

## Chapter 3 - General Institution

### AP 3435 Discrimination and Harassment Complaints and Investigations

#### References:

Education Code Section 212.5, 231.5, 66281.5 66281.8, 67386, and 87623; Government Code 12950.1; Title 5 Sections 59320, 59324, 59326, 59328; and 59300 et seq.; 34 C.F.R. Section 106.8(b) Title 2 Sections 11023 and 11024

#### I. Introduction:

The College must ensure that its programs and activities are available to all persons without unlawful discrimination, harassment, or retaliation. The College shall investigate complaints of unlawful discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking, or retaliation in its programs and activities in accordance with these procedures.<sup>1</sup>

EXCEPTION: For incidents of sexual harassment subject to Title IX that occurred between August 14, 2020, and August 1, 2024, the College must address such incidents under AP 3434 - Responding to Harassment Based on Sex under Title IX. When a complaint of sexual harassment is dismissed under AP 3434 or does not apply to Title IX, this Administrative Procedure shall apply.

#### Filing a Timely Complaint

The College strongly encourages ~~employees and students~~ anyone who believes they are being harassed or discriminated against to file a complaint within 30 days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the College'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.

#### 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~~ Associate Vice President of Human Resources, or his/her their designee, is the College Compliance Officer and

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<sup>1</sup> 5 CCR § 59320

"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 **their** designee, **or** to other **internal** 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.~~ **The investigation of complaints must be assigned to a neutral investigator. A neutral investigator means an outside investigator or an internal investigator who is not in the chain of command of the respondent, not substantially implicated by the allegations in the complaint, and who is otherwise impartial. Neutral investigators must be properly trained to conduct such investigations.**

**The College 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.**<sup>2</sup>

#### 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.~~

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<sup>2</sup> See Cal. Ed. Code 66281.8

## II. Complaints<sup>3</sup>

A Complaint is a written or verbal statement filed with the College that alleges harassment, discrimination, or retaliation in violation of the College's Board Policies, Administrative Procedures, or in violation of state or federal law. Complaints must be filed with the College Compliance Officer or designee unless the Party submitting the Complaint alleges discrimination, harassment, or retaliation against the College Compliance Officer, in which case it should be submitted directly to the College President/CEO.

Any student, employee, parent of a minor, or an individual with legal authority on behalf of a student or employee who believes the student or employee has been discriminated against or harassed by a student, employee, or third party in violation of College policy and or procedure.

A Complaint may be made orally or in writing to the College Compliance Officer or designee. The College may request, but shall not require, the Complainant to submit a written Complaint on a form prescribed by the College. The form is available at <http://www.mtsac.edu/discriminationcomplaint>. When a Complainant submits a verbal Complaint, the College Compliance Officer or designee shall record the verbal Complaint in writing and take steps to ensure the writing accurately reflects the facts alleged by the Complainant.

A Complaint must meet the following criteria:

- It must allege facts with enough specificity to show that the allegations, if true, would constitute a violation of College policies or procedures or state or federal law prohibiting discrimination, harassment, or retaliation; and
- The Complainant must file any 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 allegations of discrimination, harassment, or retaliation; or
- The Complainant must file any 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.

## III. Defective Complaints<sup>4</sup>

If the Complaint does not meet the requirements set forth above, the College Compliance Officer will notify the Complainant within 14 days that the Complaint does not contain allegations of unlawful discrimination that are sufficient under

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<sup>3</sup> 5 CCR § 59328

<sup>4</sup> 5 CCR § 59332

this procedure to trigger an investigation. The College Compliance Officer will specify why the Complaint is defective.

If the defect is based on the Complainant's failure to state sufficient facts to support a claim of unlawful discrimination, the College Compliance Officer or designee shall offer the Complainant an opportunity to proffer additional facts to support their claims through an intake interview, which shall be scheduled as soon as reasonably convenient for the Complainant and the College Compliance Officer or designee.

If, after the intake interview, the College Compliance Officer determines that the Complainant has still not stated sufficient facts to support a claim of unlawful discrimination, the College Compliance Officer shall provide the Complainant with a written determination explaining the basis for dismissing the complaint within 14 days of the intake interview. The College Compliance Officer must also notify the Complainant of their right to appeal this determination directly to the Chancellor of the California Community Colleges within 30 days from the date of the notice of dismissal.

#### IV. Intake and Processing of the Complaint<sup>5</sup>

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

- 1. Consider whether the College can** undertake efforts to uniformly **informally** resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules, obtaining apologies, providing informal counseling, and/or training, etc.
  - 2. Advise all Parties** that ~~he or she~~ **they** 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~~ **they have the right to end the informal resolution process at any time.**
- ~~• 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~~

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<sup>5</sup> **5 CCR § 59327, 59328**

~~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 calendar 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.~~

- 3. Advise *student* Complainants that they may file a Complaint with the Office for Civil Rights of the U.S. Department of Education and employee Complainants may file a Complaint with the California Civil Rights Department.**
- 4. Advise *employee* Complainants that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the California Civil Rights Department (CRD).**
- 5. Advise all Complainants that they have a right to file a complaint with local law enforcement if the act complained of is also a criminal act. The College must investigate even if the Complainant files a separate complaint with local law enforcement.**
- 6. Provide Parties notice regarding appropriate health and counseling resources developed and maintained by the College.**
- 7. 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 College Compliance Officer should notify the Complainant of their interim options and supportive measures.**

**Regardless of whether a Complaint has been filed under this procedure, if the College knows, or reasonably should know, about possible sexual harassment involving individuals subject to the College's policies at the time, the College shall promptly investigate to determine whether the alleged conduct more likely**

than not occurred, or otherwise respond if the College determines that an investigation is not required.<sup>6</sup>

#### Advisers<sup>7</sup>

Parties are permitted to have a support person or adviser accompany them during any stage of the Complaint process described in this procedure. Parties have the right to consult with an attorney, at their own expense, at any stage of the Complaint process if they wish to do so. An attorney may serve as a support person or adviser.

#### V. Confidentiality of the Investigation

Investigations are best conducted within a confidential climate. Therefore, the College does not reveal information about ongoing investigations except as necessary to fulfill its legal obligations. The College 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 students and employees during the investigation process and any ensuing discipline.

#### VI. Student Complainant Requests for Confidentiality in Matters Involving Sexual Harassment<sup>8</sup>

If a Student Complainant requests confidentiality when reporting sexual harassment, which could preclude a meaningful investigation or potential discipline of the Respondent, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the College shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students and employees, including for the Student Complainant. The College shall normally grant the request when possible. In determining whether to disclose a Student Complainant’s identity or proceed to an investigation over the objection of the Student Complainant, the College may consider whether any of the following apply:

- There are multiple or prior reports of sexual misconduct against the Respondent;
- The Respondent reportedly used a weapon, physical restraints, or engaged in battery;
- The Respondent is a faculty or staff member with oversight of students or employees;
- There is a power imbalance between the Complainant and Respondent;
- The Complainant believes that the Complainant will be less safe if the Complainant’s name is disclosed or an investigation is conducted; and

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<sup>6</sup> See Cal. Ed. Code 66281.8(b)(3)(C)

<sup>7</sup> See Cal. Ed. Code 66281.8(b)(4)(A)(xvii)

<sup>8</sup> See Cal. Ed. Code 66281.8(b)(3)(D)

- The College is able to conduct a thorough investigation and obtain relevant evidence in the absence of the Complainant's cooperation.

If the College determines that it can honor the Student Complainant's request for confidentiality, it shall still take reasonable steps to respond to the sexual harassment complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against Respondent or revealing the identity of the Student Complainant. The College shall also take immediate steps to provide for the safety of the Student Complainant while keeping the Student Complainant's identity confidential as appropriate. The College shall notify the Student Complainant that the steps the College will take to respond to the complaint will be limited by the Student Complainant's request for confidentiality.

If the College determines that it must disclose the Student Complainant's identity to the Respondent or proceed with an investigation, it shall inform the Student Complainant prior to making this disclosure or initiating the investigation. The College shall also take immediate steps to provide for the safety of the Student Complainant where appropriate. In the event the Student Complainant requests that the College inform the Respondent that the Student Complainant asked the College not to investigate or seek discipline, the College shall honor this request.

## VII. Investigation

### A. The College Compliance Officer or designee shall:

1. Provide notice to the Complainant and Respondent ("the Parties") that the College is conducting an investigation. The notice shall include the allegations against the Respondent and the alleged College policy violations under review. If new allegations that arise during the course of the College's investigation that could subject either Party to new or additional discipline or corrective action, the College Compliance Officer or designee shall provide a supplemental notice to the student Parties.<sup>9</sup>
2. 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 the Parties opt for informal resolution, the designated officer College Compliance Officer or designee will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. 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.
3. 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.

<sup>9</sup> Cal Ed Code 66281.8(b)(4)(A)(xvi)

## **B. 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. **This includes Complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of the College, whether those programs take place in the College's facilities, in a College vehicle, or at a class or training program sponsored by the College at another location. The College shall promptly investigate complaints of harassment or discrimination that occur off campus if the alleged conduct creates a hostile environment on campus.<sup>10</sup> The College shall notify the Complainant that the College will commence an impartial fact-finding investigation of the allegations contained in the Complaint.<sup>11</sup>**

As set forth above, where the complainant opts for an informal resolution, the Chief Human Resources Officer **College Compliance Officer**, or his/her **their** designee, may limit the scope of the investigation as appropriate.

## **C. Investigation Steps:**

The College 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 discrimination, harassment (including sexual harassment and sexual violence), and that they understand how the College's complaint procedures operate. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially using trauma-informed investigation techniques.<sup>12</sup>**

**The investigation and adjudication of alleged misconduct under this procedure is not an adversarial process between the Complainant, the Respondent, and the witnesses, but rather a process for the College to comply with its obligations under existing law. The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation or allegations of misconduct.<sup>13</sup>**

**Investigators will** utilizing **use** the following steps: interviewing the complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses, **if any and evidence identified by each Party; identifying and interviewing any other witnesses, if needed**; 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

<sup>10</sup> Cal Ed Code 66281.8(b)(3)(B)

<sup>11</sup> 5 CCR § 59334

<sup>12</sup> Cal Ed Code 66281.8(b)(4)(A)(iv)

<sup>13</sup> Cal Ed Code 66281.8(b)(4)(A)(i)



recommended action is carried out in a timely fashion. When the College evaluates the Complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the College will decide whether it is more likely than not that discrimination or harassment has occurred. Any evidence available but not disclosed during the investigation may not be considered at a subsequent hearing, if a hearing is required under this procedure.<sup>14</sup>

**D. Timeline for Completion**

The College will undertake its investigation promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report, and the College shall notify the Complainant and Respondent of the outcome within 90 days of the College receiving the Complaint.<sup>15</sup> The College will toll the timeline while the Parties are engaged in good faith efforts at informal resolution.<sup>16</sup>

**E. Cooperation Encouraged Expected**

All employees individuals 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 may conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim and regardless of whether a Complaint is filed.~~ All parties and witnesses are protected against retaliation for lodging a Complaint or participating in the investigation.

**F. Written Report** <sup>17</sup>

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

1. A description of the circumstances giving rise to the Complaint;
2. A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
3. A summary of the testimony provided by each witness with information relevant to the allegations, including the Complainant;
4. An explanation of why an identified potential witness was not interviewed;
5. An analysis of relevant data or other evidence collected during the course of the investigation, including a list of relevant documents;

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<sup>14</sup> Cal Ed Code 66281.8(b)(4)(A)(ix)

<sup>15</sup> 5 CCR § 59336

<sup>16</sup> 5 CCR § 59327(e)

<sup>17</sup> 5 CCR § 59334

6. A specific finding as to whether each factual allegation in the Complaint occurred based on the preponderance of the evidence standard;

## VIII. Evidence of Past Sexual History<sup>18</sup>

### A. Student Complaints

An investigator or hearing officer, if required by this procedure, shall not consider the past sexual history of the Complainant or Respondent except in the limited circumstances described below:

- The investigator or hearing officer shall not consider prior or subsequent sexual history between the Complainant and anyone other than the Respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual;
- The investigator or hearing officer shall not consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent unless the evidence is relevant to how the Parties communicated consent in prior or subsequent consensual sexual relations;
- Where the investigator or hearing officer allows consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent pursuant to this circumstance, the mere fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

Before allowing the consideration of any evidence submitted pursuant to this section, the investigator or hearing officer shall provide a written explanation to the Parties as to why consideration of the evidence is consistent with this procedure.

### B. Administrative Determination<sup>19</sup>

In any case not involving employment discrimination, within 90 days of receiving a Complaint, the College shall complete its investigation and forward a summary of the report, and written notice to the Complainant setting forth all of the following:

- The President/CEO's or their designee's determination as to whether unlawful discrimination occurred with respect to each allegation in the Complaint based on a preponderance of the evidence standard and the basis for that determination including factual findings;

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<sup>18</sup> Cal Ed Code 66281.8(b)(4)(A)(vi)

<sup>19</sup> 5 CCR § 59336

- 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;
- The proposed resolution of the Complaint;
- The *Student* Complainant's right to a written appeal to the College's Board of Trustees and the California Community Colleges Chancellor's Office, OR the *Employee* Complainant's right to a written appeal to the College's Board of Trustees and to file a Complaint with the California Civil Rights Department; and
- In matters involving student sexual misconduct, the Respondent's right to a written appeal to the College's Board of Trustees any disciplinary sanction imposed upon the Respondent.

The College shall also provide the Respondent the following:

- The President/CEO'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 and the basis for that determination including factual findings;
- The proposed resolution of the Complaint, including any disciplinary action against the Respondent; and
- In matters involving student sexual misconduct not subject to Title IX, the Respondent's right to a written appeal to the College's Board of Trustees any disciplinary sanction imposed upon the Respondent.

The College will toll the timelines described above while the Parties are engaged in good faith efforts at informal resolution.

In matters involving an academic employee placed on involuntary paid administrative leave, the College shall complete its investigation within 90 working days of the administrative leave commencing, unless the period of paid administrative leave is extended by agreement of the employee and College for a period not exceeding 30 additional calendar days.

C. Discipline for Student Sexual Misconduct Not Subject to Title IX <sup>20</sup>

In a Complaint involving student sexual misconduct not subject to Title IX, if a student Respondent is subject to severe disciplinary sanctions (including suspension or expulsion), and the credibility of witnesses was central to the investigative findings, the College, through AP 5520, Student Discipline Procedures, and the procedures herein will provide an opportunity for the student Respondent to cross-examine witnesses indirectly at a live hearing, either in person or by videoconference, conducted by a neutral decision-maker other than the investigator.

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<sup>20</sup> 5 CCR § 59337 & Cal Ed Code 66281.8(b)(4)(A)(vi)

In other Complaints involving sexual harassment against a student, the College shall decide whether a hearing is necessary to determine whether any sexual violence more likely than not occurred. In making this decision, the College may consider whether the Parties elected to participate in the investigation and whether each Party had the opportunity to suggest questions to be asked of the other Party and witnesses during the investigation.

The College shall appoint a neutral third party to attend the hearing solely for the purpose of asking any questions to the witnesses. The neutral third party shall not be the student Respondent, the student Respondent's representative, or any individual charged with making a final determination regarding discipline. The student Respondent may submit written questions before and during the cross-examination, including any follow-up questions. With at least five business days prior to the hearing, either Party or any witness may request to participate in the hearing and answer the questions by videoconference from a remote location.

At the hearing, the other Party shall have an opportunity to note an objection to the questions posed. Such objections shall be limited to written form, and neither the hearing officer nor the College are obligated to respond, other than to include any objection in the record. The hearing officer shall have the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by formal rules of evidence.

Generally, the Parties may not introduce evidence, including witness testimony, at the hearing that the Party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

The hearing officer shall provide an explanation of the meaning of the preponderance of the evidence standard, and affirm that it shall apply to adjudications under this procedure. The preponderance of the evidence standard is met if the College determines that it is more likely than not that the alleged misconduct occurred, based on the facts available at the time of the decision.

#### D. 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 **and consistent with state and federal law**. The action will be prompt, effective, and commensurate with the severity of the offense.

**Possible disciplinary sanctions for student Respondents are described in AP 5520 - Student Discipline Procedures. Possible disciplinary sanctions for employee Respondents are described in BP 7360, Discipline and**

**Dismissals – Academic Employees and AP 7365 - Discipline and Dismissals – Classified Employees.**

**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 discipline is imposed, the nature of the discipline will not be communicated to the complainant, **unless required by law. However, the College 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 College 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 College shall also take reasonable steps to protect the complainant from further harassment and/or discrimination, **address the hostile environment, if one has been created, prevent its recurrence, address its affects,** and to protect the Complainant and witnesses from retaliation as a result of communicating the complaint and/or assisting in the investigation.

**The College 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 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.

**If the College 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.**

E. Appeals<sup>21</sup>

If the complainant is not satisfied with the results of the administrative determination, ~~he or she~~ **they** may, within 45 **30** calendar days, submit a written appeal to the Board of Trustees.

**In a Complaint involving student sexual misconduct not subject to Title IX, a Respondent who is not satisfied with the results of the administrative determination may submit a written appeal to the College's Board of Trustees within 30 days.**

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 calendar 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 Respondent**. The complainant shall also be notified of his or her **their** right to appeal this decision.

If the Board of Trustees does not act within 45 calendar days, the administrative determination shall be deemed approved **on the 46th day** and shall become the final decision of the College in the matter. **The College shall promptly notify the Complainant and the Respondent of the Board's action, or if the Board took no action, that the administrative determination is deemed approved.**

**In any case not involving employment,** ~~t~~The complainant shall have the right to file a written appeal with the Chancellor's Office of the California Community Colleges within 30 calendar 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 ~~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 calendar days after the governing board issues the final decision or permits the administrative decision to become final~~ **the California Civil Rights Department.**

~~Within 150 calendar 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~~

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<sup>21</sup> **5 CCR § 59338 & 5 CCR § 59339**

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 calendar days prior to the expiration of the deadline.

In any complaint dismissed pursuant to Title 5 Section 59332, a complainant may file a written appeal with the California Community Colleges Chancellor's Office within 30 days from the date of the notice of dismissal.

**F. Remand**<sup>22</sup>

The California Community Colleges Chancellor's Office may remand any matter to the College for any of the following reasons: to cure defects in the investigation or in procedural compliance; to consider new evidence not available during the investigation despite the Complainant's due diligence that would substantially impact the outcome of the investigation; or to modify or reverse a decision of the College's Board of Trustees based upon misapplication of an applicable legal standard or an abuse of discretion.

If the California Community Colleges Chancellor's Office remands a matter to the College, the College shall take necessary action and issue a decision after remand within 60 days. In any case not involving employment discrimination, the Complainant may appeal the College's amended determination to the California Community Colleges Chancellor's Office within 30 days by following the appeal procedures above.

**G. Extension of Time**<sup>23</sup>

A student Complainant or Respondent may request, in writing, an extension of a deadline related to a Complaint during periods of examinations or school closures. The College shall grant a student Party's reasonable request for an extension of a deadline related to a Complaint during periods of examinations or school closures.

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

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

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<sup>22</sup> 5 CCR § 59352

<sup>23</sup> 5 CCR § 59342

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. The College shall send this notice no later than 10 days prior to the initial time to respond.

The College may request additional extensions from the California Community Colleges Chancellor's Office after the initial 45-day extension. The College shall send a copy of the extension request 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 California Community Colleges Chancellor's Office within 5 days of receipt.

The extension of time provisions described above do not apply to investigations involving an academic employee placed on involuntary paid administrative leave.

#### **H. Disclosures to the California Community Colleges Chancellor's Office<sup>24</sup>**

Upon request of the California Community Colleges Chancellor's Office, the College shall provide copies of all documents related to a discrimination Complaint, including the following: the original Complaint, any investigative report unless subject to the attorney-client privilege, the written notice to the Complainant setting forth the results of the investigation, the final administrative decision rendered by the Board or a statement indicating the date upon which the decision became final, and a copy of the notification to the Complainant of his/her/their appeal rights, the Complainant's appeal of the College's administrative determination, any other non-privileged documents or information the Chancellor requests.

The College shall provide to the California Community Colleges Chancellor's Office an annual report with the following information: the number of employment and non-employment discrimination complaints and informal charges received in the previous academic year; the number of complaints and informal charges resolved in the previous academic year; 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 any other information requested by the Chancellor.

#### **I. File Retention<sup>25</sup>**

For a minimum of five years, the College will retain the case on file, including copies of:

- the original Complaint;
- the investigatory report;

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<sup>24</sup> 5 CCR § 59340

<sup>25</sup> 5 CCR § 59340



- the summary of the report if one is prepared;
- the notice provided to the Parties of the College's administrative determination and the right to appeal;
- any appeal; and
- the College's final decision.

For any appeal to the California Community Colleges Chancellor's Office, the College shall provide all relevant, non-privileged documents upon request of the California Community Colleges Chancellor's Office.

#### J. Dissemination of Policy and Procedures

College Policies and Procedures related to harassment will include information that specifically addresses sexual violence. College Policies and Procedures be provided to all students, ~~faculty members, members of the administrative staff and members of the support staff,~~ all employees, all volunteers who will regularly interact with students, and each individual or entity under contract with the College to perform any service involving regular interaction with students at the College. ~~and College policy and procedures related to harassment~~ will also be posted on campus and on the College's website.<sup>26</sup>

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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<sup>26</sup> Cal. Ed Code 66281.5 & 66281.8