

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

References:

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

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

Complaints

The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in discrimination, harassment, bullying, or retaliation. Any person who has suffered discrimination, harassment, bullying, or retaliation may file a formal or informal complaint of discrimination, harassment, bullying, or retaliation.

A formal complaint is a written and signed statement filed with the District or the California Community Colleges Chancellor's office that alleges discrimination, harassment, bullying, or retaliation in violation of the District's Board Policies, Administrative Procedures or in violation of state or federal law. An informal complaint is any of the following: (1) An unwritten allegation of discrimination, harassment, bullying, or retaliation; (2) a written allegation of discrimination, harassment, bullying, or retaliation that falls outside the timelines for a formal complaint; or (3) a written complaint alleging discrimination, harassment, bullying, or retaliation filed by an individual who expressly indicates that he/she does not want to file a formal complaint.

Informal Complaints

Any person may submit an informal complaint to the Vice President of Human Resources or any other District or college administrator. Administrators receiving an informal complaint shall immediately notify the Vice President of Human Resources in writing of all pertinent information and facts alleged in the informal complaint.

Upon receipt of an informal complaint, the Vice President of Human Resources will notify the person bringing the informal complaint of his/her/their right to file a

formal complaint, if the incident falls within the timeline for a formal complaint, and explain the procedure for doing so. The complainant may later decide to file a formal complaint, if within the timelines to do so. If the individual chooses not to file a formal complaint, or if the alleged conduct falls outside the timeline to file a formal complaint, the Vice President of Human Resources shall consider the allegations contained in the informal complaint and determine the appropriate course of action. This may include efforts to informally resolve the matter, or a fact-finding investigation.

Investigation of an informal complaint will be appropriate if the Vice President of Human Resources determines that the allegation(s), if proven true, would constitute a violation of the District policy prohibiting discrimination, harassment, bullying, or retaliation. The Vice President of Human Resources will explain to any individual bringing an informal complaint that the Vice President of Human Resources may decide to initiate an investigation, even if the individual does not wish the Vice President of Human Resources to do so. The Vice President of Human Resources shall not disregard any allegations of discrimination, harassment, bullying, or retaliation solely on the basis that the alleged conduct falls outside the deadline to file a formal complaint.

Formal Complaints

Formal Complaints must be filed with the Vice President of Human Resources unless the Party submitting the Formal Complaint alleges discrimination, harassment, bullying, or retaliation against the responsible district officer, in which case it should be submitted directly to the Superintendent/President or the State Chancellor of the California Community Colleges.

Formal Complaints should be submitted on the form prescribed by the Chancellor of the California Community Colleges. A copy of the form is available on the CCCCCO website.

If any Party submits a written allegation of discrimination, harassment, bullying, or retaliation not on the form described above, the District will seek to have the individual complete and submit the form. However, if the individual chooses not to do so, the District will attach the written allegation(s) to the form and treat it as a Formal Complaint. In no instance will the District reject a written allegation of discrimination, harassment, bullying, or retaliation on the basis that it was not submitted on the proper form.

A Formal Complaint must meet each of the following criteria:

1. It must allege facts with enough specificity to show that the allegations, if true, would constitute a violation of District policies or procedures prohibiting discrimination, harassment, bullying, or retaliation;

2. The Complainant must sign and date the Formal Complaint;
3. The Complainant must file any Formal Complaint not involving employment within one year of the date of the alleged discriminatory, harassing, or retaliatory conduct or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation(s) of discrimination, harassment, bullying, or retaliation.
4. The Complainant must file any Formal Complaint alleging discrimination, harassment, bullying, or retaliation in employment within 180 days of the date of the alleged discriminatory, harassing, or retaliatory conduct, except that this period shall be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

If the Formal Complaint does not meet the requirements set forth above, the Vice President of Human Resources will promptly return it to the complainant and specify the defect. If the sole defect is that the Formal Complaint was filed outside the applicable proscribed timeline, the Vice President of Human Resources will handle the matter as an informal complaint.

Oversight of Complaint Procedure:

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

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

Who May File a Complaint:

Any student, employee, or third party who believes he/she/they has been discriminated against, harassed, bullied, or retaliated against by a student, employee, or third party in violation of this procedure and the related policy.

Where to File a Complaint:

A student, employee, or third party who believes he/she/they has been discriminated against, harassed, bullied, or retaliated against in violation of these policy and procedures may make a complaint orally or in writing.

If a Complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, he/she/they must file the complaint on a form prescribed by the California Community Colleges Chancellor's Office. These approved forms are available from the Vice President of Human Resources and at the California Community Colleges Chancellor's website. The form can be found at: https://www.cccco.edu/-/media/CCCCO-Website/About-Us/Divisions/Office-of-the-General-Counsel/Programs/Unlawful-Discrimination/x_DiscrimComplaintForm.ashx?la=en&hash=A1B0181720D8D16DB525AA603E35D373AE6C06C4

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

1. The Vice President of Human Resources;
2. The Vice President of Student Services;
3. The Superintendent/President; or designee;
4. The California Community Colleges Chancellor's Office.

Employment-Related Complaints

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

Complaints filed with the EEOC or the DFEH should be forwarded to the California Community Colleges Chancellor's Office.

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

Filing a Timely Complaint:

Since failure to report discrimination, harassment, bullying, or retaliation impedes the District's ability to stop the behavior, the District strongly encourages anyone who believes they are being discriminated against, harassed, bullied, or retaliated against, to file a complaint. The District also strongly encourages the filing of such complaints within 30 days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the District's ability to investigate and remediate.

All supervisors and managers have a mandatory duty to report incidents of discrimination, harassment, bullying, or retaliation; the existence of a hostile, offensive or intimidating work environment, and acts of retaliation.

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

Communicating that the Conduct is Unwelcome:

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

Intake and Processing of the Complaint:

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

1. Undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling, training, etc.
2. Advise the complainant that he/she need not participate in an informal resolution of the complaint, as described above, and has the right to end the informal resolution process at any time. NOTE: Districts should exercise care in using mediation in cases of sexual violence.
3. Advise a student complainant that he/she/they may file a complaint with the Office of Civil Rights of the U.S. Department of Education and employee Complainants may file a complaint with the Department of Fair Employment and Housing. All Complainants should be advised that they have a right to file a complaint with local law enforcement, if the act complained of is also a criminal act. The District must investigate even if the Complainant files a complaint with local law enforcement. In addition, the District should ensure that Complainants are aware of any available resources, such as counseling, health, and mental health services. The Vice President of Human Resources shall also notify the California Community Colleges Chancellor's Office of the complaint.
4. Take interim steps to protect a complainant from coming into contact with an accused individual, especially if the Complainant is a victim of sexual violence. The Vice President of Human Resources should notify the Complainant of his/her/their options to avoid contact with the accused individual and allow students to change academic situations as appropriate. For instance, the District may prohibit the accused individual from having any contact with the Complainant pending the results of the investigation. When taking steps to separate the Complainant and accused individual, the District shall minimize the burden on the Complainant. For

example, it is not appropriate to remove complainants from classes or housing while allowing accused individuals to remain.

Investigation

The Vice President of Human Resources shall:

1. Authorize the investigation of the complaint, and supervise or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. Where Parties opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. 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.
2. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.

Investigation of the Complaint:

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

As set forth above, where the Parties opts for an informal resolution, the Vice President of Human Resources may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the Complainant's age; whether there have been other harassment complaints about the same individual; and the accused

individual's rights to receive information about the allegations if the information is maintained by the District as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. The District will inform the Complainant if it cannot maintain confidentiality.

Investigation Steps:

The District will fairly and objectively investigate discrimination, harassment, bullying, or retaliation complaints. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the District's grievance procedures operate. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

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

Timeline for Completion:

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

Cooperation Encouraged:

All employees are expected to cooperate with a District investigation into allegations of discrimination, harassment, bullying, or retaliation. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the District of its obligation to investigate. The District will conduct an investigation if it is discovered that discrimination, harassment, bullying, or retaliation is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed. No employee will be retaliated against as a result of lodging a complaint or participating in any workplace investigation.

Written Report

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

1. A description of the circumstances giving rise to the Formal Complaint;
2. A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed.
3. A summary of the testimony provided by each witness the investigator interviewed;
4. An analysis of relevant evidence collected during the course of the investigation, including a list of relevant documents;
5. A specific finding as to whether there is probable cause to believe that discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint;
6. A table of contents if the report exceeds ten pages, and
7. Any other information deemed appropriate by the District.

Confidentiality of the Process

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

Administrative Determination

1. In any case not involving employment discrimination, within 90 days of receiving a formal complaint, the district shall complete its investigation and forward a copy of the investigative report to the California Community College Chancellor, a summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:
 - A. The determination of the Superintendent/President or his/her/their designee as to whether there is probable cause to believe

discrimination occurred with respect to each allegation in the complaint;

- B. A description of actions taken, if any, to prevent similar problems from occurring in the future;
 - C. The proposed resolution of the complaint; and
 - D. The Complainant's right to appeal to the District governing board and the California Community Colleges' Chancellor's Office.
2. In any case involving employment discrimination, within 90 days of receiving a formal complaint, the District shall complete its investigation and forward a summary of the report to the Complainant, and written notice setting forth all the following to the Complainant:
- A. The determination of the Superintendent/President as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
 - B. A description of actions taken, if any, to prevent similar problems from occurring in the future;
 - C. The proposed resolution of the complaint, and;
 - D. The Complainant's right to appeal to the District governing board and to file a complaint with Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission.

Discipline and Corrective Action

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

1. Providing an escort to ensure that the Complainant can move safely between classes and activities;
2. Ensuring that the Complainant and alleged perpetrator do not attend the same classes or work in the same work area;
3. Preventing offending third parties from entering campus;

4. Providing counseling services or a referral to counseling services;
5. Providing medical services or a referral to medical services;
6. Providing academic support services, such as tutoring;
7. Arranging for a student-Complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record, and;
8. Reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant being disciplined.

If the District imposes discipline, the nature of the discipline will not be communicated to the Complainant. However, the District may disclose information about the sanction imposed on an individual who was found to have engaged in discrimination, harassment, bullying, or retaliation when the sanction directly relates to the Complainant; for example, the District may inform the Complainant that the accused must stay away from the Complainant.

Disciplinary actions against faculty, staff, and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.

The District shall also take reasonable steps to protect the Complainant from further discrimination, harassment, bullying, and to protect the Complainant and witnesses from retaliation as a result of communicating the complaint or assisting in the investigation.

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

If the District cannot take disciplinary action against the accused individual because the Complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged discrimination, harassment, bullying, or retaliation and prevent its recurrence.

Appeals

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

If the Complainant is not satisfied with the results of the administrative determination, he/she/they may, within 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 California Community Colleges Chancellor's Office. The Complainant shall also be notified of his/her/their right to appeal this decision.

If the Board does not act within 45 days the administrative determination shall be deemed approved and shall become the final decision of the District in the matter.

In any case not involving workplace discrimination, harassment, bullying, or retaliation, the Complainant shall have the right to file a written appeal with the California Community Colleges Chancellor's Office within thirty days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Title 5 Section 59350.

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

Extension of Time

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, 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/their appeal rights. 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.

File Retention

The District will retain on file for a period of at least three years after closing the case copies of:

1. The original complaint;

2. The investigatory report;
3. The summary of the report if one is prepared;
4. The notice provided to the Parties, of the District's administrative determination and the right to appeal;
5. Any appeal; and
6. The District's final decision.

The District will make such documents available to the State Chancellor upon request.

Dissemination of Policy and Procedures

District Policy and Procedures related to harassment will include information that specifically addresses sexual violence. District policy and procedures will be provided to all students, faculty members, members of the administrative staff and members of the support staff, and will be posted on campus and on the District's website.

When hired, employees are required to sign that they have received the policy and procedures, and the signed acknowledgment of receipt is placed in each employee's personnel file. In addition, these policies and procedures are incorporated into the District's course catalogs and orientation materials for new students.

Training

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

The training and education required by this procedure shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in

employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. Supervisor's harassment training must also address potential exposure and liability for employers and individuals, supervisor's obligation to report sexual harassment, discrimination, and retaliation when they become aware of it, appropriate remedial measures to correct harassing behavior, and a review of "abusive conduct."

The District will maintain appropriate records of the training provided, including the names of the supervisory employees trained, the date of training, sign in sheets, copies of all certificates of attendance or completion issued, the type of training provided, a copy of all written or recorded training materials, and the name of the training provider. If the training is provided by webinar, the District will maintain a copy of the webinar, all written materials used by the training and all written questions submitted during the webinar, and document all written response or guidance the trainer provided during the webinar. The District will retain these records for at least two years.

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

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

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

Education and Prevention for Students

In order to take proactive measures to prevent sexual harassment and violence toward students, the District will provide preventive education programs and make victim resources, including comprehensive victim services, available. The District will include such programs in their orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, the District's policies

and disciplinary procedures, and the consequences of violating these policies. A training program or informational services will be made available to all students at least once annually.

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