

AP 3435 Discrimination and Harassment Complaints and Investigations

Reference: ***Education Code Section 66281.5; Government Code Section 12950.1; Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et seq.; and 34 Code of Federal Regulations Section 106.8(b)***

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The administrative procedures for the Grossmont-Cuyamaca Community College District's discrimination and harassment investigations include, but may not be limited to, the following processes:

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 thirty (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 Vice Chancellor of Human Resources 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 Vice Chancellor of Human Resources to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the Vice Chancellor of Human Resources 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 these policy and procedures.

Time Limit to File a Complaint

In any complaint not involving employment, the complaint shall be filed within one year of the date of the alleged unlawful discrimination or harassment, or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination or harassment.

In any complaint alleging discrimination or harassment in employment, the complaint shall be filed within 180 days of the date the alleged unlawful discrimination or harassment occurred, except that this period should 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.

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 to the Vice Chancellor of Human Resources or his/her designee.

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 California Community Colleges Chancellor's Office. These approved forms are available from the Vice Chancellor of Human Resources and on the State Chancellor's Office website.

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

- Complaints from employees or the public should be filed with the Vice Chancellor of Human Resources or his/her designee; and/or the California Community Colleges Chancellor's Office
- Complaints from students should be filed with the Vice President Student Services or his/her designee

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).

Non-employment Complaints filed with the EEOC and/or the DFEH should be forwarded to the California Community Colleges Chancellor's Office.

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

In addition, a complaint of discrimination will not be rejected solely because it is not submitted on the Chancellor's Office form. The complainant may initiate the formal complaint process by submitting the complaint in another written format and specifying that it is a formal complaint of discrimination. If a complaint of unlawful discrimination is presented in another written format, such as a letter, the District may request that the complainant complete the form.

Intake and Processing of the Complaint

Upon receiving notification of a harassment or discrimination complaint, the Vice Chancellor of Human Resources 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 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 Vice Chancellor of Human Resources shall also notify the California Community Colleges 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 Vice Chancellor of Human Resources, Vice President Student Services, or their designees, 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 while allowing accused individuals to remain.
- Authorized investigation will first determine if the complaint is valid or defective.
- 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, 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 (90) 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 Vice Chancellor of Human Resources or his/her designee as to whether harassment or other discriminatory conduct did or did not occur with respect to each allegation in the complaint; a description of action taken, if any, to prevent similar problems from occurring in the future; the proposed resolution of the complaint; and notice of the parties' rights to appeal to the District's Governing Board and the California Community Colleges Chancellor's Office. If the complaint involves allegations of employment discrimination, the complainant will be notified of his or 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 all complaints of harassment or discrimination. 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 Vice Chancellor of Human Resources or his/her designee 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.C. § 1232g; 34 C.F.R. 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 ninety (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

- Reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined

If discipline is imposed, the nature of the discipline will not be communicated to the complainant. 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, insists on confidentiality, 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 (15) days, submit a written appeal to the District's Governing Board. The Governing Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Governing Board shall issue a final District decision in the matter within forty-five (45) days after receiving the appeal. A copy of the decision rendered by the Governing Board shall be forwarded to the complainant and to the California Community Colleges Chancellor's Office. The complainant shall also be notified of his/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 California Community Colleges Chancellor's Office (in cases not involving employment discrimination) within thirty (30) days after the Governing 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.

Within 150 days of receiving a formal complaint, the District shall forward to the California Community Colleges Chancellor's Office the original complaint, the investigative report (for non-employment discrimination complaints), a copy of the final administrative decision for non-employment discrimination complaints rendered by the Governing Board or indicating the date upon which the decision became final. A copy of the final District decision and the notification to the complainant of his/her appeal rights (for non-employment discrimination complaints). 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 (10) 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 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

All new supervisory employees must be provided with the training and education within six (6) months of their assumption of a supervisory position. In addition, the District shall provide sexual harassment training and education to each supervisory employee once every two (2) 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.

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 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. The education programs will include information about the District's no-retaliation policy. If other rules are violated, the District will address such violations separately from an allegation of sexual violence.

See also: BP/AP 3410 Nondiscrimination and BP/AP 3430 Prohibition of Harassment