

~~AR 3410~~ 3435 ~~Regulations For Reporting~~ ~~Complaints of Unlawful Discrimination and Sexual~~ ~~Harassment~~ Investigations

~~Legal References:~~ Education Code Section 66281.5; Government Code Section 12950.1; Title 5 Sections 49338, 59320, 59324, 59326, 59328, and 59300 et. seq., 59328, 59338, 59339; 34 Code of Federal Regulations Section 106.8(b); Code of Civil Procedure Section 1094.5

1.0 — Definitions

1.1 — ~~"Appeal" means a request by a complainant made in writing to the Rancho Santiago Community College District governing board pursuant to title 5, section 59338, and/or to the State Chancellor's Office pursuant to title 5, section 59339, to review the administrative determination of the District regarding a complaint of discrimination.~~

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1.2 — ~~"Association with a person or group with these actual or perceived characteristics" includes advocacy for or identification with people who have one or more characteristics of a protected category listed under "Unlawful Discrimination Policy" and title 5, section 59300, participation in a group associated with persons having such characteristics, or use of a facility associated with use by such persons.~~

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1.3 — ~~"Complaint" means a written and signed statement meeting the requirements of title 5, section 59328 that alleges unlawful discrimination in violation of the nondiscrimination regulations adopted by the Board of Governors of the California Community Colleges, as set forth at title 5, sections 59300 et seq.~~

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1.4 — ~~"Days" means calendar days.~~

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1.5 — ~~"Gender" includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.~~

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1.6 — ~~"Mental disability" includes, but is not limited to, all of the following:~~

~~(1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:~~

~~(A) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.~~

~~(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.~~

~~(C) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.~~

~~(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires specialized supportive services.~~

~~(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the District.~~

~~(4) Being regarded or treated by the District as having, or having had, any mental condition that makes achievement of a major life activity difficult.~~

~~(5) Being regarded or treated by the District as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).~~

~~"Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.~~

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1.7 — ~~"Physical disability" includes, but is not limited to, all of the following:~~

- (1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:
 - (A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.
 - (B) Limits a major life activity. For purposes of this section:
 - (i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
 - (ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.
 - (iii) "Major life activities" shall be broadly construed and include physical, mental, and social activities and working.
- (2) Any other health impairment not described in paragraph (1) that requires specialized supportive services.
- (3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the District.
- (4) Being regarded or treated by the District as having, or having had, any physical condition that makes achievement of a major life activity difficult.
- (5) Being regarded or treated by the District as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).
- (6) "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

1.8 ——"District" means the Rancho Santiago Community College District or any District program or activity that is funded directly by the state or receives financial assistance from the state. This includes the District Personnel Commission and any other organization associated with the District or its college(s) that receives state funding or financial assistance through the District.

1.9 ——"Responsible District Officer" means the officer identified by the District to the State Chancellor's Office as the person responsible for receiving complaints filed pursuant to title 5, section 59328, and coordinating their investigation.

1.10 ——"Sexual harassment" is unlawful discrimination in the form of 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 workplace or in the educational setting, and includes but is not limited to:

- (1) Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. (Examples of possible sexual harassment that appear in a written form include, but are not limited to: suggestive or obscene letters, notes, invitations. Examples of possible visual sexual harassment include, but are not limited to: leering, gestures, display of sexually aggressive objects or pictures, cartoons, or posters.)
- (2) Continuing to express sexual interest after being informed that the interest is unwelcomed.
- (3) Making reprisals, threats of reprisal, or implied threats of reprisal following a rebuff of harassing behavior. The following are examples of conduct in an academic environment that might be found to be sexual harassment: implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied.
- (4) Engaging in explicit or implicit coercive sexual behavior within the work environment which is used to control, influence, or affect the employee's career, salary, and/or work environment.
- (5) Engaging in explicit or implicit coercive sexual behavior within the educational environment that is used to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student.
- (6) Offering favors or educational or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.

~~(7) Awarding educational or employment benefits, such as grades or duties or shifts, recommendations, reclassifications, etc., to any student or employee with whom the decisionmaker has a sexual relationship and denying such benefits to other students or employees.~~

~~1.11 "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.~~

~~1.12 "Unlawful discrimination" means discrimination based on a category protected under title 5, section 59300, including sexual harassment and retaliation.~~

~~2.0 Notice, Training, and Education for Students and Employees~~

~~2.1 The District's responsible officer shall make arrangements for or provide training to employees and students on the District's unlawful discrimination policy and procedures. Faculty members, members of the administrative staff, and members of the support staff will be provided with a copy of the District's written policy on unlawful discrimination at the beginning of the first quarter or semester of the college year after the policy is adopted.~~

~~2.2 All District employees will receive this training and a copy of the unlawful discrimination policies and procedures during the first year of their employment. Because of their special responsibilities under the law, supervisors will undergo mandatory training within six months of assuming a supervisory position and biennially thereafter. 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.~~

~~2.3 A training program or informational services will be made available to all students at least once annually. The student training or informational services will include an explanation of the policy, how it works, and how to file a complaint. In addition, a copy of the District's written policy on unlawful discrimination, as it pertains to students, will be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.~~

~~3.0 Informal/Formal Complaint Procedure~~

~~3.1 When a person brings charges of unlawful discrimination to the attention of the District's responsible officer, that officer will:~~

- ~~(1) Undertake efforts to informally resolve the charges;~~
- ~~(2) Advise the complainant that he or she need not participate in informal resolution;~~
- ~~(3) Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for doing so;~~
- ~~(4) Assure the complainant that he or she will not be required to confront, or work out problems with, the person accused of unlawful discrimination;~~
- ~~(5) Advise the complainant that he or she may file a nonemployment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction;~~
- ~~(6) If the complaint is employment-related, the complainant should also be advised that he or she may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where such a complaint is within that agency's jurisdiction.~~

~~3.2 Efforts at informal resolution need not include any investigation unless the responsible District officer determines that an investigation is warranted by the seriousness of the charges. Selecting an informal resolution does not extend the time limitations for filing a formal complaint. Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant to title 5, section 59334, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. *Even if the complainant does dismiss the complaint, the responsible district officer may require the investigation to continue if he or she determines that the allegations are serious enough to warrant an investigation.* Any efforts at informal resolution after the filing of a written complaint will not exceed the 90-day period for rendering the administrative determination pursuant to title 5, section 59336.~~

~~3.3~~ In employment-related cases, if the complainant files with the Department of Fair Employment and Housing, a copy of that filing will be sent to the State Chancellor's Office requesting a determination of whether a further investigation under title 5 is required. Unless the State Chancellor's Office determines that a separate investigation is required, the District will discontinue its investigation under title 5 and the matter will be resolved through the Department of Fair Employment and Housing.

~~3.4~~ The District will allow for representation where required by law and may allow for representation for the accused and complainant in other circumstances on a case-by-case basis.

~~4.0~~ Filing of Formal Written Complaint

~~4.1~~ If a complainant decides to file a formal written unlawful discrimination complaint against the District, he or she must file the complaint on a form prescribed by the State Chancellor. These approved forms are available from the District and also at the State Chancellor's website, as follows:

<http://www.cccco.edu/divisions/legal/discrimination/discrimination.htm>

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

~~4.2~~ Once a complaint is filed, the individual(s) accused of engaging in prohibited discriminatory conduct 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 District 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 his/her side of the matter, and that any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.

~~5.0~~ Threshold Requirements Prior to Investigation of a Formal Written Complaint

~~5.1~~ When a formal written complaint is filed it will be reviewed to determine if the complaint meets the following requirements:

- ~~• The complaint must be filed on a form prescribed by the State Chancellor's Office.~~
- ~~• The complaint must allege unlawful discrimination prohibited under title 5, section 59300.~~
- ~~• The complaint must be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administrator.~~
- ~~• In any complaint not involving employment, the complaint must be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the specific incident or incidents of alleged unlawful discrimination.~~
- ~~• 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.~~

~~5.2~~ Additional information about this initial review of complaints can be found in the Guidelines for Processing Formal Title 5 Unlawful Discrimination Complaints prepared by the State Chancellor's Office.

~~6.0~~ Defective Complaint

~~6.1~~ 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 claimant will also be sent to the State Chancellor's Office.

~~7.0~~ Notice to State Chancellor or District

~~7.1 A copy of all complaints filed in accordance with the title 5 regulations will be forwarded to the State Chancellor's Office immediately upon receipt. Similarly, when the State Chancellor's Office receives a complaint a copy will be forwarded to the District.~~

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~~8.0 Confidentiality of the Process~~

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~~8.1 Investigative processes can best be conducted within a confidential climate. Therefore, the District does not reveal information about such matters except as necessary to fulfill its legal obligations.~~

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~~8.2 Potential complainants are sometimes reluctant to pursue a complaint if their names will be revealed. The inability to reveal the name of a complainant or facts that are likely to reveal the identity of the complainant can severely limit the ability of the District to respond. Complainants must also recognize that persons who are accused of wrongdoing have a right to present their side of the matter, and this right may be jeopardized if the District is prohibited from revealing the name of the complainant or facts that are likely to disclose the identity of the complainant.~~

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~~8.3 If a complainant insists that his or her name not be revealed, the responsible officer should take all reasonable steps to investigate and respond to the complaint consistent with the complainant's request as long as doing so does not jeopardize the rights of other students or employees.~~

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~~8.4 It is also important that complainants and witnesses understand the possibility that they may be charged with allegations of defamation if they circulate the charges outside of the District's process. In general, persons who are participating in a District investigative or disciplinary process that is related to a charge of discrimination are protected from tort claims such as defamation. However, persons who make allegations outside of these processes or who discuss their claims with persons outside of the process may expose themselves to tort charges. Complainants, witnesses, and those accused of discrimination will all be asked to sign a confidentiality acknowledgement statement.~~

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~~8.5 Where an investigation reveals the need for disciplinary action, the complainant may wish to have information about what disciplinary actions the District took. However, the privacy rights of the persons involved often prevent the District from providing such information. In student disciplinary actions for sexual assault/physical abuse charges, Education Code section 76234 provides that the victim shall be informed of the disciplinary action, but that the victim must keep the information confidential. Disciplinary actions taken against employees are generally considered confidential.~~

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~~9.0 Administrative Determination~~

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~~9.1 In any case not involving employment discrimination, within 90 days of receiving an unlawful discrimination complaint filed under title 5, sections 59300 et seq., the responsible District officer will complete the investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all the following to both the complainant and the State Chancellor:~~

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~~(a) the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;~~

~~(b) a description of actions taken, if any, to prevent similar problems from occurring in the future;~~

~~(c) the proposed resolution of the complaint; and~~

~~(d) the complainant's right to appeal to the District governing board and the State Chancellor.~~

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~~9.2 In any case involving employment discrimination, within 90 days of receiving an unlawful discrimination complaint filed under title 5, sections 59300, et seq., the responsible District officer will complete the investigation and forward a copy or summary of the report to the complainant, and written notice setting forth all the following to the complainant:~~

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~~(a) the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;~~

~~(b) a description of actions taken, if any, to prevent similar problems from occurring in the future);~~

~~(c) the proposed resolution of the complaint; and~~

~~(d) the complainant's right to appeal to the District governing board and to file a complaint with the Department of Fair Employment and Housing.~~

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9.3 The District will keep these documents on file for a period of at least three years after closing the case, and make them available to the State Chancellor upon request.
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10.0 Complainant's Appeal Rights
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10.1 Complainants have appeal rights that they may exercise if they are not satisfied with the results of the District's administrative determination. At the time the administrative determination and summary is mailed to the complainant, the responsible District officer or his/her designee shall notify the complainant of his or her appeal rights as follows:
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10.2 First level of appeal: The complainant has the right to file an appeal to the District's governing board within 15 days from the date of the administrative determination. The District's governing board will review the original complaint, the investigative report, the administrative determination, and the appeal. The District's governing board will issue a final District decision in the matter within 45 days after receiving the appeal. Alternatively, the District's governing board 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 District decision in the matter. A copy of the final decision rendered by the District's governing board will be forwarded to the complainant and to the State Chancellor's Office.
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10.3 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 District decision or permits the administrative determination to become final by taking no action within 45 days. The appeal must be accompanied by a copy of the decision of the governing board 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.
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10.4 Complainants must submit all appeals in writing.
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11.0 Forward to State Chancellor
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11.1 In any case not involving employment discrimination, within 150 days of receiving a complaint, the responsible District officer will forward the following to the State Chancellor:
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- A copy of the final District 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 District sent the complainant.
 - Any other information the State Chancellor may require.
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11.2 The District 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.
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12.0 Extensions
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12.1 If for reasons beyond its control, the District 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, the responsible District officer will file a written request that the State Chancellor grant an extension of the deadline. 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 District expects to be able to submit the required materials.
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12.2 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.
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~~12.3 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.~~

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~~13.0 Record Retention~~

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~~13.1 Unlawful discrimination records that are part of an employee's employment records may be classified as Class-1 Permanent records and retained indefinitely or microfilmed in accordance with title 5, California Code of Regulations, section 59022. Unlawful discrimination records of a student that are deemed worthy of preservation but not classified as Class-1 Permanent may be classified as Class-2 Optional records or as Class-3 Disposable records, to be retained for a period of three years.~~

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~~13.2 Records related to a student discrimination complaint will be deemed worthy of preservation if, at the end of three years after the case is closed, a complaint on similar grounds has been filed against the same employee. In such cases, the records shall continue to be classified as Class-2 records and retained at least until complaints against that particular employee have been resolved.~~

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.

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 Executive Vice Chancellor of Human Resources & Educational Services 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 Executive Vice Chancellor of Human Resources & Educational Services to other staff or to outside persons or organizations under contract with the District. This must occur whenever the Executive Vice Chancellor of Human Resources & Educational Services 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, 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/she must file the complaint on a form prescribed by the State Chancellor's Office. These approved forms are available from the Executive Vice Chancellor of Human Resources & Educational Services and at the State Chancellor's website.

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

- the Executive Vice Chancellor of Human Resources & Educational Services and/or
- the State Chancellor's Office.

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 State Chancellor's Office.

Any District employee who receives a harassment or discrimination complaint shall notify the Executive Vice Chancellor of Human Resources & Educational Services immediately.

Intake and Processing of the Complaint: Upon receiving notification of a harassment or discrimination complaint, the Executive Vice Chancellor of Human Resources & Educational Services 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/she need not participate in an informal resolution of the complaint, as described above, and has the right to end the informal resolution process at any time. Mediation is not appropriate for resolving incidents involving sexual violence.
- Advise a student complainant that he/she may file a complaint with the Office 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. 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 Executive Vice Chancellor of Human Resources & Educational Services shall also notify the State 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 Executive Vice Chancellor of Human Resources & Educational Services should notify the complainant of his or 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.
- 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 there is probable cause to believe that discrimination did or did not occur with respect to each allegation in the complaint, a description of actions the District will take to prevent similar conduct, the proposed resolution of the complaint, the complainant's right to appeal to the District's governing board, and if the complaint does not involve employment discrimination, the right to appeal to the State

- Chancellor. If the complaint involves employment discrimination, the report shall include the right to file an administrative complaint with the Department of Fair Employment and Housing. The report may contain 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 RSCCD Chancellor or 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 District's Board of Trustees and the State Chancellor's Office (for non-employment matters). If the complaint involves allegations of employment discrimination, the complainant will be notified of his/her right to file a complaint with the California Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission. 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. 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.

As set forth above, where the complainant opts for an informal resolution, the Executive Vice Chancellor of Human Resources & Educational Services 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.

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. 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;
- providing 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 conduct that lead to the discipline.

If discipline is imposed, 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, 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 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 for non-employment-related complaints, to the State 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.

For non-employment-related complaints, 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 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. 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 non-employment-related 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/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 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.

Responsible Manager: Executive Vice Chancellor of Human Resources & Educational Services

~~Revised April 27, 2009~~ Revised ~~October 10, 2011~~ _____ (Previously AR 3410)