

## General Institution

## AP 3435 DISCRIMINATION AND HARASSMENT COMPLAINT PROCEDURES

*References:*

- Board Policies 3410, 3430, and 3540;
- Education Code Sections 212.5, 44100, 66250 et seq., 66281.5; 72010 et seq., 76234, 87100 et seq., 87740;
- Civil Code Section 47;
- Government Code Sections 11135, 12926.1, 12940 et seq.;
- Title 5 of the California Code of Regulations, sections 53000 et seq., 59300 et seq.;
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), 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.), the Age Discrimination Act (42 U.S.C. § 6101 et seq.; 34 C.F.R. 110.1 et seq.), and the Age Discrimination in Employment Act (21 U.S.C. § 621 et seq.);
- 34 CFR sections 104.4, 104.7, 106, 106.8, 110.25, 110.26; 28 CFR 35.107;
- Accreditation Standard II.B.2.c.;
- OCR Dear Colleagues Letter: Sexual Violence, April 4, 2011

## 1. DEFINITIONS

- a. **Accused:** The District, or any person identified in a Formal or Informal Complaint alleged to have engaged in Harassment, Discrimination, or Retaliation as defined in this procedure.
- b. **Days:** Calendar days.
- c. **DFEH:** The California Department of Fair Employment and Housing.
- d. **Discrimination or Harassment:** All references to alleged discrimination, harassment, or retaliation in this procedure refer to allegations relating to District employment, or participation in the District's education programs or activities, including academic, educational, extra-curricular, athletic, and other programs, whether they take place in the District's facilities, on a District bus, at a class or training program sponsored by the District at another location, or elsewhere. Harassment or discrimination includes the following:
  - (1) the denial or limitation of full and equal access or equal treatment in relation to District employment, or participation in the District's education programs, activities, or services on the basis of having, or associating with someone who has, one or more of the following actual or perceived characteristics:
    - Age;
    - Ancestry;

- Color;
- Religious Creed (including religious dress and grooming practices);
- Family and Medical Care Leave;
- Disability (mental and physical) including HIV and AIDS;
- Marital Status;
- Medical Condition (including cancer and genetic characteristics);
- Genetic Information
- Military and Veteran Status;
- National Origin (including language use restrictions);
- Race;
- Sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding);
- Gender, Gender Identity, and Gender Expression;
- Sexual Orientation; or

(2) harassing conduct, including verbal, nonverbal, physical aggression, or intimidation, (such as name-calling, graphic or written statements, physical threats, or humiliating conduct), on the basis of the above-referenced actual or perceived characteristics. Harassment or Discrimination includes all of the foregoing in violation of any of the following:

(1) Board Policies 3410 or 3430;

(2) Education Code sections 212.5, 44100, 66250 et seq., 66281.5, 72010 et seq., or 87100 et seq.;

(3) regulations adopted by the Board of Governors of the California Community Colleges (Title 5, California Code of Regulations, sections 59300 et seq., or 53000 et seq.); or

(4) Federal law (Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act, or the Age Discrimination in Employment Act).

***[See also BP and AP 3410 (Nondiscrimination) and BP and AP 3430 (Prohibition of Harassment), and AP 3540 (Sexual and other Assaults on Campus)]***

- e. **Discrimination Not Involving Employment:** Discrimination, Harassment, or Retaliation, as defined in this procedure, which is alleged to have occurred against a student or other non-employee in which the Accused party is: (1) the District; (2) a student or employee of the District; or (3) a third party.
- f. **Discrimination Involving Employment:** Discrimination, Harassment, or Retaliation, as defined in this procedure, which is alleged to have occurred against an employee.
- g. **District:** Marin 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 that receives state funding or financial assistance from or through the District.

- h. **EEOC:** The U.S. Equal Employment Opportunity Commission.
- i. **Formal Complaint:** A written and signed statement filed with the District or the State Chancellor's office that alleges Harassment, Discrimination, or Retaliation in violation of the nondiscrimination regulations adopted by the Board of Governors of the California Community Colleges, as set forth at title 5, sections 59300 et seq.
- j. **Informal Complaint:** An informal complaint is any of the following: (1) An unwritten allegation of Harassment, Discrimination, or Retaliation; (2) a written allegation of Harassment, Discrimination, or Retaliation that falls outside the timelines for a Formal Complaint; or (3) a written complaint alleging Harassment, Discrimination, or Retaliation filed by an individual who expressly indicates that he or she does not want to file a Formal Complaint.
- k. **Informal Resolution:** An informal resolution is the end result of an Informal Complaint or a Formal Complaint following efforts undertaken by the RDO or designee to resolve the matter informally. It is a written document that memorializes a resolution between, and satisfactory to, the Victim and the Accused.
- l. **OCR:** The Office for Civil Rights of the U.S. Department of Education.
- m. **Official Reporter:** An individual who submits an Informal or Formal Complaint alleging that another or others, not himself or herself, has suffered Harassment, Discrimination, or Retaliation, and who learned of the alleged Discrimination, Harassment, and/or Retaliation in his or her official capacity as a District faculty member or administrator as described in title 5, section 59328. When an Official Reporter files a complaint on behalf of an individual victim, the District will require revocable written consent from the Victim for the Official Reporter to act on her or his behalf as a Victim Advocate, if the Victim chooses to have her or him do so.
- n. **Responsible District Officer ("RDO"):** The person responsible for receiving Informal and Formal Complaints and implementing the procedures set forth in AP 3435. The District's RDO is the Executive Director of Human Resources and Labor Relations. The RDO may delegate the performance of duties required to implement these procedures; however, delegation of such duties does not relieve the RDO of his or her responsibility for implementing these procedures.
- o. **Retaliation:** Any adverse action taken in response to someone: (1) filing an Informal or Formal Complaint; (2) reporting alleged Discrimination or Harassment; (3) participating in an investigation of an Informal or Formal Complaint; or (4) representing or serving as an advocate for an alleged Discrimination or Harassment victim or alleged offender.
- p. **Sex-Based Harassment:** A particular form of Harassment that is either sexual in nature ("sexual harassment") or motivated by gender ("gender-based harassment"). Sexual harassment may include unwelcome sexual advances, requests for sexual favors, sexual favoritism, sexual violence, other verbal or physical conduct, or communications of a sexual nature. Gender-based harassment may include negative stereotyping, or other harassing conduct (such as name-calling, graphic or written statements, physical threats, or humiliating conduct) based on sex or gender/gender identity made by someone from or in the workplace or educational setting.
- q. **Third-Party Reporter:** An individual other than an Official Reporter who submits an Informal or Formal Complaint alleging that another or others, and not himself or herself,

has suffered Harassment, Discrimination, or Retaliation. When a Third Party Reporter files a complaint on behalf of an individual victim, the District will require revocable written consent from the Victim for the Third Party Reporter to act on her or his behalf as a Victim Advocate.

- r. **Victim:** An individual who is alleged to have personally suffered Harassment, Discrimination, or Retaliation.
- s. **Victim Advocate:** An individual designated by the Victim, in a written document signed by the Victim and submitted to the RDO or designee, to whom the Victim grants revocable authorization to act on the Victim's behalf and receive information from the District.

## 2. INFORMING STUDENTS AND EMPLOYEES OF PROCEDURES FOR FILING INFORMAL AND FORMAL COMPLAINTS

The District encourages any individual who believes he or she has been the Victim of Harassment, Discrimination, or Retaliation, or who believes that another has been the Victim of Harassment, Discrimination, or Retaliation, to file an Informal or Formal Complaint. The timelines under which a Formal Complaint must be filed are set forth in section 6.2 of these procedures (employment matters within 180 days and non-employment matters within one year). To enable the District's prompt and effective action in addressing concerns, the District strongly encourages the filing of Informal and Formal Complaints within 30 days of the alleged incident or as soon as possible within the timelines under section 6.2. While all Informal and Formal Complaints are taken seriously and will be investigated promptly, delay in filing impedes the District's ability to investigate and take remediating action.

The procedures for filing Informal and Formal Complaints that are set forth in this Administrative Procedure shall be (1) widely published and publicized to students and employees; (2) posted on the College of Marin website; (3) provided to all students as part of any orientation program conducted for new students at the beginning of each term; (4) provided to all employees at the time they are first employed and as part of any orientation program for new employees; and (5) published in the college course catalog. The Formal Complaint form prescribed by the State Chancellor shall be available at the student services department, the District human resources department, the Superintendent/President's office, and by a "link" published on the College of Marin website.

*(Education Code, §§ 66252, 66270, 66281.5, Government Code, § 11135, Title 5, § 59326.)*

## 3. INTERIM MEASURES UPON RECEIPT OF AN INFORMAL OR FORMAL COMPLAINT

Upon receipt of an Informal or Formal Complaint, the RDO shall immediately assess whether interim steps are warranted. Examples of interim measures may include steps to prevent contact between an alleged Victim and the Accused while the complaint is being investigated and/or resolved, counseling, academic support, health and mental services, and/or escort services. In making this assessment, the RDO will consider the seriousness of the allegations, whether they include allegations of physical or sexual violence, whether they include allegations of Retaliation, and the power differential between the parties. When preventing contact between the parties is found to be warranted, the RDO or designee

may take a variety of steps as he or she deems appropriate such as: (1) placing the Accused on paid administrative leave or immediate, interim suspension; (2) changes in the academic schedule or work assignment of the Victim and/or Accused; or (3) prohibiting the Accused from having any contact with the alleged Victim pending the results of the investigation. When taking steps to separate the alleged Victim and the Accused, the District shall minimize the burden on the alleged Victim. When any such steps are taken, the RDO or designee will make clear to all parties that these are non-disciplinary, interim measures pending the completion of an investigation and that no findings of wrongdoing have been made.

#### 4. INFORMAL COMPLAINTS

Any person may submit an Informal Complaint to the RDO or any other District administrator. Administrators receiving an Informal Complaint shall immediately notify the RDO in writing of all pertinent information and facts alleged in the Informal Complaint. Upon receipt of an Informal Complaint, the RDO or designee will notify the person bringing the Informal Complaint of his or her right to file a Formal Complaint, if the incident falls within the timeline for a Formal Complaint, and explain the procedure for doing so. If the individual is within the timelines and chooses not to submit a Formal Complaint, the RDO or designee will present the individual with a written description of the Formal Complaint process and a summary of the allegations provided by the individual making the Informal Complaint. This document will clearly indicate that the RDO or designee advised the individual of his or her option to file a Formal Complaint and that the individual chose not to do so. The RDO or designee will request the individual to sign and date the document. Signing the document does not preclude the individual from later deciding 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 RDO or designee shall consider the allegations contained in the Informal Complaint and determine the appropriate course of action. This may include efforts to resolve the matter informally, and/or a fact-finding-investigation. Investigation of an informal complaint will be appropriate if the RDO or designee determines that the allegation(s), if proven true, would constitute a violation of the District policy prohibiting Harassment, Discrimination, or Retaliation. The RDO or designee will explain to any individual bringing an Informal Complaint that the RDO or designee may decide to initiate an investigation, even if the individual does not wish the RDO or designee to do so. The RDO or designee shall not disregard any allegations of Harassment, Discrimination, or Retaliation on the basis that the alleged conduct falls outside the deadline to file a Formal Complaint.

*(Title 5, §§ 59324, 59327; 59328, 34 CFR 106.8.)*

#### 5. INFORMAL RESOLUTION PROCESS

Whenever any person brings allegations of Harassment, Discrimination, or Retaliation to the attention of the District, the RDO or designee shall undertake efforts to informally resolve the matter between the alleged Victim and the Accused party or parties as follows:

- a. The victim may participate in the informal resolution process described below through, or with the assistance of, a Victim Advocate, with the following limitations:
  - i. The Victim Advocate must sign a confidentiality agreement stating that he or she is precluded from disclosing information obtained through the

resolution process, unless such disclosure is authorized by law, and is made on behalf of the Victim with his or her approval.

- ii. If the Accused is a District employee, his or her consent is required for the participation of a Victim Advocate who is a non-management or subordinate District employee.
  - iii. No Informal Resolution of an individual complaint may be adopted without the approval of the Victim himself or herself.
- b. When Informal Resolution efforts occur in response to an Informal Complaint, the RDO or designee is not required to initiate an investigation or engage in the procedural steps that apply to a Formal Complaint. However, the RDO or designee shall advise the alleged Victim that he or she may file a Formal Complaint at any time during the informal resolution process if the incident falls within the permissible timeline for a Formal Complaint (see section 6.2 -- (employment matters within 180 days and non-employment matters within one year). The informal resolution process may continue after the filing of a Formal Complaint; however, all timelines and procedural requirements for Formal Complaints must be met. The informal resolution process does not extend the time limitations for filing a Formal Complaint;
  - c. When the District is first made aware of allegations of Harassment, Discrimination, or Retaliation through the filing of a Formal Complaint, the RDO or designee will inform the alleged Victim that he or she may engage in an informal resolution process. However, if he or she opts for an informal resolution process, all timelines and procedural requirements for Formal Complaints (see section 6.2) must be met;
  - d. The RDO or designee shall advise the alleged Victim that the informal resolution process is optional;
  - e. The RDO or designee shall advise the alleged Victim that the informal resolution process does not require that he or she confront or work out problems directly with the Accused, and that in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis;
  - f. If the alleged Victim has filed a Formal Complaint, any efforts at informal resolution shall not exceed ninety (90) Days after the District's receipt of the Formal Complaint, in conformance with the timeline for an administrative determination as provided in section 6.8 of this procedure;
  - g. If the alleged Victim has filed an Informal Complaint, the RDO or designee should generally seek to conclude the informal resolution process as soon as possible but within 90 days after receipt of the Informal Complaint. If the RDO or designee determines that, due to extenuating circumstances, the informal resolution process should be extended beyond 90 days, the RDO or designee will provide written notice to the alleged Victim and the Accused advising them that the informal resolution process will be extended for a specified number of days, by the end of which the RDO or designee will conclude the informal resolution process. The time period for any such extension shall be reasonable under the circumstances and not due to lack of diligence by the District;

- h. At all times, it remains within the sole discretion of the District to determine whether alleged Harassing, Discriminatory, or Retaliatory conduct warrants discipline. An alleged Victim and the Accused do not have the authority to include in an informal resolution the disposition of discipline. However, the District may take into consideration the results of an informal resolution in determining whether and what discipline is appropriate. Similarly, even if an alleged Victim withdraws his or her Informal or Formal Complaint as the result of a successful informal resolution, the RDO or designee may require the investigation to continue if he or she determines that the allegation(s), if proven to be true, would constitute a violation of District policies prohibiting Discrimination, Harassment, or Retaliation; the District will inform the Victim of this possibility before initiating informal resolution;
- i. If the matter is resolved, the RDO or designee will put the resolution in writing and meet with the alleged Victim and the Accused, who will review and sign the document memorializing the resolution. The Victim shall be responsible for informing the RDO or designee if the Accused fails to comply with the terms of the informal resolution. Upon such notice, the RDO or designee shall be responsible for enforcing the terms of the Informal Resolution agreement;
- j. If it becomes clear to the RDO or designee that an informal resolution cannot be reached, he or she will convey the determination to both parties. The RDO or designee will also inform the alleged Victim of his or her right to file a Formal Complaint if he or she has not already done so;
- k. If a Formal Complaint submitted by an Official Reporter is resolved through the informal resolution process, the RDO or designee will notify the Official Reporter that the alleged Victim and the Accused participated in the Informal Resolution process and successfully resolved the matter. The Official Reporter is not entitled to receive any other information about the resolution unless he or she would otherwise receive this information due to his or her supervisory role over the Accused, or due to her or his role as a Victim Advocate; and
- l. If a Third Party Reporter or Official Reporter files an Informal Complaint alleging that a class of Victims has suffered Discrimination, Harassment, or Retaliation, the Third Party Reporter or Official Reporter may participate in the Informal Resolution Process as set forth in this Section 5 as if standing in the shoes of the Victims. For example, a Third Party or Official Reporter may file a Complaint for an alleged failure to provide wheelchair accessible facilities. In such cases, the District may work directly and solely with the Third Party or Official Reporter to reach an informal resolution.

*(Title 5, §§ 59324, 59327; 59328, 59334, 59336, and 59339; 34 CFR 106.8; 34 CFR 110.25; and 28 CFR 35.107.)*

## 6. FORMAL COMPLAINTS

Anyone may file a Formal Complaint, including: (1) an alleged Victim; (2) a Third-Party Reporter, or (3) an Official Reporter. Formal Complaints must be submitted to the State Chancellor or the RDO unless the party submitting the Formal Complaint alleges Discrimination, Harassment, or Retaliation against the RDO, in which case it should be submitted directly to the Superintendent/President or the State Chancellor.

(Title 5, §§ 59324, 59327; 34 CFR 106.8.)

#### 6.1 USE OF THE PRESCRIBED FORMAL COMPLAINT FORM

Formal Complaints should be submitted on the form prescribed by the State Chancellor. A copy of the form will be available at the student services department, the human resources department, the Superintendent/President's office, and on the College of Marin web site. A copy of the form may be downloaded at the following web page:

<http://extranet.cccco.edu/Divisions/Legal/Discrimination.aspx#CmpltForm>

Any party may file the form with the RDO or mail it directly to the State Chancellor's Office of the California Community Colleges. The address for the State Chancellor's Office is provided on the form.

If any party submits a written allegation of Harassment, Discrimination, and/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 Harassment, Discrimination, or Retaliation on the basis that it was not submitted on the proper form.

(Title 5, §§ 59311, 59328.)

#### 6.2 REQUIRED ELEMENTS OF A FORMAL COMPLAINT

A Formal Complaint must meet each of the following criteria:

- a. It must allege facts with sufficient specificity to show that the allegations, if true, would constitute a violation of District policies or procedures prohibiting Discrimination, Harassment, and/or Retaliation;
- b. The complainant must sign and date the Formal Complaint;
- c. 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, and/or Retaliation.
- d. The complainant must file any Formal Complaint alleging Discrimination, Harassment, and/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 RDO or designee will promptly return it to the complainant with a written notice specifying the defect. If the Formal



Complaint was filed by an alleged Victim or an Official Reporter, the RDO or designee will also send a copy of the notice of defect to the State Chancellor at the same time he or she sends it to the complainant. If the sole defect is that the Formal Complaint was filed outside the applicable proscribed timeline, the RDO or designee will handle the matter as an Informal Complaint.

Immediately upon receiving a Formal Complaint that: (1) meets the requirements stated above; and (2) was filed by an alleged Victim or an Official Reporter, the RDO or designee shall forward a copy of the Formal Complaint to the State Chancellor. The RDO is not required to forward Formal Complaints filed by other Third Party Reporters to the State Chancellor.

(Title 5, §§ 59328, 59330, 59332.)

#### 6.3 RIGHT TO FILE A COMPLAINT WITH THE OCR, THE DFEH, THE EEOC, OR LOCAL LAW ENFORCEMENT

- a. Upon receipt of an Employment-Based Formal Complaint, the RDO or designee shall (1) advise the complainant that he or she may file a complaint with the EEOC or DFEH; and (2) forward a copy of any filing by the individual with the DFEH or the EEOC to the State Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter.
- b. Upon receipt of a Non-Employment-Based Formal Complaint, the RDO or designee shall advise the complainant that he or she may file a complaint with the OCR.
- c. The RDO or designee shall advise any individual submitting a Formal Complaint that he or she has a right to file a complaint with local law enforcement. The District must investigate Formal Complaints even if the complainant also files a complaint with local law enforcement or OCR.

(Title IX – see OCR, Questions and Answers on Title IX and Sexual Violence, April 29, 2014, p. 13; Title 5, §§ 59327, 59328.)

#### 6.4 INVESTIGATION

- a. Upon receiving a Formal Complaint that meets all of the applicable requirements set forth in section 6.2, the RDO or designee shall initiate a fact-finding investigation. No Formal Complaint of Harassment, Discrimination, or Retaliation shall remain unexamined.
- b. The RDO or designee shall notify the complainant that he or she has initiated an investigation.
- c. If a Formal Complaint was filed by an alleged Victim or by an Official Reporter, the RDO or designee shall notify the State Chancellor that he or she has initiated an investigation.

- d. The RDO or designee may conduct the investigation or assign it to other staff or outside persons or organizations under contract with the District. Other staff, not reporting to the RDO, or an outside person or organization, will perform the investigation whenever the RDO is named in the Formal Complaint or implicated by the allegations in the Formal Complaint.
- e. In all instances, the person conducting the investigation will have relevant investigative experience or training and knowledge of pertinent District policies and laws governing Harassment, Discrimination, and Retaliation.
- f. The District will fairly and objectively investigate all Formal Complaints. This shall include giving the Victim or other complainant and the Accused an equal opportunity to inform the investigator of evidence and witnesses that they believe to be relevant to assessing the allegations. The investigator has the ultimate authority to determine who it is necessary to interview and what documents to review in order to complete a thorough, fair, objective and timely investigation. However, he or she will not unreasonably fail to consider evidence identified by the Victim, other complainant, or Accused. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

#### 6.5 Written Report

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

- a. A description of the circumstances giving rise to the Formal Complaint;
- b. A summary of the testimony provided by each witness interviewed by the investigator;
- c. An analysis of relevant evidence collected during the course of the investigation;
- d. A specific finding as to whether there is probable cause to believe that Discrimination, Harassment, and/or Retaliation occurred with respect to each allegation in the Formal Complaint; and
- e. Any other information deemed appropriate by the District.

(Title 5, §§ 59320, 59324, 59334.)

#### 6.6 CONFIDENTIALITY OF THE PROCESS

Investigative processes can best be conducted within a confidential climate. Therefore, the District does not reveal information about such matters 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.

(Cal. Const. Art. I, § 1.)

#### 6.7 ADMINISTRATIVE DETERMINATION IN CASES NOT INVOLVING EMPLOYMENT

The RDO or designee shall complete the investigation and provide a copy of the investigative report to the Superintendent/President in sufficient time for the Superintendent/President or designee to issue an administrative decision within ninety (90) Days after receipt of a Formal Complaint. The District shall take the following actions within ninety (90) Days after receipt of a Formal Complaint:

- a. The RDO or designee shall forward to the alleged Victim and/or Victim Advocate and to the Accused:
  - (1) a copy or summary of the investigative report;
  - (2) the administrative determination of the Superintendent/President or his or her designee as to whether there is probable cause to believe Discrimination, Harassment, or Retaliation occurred with respect to each allegation in the Formal Complaint;
  - (3) a description of actions taken, if any, to stop any Discrimination, Harassment, or Retaliation found, to prevent similar problems from occurring in the future, and to remedy the effects of Discrimination, Harassment, or Retaliation on the Victim and other individuals, as necessary, provided, however, that the Accused will not be notified of the individual remedies offered or provided to the Victim that do not relate directly to limitations or consequences imposed on the Accused;
  - (4) the proposed resolution of the Formal Complaint; and
  - (5) notice of the right of the alleged Victim to appeal the determination to the District governing board and to the State Chancellor.
- b. If a Third Party Reporter or Official Reporter files a Formal Complaint alleging Discrimination, Harassment, or Retaliation, against a class of Victims, (such as an allegation that facilities are not wheelchair accessible), the Third Party Reporter or Official Reporter shall stand in the shoes of the Victims for the purposes of Section 6.7, subdivision a.
- c. If the Formal Complaint was filed by an alleged Victim or an Official Reporter, the RDO or designee shall forward to the State Chancellor:
  - (1) a copy of the investigative report;

- (2) the administrative determination of the Superintendent/President or his or her designee as to whether there is probable cause to believe Discrimination, Harassment, or Retaliation occurred with respect to each allegation in the Formal Complaint;
  - (3) a description of actions taken, if any, to stop any Discrimination, Harassment, or Retaliation found, to prevent similar problems from occurring in the future, and to remedy the effects of Discrimination, Harassment, or Retaliation on the Victim;
  - (4) the proposed resolution of the Formal Complaint; and
  - (5) a copy of the notice sent to the alleged Victim advising him or her of his or her right to appeal the determination to the District governing board and to the State Chancellor.
- d. If the Formal Complaint was filed by an Official Reporter on behalf of an individual rather than a class of Victims, the District will advise the Official Reporter that the District completed the investigation and apprised the alleged Victim and the Accused of the District's findings.

(Title 5, §§ 59328, 59336, 59338, 59339.)

#### 6.8 ADMINISTRATIVE DETERMINATION IN CASES INVOLVING EMPLOYMENT

The District shall complete the investigation and take the following actions within ninety (90) Days after receipt of a Formal Complaint.

- a. The RDO or designee shall forward to the alleged Victim and/or Victim Advocate and to the Accused:
  - (1) A copy or a summary of the investigative report:
  - (2) The administrative determination of the District Chancellor or his or her designee as to whether there is probable cause to believe Discrimination, Harassment, or Retaliation occurred with respect to each allegation in the Formal Complaint;
  - (3) A description of actions taken, if any, to stop any Discrimination, Harassment, or Retaliation found, to prevent similar problems from occurring in the future, and to remedy the effects of Discrimination, Harassment, or Retaliation on the Victim and/or the broader student population;
  - (4) The proposed resolution of the Formal Complaint; and

- (5) The alleged Victim's right to appeal the determination to the District governing board and/or to file a complaint with the DFEH.
- b. If the Formal Complaint was filed by an Official Reporter on behalf of an individual rather than a class of Victims, the District will advise him or her that the District completed the investigation and apprised the alleged Victim and the Accused of the findings.

(Title 5, §§ 59328, 59336, 59338, 59339.)

## 6.9 APPEALS

An alleged Victim has the right to file an appeal if he or she is not satisfied with the results of the District's administrative determination. Victims may utilize the Appeals process with the assistance of a Victim Advocate. The following procedures apply to appeals:

- a. **First Level of Appeal:** An alleged Victim has the right to file a written appeal to the District's governing board within fifteen (15) Days from the date of notice of the administrative determination. The District's governing board will review the original Formal Complaint, the investigative report, the administrative determination, and the appeal.

The District's governing board will issue a final District decision in the matter within forty-five (45) Days after receiving the appeal. Alternatively, the District's governing board may elect to take no action within forty-five (45) Days, in which case the original decision in the administrative determination shall become the final District decision in the matter. The RDO or designee will provide a copy of the final decision to the alleged Victim and the Accused.

- b. **Second Level of Appeal**
  - (1) **Cases Not Involving Employment:** If the alleged Victim is not satisfied with the result of the First Level Appeal, he or she has the right to file a written appeal with the State Chancellor's Office within thirty (30) Days of the District's final decision following an appeal to the District's governing board. The written appeal must be accompanied by (1) a copy of the decision of the governing board; or (2) evidence showing the date on which the party filed an appeal with the governing board, accompanied by a statement under penalty of perjury that the party did not receive a response from the governing board within forty-five (45) Days from that date.

(2) Cases Involving Employment: The alleged Victim has the right to file a complaint with the DFEH or the EEOC, where the case is within the jurisdiction of that agency.

c. Complaints by Third Party Reporters or Official Reporters: If a Third Party Reporter or Official Reporter files a Formal Complaint alleging Discrimination, Harassment, or Retaliation, against a class of Victims (such as an allegation that facilities are not wheelchair accessible), the Third Party Reporter or Official Reporter shall stand in the shoes of the Victims for the purposes of this Section.

(Title 5, §§ 59328, 59338, 59339; Title 2, § 10001.)

#### 6.10 PROVISION OF INFORMATION ABOUT APPEALS TO STATE CHANCELLOR

In any case involving alleged Discrimination, Harassment, or Retaliation, not involving employment, if the Formal Complaint was filed by an alleged Victim or an Official Reporter, the RDO or designee will, within 150 days of receiving a Formal Complaint, either:

- a. Notify the State Chancellor that the alleged Victim did not file an appeal with the District's governing board and that the District has closed its file; or
- b. Forward the following to the State Chancellor: (1) a copy of the notice of appeal rights the District sent to the alleged Victim; (2) a copy of the alleged Victim's appeal of the District's administrative determination; (3) a copy of the final District decision; and (4) any other information the State Chancellor may require.

The reporting obligations specified above do not apply to Formal Complaints submitted by other Third-Party Reporters.

#### 6.11 EXTENSIONS

If the District is unable to comply with the 90-Day or 150-Day deadlines (specified above in sections 6.7 and 6.10) for reasons beyond its control, the RDO or designee may file a written request with the State Chancellor requesting an extension of the deadline. The RDO or designee must submit the request no later than 10 Days prior to the expiration of the deadline. The request must set forth the reasons for the request and the date by which the District expects to be able to submit the required materials.

The RDO or designee shall send a copy of the request for an extension to the alleged Victim and provide him or her with notice that he or she may file written objections to the request for an extension with the State Chancellor within 5 Days of receipt. If the complaint was filed by a Third Party reporter on behalf of a class of individuals, the Third Party Reporter shall stand in the shoes of the alleged Victim for purposes of this Section. If the State Chancellor grants the request for an extension of the 90-day deadline, the 150-day deadline is automatically extended by an equal amount.

(Title 5, § 59342.)

#### 6.12 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 Formal Complaint; (2) the investigatory report; (3) the summary of the report if one is prepared; (4) the notice provided to alleged Victim, or Third Party Reporter of a class complaint, of the District's administrative determination and his or her 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.

(Title 5, §§ 59328, 59338 and 59340.)

### 7. DISCIPLINE AND CORRECTIVE ACTION

Upon investigation of any Informal or Formal Complaint, if the District determines that Harassment, Discrimination and/or Retaliation occurred, the District shall take remedial action. The action will be prompt, effective, and commensurate with the severity of the offense.

#### 7.1 CORRECTIVE ACTIONS

Remedies for the Victim might include, but are not limited to:

- a. providing an escort to ensure that the Victim can move safely between classes and activities;
- b. ensuring that the Victim and perpetrator do not attend the same classes or work in the same work area;
- c. preventing offending third parties from entering campus;
- d. providing counseling services and/or a referral to counseling services;
- e. providing medical services and/or a referral to medical services;
- f. providing academic support services, such as tutoring;
- g. arranging for a student-Victim to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Victim's academic record; and
- h. reviewing any disciplinary actions taken against the Victim to see if there is a causal connection between the Harassment, Discrimination, and/or Retaliation and the misconduct that may have resulted in the Victim being disciplined.

Remedies for the broader student population, if appropriate, might include notifying students of the availability of campus and community counseling, health, mental health, and other student services; providing training to students and District employees; developing materials to distribute to students and

post on campus; creating a committee of students and campus officials to identify strategies for ensuring that students know about the District's prohibition against discrimination, including harassment; conducting a "climate check" to assess the effectiveness of efforts to ensure the campus is free from discrimination and harassment and using the resulting information to inform future proactive steps.

## 7.2 DISCLOSURE OF DISCIPLINARY ACTION TAKEN

If discipline is imposed, the details of the discipline will not be communicated to the Victim or Victim Advocate, without the permission of the Accused, except as set forth in this section. The District may disclose to a Victim or Victim Advocate that discipline has been imposed or other corrective measures taken, except that such information will not be disclosed to a Victim Advocate where the matter involves employee discipline and the Victim Advocate is a non-managerial or subordinate employee to the Accused. The District may also disclose information to a Victim about the sanction imposed on an individual who was found to have engaged in Harassment when the sanction directly relates to the Victim; for example, the District may inform the Victim that the harasser must stay away from him or her.

## 7.3 ADHERENCE TO DISCIPLINE PROCEDURES

If the District determines that discipline should be imposed against a student or employee based on the findings in its investigation, the discipline process will comport with due process and related principles, and will conform to all applicable statutes, regulations, personnel policies and procedures, employment contracts, and collective bargaining agreements.

## 7.4 NOTICE TO VICTIM OF OUTCOME OF APPEAL

The RDO or designee shall provide written notice to the Victim promptly after any appeal is upheld or denied. If a successful appeal may impact the Victim, such as a return of the Accused individual to campus, the RDO or designee shall take steps as needed to remediate the environment for the alleged Victim.

The District shall also take reasonable steps (1) to protect the Victim from further Harassment and/or Discrimination; and (2) to protect the Victim, any Third-Party Reporter or Victim Advocate, and witnesses, from Retaliation. The District will ensure that Victims, Third-Party Reporters, and witnesses, know how to report any subsequent Harassment, Discrimination, and/or Retaliation.

(Ed. Code, § 76234)



## 8. EDUCATION AND TRAINING FOR STUDENTS AND EMPLOYEES

The RDO or designee shall provide or make arrangements to provide training and education to employees and students on the District's Harassment, Discrimination, and Retaliation policies and procedures and how to file an Informal or Formal Complaint.

- a. The District will provide all employees with a copy of the District's written policies and procedures on Harassment, Discrimination, and Retaliation upon hire and at the beginning of the first term of each college year.
- b. The District will provide training on the District's Harassment, Discrimination, and Retaliation policies and procedures for all employees during the first year of their employment.
- c. Because of their special responsibilities under the law, supervisors will undergo mandatory training within six months of assuming a supervisory position and thereafter once every two years. 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.
- d. In order to take proactive measures to prevent and address Discrimination and Harassment, including sexual harassment and sexual violence toward students, the District will provide preventive education programs and Victim resources and services. The District will educate students about such programs, resources, and services in orientation programs for new students, in training for student athletes and coaches, and in training provided to students who lead student organizations. These programs will include discussion of what constitutes Discrimination and Harassment, including sexual harassment and sexual violence, the District's policies and disciplinary procedures, the consequences of violating these policies, and how to file an Informal or Formal Complaint. The District will make such educational programs and information available to all students at least once annually.
- e. Student 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 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.

(Ed. Code, § 66281.5; Gov. Code, § 12950.1; Title 5, §§ 59324, 59326, 59300 et seq.; 34 C.F.R. § 106.8(b); 28 CFR 35.107; 34 CFR 104.)

Office of Primary Responsibility: Human Resources

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