

General Institution

1 **AP 3435 DISCRIMINATION AND HARASSMENT INVESTIGATIONS**

2 **References:**

- 3 Education Code, Section 66281.5;
- 4 Government Code, Section 12950.1;
- 5 Title 5, Sections 59320, 59324, 59326, 59328, and 59300 et seq.;
- 6 34 C.F.R., Section 106.8(b)

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

11 These complaint procedures apply to complaints alleging discrimination, harassment, or
12 retaliation on the basis of national origin, religion, age, gender, gender identity, gender
13 expression, race or ethnicity, color, medical condition, genetic information, ancestry,
14 sexual orientation, marital status, physical or mental disability, pregnancy, or military and
15 veteran status, or because an individual is perceived to have one or more of the foregoing
16 characteristics, or based on association with a person or group with one or more of these
17 actual or perceived characteristics. See also Board Policy and Administrative Procedure
18 3410 titled Nondiscrimination and Administrative Procedure 3430 titled Prohibition of
19 Harassment.

20 **Filing a Timely Complaint:** Since failure to report discrimination, including harassment,
21 impedes the District’s ability to stop the behavior, the District strongly encourages anyone
22 who believes he or she has been or is being harassed or discriminated against to file a
23 complaint. The District also strongly encourages the filing of such complaints within thirty
24 (30) days of the alleged incident. While all complaints are taken seriously and will be
25 reviewed, assessed, and investigated promptly as appropriate, delay in filing impedes the
26 District’s ability to investigate and remediate.

27 All managers have a mandatory duty to report incidents of harassment and discrimination;
28 the existence of a hostile, offensive or intimidating work environment; and acts of
29 retaliation.

30 The District will investigate complaints involving acts that occur off campus if they are
31 related to an academic or work activity.

32 **Communicating that the Conduct is Unwelcome:** The District further encourages
33 students and employees who believe they are being subjected to harassment to let the
34 offending person know immediately and firmly that the conduct or behavior is unwelcome,
35 offensive, in poor taste and/or inappropriate.

36 **Oversight of Complaint Procedure:** The Vice President of Human Resources is the
37 "responsible District officer" charged with receiving complaints of discrimination, including
38 harassment, and coordinating their investigation.

39 The actual investigation of complaints may be assigned by the Vice President of Human
40 Resources to other staff or to outside persons or organizations under contract with the
41 District. This shall occur whenever the Vice President of Human Resources is named in
42 the complaint or implicated by the allegations in the complaint.

43 **Who May File a Complaint:** Any student, employee, or third party who believes he/she
44 or any individual has been discriminated against or harassed by a student, employee, or
45 third party in violation of this procedure and the related policy.

46 **Where to File a Complaint:** A student, employee, or third party who believes he/she or
47 any individual has been discriminated against or harassed in violation of this policy and
48 these procedures, or that a student has been subjected to discrimination, including
49 harassment, or who has witnessed or has knowledge of such discrimination, may make
50 a complaint orally or in writing, within one year of the date of the alleged harassment or
51 the date on which the complainant knew or should have known of the facts underlying the
52 complaint. In accordance with timeline mandates, complaints filed after one year will be
53 accepted and addressed as applicable, however, delays in filing impedes the District's
54 ability to investigate and remediate promptly.

55 If a complainant decides to file a formal written unlawful discrimination or harassment
56 complaint against the District, he/she may file the complaint on a form prescribed by the
57 State Chancellor's Office. These approved forms are available from the Vice President
58 of Human Resources and at the following URL:
[https://www.cccco.edu/About-Us/Chancellors-Office/Divisions/General-
Counsel/Guidelines-Policies-and-Forms](https://www.cccco.edu/About-Us/Chancellors-Office/Divisions/General-Counsel/Guidelines-Policies-and-Forms)

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

- 60 • the Vice President of Human Resources;
- 61 • the Vice President of Student Services;
- 62 • the President's Office; and/or
- 63 • the State Chancellor's Office.

64 Employee complainants shall be notified that they may file employment discrimination
65 complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the
66 Department of Fair Employment and Housing (DFEH).

67 Complaints filed with the EEOC and/or the DFEH should be forwarded to the State
68 Chancellor's Office.

69 Any District employee who receives an alleged harassment or discrimination complaint
70 shall notify the Vice President of Human Resources immediately.

71 The District prohibits all forms of discrimination, intimidation, or harassment against any
72 individual who files or otherwise participates in the filing or investigation of a complaint of
73 discrimination. Persons who believe they have been subjected to retaliation may file a
74 complaint under these procedures.

75 **Intake and Processing of the Complaint:** Upon receiving notification of an alleged
76 harassment or discrimination complaint, the Vice President of Human Resources and/or
77 designee shall:

- 78 • Undertake efforts to informally resolve the charges, including but not limited to
79 mediation, rearrangement of work/academic schedules; obtaining apologies;
80 providing informal counseling and/or training, etc.
- 81 • Advise the complainant that he/she need not participate in an informal resolution
82 of the complaint, as described above, and has the right to end the informal
83 resolution process at any time. Mediation is not appropriate for resolving incidents
84 involving sexual violence.
- 85 • Advise complainants that he/she may file a complaint with the Office of Civil Rights
86 (OCR) of the U.S. Department of Education and employee complainants may file
87 a complaint with the California Department of Fair Employment and Housing. All
88 complainants should be advised that they have a right to file a complaint with local
89 law enforcement. They also should be advised of their option to be accompanied
90 by a support person throughout the process. The District must respond even if the
91 complainant files a complaint with local law enforcement. In addition, the District
92 should ensure that complainants are aware of any available resources, such as
93 counseling, health, and mental health services. The Vice President of Human
94 Resources or designee shall also notify the State Chancellor's Office of the
95 complaint when required by law.
- 96 • Take interim steps to protect a complainant from coming into contact with an
97 accused individual, especially if the complainant is a victim of sexual violence. The
98 Vice President of Human Resources should notify the complainant of his or her
99 options to avoid contact with the accused individual and allow students to change
100 academic situations as appropriate. For instance, the District may prohibit the
101 accused individual from having any contact with the complainant pending the
102 results of the investigation. When taking steps to separate the complainant and
103 accused individual, the District shall minimize the burden on the complainant. For
104 example, it is not appropriate to remove complainants from classes or housing
105 while allowing accused individuals to remain.
- 106 • Authorize the investigation of the complaint, and supervise and/or conduct a
107 thorough, prompt and impartial investigation of the complaint, as set forth below.
108 When complainants opt for informal resolution, the Vice President of Human
109 Resources or designee will determine whether further investigation is necessary
110 to ensure resolution of the matter and utilize the investigation process outlined
111 below as appropriate. In the case of a formal complaint, the investigation will
112 include interviews with the complainant, the accused, and any other persons who
113 may have relevant knowledge concerning the complaint. This may include victims
114 of similar conduct.

- 115 • Review the factual information gathered through the investigation to determine
116 whether the alleged conduct constitutes harassment, or other unlawful
117 discriminatory conduct, giving consideration to all factual information and the
118 totality of the circumstances, including the nature of the verbal, physical, visual, or
119 sexual conduct, and the context in which the alleged incidents occurred.
- 120 • Set forth the results of the investigation in a written report. The written report shall
121 include an explanation of the District’s investigative process, a description of the
122 circumstances giving rise to the complaint, a summary of the testimony of each
123 witness, an analysis of any relevant data or other evidence collected during the
124 investigation, a specific finding as to whether the preponderance of the evidence
125 establishes that discrimination did or did not occur with respect to each allegation
126 in the complaint and the reasons for that finding, a description of actions the District
127 will take to prevent similar conduct, the proposed resolution of the complaint, the
128 complainant’s right to appeal to the District’s Board of Trustees, and if the
129 complainant is a student, the right to appeal to the State Chancellor. If the
130 complainant is an employee, the report shall include the right to file an
131 administrative complaint with the Department of Fair Employment and Housing.
132 The report may contain any other appropriate information
- 133 • Provide the complainant and accused with a copy or summary of the investigative
134 report within ninety (90) days from the date the District received the complaint.
135 The complainant and accused shall also be provided with a written notice setting
136 forth the determination of the President/Superintendent or designee as to whether
137 harassment or other discriminatory conduct did or did not occur with respect to
138 each allegation in the complaint; a description of action taken, if any, to prevent
139 similar problems from occurring in the future; the proposed resolution of the
140 complaint; and notice of the parties’ rights to appeal to the Board of Trustees and
141 the State Chancellor’s Office. The results of the investigation and the
142 determination as to whether harassment or other discriminatory conduct occurred
143 shall also be reported to the accused, and the appropriate academic or
144 administrative official(s). Reports to the complainant shall be prepared so as not
145 to violate any applicable privacy rights of the accused.

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

153 As set forth above, where the complainant opts for an informal resolution, the Vice
154 President of Human Resources may limit the scope of the investigation, as appropriate.
155 The District will keep the investigation confidential to the extent possible, but cannot
156 guarantee absolute confidentiality because release of some information on a “need-to-
157 know-basis” is essential to a thorough investigation. When determining whether to
158 maintain confidentiality, the District may weigh the request for confidentiality against the

159 following factors: the seriousness of the alleged harassment; the complainant's age;
160 whether there have been other harassment complaints about the same individual; and
161 the accused individual's rights to receive information about the allegations if the
162 information is maintained by the District as an "education record" under the Family
163 Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code
164 Federal Regulations Part 99.15. The District will inform the complainant if it cannot
165 maintain confidentiality.

166 **Investigation Steps:** The District will fairly and objectively investigate harassment and
167 discrimination complaints. Employees designated to serve as investigators under this
168 policy shall have adequate training on what constitutes sexual harassment, including
169 sexual violence, and/or the form of discrimination alleged in the complaint, and on how
170 the District's grievance procedures operate. The investigator may not have any real or
171 perceived conflicts of interest and must be able to investigate the allegations impartially.

172 Investigators will use the following steps: interviewing the complainant(s); interviewing
173 the person who was the subject of the discrimination if different; interviewing the accused
174 individual(s); interviewing anyone who witnessed the reported discrimination; interviewing
175 individuals identified as having relevant information; identifying and interviewing
176 witnesses and evidence identified by each party; identifying and interviewing any other
177 witnesses, if needed; reminding all individuals interviewed of the District's no-retaliation
178 policy; considering whether any involved person should be removed from the campus
179 pending completion of the investigation; reviewing any records, notes, memoranda,
180 correspondence, or statements related to the discrimination complaint, and
181 personnel/academic files of all involved parties; reaching a conclusion as to the
182 allegations and any appropriate disciplinary and remedial action; and seeing that all
183 recommended action is carried out in a timely fashion. When the District evaluates the
184 complaint, it shall do so using a preponderance of the evidence standard. Thus, after
185 considering all the evidence it has gathered, the District will decide whether it is more
186 likely than not that discrimination or harassment has occurred.

187 **Timeline for Completion:** The District will undertake its investigation as promptly and
188 swiftly as possible. To that end, the investigator shall complete the above steps, and
189 prepare a written report within sixty (60) to ninety (90) days of the District receiving the
190 complaint.

191 **Cooperation Encouraged:** All employees and students are expected to cooperate with
192 a District investigation into allegations of harassment or discrimination. Lack of
193 cooperation impedes the ability of the District to investigate thoroughly and respond
194 effectively. However, lack of cooperation by a complainant or witnesses does not relieve
195 the District of its obligation to investigate. The District will conduct an investigation if it is
196 discovered that harassment or any other form of discrimination is, or may be occurring,
197 with or without the cooperation of the alleged victim(s) and regardless of whether a
198 complaint is filed.

199 **Discipline and Corrective Action**

200 If harassment, discrimination and/or retaliation occurred in violation of Board Policy or this
201 procedure, the District shall take disciplinary action against the accused and will take
202 steps to stop the discrimination, prevent recurrence, and remedy discriminatory effects
203 on the complainant and others, if appropriate. The action will be prompt, effective, and
204 commensurate with the severity of the offense. Remedies for the complainant might
205 include, but are not limited to:

- 206 • providing an escort to ensure that the complainant can move safely between
207 classes and activities;
- 208 • ensuring that the complainant and alleged perpetrator do not attend the same
209 classes or work in the same work area;
- 210 • preventing offending third parties from entering campus;
- 211 • providing counseling services;
- 212 • providing medical services;
- 213 • providing academic support services, such as tutoring;
- 214 • arranging for a student complainant to re-take a course or withdraw from a class
215 without penalty, including ensuring that any changes do not adversely affect the
216 complainant's academic record;
- 217 • reviewing any disciplinary actions taken against the complainant to see if there is
218 a causal connection between the harassment and the misconduct that may have
219 resulted in the complainant being disciplined;
- 220 • providing any services denied as a result of discrimination; and
- 221 • reviewing a grade awarded as a result of discrimination.

222 If discipline is imposed, the nature of the discipline will not be communicated to the
223 complainant. However, the District may disclose information about the sanction imposed
224 on an individual who was found to have engaged in harassment or other discrimination
225 when the sanction directly relates to the complainant; for example, the District may inform
226 the complainant that the harasser must stay away from the complainant.

227 Disciplinary actions against employees and students will conform to all relevant statutes,
228 regulations, personnel and student policies and procedures, including the provisions of
229 any applicable collective bargaining agreement.

230 The District shall also take reasonable steps to protect the complainant from further
231 harassment, and/or discrimination, and to protect the complainant and witnesses from
232 retaliation as a result of communicating the complaint and/or assisting in the investigation.

233 The District will ensure that complainants and witnesses know how to report any
234 subsequent problems, and should follow-up with complainants to determine whether any
235 retaliation or new incidents of harassment have occurred. The District shall take
236 reasonable steps to ensure the confidentiality of the investigation and to protect the
237 privacy of all parties to the extent possible without impeding the District's ability to
238 investigate and respond effectively to the complaint.

239 If the District cannot take disciplinary action against the accused individual because the

240 complainant refuses to participate in the investigation, it should pursue other steps to limit
241 the effects of the alleged harassment and prevent its recurrence.

242 **Appeals**

243 If the District imposes discipline against a student or employee as a result of the findings
244 in its investigation, the student or employee may appeal the decision using the procedure
245 for appealing a disciplinary decision.

246 If the complainant is not satisfied with the results of the administrative determination,
247 he/she may, within fifteen (15) days of issuance of the determination to the complainant
248 by the District, submit a written appeal to the Board of Trustees. The Board of Trustees
249 shall review the original complaint, the investigative report, the administrative decision,
250 and the appeal. The Board shall issue a final District decision in the matter within forty-
251 five (45) days after receiving the appeal. A copy of the decision rendered by the Board
252 of Trustees shall be forwarded to the complainant and to the State Chancellor's Office.
253 The complainant shall also be notified of his/her right to appeal this decision.

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

257 In any case not involving employment discrimination, the complainant shall have the right
258 to file a written appeal with the State Chancellor's Office within thirty (30) days after the
259 Board of Trustees issued the final District decision or permitted the administrative
260 decision to become final. Such appeals shall be processed pursuant to the provision of
261 Title 5 Section 59350.

262 In any case involving employment discrimination, including workplace harassment, the
263 complainant may, at any time before or after the issuance of the final decision of the
264 District, file a complaint with the Department of Fair Employment and Housing. In such
265 cases, the complainant may also file a petition for review with the State Chancellor's
266 Office within thirty (30) days after the Board of Trustees issues the final decision or
267 permits the administrative decision to become final.

268 Within one hundred fifty (150) days of receiving a formal complaint which does not involve
269 employment discrimination, the District shall forward to the State Chancellor's Office the
270 original complaint, the investigative report, a copy of the written notice to the complainant
271 setting forth the results of the investigation, a copy of the final administrative decision
272 rendered by the Board of Trustees or indicating the date upon which the decision became
273 final, and a copy of the notification to the complainant of his/her appeal rights. If, due to
274 circumstances beyond its control, the District is unable to comply with the 150-day
275 deadline for submission of materials, it may file a written request for an extension of time
276 no later than ten (10) days prior to the expiration of the deadline.

277 **Dissemination of Policy and Procedures**

278 Board Policy and Administrative Procedures related to harassment will include
279 information that specifically addresses sexual violence. District policy and procedures
280 will be provided to all students, faculty members, members of the administrative staff and
281 members of the support staff, and will be posted on campus and on the District's website.

282 When hired, employees are required to sign that they have received the policy and
283 procedures, and the signed acknowledgment of receipt is placed in each employee's
284 personnel file. In addition, these policies and procedures are incorporated into the course
285 catalogs, class schedules and orientation materials for new students.

286 **Training**

287 The District shall provide at least two hours of classroom or other effective interactive
288 training and education regarding sexual harassment to all management employees once
289 every two years. All new management employees must be provided with the training and
290 education within six months of their assumption of a management position.

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

299 Training of all staff shall be conducted. This includes counselors, faculty, health
300 personnel, law enforcement officers, coaches, and all staff who regularly interact with
301 students. Training for academic staff should emphasize environmental harassment in the
302 classroom. The District will also provide training to students who lead student
303 organizations. The District should provide copies of the sexual harassment policies and
304 training to all District law enforcement unit employees regarding the grievance procedures
305 and any other procedures used for investigating reports of sexual violence.

306 In years in which a substantive policy or procedural change has occurred, all District
307 employees will attend a training update and/or receive a copy of the revised policies and
308 procedures.

309 Participants in training programs will be required to sign a statement that they have either
310 understood the policies and procedures, their responsibilities, and their own and the
311 District's potential liability, or that they did not understand the policy and desire further
312 training.

313 **Education and Prevention for Students**

314 In order to take proactive measures to prevent sexual harassment and violence toward
315 students, the District will, under the direction of the Director of Diversity, Compliance, and

316 Title IX, provide preventive education programs and make victim resources, including
317 comprehensive victim services, available. The District will include such programs in
318 orientation programs for new students, and in training for student athletes and coaches.
319 These programs will include discussion of what constitutes sexual harassment and sexual
320 violence, the District's policies and disciplinary procedures, and the consequences of
321 violating these policies. A training program or informational services will be made
322 available to all students at least once annually.

323 The education programs will also include information aimed at encouraging students to
324 report incidents of sexual violence to the appropriate District and law enforcement
325 authorities. Since victims or third parties may be deterred from reporting incidents if
326 alcohol, drugs, or other violations of District or campus rules were involved, the District
327 will inform students that the primary concern is for student safety and that use of alcohol
328 or drugs never makes the victim at fault for sexual violence. If other rules are violated,
329 the District will address such violations separately from an allegation of sexual violence.

330 Office of Primary Responsibility: Vice President, Human Resources

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