

3002. ADMINISTRATIVE REGULATION ON DISCRIMINATION AND HARASSMENT COMPLAINTS AND INVESTIGATIONS

3002.1 Complaints

- A. 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.

- B. 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.

- C. 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 state or federal law.

3002.2 Who May File a Complaint

Any student, employee, or third party who believes they have been discriminated against or harassed by a student, employee, or third party, in violation of this procedure and the related policy.

3002.3 Informal Complaints

- A. Any person may submit an informal complaint to the Associate Vice President, Human Resources, or any other District or college administrator. Administrators receiving an informal complaint shall immediately notify the Associate Vice President, Human Resources in writing of all pertinent information and facts alleged in the informal complaint.

- B. The Associate Vice President, Human Resources, will notify the person bringing the informal complaint that they do not need to participate in the informal resolution process and of their 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.

- C. The complainant must also be advised they may file:
 - 1. Non-employment based complaints with the Department of Education Office of Civil Rights, or
 - 2. Employment based complaints with FEHA or EEOC
- D. 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 Associate Vice President, Human Resources, 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, and/or a fact-finding investigation.
- E. Investigation of an informal complaint need not occur unless the Associate Vice President, Human Resources, determines the allegation is sufficiently serious and would likely constitute a violation of the District policy prohibiting harassment, discrimination, or retaliation if proven true.
- F. The Associate Vice President, Human Resources, will explain to an individual bringing an informal complaint that the Associate Vice President, Human Resources, may decide to initiate an investigation, even if the individual does not wish the Associate Vice President, Human Resources, to do so.
- G. The Associate Vice President, Human Resources, 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.

3002.4 Formal Complaints

- A. Formal Complaints must be filed with the Associate Vice President, Human Resources, or the Chancellor of the California Community Colleges, 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 Vice President, Human Resources, or the Chancellor of the California Community Colleges. Upon receipt of a Formal Complaint, the District shall forward a copy to the Chancellor.

- B. A formal complaint can be filed by either:
 - 1. The individual who personally suffered alleged unlawful discrimination; or
 - 2. The individual who learned of this act or omission in their official capacity.
- C. If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, they must file the complaint on a form prescribed by the California Community Colleges Chancellor's Office. These approved forms are available from the Office of Human Resources, from the District's website, and at the California Community Colleges Chancellor's Office website.
- D. The completed form must be filed with any of the following:
 - 1. The Associate Vice President, Human Resources; and/or
 - 2. The California Community Colleges Chancellor's Office.
- E. 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.
- F. A Formal Complaint must meet each of the following criteria:
 - 1. 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;
 - 2. The complainant must sign and date the Formal Complaint;
 - 3. The complainant must file any Formal Complaint not involving employment within:
 - (a) One year of the date of the alleged discriminatory, harassing, or retaliatory conduct, or

- (b) 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.
- G. The complainant must file any Formal Complaint alleging discrimination, harassment, or retaliation in employment within:
 - 1. 180 days of the date of the alleged discriminatory, harassing, or retaliatory conduct;
 - 2. This period shall be extended by 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.
- H. If the Formal Complaint does not meet the requirements set forth above, the Associate Vice President, Human Resources, will return it to the complainant with reasonable promptness, specifying the defect. If the sole defect is that the Formal Complaint was filed outside the applicable proscribed timeline, the Associate Vice President, Human Resources, will handle the matter as an informal complaint.

3002.5 Oversight of Complaint Procedure

- A. The Associate Vice President, Human Resources, is the "responsible District officer" charged with receiving complaints of discrimination or harassment, and coordinating their investigation.
- B. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the Associate Vice President, Human Resources, is named in the complaint or implicated by the allegations in the complaint.

3002.6 Employment-Related Complaints

- A. Complainants filing employment-related complaints shall be notified they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH).
- B. Once received by the District, complaints filed with the EEOC or the DFEH should be forwarded to the California Community Colleges Chancellor's Office.

- C. Any District employee who receives a harassment or discrimination complaint shall notify the Associate Vice President, Human Resources, immediately.

3002.7 Filing a Timely Complaint

- A. 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, any delay in filing impedes the District's ability to investigate and remediate.
- B. 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.
- C. 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.

3002.8 Communicating that the Conduct is Unwelcome

The District further encourages students and staff to let the offending person know immediately and firmly that perceived harassing or discriminatory conduct or behavior is unwelcome, offensive, in poor taste, or inappropriate.

3002.9 Intake and Processing of the Complaint

Upon receiving notification of a harassment or discrimination complaint, the Associate Vice President, Human Resources, shall:

- A. 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.
- B. Advise the complainant that they need not participate in an informal resolution of the complaint, and have the right to end the informal resolution process at any time.
- C. Advise student complainants they may file a complaint with the Office of Civil Rights of the U.S. Department of Education.

- D. Advise employee complainants they may file a complaint with the Department of Fair Employment and Housing.
- E. Advise all complainants they have a right to file a complaint with local law enforcement, if the act complained may be a criminal act. The District must investigate even if the complainant files a complaint with local law enforcement.
- F. The Associate Vice President, Human Resources, shall also notify the California Community Colleges Chancellor's Office of the complaint and notify the Chancellor's Office that a fact-finding investigation is being initiated.
- G. Take interim steps to protect a complainant from coming into contact with an accused individual, especially if the complainant may be a victim of sexual violence. The Associate Vice President, Human Resources, should notify the complainant of their 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.

3002.10 Investigation

The Associate Vice President, Human Resources, shall:

- A. Authorize the investigation of the complaint, and supervise or conduct a thorough, prompt, and impartial investigation of the complaint, as set forth below.
 - 1. 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.
 - 2. 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.
- B. 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.

3002.11 Investigation of the Complaint

- A. The District shall promptly investigate every complaint and claim of harassment or discrimination. This includes:
 - 1. Complaints involving activities that occur off-campus in connection with academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District’s facilities, on District sanctioned transportation, or at a class or training program sponsored by the District at another location; or
 - 2. Complaints of harassment or discrimination that occur off-campus if the alleged conduct creates a hostile environment on campus.
- B. Where the complainant opts for an informal resolution, the Associate Vice President, Human Resources, may limit the scope of the investigation, as appropriate.
- C. 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.

3002.12 Investigation Steps

- A. The District will fairly and objectively investigate harassment and discrimination complaints. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

- B. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes sexual harassment, including sexual violence.
- C. Investigations may include any of the following as relevant:

Interviewing the complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses identified by each party; identifying and reviewing evidence identified by the investigator or by either party; identifying and interviewing any other witnesses; 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; reaching a conclusion as to the allegations and any appropriate disciplinary and remedial action; and seeing that all recommended action is carried out in a timely fashion.

3002.13 Investigatory Standard

When the District evaluates a complaint, it shall use a "preponderance of the evidence" standard. Thus, after considering all the evidence gathered, the District will decide whether it is more likely than not that discrimination or harassment has occurred.

3002.14 Timeline for Completion

The District will undertake its investigation with reasonable promptness. To that end, the investigator shall complete the above steps, and prepare a written report, within 90 days of the District receiving the complaint.

3002.15 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.

3002.16 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. A description of the circumstances giving rise to the Formal Complaint;
- B. A summary of the testimony provided by each witness interviewed by the investigator;
- C. An analysis of relevant evidence collected during the course of the investigation;
- D. A specific finding as to whether it is more likely than not that discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint; and
- E. Any other information deemed appropriate by the District.

3002.17 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 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.

3002.18 Administrative Determination

- A. In cases 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 the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:
 - 1. The determination of the Associate Vice President, Human Resources, as to whether it is more likely than not that discrimination occurred with respect to each allegation in the complaint;

2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
 3. The proposed resolution of the complaint; and
 4. The complainant's right to appeal to the District governing board and the Chancellor California Community Colleges.
- B. In cases 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, and written notice setting forth all the following to the complainant:
1. The determination of the Associate Vice President, Human Resources, as to whether it is more likely than not that discrimination occurred with respect to each allegation in the complaint;
 2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
 3. The proposed resolution of the complaint; and
 4. The complainant's right to appeal to the district governing board and to file a complaint with Department of Fair Employment and Housing or the U.S Equal Employment Opportunity Commission.

3002.19 Discipline and Corrective Action

- A. 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:
1. Providing an escort to ensure that the complainant can move safely between classes and activities;
 2. Ensuring that the complainant and alleged perpetrator do not attend the same classes or work in the same work area;
 3. Preventing offending third parties from entering campus;
 4. Providing counseling services or a referral to counseling services;

5. Providing medical services or a referral to medical services;
 6. Providing academic support services, such as tutoring;
 7. 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
 8. 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.
- B. 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.
- C. 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.
- D. 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.
- E. If the District cannot take disciplinary action against the accused individual because the complainant refuses to participate in the investigation, and there is otherwise sufficient information to support such an action, the District shall pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

3002.20 Appeals

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

- B. If the complainant is not satisfied with the results of the administrative determination, that person may, within 15 days, submit a written appeal to the Board of Trustees.
- C. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall either:
 - 1. Issue a final District decision in the matter, within 45 days after receiving the appeal. A copy of the decision shall be forwarded to the complainant and to the California Community Colleges Chancellor's Office. The complainant shall also be notified of their right to appeal this decision to the Chancellor's Office.
 - 2. Elect to not issue a final decision within 45 days and the administrative determination shall be deemed approved and the final decision of the District in the matter.
- D. In cases not involving workplace discrimination: including 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.
- E. In cases 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 California Department of Fair Employment and Housing.

3002.21 Extension of Time

- A. Within 150 days of receiving a formal complaint, 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.
- B. 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.

3002.22 File Retention

- A. The District will retain on file for a period of at least three years after closing the case copies of:
 - 1. The original complaint;
 - 2. The investigatory report;
 - 3. The summary of the report if one is prepared;
 - 4. The notice provided to the complainant, of the District's administrative determination and his/her right to appeal;
 - 5. Any appeal; and
 - 6. The District's final decision.

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