

Coast Community College District
ADMINISTRATIVE PROCEDURE
Chapter 3
General Institution

**AP 3435 Discrimination, Harassment, and Retaliation Complaints
and Investigations**

References:

Education Code Section 66281.5;
Government Code Section 12950.1;
Title 5 Sections 59320 et seq.;
34 Code of Federal Regulations Section 106.8(b)

The District is committed to providing an academic and business environment free from unlawful discrimination, harassment, and retaliation. This Procedure outlines the process for investigating unlawful discrimination, harassment, and retaliation complaints. This Procedure is subject to the provisions of applicable collective bargaining agreements.

Filing a Timely Complaint: Because failure to report discrimination, harassment, and/or retaliation impedes the District's ability to stop the behavior, the District encourages any person, including third parties, employees, and students, who believe that discrimination, harassment, and/or retaliation may have occurred, regardless of whether they personally experienced such harm, to file a complaint. The District encourages the filing of such complaints within 30 calendar days of the alleged incident.

The complaint shall be filed with the State Chancellor or with the District's Vice Chancellor of Human Resources, who is the individual designated to receive such complaints, as the Responsible District Officer. The complaint may be in a form prescribed by the State Chancellor or otherwise provided to the Vice Chancellor of Human Resources orally or in writing.

In any complaint not involving employment, the complaint 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.

In any complaint alleging discrimination in employment, the complaint shall be filed within 180 calendar days of the date the alleged unlawful discrimination occurred, except that this period should be extended by no more than 90 calendar days following the expiration of the 180 calendar days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 calendar days.

In any complaint alleging discrimination in employment, the District shall:

- advise the complainant that he/she may file the complaint with the U.S. Equal Employment Opportunity Commission (“EEOC”) and/or the Department of Fair Employment and Housing (“DFEH”) where the complaint is within the jurisdiction of those agencies; and
- forward a copy of any filing by the complainant with the DFEH or the EEOC to the State Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter.

All employees who learn of potentially unlawful discrimination, harassment, and/or retaliation in their official capacity as a faculty member or supervisor have a mandatory duty to report such incidents to the Responsible District Officer.

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

Oversight of Complaint Procedure: The Vice Chancellor of Human Resources is the "Responsible District Officer" charged with receiving complaints of discrimination, harassment, and/or retaliation, and coordinating their investigation.

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

Who May File a Complaint: Any student, employee, or third party who believes that discrimination, harassment, and/or retaliation may have occurred, regardless of whether they personally experienced such harm, or by one who has learned of such unlawful discrimination in his/her official capacity as a faculty member or supervisor in violation of applicable Board Policies and Administrative Procedures.

Where to File a Complaint: Any student, employee, or third party who believes that discrimination, harassment, and/or retaliation may have occurred in violation of applicable Board Policies and Administrative Procedures, regardless of whether they personally experienced such harm is to make a complaint orally or in writing to District Human Resources or at any college Human Resources office.

If a complainant decides to file a formal written unlawful discrimination, harassment, and/or retaliation complaint, the complaint must be on a form prescribed by the State Chancellor's Office. The approved form is available from any District Human Resources Office, and on the State Chancellor's website on the discrimination link under the Legal Office page.

The completed form must be filed with one of the following:

- the Vice Chancellor of Human Resources for employee and/or student complaints;

- the Vice Chancellor of Educational Services and Technology or College Vice Presidents of Student Services for student complaints who shall forward the complaint to the Vice Chancellor of Human Resources; and/or
- the State Chancellor's Office.

Any District employee who receives a discrimination, harassment, and/or retaliation complaint shall notify the Vice Chancellor of Human Resources promptly.

Intake and Processing of the Complaint: Upon receiving notification of a discrimination, harassment, and/or retaliation complaint, the Vice Chancellor of Human Resources shall:

- Undertake efforts to informally resolve the charges, including but not limited to mediation; rearrangement of work/academic schedules; obtaining apologies; providing informal counseling and/or training, etc.
- Advise the complainant that he/she need not participate in an informal resolution of the complaint, as described above, and has the right to end the informal resolution process at any time. Mediation is not appropriate for resolving incidents involving sexual violence or sexual assault.
- Advise complainant that he/she may file a complaint with the Office of Civil Rights ("OCR") of the U.S. Department of Education. Employee complainants may file a complaint with the EEOC or the DFEH. The District must investigate even if the complainant files a complaint with local law enforcement. In addition, the District should ensure that complainants are aware of any available resources, such as counseling, health, and mental health services. The Vice Chancellor of Human Resources shall also notify the State Chancellor's Office of the complaint.
- As circumstances warrant, take interim steps to protect a complainant from coming into contact with an accused individual, especially if the complainant is a victim of sexual violence or sexual assault. The Vice Chancellor of Human Resources should notify the complainant of his/her options to avoid contact with the accused individual and allow students to change academic situations as appropriate. For instance, the District may prohibit the accused individual from having any contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and accused individual, the District shall minimize the burden on the complainant. For example, it is not appropriate to remove complainants from classes while allowing accused individuals to remain.
- Authorize the investigation of the complaint, and supervise and/or conduct a thorough, prompt, and impartial investigation of the complaint, as set forth herein. Where complainants opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. In the case of a formal complaint, the investigation will include interviews with the complainant, the respondent, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.

- Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, retaliation, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual, or sexual conduct, and the context in which the alleged incidents occurred.
- In any case not involving employment discrimination, within 90 calendar days of receiving a complaint (unless this time frame is extended by the State Chancellor's Office), the District shall complete its investigation and forward a copy of the investigative report required pursuant to Title 5 Section 59334 to the State Chancellor's Office, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the State Chancellor's Office:
 - the determination of the Responsible District Officer or his/her designee, as to whether there is probable cause to believe that discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint;
 - a description of actions taken, if any, to prevent similar problems from occurring in the future;
 - the proposed resolution of the complaint; and
 - the complainant's right to appeal to the Board and/or the State Chancellor's Office pursuant to Title 5 Sections 59338 and 59339.

In any case involving employment discrimination, within 90 calendar days of receiving a complaint (unless this time frame is extended by the State Chancellor's Office), the District shall complete its investigation and forward a copy or summary of the report to the complainant, and written notice setting forth all the following to the complainant:

- the determination of the Responsible District Officer or his/her designee, as to whether there is probable cause to believe that discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint;
- a description of actions taken, if any, to prevent similar problems from occurring in the future;
- the proposed resolution of the complaint; and
- the complainant's right to appeal to the Board and to file a complaint with DFEH and/or EEOC

Investigation of the Complaint: The District shall promptly investigate complaints of discrimination, harassment, and/or retaliation in accordance with Title 5 Section 59328, and, if applicable, collective bargaining agreements. No claim of workplace or academic discrimination, harassment, and/or retaliation shall remain unexamined. This may include complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, on a District vehicle, or at a class or training program sponsored by the District at another location.

The District cannot guarantee confidentiality, but shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the extent possible without impeding the District's ability to investigate and respond effectively to the complaint. When determining whether to release confidential information, the District may weigh the request for confidentiality against the following factors: the nature of the alleged discrimination, harassment, and/or retaliation; whether there have been other discrimination, harassment, and/or retaliation complaints about the same individual; and the parties' legal rights to receive information about the allegations. The District will inform the complainant and the respondent if it cannot maintain confidentiality.

Investigation Steps: The District will provide an impartial and thorough, investigation in response to discrimination, harassment, and/or retaliation complaints which are timely filed. Employees designated to serve as investigators under this procedure shall have adequate training on what constitutes sexual harassment, including sexual violence. The investigator shall not have any conflicts of interest and must be able to investigate the allegations impartially.

Investigators will use the following steps: interviewing the complainant(s); interviewing the respondent(s); identifying and interviewing witnesses and relevant evidence identified by each party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District's no-retaliation policy; considering whether any involved person should be removed from the District/College pending completion of the investigation; and reaching a conclusion as to the allegations; and see that all recommended action is carried out in a timely fashion. When the District evaluates the complaint, it shall do so using a preponderance of the evidence standard. After considering all the evidence it has gathered, the District will decide whether it is more likely than not that discrimination, harassment, and/or retaliation has occurred.

Timeline for Completion: The District will undertake its investigation promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report within 90 calendar days of the District receiving the complaint.

Cooperation Encouraged: All employees are expected to cooperate with a District investigation into allegations of discrimination, harassment, and/or retaliation. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the District of its obligation to investigate. The District will conduct an investigation if it is discovered that discrimination, harassment, and/or retaliation is, or may be occurring, with or without the cooperation of those who may be suffering such harm and regardless of whether a complaint is filed.

Discipline and Corrective Action

If discrimination, harassment, and/or retaliation occurred in violation applicable Board Policies and Administrative Procedures, the District may take disciplinary or corrective action against the respondent or any other remedial action it determines to be

appropriate. The action will be prompt, effective, and commensurate with the severity of the offense(s). When applicable, disciplinary action will be taken in compliance with applicable provisions of collective bargaining agreements and/or law. Remedies for the complainant might include, but are not limited to:

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes or work in the same work area;
- preventing offending third parties from entering campus;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;
- arranging for a student-complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the discrimination, harassment, and/or retaliation and the misconduct that may have resulted in the complainant being disciplined.

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

Disciplinary actions against faculty, staff, and students will conform to all relevant statutes, regulations, and personnel Board Policies and Administrative Procedures, including the provisions of any applicable collective bargaining agreement.

Complainants and witnesses shall be advised on how to report any subsequent complaints.

The District may pursue other steps to limit the effects of any discrimination, harassment, and/or retaliation and prevent its recurrence, as appropriate.

Appeals

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

If the complainant is not satisfied with the results of the administrative determination, the complainant may, within 15 calendar days of the date of the administrative determination, submit a written appeal to the Board pursuant to Title 5 Section 59338. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within 45 calendar days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the complainant and for cases not involving employment to the State Chancellor's Office. The complainant shall also be notified of his/her right to appeal the Board's decision. If the Board does not act within 45 calendar days, the administrative determination shall be deemed approved and shall become the final decision of the District in the matter.

Except in cases of employment discrimination, the complainant shall have the right to file a written appeal with the State Chancellor's Office within 30 calendar days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Title 5 Section 59339.

In any case involving employment discrimination, harassment, and/or retaliation, the complainant may file a complaint with the Department of Fair Employment and Housing. In such cases, the complainant may also file a petition for review with the State Chancellor's Office within 30 calendar days after the Board issues the final decision or permits the administrative decision to become final.

Except in cases of employment discrimination, the District shall forward to the State Chancellor's Office, within 150 calendar days of receiving a formal complaint:

- the original complaint,
- the investigative report,
- a copy of the written notice to the complainant setting forth the results of the investigation,
- a copy of the final administrative decision rendered by the Board or a statement indicating the date upon which the decision became final, and a copy of the notification to the complainant of his/her appeal rights; or a statement notifying the Chancellor that the complainant has not filed an appeal with the District and that the District has closed its file

In cases of employment discrimination, the District shall forward only the original complaint to the State Chancellor's Office.

If, due to circumstances beyond its control, the District is unable to comply with the 150 calendar day deadline for submission of materials, it may file a written request for an extension of time no later than ten days prior to the expiration of the deadline.

Dissemination of Board Policies and Administrative Procedures

The Board Policy and related Administrative Procedure regarding prohibition of discrimination, harassment, and retaliation shall be provided to all students, faculty, staff, and managers and will be posted on District's website.

When hired, employees are required to sign that they have received the Board Policies and Administrative Procedures related to unlawful discrimination, harassment, and retaliation and the signed acknowledgment of receipt is placed in the employee's personnel file. In addition, the Board Policies and Administrative Procedures related to unlawful discrimination, harassment, and retaliation are to be incorporated into the District's course catalogs and orientation materials for new students.

Ratified December 2, 2013

Ratified December 12, 2018