PALO VERDE COMMUNITY COLLEGE DISTRICT
ADMINISTRATIVE PROCEDURE **3410**

~~Discrimination and Other Complaints~~Nondiscrimination

Nondiscrimination References for Education Programs:

Education Code Sections 66250 et seq., 200 et seq., and 72010 et seq.;
Penal Code Sections 422.55 et seq.;
Title 5 Sections 59300 et seq.;
Accreditation Standard II.B.2.c

~~Introduction and Scope~~

~~These are the written procedures for filing and processing complaints of unlawful discrimination at Palo Verde Community College District. These procedures incorporate the legal principles contained in nondiscrimination provisions of the California Code of Regulations, Title 5, sections 59300 et seq. as well as other state and federal substantive and procedural requirements.~~

~~A copy of these written procedures on unlawful discrimination 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.~~

~~Authority: 20 U.S.C. § 1681 et seq.; Ed. Code, §§ 66270, 66271.1, 66281.5; Gov. Code, §§ 11135-11139.5; Cal. Code Regs., tit. 5, § 59326. Reference: Cal. Code Regs., tit. 5, §§ 59300 et seq.; 34 C.F.R. § 106.8(b).~~

Education Programs

The District shall provide access to its services, classes and programs without regard to, national origin, religion, age, gender, gender identity, gender expression, race or ethnicity, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, pregnancy, or because he/she is perceived to have one or more of the foregoing characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics.

All courses, including noncredit classes, shall be conducted without regard to the gender of the student enrolled in the classes. As defined in the Penal Code, "gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" mean's a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

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.

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

Nondiscrimination References for Employment:

Education Code Sections 87100 et seq.;
Title 5 Sections 53000 et seq.;
Government Code Sections 11135 et seq. and 12940 et seq.

Employment

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, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or status as a Vietnam-era veteran. *(Districts may add additional protected categories.)*

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.

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Palo Verde College

Unlawful Discrimination Complaint Form

Name: _____
Last *First*

Address: _____
Street or P.O. Box *City* *State* *Zip*

Phone: *Day* (_____) _____ *Evening* (_____) _____

I Am A: ☐ Student ☐ Employee ☐ Other: _____

I Wish To Complain Against: _____

District: _____ **College:** _____

Date of Most Recent Incident of Alleged Discrimination: _____

(Nonemployment complaints must be filed within one year of the date of the alleged unlawful discrimination. Employment complaints must be filed within six months of the date of the alleged unlawful discrimination.)

I Allege Discrimination Based on the Following Category Protected under Title 5 ***(you must select at least one)*****:**

☐ Age	☐ Ethnic Group Identification	☐ Physical Disability	☐ Retaliation**
☐ Ancestry	☐ Mental Disability	☐ Race	☐ Sex/Gender (includes Harassment)
☐ Color	☐ National Origin	☐ Religion	☐ Sexual Orientation

☐ Perceived to be in protected category or associated with those in protected category

Clearly state your complaint. Describe each incident of alleged discrimination separately. For each incident provide the following information: 1) date(s) the discriminatory action occurred; 2) name of individual(s) who discriminated; 3) what happened; 4) witnesses (if any); and 5) why you believe the discrimination was because of your religion, age, race, sex or whatever basis you indicated above. **If applicable, explain why you believe you were retaliated against for filing a complaint or asserting your right to be free from discrimination on any of the above grounds.
(Attach additional pages as necessary.)

_____

_____

_____

_____

What would you like the District to do as a result of your complaint – what remedy are you seeking? _____

_____

_____

I certify that this information is correct to the best of my knowledge.

_____ _____
Signature of Complainant *Date*

Send **Original** to:

Palo Verde Community College
One College Drive, Blythe, CA 92225
Attention: Affirmative Action Officer

(Revised 06/08)

Palo Verde Community College District
Procedures
for
Handling Complaints of Unlawful Discrimination[1]
Under
Title 5 Sections 59300 et seq.
(Revised 6/08)

Definitions

Definitions applicable to nondiscrimination procedures are as follows:

1. "Appeal" means a request by a complainant made in writing to the Palo Verde Community College District governing board pursuant to Title 5, section 59338, and/or to the State Chancellor's Office pursuant to Title 5, section 59339, to review the administrative determination of the District regarding a complaint of discrimination.
2. "Association with a person or group with these actual or perceived characteristics" includes advocacy for or identification with people who have one or more characteristics of a protected category listed under "Unlawful Discrimination" and Title 5, section 59300, participation in a group associated with persons having such characteristics, or use of a facility associated with use by such persons.
3. "Complaint" means a written and signed statement meeting the requirements of Title 5, section 59328 that alleges unlawful discrimination in violation of the nondiscrimination regulations adopted by the Board of Governors of the California Community Colleges, as set forth at Title 5, sections 59300 et seq.
4. "Days" means calendar days.
5. "Gender" includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.
6. "Mental disability" includes, but is not limited to, all of the following:
   A. Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

      1) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

      2) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

      3) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

   B. Any other mental or psychological disorder or condition not described in 6.A that requires specialized supportive services.

[1] The information provided by these procedures is an informational guideline and should not be interpreted as legal advice. Much of what is included in these procedures is required by law.

C. Having a record or history of a mental or psychological disorder or condition described in paragraph 6.A or 6.B which is known to the District.

D. Being regarded or treated by the District as having, or having had, any mental condition that makes achievement of a major life activity difficult.

E. Being regarded or treated by the District as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph 6.A. or 6.B.

F. "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.[2]

7. "Physical disability" includes, but is not limited to, all of the following:

A. Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

1) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

2) Limits a major life activity. For purposes of this section:

a) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

b) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

c) "Major life activities" shall be broadly construed and include physical, mental, and social activities and working.

B. Any other health impairment not described in paragraph 7.A that requires specialized supportive services.

C. Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph 7.A or which is known to the District.

D. Being regarded or treated by the District as having, or having had, any physical condition that makes achievement of a major life activity difficult.

E. 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 as described in paragraph 7.A or 7.B.

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[2] If the Americans with Disabilities Act of 1990 definitions would result in broader protection of the civil rights of individuals with a mental or physical disability, or would include any medical condition not included within these definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of the definitions in Government Code section 12926 and should be included in district policy. (Gov. Code, § 12926(l).)

F. "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.[3]

8. "District" means the Palo Verde Community College District or any District program or activity that is funded directly by the state or receives financial assistance from the state. This includes the District Personnel Commission and any other organization associated with the District or its college(s) that receives state funding or financial assistance through the District.

9. "Responsible District Officer" means the officer identified by the District to the State Chancellor's Office as the person responsible for receiving complaints filed pursuant to title 5, section 59328, and coordinating their investigation.

10. "Sexual harassment" is unlawful discrimination in the form of 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:

    A. Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. (Examples of possible sexual harassment that appear in a written form include, but are not limited to: suggestive or obscene letters, notes, invitations. Examples of possible visual sexual harassment include, but are not limited to: leering, gestures, display of sexually aggressive objects or pictures, cartoons, or posters.)

    B. Continuing to express sexual interest after being informed that the interest is unwelcome.

    C. Making reprisals, threats of reprisal, or implied threats of reprisal following a rebuff of harassing behavior. The following are examples of conduct in an academic environment that might be found to be sexual harassment: implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied.

    D. 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.

    E. 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.

    F. 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.

    G. Awarding educational or employment benefits, such as grades or duties or shifts, recommendations, reclassifications, etc., to any student or employee with whom the decision maker has a sexual relationship and denying such benefits to other students or employees.

[3] *Ibid.*

11. "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.
12. "Unlawful discrimination" means discrimination based on a category protected under Title 5, section 59300, including sexual harassment and retaliation.

Authority: Gov. Code, § 12926; Cal. Code Regs., tit. 5, §§ 59300, 59311; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX,* Office for Civil Rights, January 19, 2001.

Notice, Training, and Education for Students and Employees

The Palo Verde Community College District's Director of Human Resources ~~Manager~~ shall make arrangements for or provide training to employees and students on the District's discrimination procedures. Faculty members, members of the administrative staff, and members of the support staff will be provided with a copy of the District's written procedures on unlawful discrimination at the beginning of the first quarter or semester of the college year after the procedures are adopted.

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All District employees will receive this training and a copy of the discrimination procedures during the first year of their employment. Because of their special responsibilities under the law, supervisors will undergo mandatory training within six months of assuming a supervisory position and annually thereafter. In years in which a substantive procedural change has occurred all District employees will attend a training update and/or receive a copy of the revised procedures.

A training program or informational services will be made available to all students at least once annually. The student training or informational services will include an explanation of the procedures, how they work, and how to file a complaint. In addition, a copy of the District's written procedures on discrimination, as it pertains to students, will be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

Authority: Ed. Code, § 66281.5; Cal. Code Regs., tit. 5, §§ 59324 and 59326. Reference: Cal. Code Regs., tit. 5, §§ 59300 et seq.; 34 C.F.R. § 106.8(b).

Unlawful Discrimination

The Palo Verde 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, in whole or in part, on the basis of ethnic group identification, national origin, religion, age, sex or gender, race, color, ancestry, sexual orientation, or physical or mental disability, or on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics, in any program or activity that is administered by, funded directly by, or that receives any financial assistance from the State Chancellor or Board of Governors of the California Community Colleges.

The Palo Verde Community College District is to provide an educational and employment environment free from unwelcome sexual advances, requests for sexual favors, sexual favoritism, or other verbal or physical conduct or communications constituting sexual harassment.

The Palo Verde Community College District is to comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973 in the development, procurement, maintenance, or use of electronic or information technology and respond to and resolve unlawful discrimination complaints regarding accessibility. Such complaints will be treated as complaints of discrimination on the basis of disability.

Employees, students, or other persons acting on behalf of the District who engage in unlawful discrimination as defined by these procedures or by state or federal law may be subject to discipline, up to and including discharge, expulsion, or termination of contract.

In so providing, the Palo Verde Community College District hereby implements the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code, §§ 66250 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101).[4]

Authority: Cal. Code Regs., tit. 5, § 59300; Ed. Code §§ 66250 et seq., 66271.1, 66700, and 70901; Gov. Code § 11138. Reference: Ed. Code §§ 66250 et seq. and 72011;Gov. Code, §§ 11135-11139.5; Penal Code §§ 422.6 and 422.55; 20 U.S.C. § 1681; 29 U.S.C. §§ 794 and 794d; 42 U.S.C. §§ 6101, 12100 et seq. and 2000d; 36 C.F.R. § 1194.

[4] If the federal statutes cited above would result in broader protection of the civil rights of individuals then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of title 5, section 59300, as cited in the Model Policy.

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 these discrimination procedures.

Authority: 20 U.S.C. §§ 1681 et seq.; 34 C.F.R. § 106; Cal. Code Regs., tit. 5, §§ 59300 et seq.; Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, Office for Civil Rights, January 19, 2001.

Academic Freedom

The Palo Verde Community College District Governing Board reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow any form of unlawful discrimination. It is recognized that an essential function of education is a probing of opinions and an exploration of ideas that may cause some students discomfort. It is further recognized that academic freedom insures the faculty's right to teach and the student's right to learn. Finally, nothing in these procedures shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

When investigating unlawful discrimination complaints containing issues of academic freedom Palo Verde Community College District will consult with a faculty member appointed by the Academic Senate with respect to contemporary practices and standards for course content and delivery.

Reference: *Cohen v. San Bernardino Valley College* (1995) 883 F.Supp. 1407, 1412-1414, affd. in part and revd. in part on other grounds, (1996) 92 F.3d 968; Cal. Code Regs., tit. 5, § 59302.

Responsible District Officer

The Palo Verde Community College District has identified the ~~Vice President of Administrative Services~~ Chief Business Officer to the State Chancellor's Office and to the public as the single 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 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.[5]

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Administrators, faculty members, other District employees, and students shall direct all complaints of unlawful discrimination to the responsible District officer.

Authority: Cal. Code Regs., tit. 5, § 59324; 34 C.F.R. § 106.8.

[5] The federal Office for Civil Rights (OCR) advises educational institutions to give one official responsibility for oversight and coordination of all sexual harassment complaints to insure consistent practices and standards in handling complaints as well as coordination of record keeping. This will help ensure that the educational institution can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them. The State Chancellor's Office advises that having the responsible district officer, named pursuant to title 5, section 59324, coordinate both sexual harassment and other unlawful discrimination complaints satisfies OCR's instruction on this subject.

Informal/Formal Complaint Procedure[6]

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. Even if the complainant does dismiss the complaint, the responsible district officer may require the investigation to continue if he or she determines that the allegations are serious enough to warrant an investigation. 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.

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[6] The purpose of the informal resolution process is to allow an individual who believes she/he has been unlawfully discriminated against or sexually harassed to resolve the issue through a mediation process rather than the formal complaint process. Typically, the informal process will be invoked when there is a simple misunderstanding or the complainant does not wish to file a formal complaint. Resolution of an informal complaint may require nothing more than a clarification of the misunderstanding or an apology from the respondent and an assurance that the offending behavior will cease. However, the district is responsible for maintaining a safe and discrimination free educational environment and serious allegations may need to be investigated even if the complaining party considers the matter resolved. In an informal process the district officer shall advise the complainant of his or her rights and responsibilities under both the formal and informal processes. If the complainant declares his or her preference for the informal process, the responsible district officer shall present the complainant with a document that describes the informal/formal process that contains the basics of complainant's allegations of unlawful discrimination. This document will clearly indicate that the complainant opted for the informal resolution process and should be signed and dated by the complainant. The informal resolution process will not be made a predicate to the process and investigation of a formal complaint. If a formal complaint is filed, an investigation must be completed within the time required unless it is voluntarily rescinded by a complainant as a result of a successful informal resolution.

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 allow 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.

Authority: Cal. Code Regs., tit. 5, §§ 59327, 59328, 59334, 59336, and 59339; *NLRB* v. *Weingarten, Inc.* (1975) 420 U.S. 251.

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 ~~Vice President of Administrative Services~~ Chief Business Officer or designee or mailed directly to the State Chancellor's Office of the California Community Colleges.

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Once a complaint is filed, the individual(s) accused of engaging in prohibited discriminatory conduct should be advised of that filing and the general nature of the complaint. This should 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.

Authority: Cal. Code Regs., tit. 5, §§ 59311 and 59328.

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:

1. The complaint must be filed on a form prescribed by the State Chancellor's Office.
2. The complaint must allege unlawful discrimination prohibited under Title 5, section 59300.
3. 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.
4. 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
5. 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.[7]

Authority: Cal. Code Regs., tit. 5, § 59328.

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.

Authority: Cal. Code Regs., tit. 5, §§ 59328, 59332.

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.

Authority: Cal. Code Regs., tit. 5, § 59330.

[7] The Guidelines for Processing Formal Title 5 Unlawful Discrimination Complaints is a procedural aid for processing formal unlawful discrimination complaints.

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. 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.[8]

Authority: Cal. Const. Art. I, § 1; Civil Code § 47; Ed. Code, §§ 76234 and 87740; *Silberg* v. *Anderson* (1990) 50 Cal.3d. 205; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX,* Office for Civil Rights, January 19, 2001.

[8] Complainants must trust the District to take appropriate action and must understand that the District is generally not at liberty to discuss personnel or student matters, particularly disciplinary matters. In some disciplinary cases, the complainant may be required to testify at a hearing, and would therefore be aware of the proposed disciplinary action.

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[9] of the report to the complainant, and written notice setting forth all the following to both the complainant and the State Chancellor:

1. the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
2. a description of actions taken, if any, to prevent similar problems from occurring in the future;[10]
3. the proposed resolution of the complaint; and
4. 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:

1. the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
2. a description of actions taken, if any, to prevent similar problems from occurring in the future (see footnote 10);
3. the proposed resolution of the complaint; and
4. the complainant's right to appeal to the District governing board and to file a complaint with 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 Palo Verde 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.

Authority: Cal. Code Regs., tit. 5, § 59336.

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[9] It is within the District's discretion to choose not to include the entire investigative report; however, a summary of an investigative report should, at the very least, include all of the following:

(a) a description of the circumstances giving rise to the complaint;
(b) a specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint;
(c) a summary and analysis of the relevant evidence (documents, data, or witness testimony) on which the determination rests; and
(d) any other information deemed appropriate by the district.

[10] If it is determined that discrimination did occur, possible remedies to prevent similar problems from occurring in the future include all the standard District disciplinary actions for students and employees, ranging from undocumented reprimand to termination or expulsion. If formal disciplinary action is inappropriate, other possible remedies include training in the pertinent area(s) of unlawful discrimination, apology, and restricting or forbidding contact between the perpetrator and victim.

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:

1. 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.
2. 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.
3. 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.[11] 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.

Authority: Cal. Code Regs., tit. 5, §§ 59338 and 59339.

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:

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

Authority: Cal. Code Regs., tit. 5, §§ 59338 and 59340.

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[11] The Department of Fair Employment and Housing (DFEH) has final jurisdiction over employment-related cases. Therefore, the State Chancellor's Office has agreed to accept DFEH decisions and does not accept appeals in employment discrimination cases. Title 5, section 59339 has been amended to reflect this arrangement.

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.

Authority: Cal. Code Regs., tit. 5, § 59342.

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 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.

Records related to a student discrimination complaint will be deemed worthy of preservation if, at the end of three years after the case is closed, a complaint on similar grounds has been filed against the same employee. In such cases, the records shall continue to be classified as Class 2 records and retained at least until complaints against that particular employee have been resolved.

Authority: Cal. Code Regs., tit. 5, § 59020.

12/10/13 Board Information
11/05/13 College Council Approval
10/27/09 Board Second Read and Approval
9/22/09 Board First Read
9/2/09 College Council Approval
08/26/08 Board Second Read and Approval
7/08/08 Board First Read