



AP 3435 Discrimination and Harassment Complaints and Investigations

The District is committed to providing an academic and work environment free from unlawful discrimination and harassment. The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in harassment, discrimination, or retaliation.

This procedure outlines the process for investigating unlawful discrimination and harassment complaints.

Who May File a Complaint

Any person who has suffered harassment, discrimination, or retaliation or who has learned of harassment, discrimination, or retaliation may report harassment, discrimination, or retaliation.

Complaints

A Complaint is a written or verbal statement filed with the District that alleges harassment, discrimination, or retaliation in violation of the District's Board Policies, Administrative Procedures, or in violation of state or federal law.

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

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

Where to File a Complaint

A student, employee, parent of a minor, or any individual who believes the student or employee has been discriminated against or harassed in violation of these policy and procedures may make a complaint orally or in writing. Complaints shall be directed to the Chief Human Resources Officer or designee unless the Party submitting the Complaint alleges discrimination, harassment, or retaliation against the responsible district officer, in which case it should be submitted directly to the Superintendent/President.



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Written and verbal complaints shall be sent directly to the Chief Human Resources Officer or designee. The Chief Human Resources Officer or designee shall record the verbal Complaint in writing. The Chief Human Resources Officer or designee will take steps to ensure the writing accurately reflects the facts alleged by the Complainant.

The District may request, but shall not require, the Complainant to submit a Complaint on the form prescribed by the Chancellor of the California Community Colleges. A copy of the form is available at the Chaffey College Office of Human Resources (https://www.chaffey.edu/hr/docs/unlawful_disc_title_v.pdf). Additionally, anyone can request a copy of the form through the Chief Human Resources Officer or designee.

Components of a Complaint and Relevant Statute of Limitation

A Complaint must meet **each of the following** criteria:

- 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 file any 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 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 Complaint does not meet the requirements set forth above, the Chief Human Resources Officer or designee will promptly contact the Complainant and specify the defect. If the Complainant is unable to fix the defect in the Complaint, the Chief Human Resources Officer or designee shall consider the allegations contained in the Complaint and determine the appropriate course of action. This may include efforts to informally resolve the matter or a fact-finding investigation.



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Filing a Timely Complaint

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

Title IX Complaints

If a Complainant reports or wishes to file a Title IX sexual harassment complaint, the District will notify the Complainant about the Title IX complaint process, which can be found at Chaffey's Title IX webpage through the following link:

<https://www.chaffey.edu/hr/title-ix/index.php>

Oversight of Complaint Procedure

The Chief Human Resources Officer or designee is the "responsible District officer" charged with receiving complaints of discrimination or harassment, and coordinating their investigation.

The actual investigation of complaints may be assigned to the Chief Human Resources Officer or designee, to other Human Resource administrator(s), or to outside persons/organizations under contract with the District. Investigations of complaints assigned to other Human Resource administrator(s) or to outside persons/organizations under contract with the District shall occur whenever the Chief Human Resources Officer or designee is named in the complaint or implicated by the allegations in the complaint.

Intake and Processing of the Complaint

Upon receiving notification of a harassment or discrimination complaint, the Chief Human Resources Officer or designee shall:

- Consider whether the District can undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules, obtaining apologies, providing informal counseling, training, etc.



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- Advise all Parties they need not participate in an informal resolution of the Complaint, as described above, and they have the right to end the informal resolution process at any time.
- Advise a student Complainant that he/she/they may file a Complaint with the Office for Civil Rights of the U.S. Department of Education and employee Complainants may file a Complaint with the Department of Fair Employment and Housing.
- Advise an employee Complainant that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH).
- All Complainants should be advised that they have a right to file a Complaint with local law enforcement, if the act complained of is also a criminal act. The District must investigate even if the Complainant files a Complaint with local law enforcement. In addition, the District should ensure that Complainants are aware of any available resources, such as counseling, health, and mental health services.
- Take interim steps to protect a Complainant from coming into contact with an accused individual, especially if the Complainant is a victim of sexual violence. The Chief Human Resources Officer or designee should notify the Complainant of his/her/their options to avoid contact with the accused individual and allow students to change academic situations as appropriate. For instance, the District may prohibit the accused individual from having any contact with the Complainant pending the results of the investigation. When taking steps to separate the Complainant and accused individual, the District shall minimize the burden on the Complainant

Investigation of the Complaint

The District shall promptly investigate every complaint and claim of harassment or discrimination. No claim of workplace or academic discrimination or harassment shall remain unexamined. This includes complaints involving activities that occur on or off campus in connection with academic, educational, extracurricular, athletic, and other programs related to an academic or work activity of the District.

The District shall promptly investigate complaints of harassment or discrimination that occur off campus if the alleged conduct creates a hostile environment on campus. The District shall notify the Complainant that the District will commence an impartial fact-finding investigation of the allegations contained in the complaint.

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Where the Parties opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate.

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

The District shall review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred-

The District will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a “need-to-know-basis” is essential to a thorough investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the Complainant’s age; whether there have been other harassment complaints about the same individual; and the accused individual’s rights to receive information about the allegations if the information is maintained by the District as an “education record” under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. The District will inform the Complainant if it cannot maintain confidentiality.

Investigation Steps

The District will fairly and objectively investigate unlawful discrimination or harassment complaints.

The District has the authority to either investigate the complaint internally or hire a third-party investigator to conduct a thorough, prompt, and impartial investigation of the complaint as set forth below.

District employees designated to serve as investigators under this process shall have adequate training on what constitutes sexual harassment, including sexual violence, and they will understand how the District’s grievance procedures operate. The



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investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigators should, when applicable and necessary, complete the following:

- interview the Complainant(s);
- interview the accused individual(s);
- identify and interview witnesses and evidence identified by each party;
- identify and interview any other witnesses, if needed;
- remind all individuals interviewed of the District's no-retaliation policy;
- recommend whether any involved person should be removed from the campus pending completion of the investigation;
- may review personnel/academic files of involved parties;
- reach a conclusion as to the allegations and recommend any appropriate corrective and/or remedial action; and
- ensure that all recommended action is carried out in a timely fashion.

Timeline for Completion

The District will undertake its investigation promptly and swiftly as possible. To that end, the investigator shall complete the above steps, prepare a written report, and deliver it to the District in a timely manner.

Cooperation Expected

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



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Written Report

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

- A description of the circumstances giving rise to the 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, including the Complainant and any available witnesses identified by the Complainant in the complaint;
- An analysis of relevant data or other evidence collected during the course of the investigation, including a list of relevant documents;
- A specific finding as to whether factual allegations in the complaint occurred based on the preponderance of the evidence standard;
- A table of content if the report exceeds ten pages; and
- Any other information deemed appropriate by the District.

Confidentiality of the Process

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

Administrative Determination

- In any case not involving employment discrimination, within 90 days of receiving a Complaint, the district shall complete its investigation and forward its Administrative Determination to both parties. The Administrative Determination shall include all of the following:
 - The Superintendent/President’s or their designee’s determination as to whether unlawful discrimination occurred with respect to each allegation in the complaint based on a preponderance of the evidence standard;



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- In the event a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future;
 - The proposed resolution of the complaint;
 - The Complainant's right to appeal to the District's Governing Board and the California Community College Chancellor's Office; and
 - In matters involving student sexual misconduct, the Respondent's right to appeal to the District's Governing Board any disciplinary sanctions imposed upon the Respondent.
- In any case involving employment discrimination, within 90 days of receiving a Complaint, the District shall complete its investigation and forward its Administrative Determination to both parties. The Administrative Determination given to the Complainant shall include all the following:
 - The Superintendent/President's or their designee's determination as to whether discrimination occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard;
 - If a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future;
 - The proposed resolution of the complaint;
 - Information regarding protection from retaliation; and
 - The Complainant's right to appeal to the District's Governing Board and to file a complaint with Department of Fair Employment and Housing.

The District shall also provide the Respondent the following:

- The President/Superintendent's or their designee's determination as to whether unlawful discrimination occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard;

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- The proposed resolution of the complaint, including any disciplinary action against the Respondent;
- A directive regarding anti-retaliation; and
- In matters involving student sexual misconduct not subject to Title IX, the Respondent's right to appeal to the District's Governing Board any disciplinary sanction imposed upon the Respondent.

Extension of Time

If the District is unable to comply with the 90-day deadline, the District may extend the time to respond by up to 45 additional days. An extension may be taken only once without permission from the California Community Colleges Chancellor's Office, and must be necessary for one of the following reasons:

- a need to interview a party or witness who has been unavailable;
- a need to review or analyze additional evidence, new allegations, or new complaints related to the matter; or
- to prepare and finalize an administrative determination.

The District shall send a written notice to the Complainant and to a Respondent who is aware of an investigation indicating the necessity of an extension, the justification for the extension, and the number of days the deadline will be extended. The District shall send this notice no later than 10 days prior to the initial time to respond.

The District may request additional extensions from the California Community Colleges Chancellor's Office after the initial 45-day extension. The District shall send a copy of the extension request to the Complainant and to a Respondent who is aware of an investigation. The Complainant and Respondent may each file a written objection with the California Community Colleges Chancellor's Office within 5 days of receipt.

Discipline for Student Sexual Misconduct Not Subject to Title IX

In a complaint involving student sexual misconduct not subject to Title IX, if a student Respondent is subject to severe disciplinary sanctions, and the credibility of witnesses was central to the investigative findings, the District will provide an opportunity for the student Respondent to cross-examine witnesses indirectly at a live hearing, either in person or by videoconference and a live hearing conducted by a neutral decision-maker



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other than the investigator. The District shall appoint a neutral third party to attend the hearing solely for the purpose of asking any questions to the witnesses. The neutral third party shall not be the student Respondent, the student Respondent's representative, or any individual charged with making a final determination regarding discipline. The student Respondent may submit written questions before and during the cross-examination, including any follow-up questions. The neutral third party asking questions shall not exclude any questions unless there is an objection to the question by any individual charged with making a final determination regarding discipline.

Discipline and Corrective Action

If unlawful discrimination, harassment, and/or retaliation occurred in violation of BP/AP 3430 titled Prohibition of Harassment or this procedure, the District shall take corrective action against the accused and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense. Remedies for the Complainant might include, but are not limited to:

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

If 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 harasser must stay away from the Complainant.

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

The District shall also take reasonable steps to protect the Complainant from further harassment, or discrimination, and to protect the Complainant and witnesses from retaliation as a result of communicating the complaint or assisting in the investigation. The District will ensure that Complainants and witnesses know how to report any subsequent problems. 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 corrective action against the accused individual because the Complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

Appeals

If the Complainant is not satisfied with the results of the Administrative Determination, they may, within 30 days, submit a written appeal to the Governing Board.

In a complaint involving student sexual misconduct not subject to Title IX, a Respondent who is not satisfied with the results of the administrative determination may submit a written appeal to the District's Governing Board within 30 days.

The Governing Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Governing Board shall issue a final District decision in the matter within 45 days after receiving the appeal. A copy of the decision rendered by the Governing Board shall be forwarded to the Complainant and the Respondent. The Complainant shall also be notified of their right to appeal this decision.

If the Governing Board does not act within 45 days, the administrative determination shall be deemed approved on the forty-sixth day and shall become the final decision of the District in the matter. The District shall promptly notify the Complainant and the Respondent of the Governing Board's action, or if the Governing Board took no action, that the administrative determination is deemed approved.

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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 30 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.

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.

If the District imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the respective appeals procedure for appealing a disciplinary decision found in either the Student Handbook (students), the relevant Collective Bargaining Agreement (classified employees), the Education Code (academic employees), or employment contract (if applicable).

Remand

The California Community College Chancellor's Office may remand any matter to the District for any of the following reasons: to cure defects in the investigation or in procedural compliance; to consider new evidence not available during the investigation despite the Complainant's due diligence that would substantially impact the outcome of the investigation; or to modify or reverse a decision of the District's Governing Board based upon misapplication of an applicable legal standard or an abuse of discretion.

If the California Community College Chancellor's Office remands a matter to the District, the District shall take necessary action and issue a decision after remand within 60 days. In any case not involving employment discrimination, the Complainant may appeal the District's amended determination to the California Community College Chancellor's Office within 30 days by following the appeal procedures above.

Disclosures to the California Community Colleges Chancellor's Office

Upon request of the California Community Colleges Chancellor's Office, the District shall provide copies of all documents related to a discrimination complaint, including the following: the original complaint, any investigative report unless subject to the attorney-client privilege, the written notice to the Complainant setting forth the results of the investigation, the final administrative decision rendered by the Governing Board or a statement indicating the date upon which the decision became final, and a copy of the

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notification to the Complainant of his/her/their appeal rights, the Complainant's appeal of the District's administrative determination, any other non-privileged documents or information the Chancellor requests.

The District shall provide to the California Community Colleges Chancellor's Office an annual report with the following information: the number of employment and non-employment discrimination complaints and informal charges received in the previous academic year; the number of complaints and informal charges resolved in the previous academic year; the number of complaints of unlawful discrimination received in the previous academic year, and the number of those complaints that were sustained in whole or in part; and any other information requested by the Chancellor.

File Retention

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

- the original complaint;
- the investigatory report;
- the summary of the report if one is prepared;
- the notice provided to the parties, of the District's administrative determination and the right to appeal;
- any appeal; and
- the District's final decision.

For any appeal to the California Community College Chancellor's Office, the District shall provide all relevant, non-privileged documents upon request of the Chancellor.

Also see BP/AP 3410 titled Nondiscrimination and BP/AP 3430 titled Prohibition of Harassment

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

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