nondiscrimination, BP 3430 Prohibition of Harassment, AP 3410 Nondiscrimination, AP 3430 Prohibition on Harassment, and AP 3435 Discrimination and Harassment Complaints and Investigations into any applicable languages.*

Complaints

The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in harassment, discrimination, or retaliation. Any person who has suffered harassment, discrimination, or retaliation may file a formal or informal complaint of harassment, discrimination, or retaliation, or who has learned of harassment, discrimination, or retaliation.

A formal complaint is a written and signed statement filed with the District or the California Community Colleges Chancellor’s Office that alleges harassment, discrimination, or retaliation in violation of the District’s Board Policies, Administrative Procedures or in violation of state or federal law. An informal complaint is any of the following: (1) An unwritten allegation of harassment, discrimination, or retaliation; (2) a written allegation of harassment, discrimination, or retaliation that falls outside the timelines for a formal complaint; or (3) a written complaint alleging harassment, discrimination, or retaliation filed by an individual who expressly indicates that he/she does not want to file a formal complaint.

Informal Complaints

Any person may submit an informal complaint to the [**designate position**] or any other District or college administrator. Administrators receiving an informal complaint shall immediately notify the [**designate position**] in writing of all pertinent information and facts alleged in the informal complaint.

Upon receipt of an informal complaint, the [**designate position**] will notify the person bringing the informal complaint of his/her right to file a formal complaint, if the incident falls within the timeline for a formal complaint, and explain the procedure for doing so. The complainant may later decide to file a formal complaint, if within the timelines to do so. If the individual chooses not to file a formal complaint, or if the alleged conduct falls outside the timeline to file a formal complaint, the [**designate position**] shall consider the allegations contained in the informal complaint and determine the appropriate course of action. This may include efforts to informally resolve the matter, or a fact-finding investigation.

Investigation of an informal complaint will be appropriate if the [**designate position**] determines that the allegation(s), if proven true, would constitute a violation of the District policy prohibiting harassment, discrimination, or retaliation. The [**designate position**] will explain to any individual bringing an informal complaint that the [**designate position**] may decide to initiate an investigation, even if the individual does not wish the [**designate position**] to do so. The [**designate position**] shall not disregard any allegations of harassment, discrimination, or retaliation solely on the basis that the alleged conduct falls outside the deadline to file a formal complaint.

Formal Complaints

Formal Complaints must be filed with the Chancellor of the California Community Colleges or the [**designate position**] unless the party submitting the Formal Complaint alleges discrimination, harassment, or retaliation against the responsible district officer, in which case it should be submitted directly to the [**CEO**] or the Chancellor of the California Community Colleges.

Formal Complaints should be submitted on the form prescribed by the Chancellor of the California Community Colleges. A copy of the form will be available at [**specify location, such as each college student services office, the office of College President, the District human resources department and on college's/district's web sites**].

If any party submits a written allegation of harassment, discrimination, or retaliation not on the form described above, the District will seek to have the individual complete and submit the form. However, if the individual chooses not to do so, the District will attach the written allegation(s) to the form and treat it as a Formal Complaint. In no instance will the District reject a written allegation of harassment, discrimination, or retaliation on the basis that it was not submitted on the proper form.

A Formal Complaint must meet each of the following criteria:

- It must allege facts with enough specificity to show that the allegations, if true, would constitute a violation of District policies or procedures prohibiting discrimination, harassment, or retaliation;
- The complainant must sign and date the Formal Complaint;
- The complainant must file any Formal Complaint not involving employment within one year of the date of the alleged discriminatory, harassing, or retaliatory conduct or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation(s) of discrimination, harassment, or retaliation.
- The complainant must file any Formal Complaint alleging discrimination, harassment, or retaliation in employment within 180 days of the date of the alleged discriminatory, harassing, or retaliatory conduct, except that this period shall 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.

If the Formal Complaint does not meet the requirements set forth above, the [**designate position**] will promptly return it to the complainant and specify the defect. If the sole defect is that the Formal Complaint was filed outside the applicable proscribed timeline, the [**designate position**] will handle the matter as an informal complaint.

Oversight of Complaint Procedure: The [**designate position**] is the "responsible District officer" charged with receiving complaints of discrimination or harassment, and coordinating their investigation.

The actual investigation of complaints may be assigned [**insert by whom**] to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the [**designate officer**] is named in the complaint or implicated by the allegations in the complaint.

Who May File a Complaint: Any student, employee, or third party who believes he/she has been discriminated against or harassed by a student, employee, or third party in violation of this procedure and the related policy.

Where to File a Complaint: A student, employee, or third party who believes he/she has been discriminated against or harassed in violation of these policy and procedures may make a complaint orally or in writing.

If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, he/she must file the complaint on a form prescribed by the California Community Colleges Chancellor's Office. These approved forms are available from the [**designate officer**] and at the California Community Colleges Chancellor's Office website.

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

- the [**designate officer**];
- [**identify others, including the Chief Student Services Officer, Chief Human Resources Officer and CEO**]; or
- the California Community Colleges Chancellor's Office.

Employment-Related Complaints

Complainants filing employment-related complaints 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).

Complaints filed with the EEOC or the DFEH should be forwarded to the California Community Colleges Chancellor's Office.

Any District employee who receives a harassment or discrimination complaint shall notify the [**designated officer**] immediately.

Filing a Timely Complaint: Since failure to report harassment and discrimination impedes the District's ability to stop the behavior, the District strongly encourages anyone who believes they are being harassed or discriminated against, to file a complaint. 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 harassment and discrimination; the existence of a hostile, offensive or intimidating work environment, and acts of retaliation.

The District will investigate complaints involving acts that occur off campus if they are related to an academic or work activity or if the harassing conduct interferes with or limits a student's or employee's ability to participate in or benefit from the school's programs or activities.

Communicating that the Conduct is Unwelcome: The District 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 or inappropriate.

Intake and Processing of the Complaint: Upon receiving notification of a harassment or discrimination complaint, the [**designate officer**] shall:

- Undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling, training, etc.

- Advise all parties ~~the complainant~~ that he/she need not participate in an informal resolution of the complaint, as described above, and they have ~~has~~ the right to end the informal resolution process at any time. **NOTE: The OCR September 2017 Interim Guidance now permits mediation in all cases as long as all parties agree. Districts should exercise care in using mediation in cases of sexual violence.**
- Advise a student complainant that he/she may file a complaint with the Office ~~for of~~ Civil Rights of the U.S. Department of Education and employee complainants may file a complaint with the Department of Fair Employment and Housing. All complainants should be advised that they have a right to file a complaint with local law enforcement, if the act complained of is also a criminal act. The District must investigate even if the complainant files a complaint with local law enforcement. In addition, the District should ensure that complainants are aware of any available resources, such as counseling, health, and mental health services. The [**designate officer**] shall also notify the California Community Colleges Chancellor's Office of the complaint.
- Take interim steps to protect a complainant from coming into contact with an accused individual, especially if the complainant is a victim of sexual violence. The [**designate officer**] should notify the complainant of his/her options to avoid contact with the accused individual and allow students to change academic situations as appropriate. For instance, the District may prohibit the accused individual from having any contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and accused individual, the District shall minimize the burden on the complainant. For example, it is not appropriate to remove complainants from classes or housing while allowing accused individuals to remain.

Investigation

The [**designate position**] shall:

- Authorize the investigation of the complaint, and supervise or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. Where ~~complainants~~ the parties 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.

Investigation of the Complaint: The District shall promptly investigate every complaint and claim of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. This includes complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, on a District bus, or at a class or training program sponsored by the District at another location. The District shall promptly investigate complaints of harassment or discrimination that occur off campus if the alleged conduct creates a hostile environment on campus.

As set forth above, where the ~~complainant parties~~ opts for an informal resolution, the [**designated officer**] may limit the scope of the investigation, as appropriate. 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. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the accused individual's rights to receive information about the allegations if the information is maintained by the District as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. The District will inform the complainant if it cannot maintain confidentiality.

Investigation Steps: The District will fairly and objectively investigate harassment and discrimination complaints. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the District's grievance procedures operate. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigators will use the following steps: interviewing the complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses and evidence identified by each party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District'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. When the District evaluates the complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that discrimination or harassment has occurred.

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

Cooperation Encouraged: All employees are expected to cooperate with a District investigation into allegations of harassment or discrimination. 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 harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed. No employee will be retaliated against as a result of lodging a complaint or participating in any workplace investigation.

Written Report

The results of the investigation of a complaint shall be set forth in a written report that will include at least all of the following information:

- A description of the circumstances giving rise to the Formal Complaint;
- A summary of the testimony provided by each witness interviewed by the investigator;
- An analysis of relevant evidence collected during the course of the investigation;
- A specific finding as to whether there is probable cause to believe that discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint; and
- Any other information deemed appropriate by the District.

Confidentiality of the Process

Investigations are best conducted within a confidential climate. Therefore, the District does not reveal information about ongoing investigations except as necessary to fulfill its legal obligations. The District will keep the investigation confidential to the extent possible, but it cannot guarantee absolute confidentiality because release of some information on a “need-to-know-basis” is essential to a thorough investigation and to protect the rights of Accused students and employees during the investigation process and any ensuing discipline.

Administrative Determination

- In any case not involving employment discrimination, within 90 days of receiving a formal complaint, the district shall complete its investigation and forward a copy of the investigative report to the Chancellor of the California Community Colleges, a copy or summary of the report to ~~both parties~~the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:
 - The determination of the [**CEO or his/her designee**] as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
 - A description of actions taken, if any, to prevent similar problems from occurring in the future;

- The proposed resolution of the complaint; and
 - The complainant's right to appeal to the District governing board and the Chancellor California Community Colleges.
- In any case involving employment discrimination, within 90 days of receiving a formal complaint, the district shall complete its investigation and forward a copy or summary of the report to the complainant [**NOTE: For cases involving employment discrimination, Title 5 only requires that a copy or summary of the report be provided to the complainant. The District may, but is not required to, provide the report to the respondent in order to have a consistent process for addressing employment and non-employment discrimination claims.**], and written notice setting forth all the following to the complainant:
 - The determination of the [**CEO or his/her designee**] as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
 - A description of actions taken, if any, to prevent similar problems from occurring in the future;
 - The proposed resolution of the complaint; and
 - The complainant's right to appeal to the district governing board and to file a complaint with Department of Fair Employment and Housing or the U.S Equal Employment Opportunity Commission.

Discipline and Corrective Action

If harassment, discrimination or retaliation occurred in violation of the policy or procedure, the District 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. Remedies for the complainant might include, but are not limited to:

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes or work in the same work area;
- preventing offending third parties from entering campus;
- providing counseling services or a referral to counseling services;
- providing medical services or a referral to medical services;
- providing academic support services, such as tutoring;
- arranging for a student-complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and

- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.

If the District imposes discipline, the nature of the discipline will not be communicated to the complainant. However, the District may disclose information about the sanction imposed on an individual who was found to have engaged in harassment when the sanction directly relates to the complainant; for example, the District may inform the complainant that the harasser must stay away from 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 District shall also take reasonable steps to protect the complainant from further harassment, or discrimination, and to protect the complainant and witnesses from retaliation as a result of communicating the complaint or assisting in the investigation.

The District will ensure that complainants and witnesses know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred. The District 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 District's ability to investigate and respond effectively to the complaint.

If the District cannot take disciplinary action against the accused individual because the complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

Appeals

If the District imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the procedure for appealing a disciplinary decision.

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

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

In any case not involving workplace discrimination, harassment, or retaliation, the complainant shall have the right to file a written appeal with the California Community Colleges Chancellor's Office within thirty days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Title 5 Section 59350.

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 District, file a complaint with the Department of Fair Employment and Housing.

Extension of Time

Within 150 days of receiving a formal complaint that does not involve employment discrimination, the District shall forward to the California Community Colleges Chancellor's Office 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 or indicating the date upon which the decision became final, and a copy of the notification to the complainant of his/her appeal rights. If, due to circumstances beyond its control, the District 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.

File Retention

The District will retain on file for a period of at least three years after closing the case copies of:

- the original complaint;
- the investigatory report;
- the summary of the report if one is prepared;
- the notice provided to the complainant parties, of the District's administrative determination and his/her/the right to appeal;
- any appeal; and
- the District's final decision.

The District will make such documents available to the Chancellor of the California Community Colleges upon request.

NOTE: *The language below is **optional language** regarding sexual misconduct and includes recommendations from the U.S. Department of Education Office for Civil Rights (OCR) "Dear Colleague" Letters and the April 2014 "Not Alone" White House Task Force Report to Protect Students From Sexual Assault. The suggested language goes beyond the strict requirements of the law, but complies with suggestions from the OCR's "Dear Colleague Letters" and other sources.*

Where the complaint allegation consists of Sexual Misconduct, as defined by Title IX, the following applies:

Sexual Misconduct:

Sexual misconduct includes sexual harassment and sexual violence.

- Sexual harassment may include 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 work or education setting.
- Sexual violence refers to physical sexual acts perpetrated against a person's will or when a person is incapable of giving consent due to the victim's use of drugs or alcohol or due to an intellectual or other disability. Sexual violence includes rape, sexual assault, sexual battery, and sexual coercion.
- Affirmative consent means an affirmative, conscious, and voluntary agreement to engage in sexual activity.

Sexual misconduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the District's program. A single or isolated incident may create a hostile environment if the incident is sufficiently severe.

Complaint Procedure:

Where the complaint involves a minor, the District will comply with California mandated reporting requirements.

All responsible employees are required to report all actual or suspected sexual misconduct to the Title IX Coordinator immediately. A responsible employee is any employee who has the authority to take action to redress sexual misconduct, who has been given the duty of reporting incidents of sexual misconduct to the Title IX Coordinator or [**insert other appropriate school designee**], or whom a student or employee could reasonably believe has this authority or duty. The District is on notice if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual misconduct.

Any person may make a complaint by contacting the Title IX Coordinator directly. The District's Title IX Coordinator is [**insert name and contact details, including location of office**]. The Title IX Coordinator will receive all relevant details about the alleged sexual misconduct reported to the District responsible employee in order to determine what occurred and how to resolve the situation. This includes the names of alleged victim and alleged perpetrator (if known), and the date, time, and location of the alleged sexual misconduct.

Privileged or Confidential Reporting:

A District [**employee or responsible employee**] should, whenever possible, before a student or employee reveals information that he/she may wish to keep confidential, ensure that the person making the report understands the employees obligations to report to the Title IX Coordinator, the victims option to request confidentiality, which the District will take into consideration, and the victims ability to share the information confidentially with designated District employees.

Professional, licensed, mental health counselors [**and pastoral counselors**], who provide mental-health counseling to members of the District community, or interns, graduate students, and others supervised by professional licensed counselors, are not required to report any information to the Title IX Coordinator.

Non-professional counselors who work or volunteer in [**insert list – health center, victim advocacy office, women’s center, etc.**], including front desk personnel and student employees in the course of their duties, may maintain confidentiality. They are not required to report actual or suspected sexual misconduct to the Title IX Coordinator in a way that identifies the student without the victims consent. These individuals are limited to [**insert detailed list with contact details**].

Authority over Parties:

The District has authority over students, employees, and third parties for alleged violations of this policy that occur on District property. The District has authority over District employees and students for alleged violations of this policy that occur at District activities or events. The District may exercise authority over events that occur off-campus to determine if the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

Standard of Proof:

The District will use a “preponderance of the evidence” standard of proof in determining whether there has been a violation of this policy. This standard of proof is also known as “more likely than not” standard.

Upon Receiving the Complaint – Health and Safety:

The Title IX Coordinator, together with [**insert title if the responsibility is shared**], will make an immediate assessment concerning the health and safety of the victim and campus community as a whole. The District will provide the reporting party and responding party with immediate, interim measures necessary to protect his/her health and safety. These immediate, interim measures may include [**insert list, for example – providing an escort to ensure that the victim can move safely between classes, ensuring that the victim and perpetrator do not attend the same classes or work in the same area, preventing offending third parties from entering campus, providing counseling services or a referral to counseling services, providing academic support services, such as tutoring, arranging for a victim to retake a course or withdraw from a course without penalty, including ensuring that any changes do not adversely affect the victims’ academic record, and reviewing any disciplinary actions taken against the victim to see if there is a causal connection between the harassment, discrimination, or retaliation and the misconduct that may have resulted in the victim being disciplined**].

Where the District determines that there is a substantial threat to the campus community, it will issue a timely warning. The District will issue the warning according to District Administrative Procedures. The District will not to disclose the victim’s name or other identifying information when issuing the warning.

Communicating that the Conduct is Unwelcome:

The employee or student may, but is not required to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste, or inappropriate. This is not required.

Intake and Processing of the Complaint:

NOTE: *The OCR September 2017 Interim Guidance now permits mediation in all cases as long as all parties agree. Districts should exercise care in using mediation in cases of sexual violence.*

If the District determines that a sexual misconduct complaint is appropriate for informal resolution, it may permit an informal resolution, including mediation. All parties, including the complainant and respondent, must receive full disclosure of the allegations and information about options for formal resolution before voluntarily agreeing to participate in an informal resolution. If all parties agree to an informal resolution, the District does not have to complete a full investigation and adjudication of a report of sexual misconduct.

Confidentiality:

Where the victim requests confidentiality regarding a reportable incident, the District will take all reasonable steps to comply with the victim's request or inform the victim when it cannot ensure confidentiality. The District will not disclose the name of the victim unless the victim provides written consent after being informed of his/her right to have the information withheld. Where the victim insists that the District not disclose his/her name or other identifiable information to the alleged perpetrator, the District will inform the victim that its ability to respond will be limited. The District will evaluate this request in the context of its responsibility to provide a safe and nondiscriminatory environment for all employees and students. When weighing a request for confidentiality against the seriousness of the alleged harassment, the Title IX Coordinator will take the factors listed above into consideration.

Fact-Finding Investigation:

Where the victim has filed a criminal complaint with local law enforcement, the District will consider what information the District is able to share, pursuant to state and federal law, to ensure that victims are not unnecessarily required to give multiple statements about a traumatic event. The District will continue to conduct its own thorough, reliable, prompt, and impartial investigation. The District will normally complete its sexual misconduct investigation within 90 days of receiving the complaint, unless extended by the Title IX Coordinator for good cause. The Title IX Coordinator will notify the victim and accused in writing of the reason for the extension and the projected new timeline.

The victim and accused will have equal opportunity to present relevant witnesses and other evidence to the District investigator. The District will provide the same opportunities to the victim and accused, [*insert, for example if the District permits the victim or accused to have a lawyer or other advisor present, it must do so for the other party. Any District*

imposed restrictions on the ability of a lawyer or other advisor to speak or participate in the interview must also apply equally].

The results of the fact-finding investigation will be set out in a formal investigative report which will include the requirements listed above and a credibility determination of the victim, accused, and witnesses.

Reporting to California Community Colleges Chancellor's Office:

The District considers all sexual misconduct complaints to be formal complaints. The **[Title IX Coordinator or other designated person]** must notify the State Chancellor's Office of any sexual misconduct complaints. Upon completing the investigation, the District shall forward to the California Community Colleges Chancellor's Office a copy of the investigative report and administrative determination and to the complainant parties a copy or summary of the investigative report and administrative determination.

NOTE: *This procedure is legally required for Option 1 and Option 2.*

Dissemination of Policy and Procedures

District Policy and Procedures related to harassment will include information that specifically addresses sexual violence. District policy and procedures 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 and on the District's website.

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 District's course catalogs and orientation materials for new students.

Training

By January 1, 2006, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees who are employed as of July 1, 2005. All new supervisory employees must be provided with the training and education within six months of their assumption of a supervisory position. After January 1, 2006, the District shall provide sexual harassment training and education to each supervisory employee once every two years.

The training and education required by this procedure shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. Supervisor's harassment training must also address potential exposure and liability for employers and individuals, supervisor's obligation to report sexual harassment, discrimination, and retaliation when they become aware of it,

appropriate remedial measures to correct harassing behavior, and a review of “abusive conduct.”

The District will maintain appropriate records of the training provided, including the names of the supervisory employees trained, the date of training, sign in sheets, copies of all certificates of attendance or completion issued, the type of training provided, a copy of all written or recorded training materials, and the name of the training provider. If the training is provided by webinar, the District will maintain a copy of the webinar, all written materials used by the training and all written questions submitted during the webinar, and document all written response or guidance the trainer provided during the webinar. The District will retain these records for at least two years.

NOTE: *The following is **suggested as good practice**, and will generally be viewed by a court as helping to reduce District liability.*

Training of all staff will be conducted. This includes counselors, faculty, health personnel, law enforcement officers, coaches, and all staff who regularly interact with students. Training for academic staff should emphasize environmental harassment in the classroom. The District will also provide training to students who lead student organizations. The District should provide copies of the sexual harassment policies and training to all District law enforcement unit employees regarding the grievance procedures and any other procedures used for investigating reports of sexual violence.

In years in which a substantive policy or procedural change has occurred, all District employees will attend a training update or receive a copy of the revised policies and procedures.

Participants in training programs will be required to sign a statement that they have either understood the policies and procedures, their responsibilities, and their own and the District’s potential liability, or that they did not understand the policy and desire further training.

Education and Prevention for Students

In order to take proactive measures to prevent sexual harassment and violence toward students, the District will provide preventive education programs and make victim resources, including comprehensive victim services, available. The District will include such programs in their orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, the District’s policies and disciplinary procedures, and the consequences of violating these policies. A training program or informational services will be made available to all students at least once annually.

The education programs will also include information aimed at encouraging students to report incidents of sexual violence to the appropriate District and law enforcement authorities. Since victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of District or campus rules were involved, the District

will inform students that the primary concern is for student safety and that use of alcohol or drugs never makes the victim at fault for sexual violence. If other rules are violated, the District will address such violations separately from an allegation of sexual violence.

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