



ADMINISTRATIVE PROCEDURES

MENDOCINO-LAKE COMMUNITY COLLEGE DISTRICT

NO. 307.2

DISCRIMINATION COMPLAINT PROCEDURE

1. PURPOSE

This procedure is intended to provide a prompt and equitable means through which allegations of unlawful discrimination on any basis defined in Board Policy 307 and including sexual harassment and sexual violence, may be expeditiously resolved because failure to act may cause damage to an alleged victim. Such complaints may be sensitive in nature, therefore, each step in the complaint procedure will be conducted confidentially, to the extent possible, for all parties involved. Both the complainant and the person being accused will be treated fairly throughout this procedure. The complainant has the right to pursue the matter with any state or federal enforcement agency having jurisdiction over the matter. (Title 5 of the California Code of Regulations, Section 59320)

2. RESPONSIBLE DISTRICT OFFICER

The Equal Employment Opportunity (EEO) Officer shall serve as the compliance officer for purposes of this procedure and is designated to receive, process, and investigate as appropriate all complaints of unlawful discrimination, including sexual harassment and sexual violence. Complaints against the EEO Officer may be forwarded directly to the Superintendent/President who will ensure an appropriate review and response. The compliance officer also serves as coordinator for Title IX, The Americans with Disabilities Act, and Section 504 complaints. The compliance officer may assign the actual investigation of complaints to other staff, outside persons, or organizations. Such procedures shall be used whenever the compliance officer is named in the complaint or is implicated by the allegations in the complaint. (Title 5, Section 59324)

3. WHO MAY USE THIS PROCEDURE

This procedure may be used by anyone who believes he/she has personally suffered unlawful discrimination in the workplace or in a program or activity of the District or by any District employee who learns of unlawful discrimination in his/her official capacity as a faculty member or administrator. (Title 5, Section 59328.) In addition, a person may initiate informal allegations of discrimination in the place of an allegedly injured party.

The District will make efforts to respect requests from complainants that their identities be held in confidence, recognizing that the District may be required to reveal such information (e.g., in instances of alleged criminal conduct) and that disclosure may be necessary for an effective investigation.

If student disciplinary matters involve allegations of discrimination, the EEO officer will coordinate with the student discipline process to ensure that discrimination allegations are properly addressed.

Retaliation against any person for making allegations of discrimination, for participating in an investigation, for being a witness, or for otherwise opposing unlawful discrimination is strictly forbidden. The District encourages persons to report instances of retaliation immediately to the EEO Officer.

4. INFORMAL RESOLUTION

When a charge of unlawful discrimination is brought to the attention of the EEO Officer, he/she will advise the complainant that: (1) the EEO Officer will undertake efforts to informally resolve the charges (unless the allegations involve sexual violence), (2) complainant need not confront the accused nor participate in informal resolution; (3) the procedure for filing a formal complaint; (4) that a nonemployment-based complaint may be filed with the Office for Civil Rights of the U.S. Department of Education or that an employment-based complaint may be filed with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair

Employment and Housing (DFEH) or any other applicable state or federal enforcement agency having jurisdiction. The EEO Officer shall also provide the complainant with a copy of these procedures.

If an informal charge is filed by a person other than the allegedly injured party, the person on whose behalf the informal complaint is filed must provide written consent from the allegedly injured party that the matter be addressed by the District. Such consent shall define the scope of allowable disclosure to the filer who acts in the place and stead of the allegedly injured party.

The EEO Officer will undertake efforts to informally resolve the charges. However, informal resolution or mediation will not be used to resolve sexual assault allegations, and such allegations shall be coordinated with Administrative Procedure 308.1 (Sexual Assault Response Procedure). At the informal resolution stage, an investigation is not required unless the EEO Officer determines that one is warranted by the seriousness of the charges. Efforts at informal resolution may continue after a formal, written complaint is filed, however, if a formal complaint is filed, a complete investigation will be required unless the matter is resolved and the complaint is dismissed or the complaint is filed as an employment complaint with the EEOC or DFEH and the matter continues under the process of those agencies. Any efforts at informal resolution after a formal, written complaint is filed shall not exceed the ninety (90) day period for rendering the administrative determination. (Title 5, Section 59327)

5. REPRESENTATIVES

Both the complainant and the accused in a discrimination complaint may be accompanied by a representative. Any representative must agree in writing to comply with the confidentiality of the process.

6. FORMAL, WRITTEN COMPLAINT

6.1 Filing a Complaint: A formal, written complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administrator.

The District will ask any complainant to use the complaint form prescribed by the Chancellor of the California Community Colleges. Any complaint must specify the name, address, and other contact information for the person filing the complaint. A complaint must specify the alleged discriminatory conduct, the date(s) of such conduct, the name(s) of any person who allegedly participated in discriminatory conduct, the name(s) of any witnesses to such conduct, and the basis of discrimination (e.g., discrimination based on race, religion, gender, etc.) The complaint must also specify what remedy the complainant seeks. The complaint must be signed and dated and must include a verification by the complainant that his/her information is correct.

A complaint not involving employment shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

A complaint that alleges discrimination in employment shall be filed within 180 days of the date of the alleged unlawful discrimination, except that this 180 day period may 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.

The complaint shall be filed with the EEO Officer. The EEO Officer will immediately forward a copy of the complaint to the Chancellor of the California Community Colleges. Any complaint that was first filed with the Chancellor of the California Community Colleges and received by the District from the Chancellor is subject to this process as though it was filed originally with the District. (Title 5, Sections 59328, 59329, 59330)

- 6.1.1 If the District receives a formal, written complaint which does not meet the criteria above, the EEO Officer will immediately notify the complainant and specify in which requirement the complaint is defective.
- 6.1.2 The receipt of a formal complaint constitutes consent by the complainant for the District to conduct an investigation of the allegations.
- 6.2 **Investigation:** Upon receiving a complaint properly filed in accordance with the criteria above, the Officer will initiate an impartial fact-finding investigation of the complaint and so notify the complainant and Chancellor. The results of the investigation shall be set forth in a written report which shall include at least: a description of the circumstances giving rise to the complaint; a summary of the testimony provided by each witness, including the complainant and any viable witnesses identified by the complainant in the complaint; an analysis of any relevant data or other evidence collected during the course of the investigation; a specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint; and any other information deemed appropriate by the District. (Title 5, 59334)
- 6.3 **Administrative Determination:** Within ninety (90) calendar days of receiving a formal complaint, the investigation shall be completed and the following forwarded to the complainant: a summary of the investigative report and a written notice setting forth the determination of the chief executive officer as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint; a description of any actions taken, if any, to prevent similar problems from occurring in the future (subject to rights of privacy); the proposed resolution of the complaint; and the complainant's right to appeal to the District's Board of Trustees. (Title 5, 59336)
- 6.4 **Final District Decision/Appeals:** If not satisfied with the results of the administrative determination, the complainant may, within fifteen (15) calendar days of the date of the notice of the administrative determination, submit a written appeal to the District's Board of Trustees. The Board of Trustees shall review the original complaint, the investigative report, the administrative determination, and the appeal, and shall issue a final District decision in the matter within forty-five (45) calendar days after receiving the appeal. A copy of the final District decision rendered by the Board of Trustees shall be forwarded to the complainant and, in cases that do not involve alleged employment discrimination, to the Chancellor of the California Community Colleges. If the Board of Trustees does not act on an appeal within forty-five (45) calendar days, the administrative determination shall be deemed approved and shall become the final District decision in the matter. (Title 5, Section 59338)
- 6.4.1 In any case not involving employment discrimination, the complainant shall be advised of the right to file a written appeal with the State Chancellor within thirty (30) days after the Board of Trustees issues the final District decision or permits the administrative determination to become final so long as the complaint is based on a protected category under the jurisdiction of the Chancellor as defined in Title 5, section 59300. The complainant may, at any time before or after the final District decision is rendered, file a complaint with the Office for Civil Rights or any other applicable state or federal enforcement agency.
- 6.4.2 In any case involving employment discrimination, the complainant may, at any time before or after the final District decision is rendered, file a complaint with the California Department of Fair Employment and Housing or the federal Equal Employment Opportunity Commission or any other applicable state or federal enforcement agency having jurisdiction.

6.5 Forward Complaint Information to the State Chancellor: Within 150 calendar days of receiving a proper complaint that does not involve employment, the District will forward to the Chancellor copies of the final District decision if rendered by the Board of Trustees (or a statement indicating the date on which the administrative determination became final); the notices sent to the complainant pursuant to Title 5, sections 59336 and 58338; the complainant's appeal of the District's administrative determination, and any such other information as the Chancellor may require. (Title 5, Section 59340)

6.6 Extensions/Failure to Comply: If the District, for reasons beyond its control, is unable to comply with the 90-day or 150-day deadline above, the District may file a written request that the Chancellor grant an extension of the deadline. The request shall be submitted no later than ten (10) days prior to the expiration of the deadline and shall include the reasons for the request and the date by which the District expects to be able to submit the required materials. A copy of the request shall be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt. The Chancellor may grant the request unless delay would be prejudicial to the investigation. If the District fails to comply with the deadlines including any extension granted, the Chancellor may proceed to review the case based on the original complaint and any other relevant information available. (Title 5, Section 59342)

7. REMEDIES

If discriminatory conduct is revealed in any investigation, or if the District learns of discriminatory conduct apart from a discrimination complaint, the District shall take steps to remedy the harm resulting from the conduct and to ensure that similar conduct does not recur.

Adopted: December 6, 1989
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