



# SAN DIEGO COMMUNITY COLLEGE DISTRICT

## Administrative Procedure

### Chapter 3 - GENERAL INSTITUTION

#### AP 3435 DISCRIMINATION AND HARASSMENT INVESTIGATIONS

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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 thirty (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.

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.

**Communicating that the Conduct is Unwelcome:** The District further encourages students and staff 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 Equal Opportunity and Diversity 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 other staff or to outside persons or organizations under contract with the District. This shall occur whenever the Equal Opportunity and Diversity Officer is named in the complaint or implicated by the allegation in the complaint.

**Who May File a Complaint:** Any student, employee, or third party or who believes that another has been the victim of harassment or retaliation by a student, employee, or third party in violation of this procedure and the related policy based on national origin, religion, age, gender, gender identity, gender expression, race or ethnicity, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, pregnancy, or military or veteran status, or because they are perceived to have one or more of the foregoing characteristics, or based on association with a person or group with one or more

of these actual or perceived characteristics. A person does not have to allege that they have personally suffered unlawful discrimination to file a complaint.

**Where to File a Complaint:** A student, employee, or third party who believes that they or others have been discriminated against or harassed by a student, employee, or third party in violation of these policies 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.

A student or employee can file a complaint with their Site Compliance Officer (SCO). In addition, students may also file a complaint with the Dean responsible for student affairs, who will notify the SCO and work with the SCO to resolve the complaint. The SCO will undertake efforts to informally resolve any charges including, but not limited to, investigating the allegations; resolving the conflict amongst the parties; rearrangement of work/academic schedules; providing informal counseling and/or training, etc. The SCO will advise the complainant that they need not participate in an informal resolution of the complaint, as described above, and that they may file a formal complaint. In the case of employment cases, the SCO will advise the complainant that they may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH).

When a complaint is informally resolved using the Informal Resolution Process, the SCO will address every allegation in the complaint and provide written notification to the parties of the outcome of the Informal Resolution Process as to each allegation that is resolved.

Students are not required to file a new formal complaint if the student's previous attempts at informal resolution of the complaint were unsuccessful or if the student failed to pursue any informal resolution at all.

If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, they should file the complaint on a form prescribed by the State Chancellor's Office. A complaint that is not on an official complaint form will be treated in the same manner as one on an official complaint form. These approved forms are available from the Equal Opportunity and Diversity Officer, the Site Compliance Officers or the District's Office of Legal Services and EEO. A copy of the complaint form is attached as Appendix A to this procedure and can also be located at the following URL:

<https://www.sdccd.edu/docs/District/procedures/District%20Governance/AP%203435-01.pdf>

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

- the Equal Opportunity and Diversity Officer;
- the Vice Chancellor of Human Resources (only if the complaint involves the District's Equal Opportunity and Diversity Officer); 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

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 Equal Opportunity and Diversity Officer immediately.

**Intake and Processing of the Complaint:** Upon receiving notification of a harassment or discrimination complaint, the Equal Opportunity and Diversity Officer shall:

- Undertake efforts to informally resolve the charges, (if that process has not already been completed by one of the District's SCOs) including but not limited to mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling and/or training, etc.
- Advise the complainant that they 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. Mediation is not appropriate for resolving incidents involving sexual violence.
- Advise a student complainant that they may file a complaint with the Office of Civil Rights of the U.S. Department of Education and employee complainants may file a complaint with the Department of Fair Employment and Housing. All complainants should be advised that they have a right to file a complaint with local law enforcement, if the act complained of is 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. The Equal Opportunity and Diversity Officer shall also notify the State Chancellor's Office of the complaint.
- 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 Equal Opportunity and Diversity Officer should notify the complainant of 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. For example, it is not appropriate to remove complainants from classes or housing while allowing accused individuals to remain.

### **Investigation**

The Equal Opportunity and Diversity Officer Shall:

- Authorize the investigation of the complaint, and supervise or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. Where complainants 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. In the case of a formal complaint, 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.

- 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 the testimony of 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, the complainant's right to appeal to the District's governing board, and if the complainant's complaint does not involve employment discrimination, 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 a summary of the investigative report within ninety (90) days from the date the District received the complaint. The complainant shall also be provided with a written notice setting forth the determination of the Equal Opportunity and Diversity Officer as to whether harassment or other discriminatory conduct did or did not occur with respect to each allegation in the complaint; a description of 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 to the District's Board of Trustees and the State Chancellor's Office. If the complaint involves allegations of employment discrimination, the complainant will be notified of their right to file a complaint with the California Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission. 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 complainant shall be prepared so as not to violate any applicable privacy rights of the accused.

**Investigation of the Complaint:** The District shall promptly investigate every complaint of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. This includes complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, on a District bus, or at a class or training program sponsored by the District at another location.

As set forth above, where the complainant opts for an informal resolution, the Site Compliance Officer or Equal Opportunity and Diversity Officer may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality 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 harassment and discrimination complaints. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes sexual harassment, including sexual violence, and that they 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 use the following steps: interviewing the complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses, if needed; reminding all individuals interviewed of the District's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion. 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 ninety (90) days of the District receiving the complaint.

**Cooperation Encouraged:** All employees are expected to cooperate with a District investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. 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 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 harassment, discrimination and/or retaliation occurred in violation of the policy or procedure, the District shall take disciplinary 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;
- providing medical services or a referral to medical services;

- providing 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.

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, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred. 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.

## **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, they may, within fifteen (15) days, submit a written appeal to the Board of Trustees. 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 forty-five (45) days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the complainant and to the State Chancellor's Office. The complainant shall also be notified of their right to appeal this decision.

If the Board does not act within forty-five (45) days, the administrative determination shall be deemed approved and shall become the final decision of the District in the matter.

In any case not involving workplace discrimination, harassment, or retaliation, the complainant

shall have the right to file a written appeal with the State Chancellor's Office within thirty (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.

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. In such cases, the complainant may also file a petition for review with the State Chancellor's Office within thirty (30) days after the governing board issues the final decision or permits the administrative decision to become final.

### **Extension of Time**

Within one hundred fifty (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 their appeal rights. If, due to circumstances beyond its control, the District is unable to comply with the one hundred fifty (150) day deadline for submission of materials, it may file a written request for an extension of time no later than ten (10) days prior to the expiration of the deadline.

### **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 throughout the District 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.

### **Training**

By January 1, 2006, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees who are employed as of July 1, 2005. All new supervisory employees must be provided with the training and education within six (6) months of their assumption of a supervisory position. After January 1, 2006, the District shall provide sexual harassment training and education to each supervisory employee once every two (2) years.

The training and education required by this procedure shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with

knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

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.

### **Education and Prevention for Students**

In order to take proactive measures to prevent sexual harassment and violence toward students, the District will provide preventive education programs and make victim resources, including comprehensive victim services, available. The District will include such programs in their orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, the District's policies and disciplinary procedures, and the consequences of violating these policies. A training program or informational services will be made available to all students at least once annually.

The 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 or campus 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. If other rules are violated, the District will address such violations separately from an allegation of sexual violence.

### **Appendix A - San Diego Community College District Unlawful Discrimination Complaint Form**

#### References:

Education Code Section 66281.5; Government Code 12950.1;  
Title 5, Sections 59320, 59324, 59326, 59328, and 59300 et seq.; 34 C.F.R. Section 106.8(b).

Adopted: 01/28/2016

Supersedes: AP 3435 2/12/2009