

Procedures for Handling Complaints of Unlawful Discrimination, Harassment and Retaliation

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Why is this training required?

- Compliance with agreements:
 - Department of Education, Office for Civil Rights
 - California Community College Chancellor's Office
- Explain the process and the role of supervisors and department chairs
- Important Updates
 - New policies and recent changes
 - Changes in the Office Diversity, Equity and Compliance

Diversity and Human Resources

Melissa Kane
Vice Chancellor
Diversity and
Human Resources

Art Alcaraz
Director
Human Resources

Human Resource Specialists

Chani Beeman
Director
Diversity, Equity and Compliance

Deb Miller
Administrative Assistant

Diversity Equity and Compliance

- Facilitates and monitors District efforts to cultivate an inclusive, respectful and supportive climate
- Works collaboratively with the Colleges to create a safe environment for intellectual interactions and growth
- Administers:
 - The Equal Employment Opportunity program
 - Inclusiveness and Diversity Strategic Planning
 - District-wide training on diversity and non-discrimination compliance
 - Investigations of harassment and discrimination

Protected Bases

Actual, perceived or association with others':

- Disability
- Sex/Gender
- Nationality
- Race or ethnicity
- Religion
- Sexual orientation
- Age (40+)
- Or any characteristic listed or defined in Section 11135 of the Government Code or any characteristic that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code

Complaint Types

■ Discrimination

Differential treatment of an individual or group that is based on:

- One or more protected characteristics
- Likely to impair a reasonable person's performance or prospects for advancement or promotion.

■ Examples: Double standards, assignments, limitations

Complaint Types

■ Harassment

Verbal, visual or physical conduct of an aggravating nature that is:

- Based on protected characteristics
 - Subjectively and objectively unwelcome
 - Sufficiently severe or pervasive to alter the working/learning environment so as to create an abusive environment.
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- Harassment does NOT need to be intended, it is determined by the perception of “the reasonable person”
 - Examples: Yelling, teasing, intimidation, rumors, innuendo, touching

Complaint Types

■ Retaliation

- Causal connection between a person's engagement of a protected activity* and an adverse action.

- Examples: Threats, rumors, letter of reprimand, schedule change

* Protected activity in this context includes participation in the unlawful discrimination/harassment complaint process and/or filing a whistleblower complaint

Other Complaints

- **Academic Affairs:** Classroom management and teaching style
- **Student Services:** Student-to-student disputes not involving unlawful discrimination, harassment or retaliation
- **Human Resources:** Employment-related issues not involving unlawful discrimination, harassment or retaliation

When in Doubt...

Contact Diversity, Equity & Compliance

222-8039

- Proper referral will be made, if necessary

Applicable District Policies

■ BP 3410 Nondiscrimination

- *“The District is committed to equal opportunity in educational programs, employment, and access to all institutional programs and activities.”*

■ BP 3420 Equal Employment Opportunity

- *“...diversity in the academic environment fosters cultural awareness, mutual understanding, respect, harmony, and suitable role models for all students. The Board of Trustees therefore commits itself to promote the total realization of equal employment through a continuing equal employment opportunity program.”*

■ BP 3430 Prohibition of Harassment and Retaliation

- *“All forms of harassment are contrary to basic standards of conduct between individuals and are prohibited by state and federal law, as well as this policy, and will not be tolerated. The District is committed to providing an academic and work environment that respects the dignity of individuals and groups.”*

AP 3435 Handling Complaints of Unlawful Discrimination or Harassment

- Who is covered?
 - The District is required to protect students and employees from discriminatory or harassing conduct by:
 - Visitors
 - Vendors and contractors
 - Other students and employees

The Complaint Process

- Resolution may be *formal* or *informal*
 - Supervisors may arrange an informal resolution but it must be documented and placed on file in DEC
 - Decision is made by the individual raising the concern and after they are made aware of the formal complaint process
 - Informal allows an individual who believes she/he has been unlawfully discriminated against or harassed to resolve the issue through a mediation process rather than the formal complaint process
 - Informal resolution is typically utilized when there is a simple misunderstanding or the individual seeks nothing more than a clarification of the misunderstanding or an apology from the other person and an assurance that the offending behavior will cease
 - Informal resolution does not extend timelines

Formal Complaint Requirements

- Must be filed on the appropriate form
 - *Verbal reports are not formal complaints*
- Filed by a person alleging unlawful discrimination, harassment or retaliation
- Cannot be filed anonymously or on behalf of another
 - Limited exceptions
- Non-employment complaint must be filed within one year of date of discrimination or date complainant knew or should have known of discrimination
- Employment-related complaint must be filed within 180 days of alleged occurrence

Filing a Formal Complaint

- The appropriate form and district procedure is located at the DEC web site:

<http://rcc.edu/administration/dec.cfm>

- and, the CCCCO web site:

[http://www.cccco.edu/divisions/legal/discrimination/attachments/Discrim Complaint 2006.pdf](http://www.cccco.edu/divisions/legal/discrimination/attachments/Discrim%20Complaint%202006.pdf)

Complaint Process Timeline

■ Investigation

- May take up to 90-calendar days
 - Investigation may be done internally or externally
 - Fact-finding, fair and objective
 - All parties have an opportunity to tell their side of the story
 - Witnesses are interviewed as necessary
 - Will investigate all circumstances, including other complaints filed against the subject of the complaint
- A summary of the investigative report is only provided to the complainant and subject of the complaint
- Based on investigative findings an Administrative Determination as to the validity of the complaint is made

Complaint Process Timeline

■ Appeal Levels

- Administrative Determination may be appealed to the Board of Trustees
 - Board of Trustees has 45-calendar days to take any action on the appeal
 - Decision of the Board is final District Decision
 - If Board takes no action, Administrative Determination becomes District Decision
- District Decision may be appealed to external agencies:
 - Non employment related – State Chancellor’s Office
 - Employment related – Department of Fair Employment and Housing or Equal Employment Opportunity Commission (or both)

Consequences of Unlawful Discrimination, Harassment or Retaliation

- District
 - Lawsuits, decreased morale, low enrollment, lower grades, diminished reputation
- Employees
 - Reprimands, counseling, suspension, missed promotion, termination
- Students
 - Removal from class, counseling, academic record notation, expulsion

Confidentiality of Records and Information

- All records and information regarding investigations are kept confidential to the extent allowed by law
 - *Don't make promises of absolute confidentiality*
- Confidential information may be disclosed in cases involving litigation
- All parties (including witnesses) are cautioned to not discuss complaint information outside the investigative process, except with their legal representative
- Information regarding disciplinary outcomes will remain confidential

Outside Agencies

- Although the District prefers to resolve complaints internally, employees and students may also file complaints with the following external agencies:
 - Department of Fair Employment and Housing
 - employment-related complaints
 - Equal Employment Opportunity Commission
 - employment-related complaints
 - Department of Education Office for Civil Rights
 - non employment-related complaints
 - State Chancellor's Office
 - Any complaint may be sent to this agency, but only has appeal jurisdiction over complaints not related to employment

The Supervisor's Role

- Attempt to get a statement of facts
- Provide a copy of the summary handout “You Have the Right to File a Complaint”
 - Refer the complainant to the District’s website for the complete complaint process and complaint form
- Immediately report the situation to Diversity, Equity & Compliance
 - Even if the complainant does not ask to file a complaint
 - Supervisory employees can be personally liable for failing to report unlawful discrimination, harassment or retaliation
- Make a written record of what occurred and how you responded

Questions, Answers and Discussion