

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT
3401 CSM Drive
San Mateo CA 94402

Policy and Procedures
for
Unlawful Discrimination and
Sexual Harassment Complaints
(Employees and Students)

(Filed Under Title 5 Sections 59300 et seq.)
(Revised and Board Approved December 1, 2002)

District Complaint Officer for Employees and Students:
Harry W. Joel, Vice-Chancellor
Human Resources and Employee Relations
District Administration Building
3401 CSM Drive, San Mateo CA 94402
(650) 358-6767

**San Mateo County Community College District
Policy and Procedures
for
Handling Complaints of Unlawful Discrimination¹
(Employees and Students)**

Filed Under Title 5 Sections 59300 et seq.
(Revised and Board Approved 12/11/02)

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¹ The information was provided as part of the State Chancellor’s Model Policy and should be considered an informational guideline and not be interpreted as legal advice.

I. Introduction and Scope

The following document includes the written policies and procedures for filing and processing complaints of unlawful discrimination at San Mateo County Community College District. These policies and procedures incorporate the legal principles contained in nondiscrimination provisions of the California Code of Regulations, Title 5, sections 59300 et seq. as well as other state and federal substantive and procedural requirements.

A copy of these written policies on unlawful discrimination will be displayed in a prominent location in the Chancellor's Office and at each of the three Colleges in areas where notices regarding the District's rules, regulations, procedures, and standards of conduct are posted.

These policies and procedures were adopted at a regular meeting of the District Board of Trustees on December 11, 2002.

Authority: 20 U.S.C. § 1681 et seq.; Ed. Code, §§ 66270, 66271.1, 66281.5; Gov. Code, § 11135-11139.5; Cal. Code Regs., tit. 5, § 59326. **Reference:** Cal. Code Regs., tit. 5, § 59300 et seq.; 34 C.F.R. § 106.8(b).

II. Definitions

Definitions applicable to nondiscrimination policies are as follows:

- "Appeal" means a request by a complainant made in writing to the District Board of Trustees pursuant to Title 5, section 59338, and/or to the State Chancellor's Office pursuant to Title 5, section 59339, to review the administrative determination of the District regarding a complaint of discrimination.
- "Complaint" means a written and signed statement meeting the requirements of Title 5, section 59328 that alleges unlawful discrimination in violation of the nondiscrimination regulations adopted by the Board of Governors of the California Community Colleges, as set forth at Title 5, section 59300 et seq.
- "Days" means calendar days.
- "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 section:
 - (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.

(3) Having a record or history of a mental or psychological disorder or condition 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 mental condition that makes achievement of a major life activity difficult.

(5) 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.²

- "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 section:

(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.

² If the Americans with Disabilities Act of 1990 definitions would result in broader protection of the 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 into, and shall prevail over conflicting provisions of the definitions in Government Code section 12926 and should be included in district policy. (Gov. Code, § 12926(l).)

- (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.³
- "District" means San Mateo County Community 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 organization associated with the District or its three College(s) that receives state funding or financial assistance through the District.
 - "Responsible District Officer" means the officer identified by the District to the State Chancellor's Office as the person responsible for receiving complaints filed pursuant to Title 5, section 59328, and coordinating their investigation.
 - "Sexual harassment" is unlawful discrimination in the form of 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 possible sexual harassment that appear in a written form include, but are not limited to: suggestive or obscene letters, notes, invitations. Examples of possible visual sexual harassment include, but are not

³ *Ibid.*

limited to: gestures, display of sexually aggressive objects or pictures, cartoons, or posters.)

- (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 conduct in an academic environment that might be found to be sexual harassment: implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a 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, in exchange for sexual favors.

The full District Sexual Harassment policy (District Rules and Regulations 2.25) is Attachment A.

- “Unlawful discrimination” means any complaint of unlawful discrimination based upon a category protected under Title 5, section 59300, including sexual harassment and retaliation.

Authority: Gov. Code, § 12926; Cal. Code Regs., tit. 5, § 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.*

III. Employee and Student Notice, Training, and Education

The San Mateo County Community College District “Responsible Officer” shall make arrangements for or provide training to employees and students on the District’s unlawful discrimination policy and procedures. Faculty members, members of the management staff, and members of the classified staff will be provided with a copy of the District’s written policy on unlawful discrimination at the beginning of the first semester of the college year after the policy is adopted.

All District employees will receive this training and a copy of the unlawful discrimination policies and procedures during the first year of their employment. Because of their special responsibilities under the law, managers will undergo mandatory annual training. 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 training program and/or informational services will be made available to all students at least once annually. The student training or informational services should include an explanation of the policy, how it works, and how to file a complaint. In addition, a copy of the District’s written policy on unlawful discrimination, 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.

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

IV. Unlawful Discrimination Policy

The policy of San Mateo County Community College District is to provide an educational and employment environment in which no person shall be unlawfully denied full and equal access to, the benefits of, or be unlawfully subjected to discrimination on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability in any program or activity that is administered by, funded directly by, or that receives any financial assistance from the State Chancellor or Board of Governors of the California Community Colleges.

The policy of the District is to also provide an educational and employment environment free from unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment.

Employees, students, or other persons acting on behalf of the District who engage in unlawful discrimination as defined in this policy or by state or federal law may be subject to discipline, up to and including discharge, expulsion, or termination of contract.

In so providing, San Mateo County Community College District hereby implements the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code, § 66250 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of

the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101)⁴.

Authority: Cal. Code Regs., tit. 5, § 59300; Gov. Code, §§ 11135-11139.5; Ed. Code, § 66250 et seq.; 42 U.S.C. § 2000d; 20 U.S.C. § 1681; 29 U.S.C. § 794; 42 U.S.C. § 12100 et seq.; 42 U.S.C. § 6101.

V. Policy Against Retaliation

It is unlawful for anyone to retaliate against an individual who:

- files an unlawful discrimination complaint,
- refers a matter for investigation or complaint,
- participates in an investigation of a complaint,
- represents or serves as an advocate for an alleged victim or alleged offender; or
- otherwise furthers the principles of this unlawful discrimination policy.

Authority: 20 U.S.C. § 1681 et seq.; 34 C.F.R. § 106; Cal. Code Regs., tit. 5, § 59300 et seq.; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, Office for Civil Rights, January 19, 2001.*

VI. Academic Freedom

The San Mateo County Community College District Board of Trustees reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow any form of unlawful discrimination. It is recognized that an essential function of education is a probing of opinions and an exploration of ideas that may cause discomfort for some students. It is further recognized that academic freedom insures faculty's right to teach and the student's right to learn. Finally, nothing in these policies and procedures shall be interpreted to prohibit bona fide academic requirements for a specific District program, course or activity.

When investigating complaints of unlawful discrimination containing issues of academic freedom, the District will consult with a faculty member appointed by the Academic Senate with respect to contemporary practices and standards for course content and delivery.

Reference: *Cohen v. San Bernardino Valley College* (1995) 883 F.Supp. 1407, 1412-1414, *affd. in part and revd. in part on other grounds*, (1996) 92 F.3d 968; Cal. Code Regs., tit. 5, § 59302.

⁴ If the federal statutes cited above would result in broader protection of the civil rights of individuals than that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of Title 5, section 59300, as cited in the Model Policy.

VII. Responsible District Officer

San Mateo County Community College District has identified the Vice-Chancellor, Human Resources and Employee Relations to the State Chancellor's Office and to the public as the single District officer responsible for receiving all unlawful discrimination complaints filed by employees and students, pursuant to Title 5, section 59328, 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 officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.⁵

Administrators, supervisors, faculty members, other District employees, and students shall direct all complaints of unlawful discrimination to the Vice-Chancellor, Human Resources and Employee Relations, located in the Chancellor's Office, 3401 CSM Drive, San Mateo CA 94402.

Authority: Cal. Code Regs., tit. 5, § 59324; 34 C.F.R. § 106.8.

VIII. Informal/Formal Complaint Procedure⁶

When a person brings charges of unlawful discrimination to the attention of the District's responsible officer (Vice-Chancellor of Human Resources and Employee Relations), that officer will do the following:

1. Undertake efforts to informally resolve the charges;
2. Advise the complainant that he or she need not participate in informal resolution;

⁵ The Office for Civil Rights (OCR) advises educational institutions to give one official responsibility for oversight and coordination of all sexual harassment complaints to insure consistent practices and standards in handling complaints as well as coordination of record keeping. This will help ensure that the educational institution can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them. The State Chancellor's Office advises that having the responsible district officer, named pursuant to Title 5, section 59324, coordinate both sexual harassment and other unlawful discrimination complaints satisfies OCR's instruction on this subject.

⁶ The purpose of the informal resolution process is to allow an individual who believes she/he has been unlawfully discriminated against or sexually harassed to resolve the issue through a mediation process rather than the formal complaint process. Typically, the informal process will be invoked when there is a simple misunderstanding or the complainant does not wish to file a formal complaint. Resolution of an informal complaint may require nothing more than a clarification of the misunderstanding or an apology from the respondent and an assurance that the offending behavior will cease. However, the district is responsible for maintaining a safe and discrimination free educational environment and serious allegations may need to be investigated even if the complaining party considers the matter resolved. In an informal process the district officer shall advise the complainant of his or her rights and responsibilities under both the formal and informal processes. If the complainant declares his or her preference for the informal process, the responsible district officer shall present the complainant with a document that describes the informal/formal process that contains the basics of complainant's allegations of unlawful discrimination. This document will clearly indicate that the complainant opted for the informal resolution process and should be signed and dated by the complainant. The informal resolution process will not be made a predicate to the process and investigation of a formal complaint. If a formal complaint is filed, an investigation must be completed within the time required unless it is voluntarily rescinded by a complainant as a result of a successful informal resolution.

3. Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for doing so;
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 the complainant that he or she may file a non-employment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction.
6. If the complaint is employment-related, the complainant should also be advised that he or she may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where such a complaint is within that agency's jurisdiction.

Efforts at informal resolution need not include any investigation unless the responsible District officer determines that an investigation is warranted by the seriousness of the charges. Selecting an informal resolution does not extend the time limitations for filing a formal complaint. 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 90-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.

Authority: Cal. Code Regs., tit. 5, §§ 59327, 59328, 59334, 59336, and 59339; *NLRB v. Weingarten, Inc.* (1975) 420 U.S. 251.

IX. Filing of Formal Written Complaint

If a complainant decides to file a formal written unlawful discrimination complaint against the District, he or she must file the complaint on a form prescribed by the State Chancellor. These approved forms are available from the District Office of Human Resources, the Vice-Presidents of Student Services, and also at the State Chancellor's website, as follows:

<http://www.cccco.edu/divisions/legal/Discrimination/discrimination.htm>

The completed form must be filed with the District Vice-Chancellor of Human Resources and Employee Relations or mailed directly to the State Chancellor's Office of the California Community Colleges.

Once a complaint is filed, the individual(s) accused of engaging in prohibited discriminatory conduct should be advised of that filing and the general nature of the complaint. This should 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.

Authority: Cal. Code Regs., tit. 5, §§ 59311 and 59328.

X. Threshold Requirements Prior to Investigation 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:

- The complaint must be filed on a form prescribed by the State Chancellor's Office.
- The complaint must allege unlawful discrimination prohibited under Title 5, section 59300.
- 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.
- 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 specific incident or incidents of alleged 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 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 the 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. Additional information about this initial review of complaints can be found in the Guidelines for Processing Formal Title 5 Unlawful Discrimination Complaints prepared by the State Chancellor's Office.⁷

Authority: Cal. Code Regs., tit. 5, § 59328.

⁷ The Guidelines for Processing Formal Title 5 Unlawful Discrimination Complaints is a procedural aid for processing formal unlawful discrimination complaints.

XI. Notice Forwarded to State Chancellor or District

A copy of all complaints filed in accordance with the Title 5 regulations will be forwarded to the State Chancellor's Office immediately upon receipt. Similarly, when the State Chancellor's Office receives a complaint a copy will be forwarded to the District.

Authority: Cal. Code Regs., tit. 5, § 59330.

XII. Confidentiality of the Process

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 responsible officer should 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 reveals the need for 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. 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. Disciplinary actions taken against employees are generally considered confidential.⁸

⁸ Complainants must trust the District to take appropriate action and must understand that the District is generally not at liberty to discuss personnel or student matters, particularly disciplinary matters. In some disciplinary cases, the complainant may be required to testify at a hearing, and would therefore be aware of the proposed disciplinary action.

Authority: Cal. Const. Art. I, § 1; Civil Code § 47; Ed. Code, §§ 76234 and 87740; *Silberg v. Anderson* (1990) 50 Cal.3d. 205; Revised *Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, Office for Civil Rights, January 19, 2001.*

XIII. Administrative Determination

Within 90 days of receiving an unlawful discrimination complaint filed under Title 5, sections 59300 et seq., the responsible District officer will complete the investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all the following to both the complainant and the State Chancellor:

1. the determination of the District Chancellor-Superintendent or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
2. a description of actions taken, if any, to prevent similar problems from occurring in the future;⁹
3. the proposed resolution of the complaint; and
4. the complainant's right to appeal to the District Board of Trustees and the State Chancellor.

San Mateo County Community College District recognizes the importance of and is therefore committed to completing investigations and resolving complaints as quickly as possible, consistent with the requirements for a thorough investigation.

Authority: Cal. Code Regs., tit. 5, § 59336.

XIV. Complainant 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 responsible District officer or his/her designee shall notify the complainant of his or her appeal rights as follows:

A. First level of appeal:

1. The complainant has the right to file an appeal to the Board of Trustees within 15 days from the date of the administrative determination. The Board will review the original complaint, the investigative report, the administrative determination, and the appeal.

⁹ If it is determined that discrimination did occur, possible remedies to prevent similar problems from occurring in the future include all the standard District disciplinary actions for students and employees, ranging from undocumented reprimand to termination or expulsion. If formal disciplinary action is inappropriate, other possible remedies include training in the pertinent area(s) of unlawful discrimination, apology, and restricting or forbidding contact between the perpetrator and victim.

2. The Board of Trustees will issue a final District decision in the matter within 45 days after receiving the appeal. Alternatively, the 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.

B. Second level of appeal:

1. 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 District Board of Trustees issues its final decision or permits the administrative determination to become final by taking no action within 45 days.¹⁰
2. The appeal must be accompanied by a copy of the decision of the Board or evidence showing the date on which the complainant filed an appeal with the Board, and a statement under penalty of perjury that no response was received from the Board within 45 days from that date.

Complainants must submit all appeals in writing.

Authority: Cal. Code Regs., tit. 5, §§ 59338 and 59339.

XV. Forward to State Chancellor

Within 150 days of receiving a complaint, the Vice-Chancellor of Human Resources and Employee Relations (responsible District officer) will forward the following to the State Chancellor:

1. A copy of the final District decision rendered by the governing board 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.

Authority: Cal. Code Regs., tit. 5, §§ 59338 and 59340.

¹⁰ The Department of Fair Employment and Housing (DFEH) has final jurisdiction over employment-related cases. Therefore, the State Chancellor's Office has agreed to accept DFEH decisions and generally will not accept appeals in employment discrimination cases. However, in limited circumstances the State Chancellor's Office will intervene, such as when intervention might bring about a resolution at the informal level or when some unique aspect of community college governance is at issue and the expertise of the State Chancellor's Office is needed.

XVI. 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 responsible District officer will file a written request that the State 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 5 days of receipt.

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

Authority: Cal. Code Regs., tit. 5, § 59342.

XVII. Record Retention

Unlawful discrimination records that are part of an employee's employment records may be classified as Class-1 Permanent records and retained indefinitely or microfilmed in accordance with Title 5, California Code of Regulations, section 59022. Unlawful discrimination records of a student that are deemed worthy of preservation but not classified as Class-1 Permanent may be classified as Class-2 Optional records or as Class-3 Disposable records, to be retained for a period of three years.

Authority: Cal. Code Regs., tit. 5, § 59020.

1. It is the policy of the San Mateo County Community College District to provide an educational and work environment free from unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment. The District promotes a zero tolerance for behaviors of both employees and non-employees which constitute sexual harassment in its educational and workplace environment
2. This policy defines sexual harassment and sets forth a procedure for the investigation and resolution of complaints of sexual harassment by or against any faculty member, staff member, Board member or student within the District. Sexual harassment violates State and Federal laws, as well as this policy, and will not be tolerated. It is also illegal to retaliate against any individual for filing a complaint of sexual harassment or for participating in a sexual harassment investigation. Retaliation constitutes a violation of this policy.
3. This policy applies to all aspects of the academic and work environment, including but not limited to classroom conditions, grades, academic standing, employment opportunities, scholarships, recommendations, disciplinary actions, and participation in any District activity. In addition, this policy applies to minors as well as adults, and to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary action, layoff, reemployment, transfer, leave of absence, training opportunities, assignment of work hours and projects, and compensation.
4. It is the responsibility of each District employee and student to maintain a level of conduct that is in compliance with District policy. Employees who violate this policy may be subject to disciplinary action up to and including termination. Students who violate this policy may be subject to disciplinary measures up to and including expulsion.
5. For purposes of this policy, sexual harassment is defined as unsolicited, unwelcome sexual advances, requests for sexual favors, and/or other conduct of a sexual nature, characteristically persistent, pervasive and/or sufficiently severe, when one or more of the following conditions exist:
 - submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic status, or progress;
 - submission to, or rejection of, the conduct by the individual is used as a basis for employment, academic or professional development decisions affecting the individual;
 - the conduct has the purpose or the effect of unreasonably interfering with an individual's work or academic performance or of creating an intimidating, hostile or offensive work or educational environment;

- submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors and awards, programs, or activities available at or through the District;

6. This definition encompasses two categories of sexual harassment:

- a) “Quid pro quo” sexual harassment which occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual’s willingness to engage in or tolerate unwanted sexual conduct.

Examples of “quid pro quo” sexual harassment can include, but are not limited to: offering favors; educational or employment benefits, such as transfers or reassignments; favorable performance evaluations; support for transfers or reassignments; job duties, work shifts, reclassifications or changes to salary; favorable room assignments, equipment or materials in exchange for sexual favors.

- b) “Hostile environment” or “third party” sexual harassment which occurs when unwelcome conduct based on sex is sufficiently severe or pervasive so as to alter the conditions of an individual’s learning or work environment, unreasonably interfere with an individual’s academic or work performance, or create an intimidating, hostile, or abusive work or learning environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile.

7. Sexual harassment can consist of any form or combination of verbal, physical, visual or environment conduct. It need not be explicit or specifically directed at the victim. Sexually harassing conduct can occur between people of the same or different genders. The District standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the victim would perceive the conduct as harassment based on sex.

Conduct such as the following may constitute sexual harassment if any of the other elements of sexual harassment, as defined in section 4 above, are present:

Verbal:

Inappropriate or offensive remarks, slurs, jokes or innuendoes based on sex. This may include, but is not limited to, inappropriate comments regarding an individual’s body, physical appearance, attire, sexual prowess, marital status or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats or intimidation of a sexual nature; or sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular gender.

Physical:

Inappropriate or offensive touching, assault, or physical interference with free movement. This may include, but is not limited to, kissing, patting, lingering or intimate touches,

grabbing, pinching, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures.

Visual or Written:

The display or circulation of offensive sexually-oriented visual or written material. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.

Environmental:

A work or academic environment that is permeated with sexually-oriented talk, innuendo, insults or abuse not relevant to the work being performed, or the subject matter of the class. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom. An environment may be hostile if unwelcome sexual behavior is directed specifically at an individual or if the individual merely witnesses unlawful harassment in the immediate surroundings. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's work or learning.

8. When there are evaluative and/or direct supervisory responsibilities of one individual over another, romantic or sexual relationships between two individuals are inappropriate and strongly discouraged because of the inherent imbalance of power and potential for exploitation in such relationships.

A conflict of interest may exist if the employee must evaluate a student's or other employee's work or make decisions which affect the student or employee. The relationship may: create an appearance of impropriety; lead to charges of favoritism by other students or employees; and negatively impact the productivity and morale of others who observe and must interact with the two parties within the workplace or educational environment. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

An employee or student whose consensual relationship interferes with the ability of another employee to perform his/her job (or student to perform in the educational environment) may be subject to disciplinary action. Interference with employee or student performance may be documented by a failure to satisfactorily perform, or by the receipt of a valid complaint by a third party.

9. The District will promptly investigate complaints of sexual harassment and, when there is a finding of sexual harassment, will insure that any harm resulting from that harassment will be promptly redressed by restoring any lost benefit or opportunity.
10. The District forbids any form of sexual harassment within the District's work and/or educational environment. Prompt disciplinary action will be taken against any employee

(administrative, supervisory or other employee group) or student who engages in sexual harassment or retaliation against complainants or witnesses.

11. This policy will be disseminated to all employees annually, and shall be provided to each new employee. It will also be posted in a prominent place at each College and in the Chancellor's Office and will become a part of employee handbooks, online communications, and other applicable staff manuals. Copies of this policy will also be made available to students and will be printed, in whole or in part, in student handbooks and/or other student publications as appropriate.
12. Any person who believes that he/she has been subjected to sexual harassment in the District may obtain a copy of the District's Policy and Procedures for Unlawful Discrimination and Sexual Harassment complaints by contacting the Office of Human Resources, or Vice-President for Student Services at each College. The District provides both informal and formal complaint resolution procedures; considers as serious matters all complaints of sexual harassment; is committed to full investigation and timely resolution; and takes steps to ensure that persons complaining of sexual harassment will not be subjected to retaliation or reprisals of any kind.

Pursuant to Title V of the California Code of Regulations, the designated Officer for employee and student complaints of sexual harassment is the Vice-Chancellor of Human Resources and Employee Relations. Copies of the complaint procedures, including procedures for both informal and formal resolution, can be obtained by contacting the Office of Human Resources or Vice-Presidents for Student Services.

13. Students should promptly notify their division/department administrator, counselor, chief executive officer, or Vice-President for Student Services (who refer the complaints to the Vice-Chancellor of Human Resources and Employee Relations), and employees should promptly notify their immediate supervisor, division/department administrator, chief executive officer, or Human Resources immediately to report any conduct which may constitute sexual harassment on the part of other employees, students, or other persons.
14. Once the complaint has been made, the investigation will be conducted by the appropriate Title IX Officer immediately and will be acted upon in accordance with District Rules and Regulations. All matters related to complaints, investigations, findings and corrective actions will be held in strictest confidence.

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