

I. Introduction & Scope

These are the written policies and procedures for filing and processing complaints of unlawful discrimination and harassment at Cabrillo Community College District. These policies and procedures incorporate the legal principles contained in unlawful discrimination provisions of state and federal substantive and procedural requirements.

A copy of these written policies on unlawful discrimination and harassment will be displayed in a prominent location in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

A. Unlawful Discrimination and Harassment Policy

The policy of the Cabrillo Community College District is to provide an educational and employment environment in which no person shall be unlawfully denied full and equal access to, the benefits of, or be unlawfully subjected to discrimination or harassment on the basis of ethnicity, national origin, religion, age, sex, sexual orientation, race, or physical or mental disability, and any other protected status category as may be designated by law, in any of its programs or activities.

Employees, students, or other persons acting on behalf of the District who engage in unlawful discrimination, harassment, or retaliation prohibited by this policy, or state or federal law, may be subject to discipline, up to and including, but not limited to, discharge, expulsion, or termination of contract.

B. Academic Freedom

Cabrillo College District recognizes that academic freedom provides a foundation for intellectual stimulations and development, and academic success in the teaching environment. The District also recognizes that academic freedom is fundamental to the protection of teachers' and students' rights. Academic freedom encompasses the freedom to study, teach and express ideas, including unpopular or controversial ones, without censorship, political restraint or retribution. Academic freedom allows for the free exchange of ideas in the conscientious pursuit of truth. Protecting academic freedom is the responsibility of the college community. In a climate of openness and mutual respect, the college protects and encourages the exchange of ideas, which are presented in the spirit of free and open dialogue. Employment by the District does not in any way restrict or limit the First Amendment right enjoyed by faculty as members of their communities. Faculty members are free to speak and write publicly on any issue, as long as they do not indicate they are speaking for the institution. To this end, academic freedom shall be assured, subject to limitations imposed by law and by the academic standards of the college and the state.

II. Definitions

Definitions applicable to nondiscrimination and harassment policies are as follows:

- A. “Appeal” means a written request to the Cabrillo College Advisory Panel, Governing Board, or the State Chancellor’s Office for review of a determination made following investigation of a discrimination or harassment complaint, as permitted by AR 5040 or Title 5.
- B. “Complaint” means a written and signed statement meeting the requirements of section 59328, which alleges unlawful discrimination or harassment in violation of this subchapter.
- C. “Days” means calendar days unless otherwise specified.
- D. “Responsible District Officer” means the District Officer identified by the district to the Chancellor's Office as the person responsible for receiving complaints filed pursuant to section 59328 and coordinating their investigation.
- E. “Discrimination on the basis of sex” means sexual harassment or discrimination on the basis of gender.
- F. “Manager” means anyone who is authorized to recommend or to make personnel or educational decisions affecting an employee or student, or who is otherwise authorized to transact business on behalf of the Cabrillo College District.
- G. “Sexual harassment” means unlawful and unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the workplace or in the educational setting, and includes but is not limited to:
 - 1. Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. (Examples of sexual harassment that appear in a written form include, but are not limited to: suggestive or obscene letters, notes, and invitations. Examples of verbal sexual harassment include, but are not limited to: leering, gestures, display of sexually aggressive objects or pictures, cartoons, or posters.)
 - 2. Continuing to express sexual interest after being informed that the interest is unwelcome.
 - 3. Making reprisals, threats of reprisal, or implied threats of reprisal following a rebuff of harassing behavior.
 - 4. Engaging in explicit or implicit coercive sexual behavior within the work environment which is used to control, influence, or affect the employee’s career, salary, and/or work environment.
 - 5. Engaging in explicit or implicit coercive sexual behavior within the educational environment that is used to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student.
 - 6. Offering favors or educational or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.
- H. “Hostile Environment Sexual Harassment” includes but is not limited to: behavior that is in the classroom, workplace, or any other college or non-college setting, that is continuous, frequent, repetitive, and part of an overall pattern, rather than one event. However, a single, severe event can constitute hostile work environment sexual harassment, especially if it involves physical contact. Perpetration of such behavior can be from instructors, supervisors, subordinates,

consultants, vendors or peers. The intentions of the accused are irrelevant in determining whether her/his behavior constitutes sexual harassment; it is the effect of the behavior upon the recipient which creates a hostile work environment. Such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile or offensive work or educational environment.

Behaviors that may contribute to a hostile environment as judged by a reasonable person of the same gender as the complainant, which are inappropriate or have no educational relevance, include, but are not limited to the following:

1. verbal, non-verbal and physical sexual behaviors;
2. sexual advances that are repeated and unwanted even when they are verbal and not coercive;
3. sexual jokes, innuendoes;
4. remarks about a person's body;
5. turning discussions inappropriately to sexual topics;
6. making offensive sounds, such as whistling or catcalls;
7. looking a person up and down or staring in a sexually suggestive manner;
8. invading someone's personal space or blocking his or her path;
9. distribution of sexually explicit visuals such as pinups, or digital images;
10. suggestions of sexual intimacy;
11. repeated requests for dates or private meetings in inappropriate or intimate locations;
12. unwanted letters or gifts; or
13. touching, hugging, massaging, or other unwelcome physical contact.

- I. "Mental Disability" includes but is not limited to, all of the following:
 1. Having any mental or psychological disorder or condition, such as mental retardation;
 2. organic brain syndrome;
 3. emotional or mental illness, or specific learning disabilities that limits a major life activity.
 4. "Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

- J. Physical Disability, includes but is not limited to all of the following:
 1. Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss.
 2. Any physical health impairment that requires specialized supportive services.
 3. Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment, which is known to the district.

4. Being regarded or treated by the District as having, or having had, any physical condition that makes achievement of a major life activity difficult.
5. Being regarded or treated by the District as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability.
6. "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

III. Responsible District Officer

- A. The Cabrillo Community College District has identified the Director of Human Resources or designee, to the State Chancellor's Office and to the public as the single District Officer responsible for receiving unlawful discrimination and harassment complaints and coordinating an appropriate investigation. The actual investigation of any complaint may be assigned to other staff or to outside persons or organizations under contract with the District. However, such investigation delegation procedures must be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.
- B. Employee Notice, Training, and Education
 1. The Cabrillo Community College District's Responsible District Officer, or a designee, is responsible for providing training to employees and students on the District's unlawful discrimination and harassment policy and procedures. Faculty, administrative staff, and all members of the support staff will be provided with a copy of the District's written policy on unlawful discrimination and harassment at the beginning of the semester of the school year after the policy is adopted.
 2. All District employees will receive this training and a copy of the unlawful discrimination and harassment policies and procedures during the first year of their employment. In years in which a substantive policy or procedural change has occurred, all District managers will attend a training update and receive a copy of the revised policies and procedures to be disseminated to their respective staff.

IV. Filing A Complaint

A. Informal Complaint Procedure

When a person brings charges of unlawful discrimination to the attention of the responsible District Officer or designee, that officer will:

1. Undertake efforts to informally resolve the charges, if appropriate;
2. Advise the complainant that he or she need not participate in informal resolution of the complaint;
3. Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for filing a formal complaint;

4. Advise the complainant that he or she may file a complaint with the Office of Civil Rights of the U.S. Department of Education (OCR); and,
5. If the complaint is employment-related, the complainant will also be advised that he or she may file a complaint with the State Department of Fair Employment and Housing (DFEH) and/or the U.S. Equal Employment Opportunity Commission.

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 formal complaint is filed an investigation is required to be conducted and will be completed unless the matter is informally resolved and the complainant dismisses or withdraws 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 regarding the formal complaint.

B. Formal Complaint Procedure

If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, s/he will file the complaint on a form prescribed by the State Chancellor. These approved forms are available from the District and also from the State Chancellor's office.

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

C. Investigation Upon Filing of a Formal Written Complaint

When a formal written complaint is filed an investigation will be initiated if the complaint meets the following requirements:

1. The complaint must allege unlawful discrimination or harassment.
2. The complaint must be filed by one who alleges that he or she has personally suffered unlawful discrimination or harassment, or by one who has learned of such unlawful discrimination or harassment in his or her official capacity such as a faculty member or administrator.
3. In any complaint not involving employment, the complaint must be filed within one year of the date of the alleged unlawful discrimination or harassment on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination or harassment.
4. Complaints alleging discrimination or harassment in employment must be filed within six (6) months of the date the alleged unlawful employment discrimination occurred. This period can be extended by no more than 90 days following the expiration of the six (6) month period if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of six (6) months.
5. The District may conduct an appropriate investigation whenever it becomes aware of alleged unlawful discrimination or harassment in any of its programs or activities.

D. Notice to Chancellor or District

Upon receipt of a formal written complaint, the responsible District Officer will conduct a full and impartial investigation and notify the State Chancellor's office of the investigation. Similarly, when the State Chancellor's Office receives a complaint filed in accordance with the regulations a copy will be forwarded to the District for investigation.

E. Confidentiality of the Investigative Process

Investigative processes can best be conducted within a confidential environment, and the District does not reveal information about such matters except as necessary to fulfill its legal obligations. 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. If a complainant insists that his/her name not be revealed, the responsible District Officer will ensure confidentiality to the extent possible, as long as doing so does not jeopardize the rights of other students and employees. However, the District cannot guarantee absolute confidentiality in all cases.

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, except as required or authorized by law.

F. Administrative Determination

1. Investigation:

Within sixty (60) days of receiving a formal unlawful discrimination or harassment complaint, the investigation will be completed and the responsible District Officer will notify both the complainant and the accused regarding his/her determination based upon the investigation as to whether discrimination and/or harassment did or did not occur with respect to each allegation in the complaint.

2. Appeal to Advisory Panel:

a. If either the complainant or the respondent is dissatisfied with the responsible District Officer's determination, that party may appeal to the District's Advisory Panel in writing within 5 working days of notification of the determination.

b. The Advisory Panel shall include up to five members chosen from a pool of faculty, students and classified staff, selected by the Superintendent/President. The responsible District Officer will recommend impartial panel members and attempt to achieve gender balance for each panel. A student representative may be selected for panels dealing with complaints involving students. All panel members will serve for two consecutive years except the Student Senate representative, who may serve for only one year. At the beginning of their terms, members will receive training on District policy related to nondiscrimination and harassment law. The panel will review formal appeal cases and all proceedings will be confidential to the extent required by law.

c. When either the complainant or the respondent initiates an appeal to the Advisory Panel, the responsible District Officer will submit

the investigation report to the panel. The complainant and accused will be given the option of appearing before the panel in person to present their case. The Advisory Panel will review any oral or written statements submitted by the complainant and respondent in determining whether the appeal has merit. After completing a review, the panel may recommend upholding, revising, or reversing the responsible District Officer's conclusions. The panel's recommendation will be given in writing to the responsible District Officer within 10 days of the filing of the appeal. Within 5 days of receiving the panel's recommendation, the responsible District Officer shall review the panel's recommendation and make his/her written determination. If the responsible District Officer agrees with the recommendations of the panel, the panel's recommendations shall become the final administrative determination of the District. If the responsible District Officer does not agree with the recommendation of the panel, a final administrative determination shall be rendered by the Superintendent/President in writing, and forwarded to the complainant and respondent, within 10 days of the responsible District Officer's determination.

3. **Complainants' and State Chancellor's Notification of Administrative Determination**

Within 90 days of receiving a formal complaint alleging unlawful discrimination or harassment, the responsible District Officer will forward a copy of the investigative report to the State Chancellor, a summary of the report to the complainant, and written notice to the State Chancellor and the complainant setting forth the following:

- a. The final administrative determination as to whether discrimination or harassment did or did not occur with respect to each allegation in the complaint;
- b. A description of the 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's Governing Board and/or the State Chancellor's Office.

V. **Complainant's Appeal Rights**

Complainants have additional appeal rights that they may exercise if they are not satisfied with the results of the District's final administrative determination. At the time the final administrative determination is made, a summary is mailed to the complainant and the District will notify the complainant of his or her appeal rights as follows:

- A. **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 final 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. Or, the District's Governing Board may elect to take no action within 45 days, in which case the original decision in the final 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.

- B. 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 or harassment 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.
- C. In any case involving employment discrimination or harassment, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the state Department of Fair Employment and Housing and/or the U.S Equal Employment Opportunity Commission.
- D. The Chancellor shall have discretion to accept or reject any such petition for review in employment discrimination cases. If the Chancellor agrees to accept to petition, s/he shall take action consistent with the procedures prescribed by the Chancellor's Office.

Complainants must submit all appeals in writing.

VI. Forward to Chancellor

Within 150 days of receiving a formal complaint, the District will forward the following to the Chancellor:

- A. 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.
- B. A copy of the notice of appeal rights the District sent the complainant.

VII. 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 District will file a written request that the 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 law 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 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 complainant. If the Chancellor grants an extension of the 90-day deadline the 150-day deadline is automatically extended by an equal amount.

VIII. 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. 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.

IX. Retaliation

It is unlawful for anyone to retaliate against someone who files an unlawful discrimination complaint, who refers a matter for investigation or complaint, who participates in an investigation of a complaint, who represents or serves as an advocate for an alleged victim or alleged offender, or who otherwise furthers the principles of this unlawful discrimination policy.

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AR 5040 - Complaint Procedure

Formal Complaint - 150 days from filing to final disposition

