

**Coast Community College District  
ADMINISTRATIVE PROCEDURE**

Chapter 3  
General Institution

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**AP 3435    Discrimination and Harassment Investigations**

**Legal References:**

Education Code Section 66281.5;

Government Code Section 12950.1;

Title 5 Sections 59320 et seq.;

34 Code of Federal Regulations Section 106.8(b)

The District is committed to providing an academic and business environment free from unlawful discrimination and harassment. This procedure outlines the process for investigating unlawful discrimination and harassment complaints.

**Filing a Timely Complaint:** Since failure to report harassment and discrimination impedes the District's ability to stop the behavior, the District encourages anyone who believes they are being harassed or discriminated against, to file a complaint. The District encourages the filing of such complaints within 30 days of the alleged incident.

The complaint shall be filed by one who alleges that he/she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his/her official capacity as a faculty member or administrator.

The complaint shall be filed with the State Chancellor or with the District officer designated to receive such complaints.

The complaint shall be in a form prescribed by the State Chancellor.

In any complaint not involving employment, the complaint shall 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.

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 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.

In any complaint alleging discrimination in employment, the District shall:

- advise the complainant that he/she may file the complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies; and
- forward a copy of any filing by the complainant with the DFEH or the EEOC to the State Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of this subchapter.

All supervisors and managers have a mandatory duty to report unlawful 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 District's 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 District's Vice Chancellor of Human Resources to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the District's 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 this procedure and the related policy. Also, complaints shall be filed by one who has learned of such unlawful discrimination in his/her official capacity as a faculty member or administrator.

**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 District Human Resources.

If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, he/she must file the complaint on a form prescribed by the State Chancellor's Office. These approved forms are available from the District's Vice Chancellor of Human Resources and on the State Chancellor's website on the discrimination link under the Legal Office page.

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

- the District's Vice Chancellor of Human Resources for employee complaints;
- the Chief Student Services Officer for student complaints and/or
- the State Chancellor's Office.

Complaints filed with the EEOC and/or the DFEH should be forwarded to the State Chancellor's Office pursuant to Title 5 Section 59328(f).

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

**Intake and Processing of the Complaint:** Upon receiving notification of a harassment or discrimination complaint, the District's 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. Employee complainants may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH). 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 District's Vice Chancellor of Human Resources shall also notify the State Chancellor's Office of the complaint.
- As circumstances warrant, 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 District's Vice Chancellor of Human Resources should notify the complainant of his/her options to avoid contact with the accused individual and allow students to change academic situations as appropriate. For instance, the District may prohibit the accused individual from having any contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and accused individual, the District shall minimize the burden on the complainant. For example, it is not appropriate to remove complainants from classes or housing while allowing accused individuals to remain.
- Authorize the investigation of the complaint, and supervise and/or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. Where complainants opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. In the case of a formal complaint, the investigation will include

interviews with the complainant, the accused, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.

- Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.
- In any case not involving employment discrimination, within 90 days of receiving a complaint, the District shall complete its investigation and forward a copy of the investigative report required pursuant to Title 5 Section 59334 to the State Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the State Chancellor:
  - the determination of the District Chief Executive Officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
  - a description of actions taken, if any, to prevent similar problems from occurring in the future;
  - the proposed resolution of the complaint; and
  - the complainant's right to appeal to the district governing board and the State Chancellor pursuant to Title 5 Sections 59338 and 59339.

In any case 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 to the complainant, and written notice setting forth all the following to the complainant:

- the determination of the District Chief Executive Officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
- a description of actions taken, if any, to prevent similar problems from occurring in the future;
- the proposed resolution of the complaint; and
- the complainant's right to appeal to the District Board of Trustees and to file a complaint with DFEH.

**Investigation of the Complaint:** The District shall promptly investigate every complaint of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. This includes complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, on a District bus, or at a class or training program sponsored by the District at another location.

As set forth above, where the complainant opts for an informal resolution, the District's Vice Chancellor of Human Resources may limit the scope of the investigation, as appropriate. The District cannot guarantee confidentiality but 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. When determining whether to release confidential information, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the accused individual's rights to receive information about the allegations if the information is maintained by the District as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. The District will inform the complainant if it cannot maintain confidentiality.

**Investigation Steps:** The District will fairly and objectively investigate harassment and discrimination complaints which are timely filed. Employees designated to serve as investigators under this procedure shall have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the District's grievance procedures differ from the District's harassment investigation procedures. The investigator shall not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigators will use the following steps: interviewing the complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses and evidence identified by each party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion. When the District evaluates the complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that discrimination or harassment has occurred.

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

**Cooperation Encouraged:** All employees are expected to cooperate with a District investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the District of its obligation to investigate. The District will conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed.

### **Discipline and Corrective Action**

If harassment, discrimination and/or retaliation occurred in violation of the policy or procedure, the District shall take disciplinary or corrective action against the accused and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense. Remedies for the complainant might include, but are not limited to:

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes or work in the same work area;
- preventing offending third parties from entering campus;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;
- arranging for a student-complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the 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.

Complainants and witnesses shall be advised on how to report any subsequent problems.

The District will pursue other steps to limit the effects of any harassment and prevent its recurrence, as appropriate.

## **Appeals**

If the District imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the procedure for appealing a disciplinary decision.

If the complainant is not satisfied with the results of the administrative determination, he/she may, within fifteen days, submit a written appeal to the Board of Trustees. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within 45 days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the complainant and to the State Chancellor's Office. The complainant shall also be notified of his/her right to appeal the Board's decision. If the Board does not act within 45 days the administrative determination shall be deemed approved and shall become the final decision of the District in the matter.

Except in cases of employment discrimination, the complainant shall have the right to file a written appeal with the State Chancellor's Office within 30 days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Title 5 Section 59350.

In any case involving employment discrimination, including workplace harassment, the complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the Department of Fair Employment and Housing. In such cases, the complainant may also file a petition for review with the State Chancellor's Office within thirty days after the governing board issues the final decision or permits the administrative decision to become final.

Except in cases of employment discrimination, the District shall forward to the State Chancellor's Office, within 150 days of receiving a formal complaint:

- the original complaint,
- the investigative report,
- a copy of the written notice to the complainant setting forth the results of the investigation,
- a copy of the final administrative decision rendered by the Board or indicating the date upon which the decision became final, and
- a copy of the notification to the complainant of his/her appeal rights.

In cases of employment discrimination, the District shall forward only the original complaint to the State Chancellor's Office.

If, due to circumstances beyond its control, the District is unable to comply with the 150 day deadline for submission of materials, it may file a written request for an extension of time no later than ten days prior to the expiration of the deadline.

## **Dissemination of Policy and Procedures**

The Board policy and related administrative procedures regarding prohibition of harassment shall be provided to all students, faculty members, members of the administrative staff, and members of the support staff, and will be posted on District's websites.

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.

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**NOTE:** *The underlined language in **red ink** is **legally required** language recommended by the League's Policy and Procedure Service to comply with the applicable legal references. The language in **green ink** was added during the review with James Andrews on December 4, 2012 and on January 7, 2012. Jack Lipton's December 3, 2012 (via hard copy letter) recommended revisions were incorporated in this version. The language in **blue ink** was added during the review by President's Council.*

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**Date Approved:**

## Legal Citations for AP 3435

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

#### **Education Code Section 66281.5**

**66281.5.** (a) It is the policy of the State of California, pursuant to Section 66251, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary educational institution of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each postsecondary educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The postsecondary educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the postsecondary educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or school site. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the postsecondary educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the postsecondary educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the postsecondary educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

#### **Government Code Section 12950.1**

**12950.1.** (a) By January 1, 2006, an employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees who are employed as of July 1, 2005, and to all new supervisory employees within six months of their assumption of a supervisory position. Any employer who has provided this training and education to a supervisory employee after January 1, 2003, is not required to provide training and education by the January 1, 2006, deadline. After January 1, 2006, each employer covered by this section shall provide sexual harassment training and

education to each supervisory employee once every two years. The training and education required by this section 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.

(b) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new supervisory employees pursuant to subdivision (b) of Section 19995.4 of the **Government Code**, using existing resources.

(c) For purposes of this section only, "employer" means any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates the requirements of this section, the commission shall issue an order requiring the employer to comply with these requirements.

(f) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

## **Cal. Admin. Code tit. 5, s 59320**

### **TITLE 5. EDUCATION**

#### **DIVISION 6. CALIFORNIA COMMUNITY COLLEGES**

#### **CHAPTER 10. COMMUNITY COLLEGE ADMINISTRATION**

#### **SUBCHAPTER 5. NONDISCRIMINATION IN PROGRAMS RECEIVING STATE FINANCIAL ASSISTANCE THROUGH THE CHANCELLOR OR BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES**

#### **ARTICLE 3. DISTRICT COMPLIANCE AND ENFORCEMENT**

#### **s 59320. District Responsibility.**

Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, national origin, religion, age, race, sex, color, sexual orientation, ancestry, or physical or mental disability. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints in accordance with the provisions of this subchapter.

### **Cal. Admin. Code tit. 5, s 59324**

s 59324. Responsible District Officer.

Each community college district shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to section 59328 and 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 procedures shall be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

### **Cal. Admin. Code tit. 5, s 59326**

s 59326. Notice to Students and Employees.

Each community college district shall notify students and employees of the provisions of this subchapter.

### **Cal. Admin. Code tit. 5, s 59328**

s 59328. Formal Investigation Upon Filing of Written Complaint.

An investigation of alleged unlawful discrimination prohibited by this subchapter will be initiated by filing a complaint that meets the following requirements:

- (a) The complaint shall 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.
- (b) The complaint shall be filed with the Chancellor of the CA Community Colleges or with the officer designated pursuant to section 59324 by the appropriate community college district.
- (c) The complaint shall be in a form prescribed by the Chancellor.
- (d) In any complaint not involving employment the complaint shall 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.
- (e) 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 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.
- (f) In any complaint alleging discrimination in employment, the district shall:
  - (1) advise the complainant that he or she may file the complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies, and;
  - (2) forward a copy of any filing by the complainant with DFEH to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of this subchapter.

### **Cal. Admin. Code tit. 5, s 59300**

TITLE 5. EDUCATION

DIVISION 6. CALIFORNIA COMMUNITY COLLEGES

CHAPTER 10. COMMUNITY COLLEGE ADMINISTRATION

SUBCHAPTER 5. NONDISCRIMINATION IN PROGRAMS RECEIVING STATE FINANCIAL ASSISTANCE  
THROUGH THE CHANCELLOR OR BOARD OF GOVERNORS OF THE CALIFORNIA  
COMMUNITY COLLEGES  
ARTICLE 1. GENERAL

s 59300. Purpose.

The purpose of this subchapter is to implement the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code s 66250 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. s 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. s 1681), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. s 794), the Americans with Disabilities Act of 1990 (42 U.S.C. s 12100 et seq.) and the Age Discrimination Act (42 U.S.C. s 6101), to the end that no person in the State of California shall, on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under any 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.

**34 Code of Federal Regulations Section 106.8(b)**

**Sec. 106.8 Designation of responsible employee and adoption of grievance procedures.**

(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.