

AP 3435 Discrimination and Harassment Investigations

Reference:

*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. Since failure to report harassment and discrimination impedes the District's ability to stop the behavior, the District strongly encourages employees and students who believe 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. (See also Imperial Community College District's Policy and Procedures for Handling Complaints of Unlawful Discrimination Under Title 5 Sections 59300 et. Seq.).

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 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 and/or inappropriate.

Oversight of Complaint Procedure. The Chief Human Resources Officer 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 by the Chief Human Resources Officer to other staff or to outside persons or organizations under contract with the district. This shall occur whenever the Chief Human Resources Officer 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 these 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 District, he or she must file the complaint on a form prescribed by the CCC Chancellor's Office. These approved forms are available from the Chief Human Resources Officer and at the following URL: www.cccco.edu/divisions/legal/discrimination/discrimination.htm

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

- Chief Human Resources Officer;
- Superintendent/President; and/or
- The Chancellor 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).

Complaints filed with the EEOC and/or the DFEH should be forwarded to the Chancellor's Office.

Any District employee who receives a harassment or discrimination complaint shall notify the Chief Human Resources Officer immediately.

Intake and Processing of the Complaint. Upon receiving notification of a harassment or discrimination complaint, the Chief Human Resources 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 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 shall also notify the Chancellor of 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 District 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 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 District's Board of Trustees and the state Chancellor's Office. 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 District 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 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.

Investigation Steps. The District 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 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.

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.

Discipline and Corrective Action

If harassment, discrimination and/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. 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 District 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 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.

Appeals

If the complainant is not satisfied with the results of the administrative determination, he or 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 state Chancellor's Office. The complainant shall also be notified of his or her right to appeal this decision.

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

The complainant shall have the right to file a written appeal with the state 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 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 District, 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 state Chancellor's Office within thirty 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 District shall forward to the state 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 or 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.

Dissemination of Policy and Procedures

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

Training

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, 2007, 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.

Training of all staff will be conducted. Training for academic staff should emphasize environmental harassment in the classroom.

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

A training program or informational services will be made available to all students at least once annually. The student training or informational services shall include an explanation of the policy, how it works, and how to file a complaint.

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.