

AP 3435 Discrimination, Harassment, Bullying, or Retaliation Complaint Investigation Procedure

References:

Education Code Sections 212.5, 66281.5, and 67386;
Government Code Section 12950.1;
Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et seq.;
Title 2 Sections 11023 and 11024;

For sexual harassment under Title IX, Complainants must proceed under BP 3433 Prohibition of Sexual Harassment under Title IX, AP 3433 Prohibition of Sexual Harassment under Title IX, and AP 3434 Responding to Harassment Based on Sex under Title IX. For other forms of sexual harassment or gender-based harassment, Complainants should use this procedure.

Reporting and Filing Complaints

The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in discrimination, harassment, bullying, or retaliation. Any person who has suffered discrimination, harassment, bullying, or retaliation or who has learned of harassment, discrimination, or retaliation may report discrimination, harassment, bullying, or retaliation. Complainants may have the option of filing a Complaint.

Complaints

A Complaint is a written or verbal statement filed with the District that alleges harassment, discrimination, or retaliation in violation of the District's Board Policies, Administrative Procedures, or in violation of state or federal law. Complaints must be filed with the Vice President of Human Resources unless the Party submitting the Complaint alleges discrimination, harassment, bullying, or retaliation against the responsible district officer, in which case it should be submitted directly to the Superintendent/President or the State Chancellor of the California Community Colleges.

The District may request, but shall not require the Complainant to submit a Complaint on the form prescribed by the Chancellor of the California Community Colleges. A copy of the form is available on the CCCCCO website. A Complainant shall report a verbal Complaint to the Vice President of Human Resources. The Vice President of Human Resources shall record the verbal Complaint in writing. The Vice President of Human Resources will take steps to ensure the writing accurately reflects the facts alleged by the Complainant.

A 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, bullying, or retaliation;
2. 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 allegation(s) of discrimination, harassment, bullying, or retaliation.
3. The Complainant must file any Complaint alleging discrimination, harassment, bullying, or retaliation in employment within 180 days of the date of the alleged discriminatory, harassing, or retaliatory conduct, except that this period shall be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

If the Complaint does not meet the requirements set forth above, the Vice President of Human Resources will promptly contact the complainant and specify the defect. If the Complainant is unable to fix the defect in the Complaint, the Vice President of Human Resources shall consider the allegations contained in the Complaint and determine the appropriate course of action. This may include efforts to informally resolve the matter or a fact-finding investigation.

Oversight of Complaint Procedure:

The Vice President of Human Resources is the "responsible District officer" charged with receiving complaints of discrimination, harassment, bullying, or retaliation and coordinating their investigation.

The actual investigation of complaints may be assigned by the Superintendent/President to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the Vice President of Human Resources is named in the complaint or implicated by the allegations in the complaint.

Who May File a Complaint:

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, harassed, bullied, or retaliated against by a student, employee, or third party in violation of this procedure and the related policy.

Where to File a Complaint:

A 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, harassed, bullied, or retaliated against in violation of these policy and procedures may make a complaint orally or in writing directed to the Vice President of Human Resources. Complainants may but are not required to use the form prescribed by the Chancellor of the California Community Colleges. These forms are available from the Vice President of Human Resources and at the California Community Colleges Chancellor's website.

Employment-Related Complaints

Complainants filing employment-related complaints shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH).

Any District employee who receives a discrimination, harassment, bullying, or retaliation complaint shall notify the Vice President of Human Resources immediately.

Filing a Timely Complaint:

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

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

Communicating that the Conduct is Unwelcome:

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

Intake and Processing of the Complaint:

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

1. Consider whether the District can 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.
2. 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. NOTE: Districts should exercise care in using mediation in cases of sexual violence.
3. Advise a student complainant that he/she/they 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, if the act complained of is also a criminal act. The District must investigate even if the Complainant files a complaint with local law enforcement. In addition, the District should ensure that Complainants are aware of any available resources, such as counseling, health, and mental health services.
4. 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 Vice President of Human Resources should notify the Complainant of his/her/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. For example, it is not appropriate to remove complainants from classes or housing while allowing accused individuals to remain.

Investigation

The Vice President of Human Resources shall:

1. Authorize the investigation of the Complaint, and supervise or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. Where Parties opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure

resolution of the matter and utilize the investigation process outlined below as appropriate. 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.

2. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.

Investigation of the Complaint:

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

As set forth above, where the Parties opts for an informal resolution, the Vice President of Human Resources 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 discrimination, harassment, bullying, or retaliation 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, harassment, bullying, or retaliation has occurred.

Timeline for Completion:

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

Cooperation Expected:

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

Written Report

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

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, including the complainant and any available witnesses identified by the Complainant in the complaint;
4. An analysis of relevant data or other evidence collected during the course of the investigation, including a list of relevant documents;
5. A specific finding as to whether each factual allegation in the complaint occurred based on the preponderance of the evidence standard;
6. A table of contents if the report exceeds ten pages, and
7. Any other information deemed appropriate by the District.

Confidentiality of the Process

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

Administrative Determination

1. In any case not involving employment discrimination, within 90 days of receiving a Complaint, the district shall complete its investigation and forward a copy or summary of the report, and written notice to the Complainant setting forth all of the following:
 - A. The Superintendent/President’s or his/her/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;
 - B. 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;
 - C. The proposed resolution of the complaint;
 - D. The Complainant's right to appeal to the District’s Governing Board of Trustees and the California Community Colleges’ Chancellor’s Office; and

- E. In matters involving student sexual misconduct, the Respondent's right to appeal to the District's Board of Trustees any disciplinary sanction imposed upon the Respondent.
2. In any case involving employment discrimination, within 90 days of receiving a Complaint, the District shall complete its investigation and forward a summary of the report and written notice to the Complainant setting forth all the following:
- A. The Superintendent/President' or his/her/their designee's determination as to whether there discrimination occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard;
 - B. If a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future;
 - C. The proposed resolution of the complaint, and;
 - D. The Complainant's right to appeal to the District's Governing Board of Trustees and to file a complaint with Department of Fair Employment and Housing.

The District shall also provide the Respondent the following:

- A. The Superintendent/President's or his/her/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;
- B. The proposed resolution of the complaint, including any disciplinary action against the Respondent; and
- C. In matters involving student sexual misconduct not subject to Title IX, the Respondent's right to appeal to the District's Board of Trustees any disciplinary sanction imposed upon the Respondent.

Discipline for Student Sexual Misconduct Not Subject to Title IX

In a complaint involving student sexual misconduct not subject to Title IX, if a student Respondent is subject to severe disciplinary sanctions, the credibility of witnesses was central to the investigative findings, the District will provide an opportunity for the student Respondent to cross-examine witnesses indirectly at the live hearing, either in person or by videoconference and a live hearing conducted by 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. The neutral third party asking questions shall not exclude any questions unless there is an objection to the question by any individual charged with making a final determination regarding discipline.

Discipline and Corrective Action

If discrimination, harassment, bullying, 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 consistent with state and federal law. 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.

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 discrimination, harassment, bullying, or retaliation when the sanction directly relates to the Complainant; for example, the District may inform the Complainant that the accused 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 discrimination, harassment, bullying, and to protect the Complainant and witnesses from retaliation as a result of communicating the complaint or assisting in the investigation.

The District will ensure that Complainants and witnesses know how to report any subsequent problems, and should follow-up with Complainants to determine whether any retaliation or new incidents of harassment have occurred. The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the extent possible without impeding the District's ability to investigate and respond effectively to the complaint.

If the District cannot take disciplinary action against the accused individual because the Complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged discrimination, harassment, bullying, or retaliation 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/they may, within 30 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 District's Board of Trustees within 30 days.

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 the Respondent. The Complainant shall also be notified of his/her/their right to appeal this decision.

If the Board does not act within 45 days the administrative determination shall be deemed approved on the forty-sixth day and shall become the final decision of the District in the matter. The District 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 workplace discrimination, harassment, bullying, or retaliation, the Complainant shall have the right to file a written appeal with the California Community Colleges Chancellor's Office within thirty days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Title 5 Section 59350.

In any case involving employment discrimination, including workplace harassment, the Complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the Department of Fair Employment and Housing.

Remand

The California Community College Chancellor's Office may remand any matter to the District 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 District's Board of Trustees based upon misapplication of an applicable legal standard or an abuse of discretion.

If the California Community College Chancellor's Office remands a matter to the District, the District 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 District's amended determination to the California Community College Chancellor's Office within 30 days by following the appeal procedures above.

Extension of Time

If the District is unable to comply with the 90-day deadline, the District 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 College 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.

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

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

Disclosures to the California Community Colleges Chancellor's Office

Upon request of the California Community Colleges Chancellor's Office, the District 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 District's administrative determination, any other non-privileged documents or information the Chancellor requests.

The District shall provide to the California Community College 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 sustain in whole or in part; and any other information requested by the Chancellor.

File Retention

The District will retain on file for a period of at least five 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 Parties, of the District's administrative determination and the right to appeal;
5. Any appeal; and
6. The District's final decision.

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

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, 2021, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees. All new employees must be provided with the training and education within six months of their assumption of a his/her/their position. After January 1, 2021, the District shall provide sexual harassment training and education to each supervisory employee once every two years. An employee who received this training and education in 2019 is not required to have refresher training until after two years thereafter.

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

The District will maintain appropriate records of the training provided, including the names of the supervisory employees trained, the date of training, sign in sheets, copies of all certificates of attendance or completion issued, the type of training

provided, a copy of all written or recorded training materials, and the name of the training provider. If the training is provided by webinar, the District will maintain a copy of the webinar, all written materials used by the training and all written questions submitted during the webinar, and document all written response or guidance the trainer provided during the webinar. The District will retain these records for at least two years.

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

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

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

Education and Prevention for Students

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

The education programs will also include information aimed at encouraging students to report incidents of sexual violence to the appropriate District and law enforcement authorities. Since victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of District or campus rules were involved, the District will inform students that the primary concern is for student safety and that use of alcohol or drugs never makes the victim at fault for sexual violence. If other rules are violated, the District will address such violations separately from an allegation of sexual violence.