

2.7P

DISCRIMINATION COMPLAINT PROCEDURES

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This procedure for the filing and processing of allegations of unlawful discrimination and sexual harassment is adopted to implement the requirements of Title 5 of the California Code of Regulations, sections 59300 et seq. (and other laws that prohibit unlawful discrimination) which requires all California Community College districts to ensure that their programs and activities are free from unlawful discrimination, to investigate complaints of unlawful discrimination in its programs and activities, and to try to resolve those complaints.

The Sonoma County Junior College District has identified the Vice President of Human Resources to the Chancellor of the California Community Colleges (State Chancellor) and to the public as the single District officer responsible for receiving unlawful discrimination complaints filed pursuant to this procedure and for coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the District. Such delegation procedures will be used whenever the Vice President of Human Resources is named in the complaint or is implicated by the allegations in the complaint.

Administrators, faculty members, other District employees, and students should direct all complaints of unlawful discrimination to the Vice President of Human Resources.

Vice President of Human Resources:
Santa Rosa Junior College
1501 Mendocino Avenue
1988 Armory Drive
Santa Rosa, CA 95401
(707) 527-4954

Cal. Code Regs., Title 5, § 59324, 34 C.F.R. § 106.8

CONFIDENTIALITY OF THE PROCESS

The District recognizes that confidentiality is important to all parties involved in an alleged unlawful discrimination complaint investigation. To the extent possible, the confidentiality of the complainant, respondent and witnesses will be protected. Employees and/or students interviewed in accordance with these procedures shall assist in maintaining such confidentiality.

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

If a complainant insists that his or her name not be revealed, the Vice President of Human Resources shall 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.

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.

Where an investigation results in recommendations of 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. Disciplinary actions taken against employees are generally considered confidential. In student disciplinary actions for sexual assault/physical abuse charges, the victim shall be informed of the final results of the disciplinary proceeding, but the victim must keep the information confidential. Further disclosure of the final results of student disciplinary proceedings may be made in accordance with applicable law.

California Const., Article I, §1; Civil Code § 47; Ed. Code, §§ 76234 and 87740, 34 C.F.R. § 99.31(a); *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, Office for Civil Rights, January 19, 2001.

FILING A COMPLAINT

An individual who believes he/she has been unlawfully discriminated against or sexually harassed in violation of District policy in any program or activity of the District that is funded directly by, or that receives any financial assistance from, the State Chancellor or Board of Governors of the California Community Colleges or an individual who learns of such alleged discrimination or harassment in his or her official capacity as a faculty member or District administrator may file a complaint with the Vice President of Human Resources.

A representative of his/her choice may accompany the complainant and the respondent at any stage of these proceedings. Any expense of such representative is the sole obligation of the individual who requests the participation of a representative.

Cal. Code Regs., Title 5, §59328.

TIMELINES

The District recognizes that it is in the best interest of all parties that persons who allege that improper conduct occurred seek resolution of their concerns as soon as possible to allow necessary reviews to occur expeditiously. Formal written complaints must be complete and filed in a timely manner. (See "Investigation Upon Filing of a Formal Complaint" below for filing details, including filing deadlines.) It is the District's intent that all complaints be resolved as quickly as possible consistent with the requirements for a thorough investigation.

Cal. Code Regs., Title 5, § 59328.

INFORMAL/FORMAL COMPLAINT PROCESS

Persons who feel comfortable doing so may attempt to address conduct that may violate the District's nondiscrimination policy on their own. For example, they may inform (either verbally or in writing) the individual perceived as engaging in unlawful discriminatory conduct that such behavior is offensive and

must stop. However, no individual is required to attempt to resolve offensive conduct on their own and no direct communication with the individual whose conduct is offensive. If an individual chooses not to directly communicate with the individual whose conduct is offensive is required. If an individual chooses not to directly communicate with the individual whose conduct is offensive, or if such communication is unsuccessful, he/she should bring the complaint to the Vice President of Human Resources who will explain both informal and formal options for addressing the issue and the individual's rights and responsibilities under both options.

The purpose of an informal resolution process is to allow an individual who believes he/she has been unlawfully discriminated against or sexually harassed to resolve the issue through a mediation process rather than through a formal complaint process. The informal resolution process may be an effective process when there may be a simple misunderstanding or when an individual does not wish to file a formal complaint. For example, such a process may resolve problems that require only clarification or where a problem can be resolved fairly easily, such as with an apology and an assurance that the offensive conduct will stop. The individual who selects informal resolution will be asked to sign the District's Informal Proceeding verification form.

When a person brings charges of unlawful discrimination to the Vice President of Human Resources, the Vice President 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 filing a formal complaint;
- (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 students a complaint may be filed with the Office for Civil Rights of the U.S. Department of Education (OCR – <http://www.ed.gov/about/offices/list/ocr>) where such complaint is within that agency's jurisdiction; and,

OFFICE FOR CIVIL RIGHTS
U.S. Department of Education
Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, CA 94102-4102
(415) 437-7700

- (6) If the complaint is employment-related, advise the complainant that complaint may be filed with the Department of Fair Employment and Housing (DFEH – <http://www.dfeh.ca.gov>) and/or the U.S. Equal Employment Opportunity Commission (EEOC – <http://www.eeoc.gov>) where such complaint is within the agency's jurisdiction.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
350 The Embarcadero, Suite 500
San Francisco, CA 94105-1260
(415) 625-5600

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
San Francisco District Office
1515 Clay Street, Suite 701
Oakland, CA 94612
(800) 884-1684

The Vice President of Human Resources cannot offer advice regarding the processes that will be followed by the EEOC, DFEH, or OCR. Persons should contact those agencies directly with any questions about their jurisdiction or their processes.

Efforts at informal resolution need not include any investigation unless the Vice President of Human Resources determines that an investigation is warranted by the seriousness of the charges. Efforts at informal resolution may continue after the filing of a formal written complaint, but informal resolution efforts do not extend the time limitations for filing a formal complaint. After a complaint is filed an investigation is required to be conducted and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. If a complainant chooses informal resolution or dismisses a formal complaint prior to completion of the process, the Vice President of Human Resources may require a complete investigation if warranted by the seriousness of the allegations. Any efforts at informal resolution after the filing of a written complaint will not exceed the ninety-day period for rendering the administrative determination.

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.

Cal. Code Regs., Title 5, §§ 59327, 59328, 59334, 59336 and 59339.

FILING OF FORMAL WRITTEN COMPLAINT

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

http://www.cccco.edu/divisions/legal/discrimination/attachments/Discrim_Complaint_2006.pdf.

The completed form is to be filed with the Vice President of Human Resources or mailed directly to the State Chancellor's Office.

Vice President of Human Resources
Human Resources Department
Santa Rosa Junior College
1501 Mendocino Avenue
1988 Armory Drive
Santa Rosa, CA 95401
(707) 527-4954

State Chancellor's Office
Legal Affairs Division
Chancellor's Office
California Community Colleges
1102 Q Street
Sacramento, CA 95811
(916) 445-4826

INVESTIGATION UPON FILING OF A FORMAL WRITTEN COMPLAINT

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

- (1) The complaint must be filed on a form prescribed by the State Chancellor's Office.
- (2) The complaint must allege unlawful discrimination prohibited under Cal. Code Regs., tit. 5, § 59300.
- (3) 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.

- (4) 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 allegation of unlawful discrimination.
- (5) 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.

If a complaint is defective it will be immediately returned to the complainant with a complete explanation of why an investigation could not be initiated under this process. The notice shall specify in what way(s) the complaint is defective, and a copy of the notice to the complainant will be sent to the State Chancellor's Office.

Cal. Code Regs., Title 5, §§ 59328, 59332.

Once a complaint is determined to be a valid complaint under this process, the individual(s) accused of engaging in prohibited discriminatory conduct shall be advised of the filing and the general nature of the complaint. This will occur as soon as possible and as 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.

Cal. Code Regs., Title 5, 59334.

RETALIATION

If an individual believes he/she has been subject to retaliation for filing a complaint or asserting the right to be free from discrimination prohibited by District Policy 2.7, the individual may file an additional complaint with the Vice President of Human Resources. The Vice President of Human Resources shall investigate the claim of retaliation in accordance with these procedures.

If the Vice President of Human Resources determines that the complaint of retaliation is valid, in addition to any other remedies which may be appropriate (such as disciplinary action), the Vice President of Human Resources shall take all necessary steps to end the retaliatory behavior as quickly as possible including providing counseling to the person engaging in the retaliatory conduct.

INVESTIGATIVE REPORT AND ADMINISTRATIVE DETERMINATION

The Vice President of Human Resources reviews the formal complaint, conducts an impartial fact finding investigation of the complaint, and recommends corrective action on behalf of the District. Corrective action involving a recommendation for staff or student disciplinary action shall be referred to the appropriate vice president for further action. To the extent possible, all unlawful discrimination or sexual harassment complaints filed under this process shall be investigated within a maximum of ninety (90) days of receipt. If circumstances beyond the control of the District prevent the completion of an investigation within 90 days, the Vice President of Human Resources will notify the State Chancellor and the complainant. (See "Extensions" section below for complete information.) Upon completion of the investigation, the Vice President of Human Resources will forward a copy of the investigative report to the State Chancellor.

The investigative report shall include at least all of the following:

- (1) A description of the circumstances giving rise to the complaint.
- (2) A summary of witness testimony.

- (3) An analysis of relevant data.
- (4) A finding as to whether probable cause exists to believe that discrimination in violation of District policy occurred with respect to each complaint allegation.

Upon completion of the investigation, a summary of the investigative report shall be forwarded to the complainant

Cal. Code Regs., Title 5, § 59334.

The District's administrative determination shall also be sent to the State Chancellor and the complainant, and shall set forth all of the following:

- (1) The determination of the District's Superintendent/President or his/her designee as to whether there is probable cause to believe that discrimination in violation of District policy occurred with respect to each complaint allegation.
- (2) A description of actions taken, if any, to prevent similar problems from occurring in the future.
- (3) The proposed resolution to the complaint.
- (4) The complainant's right to appeal to the District's Board of Trustees and to the State Chancellor.

Cal. Code Regs., Title 5, § 59336.

COMPLAINANT'S APPEAL RIGHTS

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 the summary of the investigative report is mailed to the complainant the District will notify the complainant of his or her appeal rights as follows:

- (1) First level of appeal: the complainant has the right to file an appeal to the District's Board of Trustees within 15 days from the date of the administrative determination. The Board of Trustees will review the original complaint, the investigative report, the administrative determination, and the appeal.

The District's Board of Trustees will issue a final District decision in the matter within 45 days after receiving the appeal. Or, the Board of Trustees may elect to take no action within 45 days, in which case 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 Board will be forwarded to the complainant and to the State Chancellor's Office.

- (2) 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 Board of Trustees issues the final District decision or permits the administrative determination to become final by taking no action within 45 days.

The complainant's appeal to the State Chancellor must be accompanied either by a copy of the Board of Trustees' decision or by evidence showing the date the complainant filed an appeal with the Board of Trustees and a statement signed under penalty of perjury that the complainant received no response from the Board of Trustees within 45 days from that date.

Complainants must submit all appeals in writing.

Cal. Code Regs., Title 5, §§ 59338 and 59339.

If a person chooses to pursue a complaint under this policy, he/she has not waived the right to file a complaint with the Equal Employment Opportunity Commission, Department of Fair Employment and Housing, the Office for Civil Rights or the appropriate bargaining agent, and has not waived the right to pursue the matter in a court of law.

FORWARD TO STATE CHANCELLOR

Within 150 days of receiving a complaint that does not involve employment discrimination, the District will forward the following to the State Chancellor:

- (1) A copy of the final District decision rendered by the Board of Trustees 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.
- (2) A copy of the notice of appeal rights the District sent the complainant.
- (3) Any other information the State Chancellor may require.

Cal. Code Regs., Title 5, §§ 59338 and 59340.

EXTENSIONS

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 District will file a written request that the Chancellor grant an extension of the deadline. The request will be submitted no later than 10 days prior to the expiration of the deadlines for completing investigations or for reaching a final District decision as 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.

A copy of the request for an extension will be sent to the complainant who may file written objections with the State Chancellor within five (5) days of receipt.

The State Chancellor may grant the request unless delay would be prejudicial to the investigation. If the State Chancellor grants an extension of the 90-day deadline the 150-day deadline is automatically extended by an equal amount.

Cal. Code Regs., Title 5, § 59342.

NOTICE, TRAINING AND EDUCATION FOR STUDENTS AND EMPLOYEES

The Vice President of Human Resources or designee is responsible for providing information and/or training to employees and students on the District's unlawful discrimination and sexual harassment policy and procedures.

Every nonsupervisory District employee will receive information related to nondiscrimination and a copy of the unlawful discrimination and sexual harassment policies and procedures during the first year of their employment. New supervisory employees shall receive training regarding the District's nondiscrimination policy, including training in sexual harassment prevention within six months of assuming their supervisory positions. All supervisory employees will receive such training at least once every two years. In years in which a substantive policy or procedural change has occurred all District employees will attend a training update and/or receive a copy of the revised policies and procedures.

A copy of the District's written policy on unlawful discrimination and sexual harassment, as it pertains to students, will be provided as part of any orientation program conducted for new students at the beginning of each semester or summer session, as applicable. A training program will be made available to continuing students as often as practical. Such informational services shall ensure that students have information on where to obtain rules and procedures for reporting allegations of discrimination and sexual harassment and how to file a District complaint or pursue available remedies.

A copy of the District's written policies on unlawful discrimination and sexual harassment will be displayed in a prominent place in the main administration building, Bailey Hall, and other areas where notices regarding the, and other areas where notices regarding the District's rules, regulations, procedures, and standards of conduct are posted, and shall appear in any District publications that set forth the comprehensive rules, regulations, procedures, and standards of conduct for the District.

Ed. Code, § 66281.5; Cal. Code Regs., Title 5, § 59324 and 59326; Reference: Cal. Code Regs., Title 5, § 59300 et seq.; 34 C.F.R. § 106.8(b).

DOCUMENT RETENTION

Documents related to complaint resolution and to employee and student notices and training will be retained by the District in accordance with Title 5 of the California Code of Regulations, sections 59020 et seq.

DEFINITIONS APPLICABLE TO NONDISCRIMINATION POLICIES AND PROCEDURES

"Appeal" means a request by a complainant made in writing to the District Board of Trustees requesting review of the administrative determination and/or the State Chancellor requesting review of the District's final decision regarding a complaint of discrimination or harassment.

"Association with a person or group with one or more of these actual or perceived characteristics" includes advocacy for or identification with people who have one or more characteristics of a protected category listed in the District's Unlawful Discrimination Policy (Policy 2.7), participation in a group associated with persons having such characteristics, or use of a facility associated with use by such persons.

"Complaint" means a written and signed statement meeting the requirements of section 59338 of Title 5, and described in the "Investigation Upon Filing of a Formal Written Complaint" portion of this procedure that alleges unlawful discrimination in violation of District Policy 2.7 and the nondiscrimination regulations set out at title 5, section 59300 et seq. of the California Code of Regulations.

"Days" means calendar days.

Disability means mental or physical disability as defined herein, and includes the Americans with Disabilities Act of 1990. If those definitions would result in broader protection of civil rights of individuals with a mental or physical disability, or would include any medical condition not included within these definitions, then that broader protection or coverage shall be deemed incorporated by reference, and shall prevail over conflicting provisions described herein.

"District" means the Sonoma County Junior College District or any District program or activity that is administered by, funded directly by, or that receives any financial assistance from the Chancellor or Board of Governors of the California Community Colleges. This includes any other organization associated with the District that receives state funding or financial assistance through the District.

"Discrimination on the basis of sex" means sexual harassment or discrimination on the basis of gender.

“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 procedure:
 - (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 special education or related services.

Having a record of a mental or psychological disorder or condition not described in paragraph (1) or (2) which is known to the District.

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

“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 procedure:
 - (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 includes physical, mental, and social activities and working.
- (2) Any other health impairment not described in paragraph (1) that requires special education or related 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.

"Sexual Harassment" includes but is not limited to:

- (1) Making unsolicited and unwelcome written, verbal, physical, and/or visual contacts with sexual overtones. (Examples of sexual harassment which appear in a written form include, but are not limited to: suggestive or obscene letters, notes, invitations. Examples of visual sexual harassment include, but are not limited to: leering, gestures, display of sexual objects or pictures, cartoons, or posters. Examples of verbal harassment include, but are not limited to: sexual innuendoes and comments; humor or jokes about sex or females/males in general; pejorative comments about females; comments about one's own or someone else's sex life or body; rating a person's sexuality or attractiveness. Examples of physical harassment include but are not limited to: giving a neck or shoulder massage; touching, patting, pinching, stroking or brushing against a person; attempted or actual sexual assault.)
- (2) Continuing to express sexual interest after being informed that the interest is unwelcome.
- (3) Making reprisals, threats of reprisal, or implied threats of reprisal following a rebuff of harassing behavior. The following are examples of this type of sexual harassment: implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting 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.

Ed. Code, §§ 212.5, 66262.5; Cal. Code Regs., Title 5, §§ 59300, 59311; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, Office for Civil Rights, January 19, 2001.