AP 3435 Discrimination and Harassment Investigations

The District is committed to providing an academic and work environment free from unlawful discrimination and harassment. This procedure outlines the process for investigating unlawful discrimination and harassment complaints.

Filing a Timely Complaint

Since failure to report unlawful discrimination and harassment impedes the District’s ability to stop the behavior, the District strongly encourages those who believe they are being discriminated or harassed 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.

Managers, faculty, and staff members have a mandatory duty to report incidents of discrimination and harassment; the existence of a hostile, offensive or intimidating work environment, and acts of retaliation.

The District shall promptly investigate every complaint of unlawful discrimination or harassment. 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.

Communicating that the Conduct is Unwelcome

The District further encourages, however does not require, students and employees to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste and/or inappropriate.

Oversight of Complaint Procedure

The Chief Human Resources Officer 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, 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 is named in the complaint or implicated by the allegations in the complaint.
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Who May File a Complaint

Any student, employee, or third party who believes he/she has 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 he/she has been discriminated against or harassed in violation of these policy and procedures may make a complaint orally or in writing, within one year of the date of the alleged harassment or the date on which the complainant knew or should have known of the facts underlying the complaint.

If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, he/she must file the complaint on a form prescribed by the State Chancellor's Office. These approved forms are available from the Chief Human Resources Officer and on the State Chancellor's website under the discrimination link on the Legal Division page.

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

- the Chief Human Resources Officer;
- Superintendent/President; and/or
- the State Chancellor's Office.

Employee complainants shall be notified 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).

Complaints filed with the EEOC and/or the DFEH should be forwarded to the State Chancellor's Office.

Any District employee who receives a harassment or discrimination complaint shall notify the Chief Human Resources Officer immediately.

Intake and Processing of the Complaint

Upon receiving notification of a harassment or discrimination complaint, the Chief Human Resources Officer shall determine whether the complaint alleges unlawful discrimination, harassment, or retaliation. If the complaint alleges unlawful discrimination, harassment, or retaliation, the following process shall be initiated:
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Informal Resolution

If the notification is informally submitted, the Chief Human Resources Officer shall:

- Undertake efforts to informally resolve the charges of discrimination and/or harassment. Individuals participating in the informal resolution of a complaint may include the Chief Human Resources Officer or designee, the complainant, the alleged harasser, and the appropriate manager. The purpose of any meeting shall be to discuss the issue(s) and to seek appropriate action to reach an acceptable resolution which may include, but are not limited to, mediation, rearrangement of work/academic schedules, informal counseling and/or training, etc. Mediation is not appropriate for resolving incidents involving sexual violence.

- Advise the complainant that he/she need not participate in an informal resolution of the complaint, as described above, and has the right to end the informal resolution process at any time.

- Notify the complainant, at the time he/she files an informal complaint, of his/her right to file a formal complaint and the procedures for filing a formal complaint.

- Advise a student complainant that he/she may file a complaint with the Office for Civil Rights of the U.S. Department of Education. An employee complainant may file a complaint with the Department of Fair Employment and Housing. In addition, the District should ensure that complainants are aware of any available resources, such as contacting local law enforcement or seeking counseling, health, and/or mental health services. The District must investigate even if the complainant files a complaint with local law enforcement.

- Where complainants request an 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.

Formal Resolution

When a formal written complaint is filed, the Chief Human Resources Officer may continue to exercise steps outlined in the informal process. In addition, the complainant and the accused shall be notified that an investigation will be initiated. The Chief Human Resources Officer shall:

- 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 should notify the complainant of his/her options to avoid contact with the accused individual and allow students to change
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academic situations as appropriate. For instance, the District may prohibit the accused individual from having any contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and accused individual, the District shall minimize the burden on the complainant. For example, it is not appropriate to require removal of the complainant(s) from classes while allowing accused individuals to remain.

- Authorize the investigation of the complaint and supervise and/or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. The investigation will include interviews with the complainant, the accused, and any other persons who may have relevant knowledge concerning the complaint.

- 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.

- Set forth the results of the investigation in a written report. The written report shall include a description of the circumstances giving rise to the complaint, a summary of statements from each witness, an analysis of any relevant data or other evidence collected during the investigation, a specific finding as to whether there is probable cause to believe that discrimination did or did not occur with respect to each allegation in the complaint, a description of actions the District will take to prevent similar conduct, the proposed resolution of the complaint, and the complainant’s right to file a written appeal to the District’s Governing Board. If the complainant is a student and wishes to appeal the Governing Board decision, he/she has the right to appeal to the State Chancellor. If the complainant is an employee, the report shall include the right to file an administrative complaint with the Department of Fair Employment and Housing. The report may contain any other appropriate information.

- Provide the complainant with a copy or summary of the investigative report within 90 days from the date the District received the complaint. The complainant and accused shall also be provided with a written notice setting forth the determination of the Superintendent/President or designee as to whether harassment or other discriminatory conduct did or did not occur with respect to each allegation in the complaint; a summary of administrative action taken, if any, to prevent similar problems from occurring in the future; the proposed resolution of the complaint; and notice of the parties’ rights to appeal as described above. The results of the investigation and the determination as to whether harassment or other discriminatory conduct occurred shall also be reported to the accused and the appropriate academic or administrative official(s). Reports to the
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The complainant shall be prepared so as not to violate any applicable privacy rights of the accused.

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

Investigators will 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.
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When the District evaluates the complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that discrimination or harassment has occurred.

Timeline for Completion

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

Cooperation Encouraged

All employees are expected to cooperate with a District investigation into allegations of 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.

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, 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
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- 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 discipline is imposed, 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.

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, and/or discrimination, and to protect the complainant and witnesses from retaliation as a result of communicating the complaint and/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 District imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the procedure for appealing a disciplinary decision.

If the complainant is not satisfied with the results of the administrative determination, he/she may, within 15 days, submit a written appeal to the Governing Board. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within 45 days after receiving the appeal. Where the Governing Board does not act within 45 days, the administrative determination must be deemed approved and must become the final District decision.
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Student/Non-Employment Related Cases: A copy of the decision rendered by the Governing Board shall be forwarded to the complainant and to the State Chancellor’s Office. The complainant shall also be notified of his/her right to appeal this decision.

The complainant shall have the right to file a written appeal with the State Chancellor’s Office within 30 days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Title 5 Section 59350.

Within 150 days of receiving a formal complaint, the District shall forward to the State Chancellor’s Office the original complaint, the investigative report, a copy of the written notice to the complainant setting forth the results of the investigation, a copy of the final administrative decision rendered by the Board or indicating the date upon which the decision became final, and a copy of the notification to the complainant of his/her appeal rights. If, due to circumstances beyond its control, the District is unable to comply with the 150-day deadline for submission of materials, it may file a written request for an extension of time no later than ten days prior to the expiration of the deadline.

Employment Related Cases: 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 U.S. Equal Employment Opportunity Commission (EEOC) or Department of Fair Employment and Housing (DFEH). The District shall forward a copy of the decision rendered by the Governing Board to the complainant and will include notification of his/her right to file a complaint with the EEOC or DFEH.

Dissemination of Policy and Procedures

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

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

Also see BP/AP 3410 titled Nondiscrimination and BP/AP 3430 titled Prohibition of Harassment
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References:  Education Code Section 66281.5;
Government Code Section 12950.1;
Title 5 Sections 59320, 59324, 59326, 59328, 59338, 59339, 59340 and
59300 et seq.;
34 Code of Federal Regulations Section 106.8(b)

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