

The Sonoma County Junior College District has identified the District Compliance Officer to the State Chancellor's Office and to the public as the single District officer responsible for receiving unlawful discrimination complaints filed pursuant to Title 5, section 59338 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 District Compliance Officer is named in the complaint or is implicated by the allegations in the complaint.

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 District Compliance Officer 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, Education Code, section 76234 provides that the victim shall be informed of the disciplinary action, but that the victim must keep the information confidential.

California Const., Article I, §1; Civil Code § 47; Ed. Code, §§ 76234 and 87740

DEFINITIONS:

“Appeal” means a request by a complainant made in writing to a community college district governing board pursuant to section 59338 and/or the Chancellor’s Office pursuant to section 59339 of Title 5 to review the administrative determination of a community college district regarding a complaint of discrimination.

“Complaint” means a written and signed statement meeting the requirements of section 59338 of Title 5, which alleges unlawful discrimination in violation of this subchapter.

“Days” means calendar days unless otherwise specified.

“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 specialized supportive services.
Having a record of a mental or psychological disorder or condition 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 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.

"District" means the Sonoma County Junior College District or any District program or activity that is funded directly by the state or receives financial assistance from the state. This includes any other organization associated with the District or its college(s) that receives funding or financial assistance through the District.

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

"Sexual Harassment" means 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 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 includes but is 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.

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

FILING A COMPLAINT

An individual who believes he/she has been unlawfully discriminated against or sexually harassed in any program or activity of the district that is funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges may file a complaint with the District Compliance Officer.

A representative of his/her choice may accompany the complainant and the respondent at any stage of these proceedings.

Cal. Code Regs., Title 5, § 59311.

TIMELINES:

The District recognizes that it is in the best interest of all parties to a complaint for resolution to occur expeditiously. To that end, and to the extent feasible, it is the District's intent that all complaints be resolved as quickly as possible consistent with the requirements for a thorough investigation.

INFORMAL/FORMAL COMPLAINT PROCESS:

Persons who feel comfortable doing so are encouraged to inform (either verbally or in writing) the individual perceived as engaging in unlawful discriminatory conduct that such behavior is offensive and must stop. However, direct communication with the individual whose conduct is offensive is not required if the person does not wish such communication, or fears retribution as the result of such communication. If an individual chooses not to directly communicate with the individual whose conduct is offensive, or if such communication is unsuccessful, he/she may bring complaint to the District Compliance Officer.

When a person brings charges of unlawful discrimination to the District's Compliance Officer, he/she 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) If the complainant is a student, advise her or him that he or she may file a complaint with the Office of Civil Rights of the U.S. Department of Education (OCR); and,
- (5) If the complaint is employment-related, advise the complainant that he or she may file a complaint with the Department of Fair Employment and Housing (DFEH).

Efforts at informal resolution need not include any investigation unless the District Compliance Officer 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 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. Any efforts at informal resolution after the filing of a written complaint will not exceed the ninety-day period for rendering the administrative determination pursuant to Title 5, Section 59336.

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.

The District will provide 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.

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

FILING OF FORMAL WRITTEN COMPLAINT

If a complainant decides to file a formal written unlawful discrimination complaint against the District, he or she will file the complaint on a form prescribed by the Chancellor of the California Community Colleges. 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_form_2002.pdf

The completed form is to be filed with the Sonoma County Junior College District Compliance Officer or mailed directly to the State Chancellor's Office of the California Community Colleges.

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 Title 5, California Code of Regulations, section 59300 et seq.

Cal. Code Regs., Title 5, § 59328.

Once a complaint is determined to be a valid complaint under Title 5, 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 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, §§ 59311 and 59328.

ADMINISTRATIVE DETERMINATION

The District Compliance Officer has the authority to review the formal complaint, conduct an impartial fact finding investigation of the complaint and recommend 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. All unlawful discrimination or sexual harassment complaints filed under Title 5, Sections 59300 et seq. shall be responded to by the District Compliance Officer within a maximum of ninety (90) days of receipt. The District Compliance Officer will forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant.

The Officer's report shall include the following:

- (1) A description of the circumstances giving rise to the complaint.
- (2) A copy or summary of the investigative report.
- (3) A specific finding as to whether unlawful discrimination did or did not occur with respect to each allegation in the complaint.
- (4) The proposed resolution to the complaint.
- (5) The complainant's right to appeal to the district governing board and 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 summary 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 governing board will review the original complaint, the investigative report, the administrative determination, and the appeal.
- (2) The District's Board of Trustees will issue a final District decision in the matter within 45 days after receiving the appeal. Or, 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 board will be forwarded to the complainant and to the state Chancellor's Office.
- (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.

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, the District will forward the following to the Chancellor of the California Community Colleges:

- (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 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 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 complainant. If the 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.

RETALIATION:

If an individual believes he/she has been subject to retaliation, the individual may file an additional or amended complaint with the District Compliance Officer. The District Compliance Officer shall investigate the claim of retaliation in accordance with these procedures.

If the District Compliance Officer determines that the complaint of retaliation is valid, in addition to any other remedies which may be appropriate (such as disciplinary action), the District Compliance Officer shall take all necessary steps to end the retaliatory behavior as

quickly as possible and shall provide counseling to the person performing the retaliation regarding the rights of complainants to be free from retaliation.

NOTICE, TRAINING AND EDUCATION FOR STUDENTS AND EMPLOYEES

The District Compliance Officer or designee is responsible for providing training to employees and students on the District's unlawful discrimination and sexual harassment policy and procedures.

Every district employee will receive training and a copy of the unlawful discrimination and sexual harassment policies and procedures during the first year of their employment. Thereafter, in years in which a substantive policy or procedural change has occurred all District employees will attend a training update and receive a copy of the revised policies and procedures. Because of their special responsibilities under the law, supervisors will undergo mandatory annual training.

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 students as often as practical.

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).