

Discrimination, Harassment, Retaliation and General Complaints and Investigations

For unlawful discrimination and unlawful harassment under Title 5, and sexual harassment under Title IX, Complainants must proceed under Human Resources (HR) Procedure 1040.07. For other forms of harassment and retaliation not encompassed by HR Procedure 1040.07, Complainants should use this procedure.

No Retaliation for Filing Complaint

State and federal laws prohibit employees, supervisors, managers, and third parties with whom an employee comes into contact from engaging in harassment, discrimination, or retaliation. Any person who believes they have suffered harassment, discrimination, or retaliation may file a formal or informal complaint.

Complaint Procedures

A formal complaint is a written and signed statement filed with the District alleging harassment, discrimination, or retaliation in violation of the District's Board Policies, Administrative Procedures, or in violation of state or federal laws. An informal complaint is any of the following: (1) an unwritten allegation of harassment, discrimination, or retaliation; (2) an online submission through the District's Ethics Point website at <https://secure.ethicspoint.com/domain/media/en/gui/33933/>; (3) documentation and/or verbal reports resulting from an in-person meeting with a Complainant; (4) a written allegation of harassment, discrimination, or retaliation that falls outside the timelines for a formal complaint; or (5) a written complaint alleging harassment, discrimination, or retaliation filed by an individual who expressly indicates that they do not want to file a formal complaint.

Formal Complaints

Formal Complaints must be filed with the Associate Vice Chancellor/Chief Human Resources Officer unless the party submitting the Formal Complaint alleges discrimination, harassment, or retaliation against a member of the responsible District committee, in which case the member at issue should recuse himself from any consideration of the matter. Formal complaints against the Chancellor should be submitted directly to the President of the Governing Board.

Formal Complaints may be submitted on the form prescribed by the District. The form is available in the Human Resources Office, 500 Court Street, Martinez, CA 94553, or online at <https://www.4cd.edu/hr/docs/Unlawful%20Discrimination%20Complaint%20Form.pdf>.

If any party submits a written allegation of harassment, discrimination, or retaliation not on the form described above, the District will attempt 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 harassment, discrimination, or retaliation on the basis that it was not submitted on the proper form.

A Formal Complaint must meet each of the criteria listed below.

- 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, or retaliation.
- The Complainant must sign and date the Formal Complaint form or their documented allegation.
- 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, or retaliation.
- The Complainant must file any Formal Complaint alleging discrimination, harassment, 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 Employee Relations and Review Committee ("ERRC"), see *infra*, and/or its designee will promptly return the defective complaint to the Complainant and identify the issue. If the sole issue is that the Formal Complaint was filed outside the applicable proscribed timeline, the ERRC will handle the matter as an informal complaint.

Informal Complaints

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

Upon receipt of an informal complaint, the Associate Vice Chancellor/Chief Human Resources Officer will notify the person bringing the informal complaint of 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 ERRC 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 (after obtaining consent from the Complainant), or a fact-finding investigation.

Investigation of an informal complaint will be appropriate if the ERRC determines the information provided reasonably suggests a violation of District policies prohibiting harassment, discrimination, or retaliation has occurred. The ERRC will explain to any individual bringing an informal complaint that the District may initiate an investigation, even if the individual does not request an investigation. The ERRC shall not disregard any allegations of harassment, discrimination, or retaliation solely on the basis that the alleged conduct falls outside the timeframe to file a formal complaint.

Oversight of Complaint Procedure

The Associate Vice Chancellor/Chief Human Resources Officer is the "responsible District officer" charged with receiving complaints of discrimination or harassment, and submitting the complaint to the ERRC for its determination as to whether the complaint warrants an investigation. The ERRC membership shall consist of the Associate Vice Chancellor/Chief Human Resources Officer, Chief of Police, and the District General Counsel who will serve as the Chair of the committee. If the Respondent of a complaint is a member of the ERRC, the ERRC member at issue shall recuse herself or himself from further consideration of the matter. If the Respondent of a complaint is a member of the ERRC, a Governing Board member or the Chancellor, the Governing Board President (or their Designee) will be added to the ERRC as a voting member.

The ERRC will meet on a weekly basis or as needed to receive and review complaints, and determine if each complaint warrants a formal investigation. Once a complaint is found to warrant an investigation, the ERRC will initiate the investigation process and assign an investigator. The ERRC will determine if a complaint should be processed using a specific state, federal or internal procedure.

The ERRC may assign the actual investigation of complaints to other staff or to outside persons or organizations under contract with the District. An alternate investigator shall be used whenever any member of the ERRC 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 they have been discriminated against or harassed 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 they have been discriminated against or harassed in violation of these policies and procedures may make a complaint orally or in writing.

If an individual decides to file a formal written unlawful discrimination or harassment complaint against the District, they may file the complaint on a form prescribed by the District. The approved forms are available from the Associate Vice Chancellor/Chief Human Resources Officer and online at <https://www.4cd.edu/hr/docs/Unlawful%20Discrimination%20Complaint%20Form.pdf>.

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

- Associate Vice Chancellor/Chief Human Resources Officer or the ERRC;
- President; or
- Governing Board.

Employment-Related Complaints

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

Any District employee who receives a harassment or discrimination complaint shall notify a member of the ERRC immediately.

Filing a Timely Complaint: Failure to report harassment and discrimination timely impedes the District's ability to take appropriate action; the District strongly encourages anyone who believes they are being harassed or discriminated against to file a complaint within 30 days of the alleged incident.

All District administrators are required to report incidents of harassment; discrimination; hostile, offensive, or intimidating work environments; 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 District's programs or activities.

Addressing Unwelcome Conduct: The District encourages students and staff to object to unwelcome, offensive, and/or inappropriate conduct and behavior(s), request the responsible individual(s) stop the offensive behavior(s), and notify the individual's supervising administrator.

Intake and Processing of the Complaint: Upon receiving notification of a harassment or discrimination complaint, the ERRC or its designee shall take the actions listed below.

- 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 Complainants they are not required to participate in an informal resolution of the complaint, as described above, and have the right to end the informal resolution process at any time.
- Advise students they may file a complaint with the Office of Civil Rights of the U.S. Department of Education and employees they may file a complaint with DFEH or the EEOC. All Complainants shall be advised of their right to file a complaint with local law enforcement when criminal acts are alleged. The District shall conduct an investigation whether or not the individual(s) files a complaint with local law enforcement. The District shall make Complainants aware of available resources such as counseling, health, and mental health services.
- Take interim steps to protect a Complainant from coming into contact with a Respondent, especially if the Complainant alleges sexual assault and/or violence. The Associate Vice Chancellor/Chief Human Resources Officer shall notify the Complainant of options to avoid contact with the

Respondent and allow students to change academic situations as appropriate. When taking steps to separate the Complainant and the Respondent, the District shall minimize the burden on the Complainant.

Investigation

The ERRC shall:

- authorize the investigation of the complaint and supervise or conduct a thorough, prompt, and impartial investigation of the complaint. Where Complainants opt for informal resolution, the ERRC will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process as appropriate. In the case of a formal complaint, the investigation will include interviews with the Complainant, the Respondent, and other persons who may have relevant knowledge concerning the complaint; and
- review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment or other unlawful discriminatory conduct.

Investigation of the Complaint: The District shall promptly investigate complaints of harassment or discrimination. 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 District transportation, or at a class or training program sponsored by the District at another location. The District shall promptly investigate complaints of harassment or discrimination that occur off campus if the alleged conduct creates a hostile environment on campus.

As set forth above, where the Complainant opts for an informal resolution, the ERRC 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 where the release of specific information is necessary to conduct a full investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: (1) the seriousness of the alleged harassment; (2) the Complainant's age; (3) whether there have been other harassment complaints about the same individual; and (4) 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. Employees designated to serve as investigators under this policy shall have adequate training on sexual harassment, including sexual violence. The investigator must not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigators will use the following information-gathering methods: interviewing Complainant(s), interviewing Respondent(s), identifying and interviewing witnesses, reviewing personnel/academic files of involved parties, and collecting physical evidence relevant to all allegations. Investigators shall remind all individuals interviewed of the District's confidentiality and non-retaliation policies. The ERRC shall determine whether any involved person should be removed from the campus pending completion of the investigation. The ERRC shall review the investigative materials and reports and determine whether any appropriate disciplinary or remedial action is warranted. The ERRC shall make a recommendation to the President and Board of Trustees of any disciplinary action against an employee. The ERRC shall make a recommendation to the President and Board of Trustees of any disciplinary action against a student. When the District evaluates the complaint, it shall do so using a preponderance of the evidence standard; 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. The District's goal is to complete the above steps and prepare a written report within 90 days of the District receiving the complaint

whenever possible. If the complaint involves employment discrimination, the district may extend the 90-day timeline by 45 days with proper written notice to the parties. Any extension beyond the additional 45 days must be granted by the Chancellor and based on one of the reasons delineated in Section 59342 of Title 5, which include (1) a need to interview a party or witness who has been unavailable; (2) a need to review or analyze additional evidence, new allegations, or new complaints related to the matter; or (3) to prepare and finalize an administrative determination.

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. 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 credible information reasonably suggests harassment or discrimination is occurring, with or without the cooperation of the Complainants and regardless of whether a complaint is filed. Retaliation for filing a complaint or participating in an investigation is strictly prohibited; employees retaliating against Complainants and or participants in an investigation will be subject to disciplinary action up to and including termination.

Written Report

The results of the investigation of a complaint shall be set forth in a written report that will include at least the information listed below.

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

Administrative Determination

In any case not involving employment discrimination, the District shall complete its investigation and forward a copy or summary of the report to the Complainant, and written notice setting forth all of the following to the Complainant:

- the determination of the ERRC 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 Chancellor California Community Colleges.

In any case involving employment discrimination, the District shall complete its investigation and forward a copy or summary of the report to the Complainant and Respondent, and written notice setting forth all the following to the Complainant:

- the determination of the ERRC 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 to file a complaint with Department of Fair Employment and Housing or the U.S Equal Employment Opportunity Commission.

Discipline and Corrective Action

When the District concludes harassment, discrimination, and/or retaliation occurred in violation of District policies, the District shall take disciplinary action and any other remedial action it determines to be appropriate consistent with state and federal law. Disciplinary and/or corrective action will be prompt, effective, and commensurate with the severity of the offense.

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 harassment when the sanction directly relates to the Complainant; for example, the District may inform the Complainant that the Respondent must stay away from the Complainant.

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

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

The District will ensure that Complainants and witnesses know how to report any subsequent concerns. 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 Respondent because the Complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

Appeals

When 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, they may, within thirty (30) calendar days, submit a written appeal to the Governing Board. The Governing Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District determination in the matter within forty-five (45) calendar days after receiving the appeal. A copy of the decision rendered by the Governing Board shall be forwarded to the Complainant. The Complainant shall also be notified of his/her right to appeal this decision.

If the Governing Board does not act within forty-five (45) calendar 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, or retaliation, the Complainant shall have the right to file a written appeal with the California Community Colleges Chancellor's Office within thirty (30) calendar days after the Governing 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. On appeal of a district's final decision, under Section 59350 of Title 5, the Chancellor's review is limited to: (1) whether there was a procedural error; (2) whether there was a defect in the investigation; (3) whether new evidence unavailable during the investigation would substantially impact the outcome of the investigation; (4) whether the correct legal standards were applied; and (5) whether the district's determination was an abuse of discretion. The Chancellor must respond to the appeal within 90 days.

Section 59325 of Title 5 provides the circumstances under which a matter may be remanded, and provides that the district must take necessary action and issue a decision after remand within 60 days.

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 or the Equal Employment Opportunity Commission.

A Respondent may appeal the results of an administrative determination within 30 days when disciplinary action is imposed pursuant to an allegation of student sexual misconduct.

Upon a request from the Chancellor, the District is required to disclose: (1) the complaint; (2) the investigation report, if not privileged; (3) the final district decision; (4) the notice to the complaint; and (5) the complainant's appeal to the District.

File Retention

The District will retain on file, for a period of at least five (5) years after closing an investigation, copies of the following documents:

- the original complaint;
- the investigative report;
- the summary of the report if one is prepared;
- the notice provided to the Complainant of the District's administrative determination and their right to appeal;
- any appeal(s); and
- the District's final decision.

The District will make such documents available to the Chancellor of the California Community Colleges upon request.

Authority over Parties: The District has authority over students, employees, and third parties for alleged violations of this policy that occur on District property. The District has authority over District employees and students for alleged violations of this policy that occur at District activities or events. The District may exercise authority over events that occur off-campus to determine if the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

Training

The District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees. The District shall provide at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all non-supervisory employees. All new employees must be provided with the training and education within six months of starting employment. The District shall provide ongoing sexual harassment training and education to each employee at least once every two years.

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, a review of "abusive conduct," and harassment based on gender identity, gender expression, and sexual orientation. 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.

The District will maintain appropriate records of the training provided and evidence of completion for each employee and retain these records for at least two (2) years.

Education Code Sections 212.5, 231.5, 66281.5, and 67386

Government Code Section 12950.1

Title 5 Sections 59320, 59324, 59326, 59328, and 59300, and following

Title 2 Sections 11023 and 11024