



Administrative Procedure 3410 Nondiscrimination

Education Programs

Reference: *Education Code Sections 66250, et seq.; 200 et seq; 72010 et seq.*

The District shall provide access to its services, classes and programs without regard to national origin, religion, age, sex (gender), race, color, medical condition, ancestry, sexual orientation, marital status, physical or mental disability, or because he or she is perceived to have one or more of the foregoing characteristics.

All courses, including noncredit classes, shall be conducted without regard to the gender of the student enrolled in the classes.

The District shall not prohibit any student from enrolling in any class or course on the basis of gender.

Academic staff, including but not limited to counselors, instructors and administrators shall not offer program guidance to students which differs on the basis of gender.

Insofar as practicable, the District shall offer opportunities for participation in athletics equally to male and female students.

Employment

Reference: *Education Code Section 53000 et seq.*
Government Code Sections 11135 et seq; 12940 et seq.

The District shall provide equal employment opportunities to all applicants and employees regardless of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or status as a Vietnam-era veteran.

All employment decisions, including but not limited to hiring, retention, assignment, transfer, evaluation, dismissal, compensation, and advancement for all position classifications shall be based on job-related criteria as well as be responsive to the District's needs.

The District shall, from time to time as necessary, provide professional and staff development activities and training to promote understanding of diversity.

Responsible District Officer

The District has identified the Director of Human Resources as the District Officer responsible for receiving all unlawful discrimination complaints filed pursuant to Title 5, Section 59328, and for coordinating their investigation. The actual investigation of complaints may be assigned to other

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staff or to outside persons or organizations under contract with the District. Such delegation procedures will be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint. Employees and students shall direct all complaints of unlawful discrimination to the responsible District officer.

Notice, Training and Education

The District Officer shall make arrangements for or provide training to employees and students on the District's unlawful discrimination policy and procedures. The policy and procedure will be available on the District's web site for access by any employee, student or member of the public.

All new employees will receive orientation and a copy of the unlawful discrimination policy and procedure during the first year of their employment. Because of their special responsibilities under the law, supervisors and managers will undergo mandatory annual training. 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 policy and procedures.

A training program or informational services will be made available to all students at least once annually. The student training or informational services should include an explanation of the policy, how it works, and how to file a complaint. In addition, a copy of the District's policy on unlawful discrimination, as it pertains to students, will be provided as part of any orientation program conducted for new students as applicable.

Applicability

The following procedures will apply when a student or employee alleges that he/she has been unlawfully discriminated against on the basis of national origin, religion, age, sex, race, color, medical condition, ancestry, sexual orientation, marital status, physical or mental disability, or because he or she is perceived to have one of the above-specified characteristics. In addition, the following complaint procedures will apply to any student or employee who believes that he/she has been retaliated against for filing an unlawful discrimination complaint, for referring a matter for investigation or complaint, for participating in an investigation of a complaint, for representing or serving as an advocate for the alleged victim or alleged offender, or who in any other way involves him/herself with any kind of complaint brought under this policy.

Informal/Formal Complaint Procedure

When a person brings charges of unlawful discrimination to the attention of the District's responsible officer, that officer will:

1. Undertake efforts to informally resolve the charges;
2. Advise the complainant that he or she need not participate in informal resolution;
3. Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for doing so;
4. Assure the complainant that he or she will not be required to confront or work out problems with the person accused of unlawful discrimination;

5. Advise the complainant that he or she may file a nonemployment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction;
6. If the complaint is employment-related, the complainant should also be advised that he or she may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where such a complaint is within that agency's jurisdiction.

Efforts at informal resolution need not include any investigation unless the responsible District officer determines that an investigation is warranted by the seriousness of the charges. Selecting an informal resolution does not extend the time limitations for filing a formal complaint. Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant to Title 5, Section 59334, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. Any efforts at informal resolution after the filing of a written complaint will not exceed the 90-day period for rendering the administrative determination pursuant to Title 5, Section 59336.

In employment-related cases, if the complainant files with the Department of Fair Employment and Housing, a copy of that filing will be sent to the State Chancellor's Office requesting a determination of whether a further investigation under Title 5 is required. Unless the State Chancellor's Office determines that a separate investigation is required, the District will discontinue its investigation under Title 5 and the matter will be resolved through the Department of Fair Employment and Housing.

The District will provide for representation where required by law and may allow for representation for the accused and complainant in other circumstances on a case by case basis.

Filing of Formal Written Complaint

If a complainant decides to file a formal written unlawful discrimination complaint against the District, he or she must file the complaint on a form prescribed by the State Chancellor. These approved forms are available from the District and also at the State Chancellor's website, as follows:

<http://www.cccco.edu/divisions/legal/discrimination/discrimination.htm>

The completed form must be filed with the District representative or mailed directly to the State Chancellor's Office of the California Community Colleges.

Once a complaint is filed, the individual(s) accused of engaging in prohibited discriminatory conduct will be advised of that filing and the general nature of the complaint. This will occur as soon as possible and in a manner that is appropriate under the circumstances. The District will also advise the accused that an assessment of the accuracy of the allegations has not yet been made, that the complaint will be investigated, that the accused will be provided an opportunity to present his/her side of the matter, and that any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.

Threshold Requirements Prior to Investigation of a Formal Written Complaint

When a formal written complaint is filed it will be reviewed to determine if the complaint meets the following requirements:

- The complaint must be filed on a form prescribed by the State Chancellor's Office.
- The complaint must allege unlawful discrimination prohibited under Title 5, Section 59300.
- The complaint must 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.
- In any complaint not involving employment, the complaint must 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 specific incident or incidents of alleged unlawful discrimination.
- In any complaint alleging discrimination in employment, the complaint shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period will be extended by no more than 90 days following the expiration of that 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of 180 days.

Additional information about this initial review of complaints can be found in the Guidelines for Processing Formal Title 5 Unlawful Discrimination Complaints prepared by the State Chancellor's Office.

Defective Complaint

If a complaint is found to be defective it will be immediately returned to the complainant with a complete explanation of why an investigation will not be initiated under California Code of Regulations, Title 5, Section 59300 et seq. The notice will inform the complainant that the complaint does not meet the requirements of section 59328, and shall specify in what requirement the complaint is defective. A copy of the notice to the claimant will also be sent to the State Chancellor's Office.

Notice to State Chancellor or District

A copy of all complaints filed in accordance with the Title 5 regulations will be forwarded to the State Chancellor's Office immediately upon receipt. Similarly, when the State Chancellor's Office receives a complaint a copy will be forwarded to the District.

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. However, potential complainants are sometimes reluctant to pursue a complaint if their names will be revealed.

The inability to reveal the name of a complainant or facts that are likely to reveal the identity of the complainant can severely limit the ability of the District to respond. Complainants must also recognize that persons who are accused of wrongdoing have a right to present their side of the matter, and this right may be jeopardized if the District is prohibited from revealing the name of the complainant or facts that are likely to disclose the identity of the complainant.

If a complainant insists that his or her name not be revealed, the responsible officer should take all reasonable steps to investigate and respond to the complaint consistent with the complainant's request as long as doing so does not jeopardize the rights of other students or employees.

It is also important that complainants and witnesses understand the possibility that they may be charged with allegations of defamation if they circulate the charges outside of the District's process. In general, persons who are participating in a District investigative or disciplinary process that is related to a charge of discrimination are protected from tort claims such as defamation. However, persons who make allegations outside of these processes or who discuss their claims with persons outside of the process may expose themselves to tort charges. Complainants, witnesses, and those accused of discrimination will all be asked to sign a confidentiality acknowledgement statement.

Where an investigation reveals the need for disciplinary action, the complainant may wish to have information about what disciplinary actions the District took. However, the privacy rights of the persons involved often prevent the District from providing such information. In student disciplinary actions for sexual assault/physical abuse charges, Education Code Section 76234 provides that the victim shall be informed of the disciplinary action, but that the victim must keep the information confidential. Disciplinary actions taken against employees are generally considered confidential.

Investigation Processes

A prompt, thorough and impartial investigation shall take place following the District's receipt of a formal complaint. The designated investigator shall meet with the complainant, the individuals against whom the complaint is based, and any other relevant witnesses to the complaint. The investigator shall also review and analyze any relevant documentation and/or any applicable District written policies or procedures connected with the complaint. The investigative report shall include, but is not limited to, a description of the circumstances giving rise to the complaint; a description of the supporting or opposing evidence with respect to each allegation in the complaint; a summary and analysis of the documents, data and/or witness testimony; and any other information deemed appropriate by the investigator.

Administrative Determination

In any case not involving employment discrimination, within 90 days of receiving an unlawful discrimination complaint filed under Title 5, Sections 59300 et seq., the responsible District officer will complete the investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all the following to both the complainant and the State Chancellor:

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- a. the determination of the chief executive officer or his/her designee as to whether there is sufficient evidence to believe discrimination occurred with respect to each allegation in the complaint;
- b. a description of actions taken, if any, to prevent similar problems from occurring in the future;
- c. the proposed resolution of the complaint; and
- d. the complainant's right to appeal to the District governing board and the State Chancellor.

In any case involving employment discrimination, within 90 days of receiving an unlawful discrimination complaint filed under Title 5, Sections 59300, et seq., the responsible District officer will complete the investigation and forward a copy or summary of the report to the complainant, and written notice setting forth all the following to the complainant:

- a. the determination of the chief executive officer or his/her designee as to whether there is sufficient evidence to believe discrimination occurred with respect to each allegation in the complaint;
- b. a description of actions taken, if any, to prevent similar problems from occurring in the future;
- c. the proposed resolution of the complaint; and
- d. the complainant's right to appeal to the District governing board and the Department of Fair Employment and Housing.

The District will keep these documents on file for a period of at least three years after closing the case, and make them available to the State Chancellor upon request.

The West Hills Community College District recognizes the importance of, and is therefore committed to, completing investigations and resolving complaints as quickly as possible, consistent with the requirements for a thorough investigation.

Complainant's Appeal Rights

Complainants have appeal rights that they may exercise if they are not satisfied with the results of the District's administrative determination. At the time the administrative determination and summary is mailed to the complainant, the responsible District officer or his/her designee shall notify the complainant of his or her appeal rights as follows:

- First level of appeal – The complainant has the right to file an appeal to the District's governing board within 15 days from the date of the administrative determination. The District's governing board will review the original 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 45 days after receiving the appeal. Alternatively, the District's governing board may elect to take no action within 45 days, in which case the original decision in the administrative determination will be deemed to be affirmed and shall become the final District decision in the matter. A copy of the final decision rendered by the District's governing board will be forwarded to the complainant and to the State Chancellor's Office.

- Second level of appeal – The complainant has the right to file an appeal with the California Community College Chancellor’s Office in any case not involving employment-related discrimination within 30 days from the date that the governing board issues the final District decision or permits the administrative determination to become final by taking no action within 45 days. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board and a statement under penalty of perjury that no response was received from the governing board within 45 days from that date.

Complainants must submit all appeals in writing.

Forward to State Chancellor

In any case not involving employment discrimination, within 150 days of receiving a complaint, the responsible District officer will forward the following to the State Chancellor:

1. A copy of the final District decision rendered by the governing board or a statement indicating the date on which the administrative determination became final as a result of taking no action on the appeal within 45 days.
2. A copy of the notice of appeal rights the District sent the complainant.
3. Any other information the State Chancellor may require.

The District will keep these documents on file for a period of at least three years after closing the case, and in any case involving employment discrimination, make them available to the State Chancellor upon request.

Extensions

If for reasons beyond its control the District is unable to comply with the 90-day or 150-day deadlines specified above for submission of materials to the complainant and the State Chancellor's Office, the responsible District officer will file a written request that the State Chancellor grant an extension of the deadline. The request will be submitted no later than 10 days prior to the expiration of the deadlines established by title 5 in sections 59336 and/or 59340 and will set forth 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 for an extension will be sent to the complainant, who will be advised that he or she may file written objections with the State Chancellor within 5 days of receipt.

The State Chancellor may grant the request unless delay would be prejudicial to the investigation. If an extension of the 90-day deadline is granted by the State Chancellor the 150-day deadline is automatically extended by an equal amount.

Record Retention

Unlawful discrimination records that are part of an employee’s employment records may be classified as Class-1 Permanent records and retained indefinitely or microfilmed in accordance with

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Title 5, California Code of Regulations, Section 59022. Unlawful discrimination records of a student that are deemed worthy of preservation but not classified as Class-1 Permanent may be classified as Class-2 Optional records or as Class-3 Disposable records, to be retained for a period of three years.

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