



Book	SJECCD Administrative Procedures
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AP 3435 Discrimination and Harassment Complaint Procedures

Reference:

20 U.S.C. Section 1681 et seq.;
 Education Code Sections 212.5, 66281.5, and 67386;
 Government Code Section 12950.1;
 Title 2 Sections 110243 and 11024;
 Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et. seq.;
 34 Code of Federal Regulations 106.8(b)

I. Introduction and Scope

The purpose of these procedures is to provide a fair and prompt process for the resolution and investigation of internal complaints of discrimination.

Discrimination includes sexual harassment as well as any harassment that occurs on the basis of any of the protected categories listed below.

Any person, who believes that they have been discriminated against, in whole or in part, on the basis of ethnic group identification, race, color, language, accent, immigration status, ancestry, national origin, age, sex or gender, gender identity, religion, sexual orientation, marital status, medical condition, veteran status, 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 shall have the right to file a complaint. Complaints may also be filed by anyone who has learned of such discrimination in his or her official capacity as a classified employee, faculty member or administrator. The procedures outlined below govern the process for complaints filed against employees of the District, or any other person acting on behalf of the District. If the complaint is against a student that is not employed by the District, such complaints shall be handled through the Vice President of Student Affairs or Campus designee and student disciplinary procedures.

The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in harassment, discrimination, or retaliation. Any person who has suffered harassment, discrimination, or retaliation may file a formal or informal complaint of harassment, discrimination, or retaliation.

A. Application, Availability and Posting of Procedures

These written procedures on discrimination will be posted on the District and Campus website at <http://www.sjeccd.edu/district-services/human-resources/policies-procedures> and made available in the Chancellor's Office, the Presidents' Offices, the Office of Human Resources, the Offices of Diversity, the Offices of Student Life, the Campus libraries, the Disabled Student's Programs, Campus and District mailrooms, and each Dean's office. The District will post a summary of these procedures in areas easily accessible to students, employees, and visitors including but not limited to the locations listed above. The District will post this summary in English and any other languages spoken by a substantial number of students, employees, or visitors of the District.

These procedures apply to complaints filed by an employee of the District against another employee, or a student against an employee or program of the District. If a student wishes to file a complaint against another student, they should contact the Vice President of Student Affairs or Campus designee at the appropriate campus. For additional information regarding such complaints, students at Evergreen Valley College should call (408) 274-7900, Extension 6117, and at San Jose City College should call (408) 298-2181, Extension 3190.

Employees who believe they are being harassed by a student should refer to the District regulations on disruptive students. Complaints by students or employees involving harassment or discrimination by third parties who are not employees or students will be investigated. The District will forward the complaint to the responsible party with a written request for (1) an investigation of the incident(s) giving rise to the complaint, and (2) a report of the findings to be sent to the District. The District will also review the matter and take appropriate action where possible.

The District will investigate complaints involving acts that occur offcampus if they are related to an academic or work activity or if the harassing conduct interferes with or limits a student's or employee's ability to participate in or benefit from the school's programs or activities. The District shall promptly investigate complaints of harassment or discrimination that occur off campus if the alleged conduct creates a hostile environment on campus.

B. Students and Employees Notice, Training, and Education

The San Jose/Evergreen Community College District shall provide training to employees and students on the District's discrimination policies and procedures. The District will provide members of the faculty, classified staff and administrative staff, a copy of the District's written policies and procedures on discrimination during new employee orientation and at the beginning of the first semester of the academic year after it revises the policies and procedures.

All new District employees will receive training on the District's discrimination policies and procedures. New employees are required to complete this training and receive a copy of the discrimination policies and 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 mandatory training every two years. In years in which a substantive policy or procedural change has occurred, training will be made available for all employees; and all District employees will receive a copy of the revised policies and procedures.

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

C. Responsible District Officer

The San Jose/Evergreen Community College District will identify to the State Chancellor's Office and to the public the responsible district officer who will be responsible for coordination of all discrimination complaints filed pursuant to Title 5 section 59328, and who is responsible for maintaining communications with the State Chancellor's Office on these matters. Informal charges of unlawful discrimination should be brought to the attention of the responsible district officer, who shall oversee the informal resolution process pursuant to section 59327. The responsible district officer is the Vice Chancellor of Human Resources located in the District Office.

D. Confidentiality of the Process

Investigative processes are confidential and the District shall not reveal information about such matters except as necessary to fulfill its legal obligations. Both the respondent and the complainant have privacy rights and the District will respect these rights to the extent possible in conducting the investigation.

Complainants, witnesses, and respondents will all be asked to sign a confidentiality acknowledgement statement.

E. Representation

Union representation will be allowed for respondent and/or complainant, where required by law and in other circumstances on a case-by-case basis. Where not required by law either party may request for a representative during interviews. Such requests shall be granted on a case-by-case basis.

I. Discrimination Complaint Procedures

A. How to File A Complaint

The district encourages its employees and students to contact the appropriate Campus Coordinator or District designee prior to filing a formal complaint or to obtain assistance in determining whether or not an individual has been or is a victim of discrimination. The

designated Campus Coordinator at each college is the Vice President of Student Affairs. At EVC the Vice President of Student Affairs can be contacted at (408) 274-7900 ext. 6749; at SJCC the Vice President of Student Affairs can be contacted at (408) 298-2181 ext. 3190. For the District Office, contact the Vice Chancellor of Human Resources at (408) 270-6404. The Discrimination Complaint Procedures and the Discrimination Complaint Forms are also available online and can be accessed at <http://www.sjeccd.edu/district-services/human-resources/policies-procedures> via the District's Web site.

B. Informal Complaint Procedure (Step One)

Employees and students who believe they have been discriminated against or harassed may lodge an informal complaint verbally and/or in writing to the complainant's supervisor or to the supervisor of the person being complained against. Complainants may obtain assistance through the designated Campus Coordinator or District designee.

The purpose of the informal complaint procedure is to allow individuals who believe that they have been discriminated against to resolve the issue through a mediation focused process rather than a more formal procedure. The informal procedure allows for a quicker resolution than the formal procedure and allows for more flexibility and creativity in the resolution of complaints. The District and all constituency groups encourage individuals to take advantage of the informal complaint procedure before proceeding with a formal complaint. Individuals, however, do have the right to forgo the informal complaint procedure and go directly to a formal complaint.

If the District determines that a sexual misconduct complaint is appropriate for informal resolution, it may permit an informal resolution, including mediation. All parties, including the complainant and respondent, must receive full disclosure of the allegations and information about options for formal resolution before voluntarily agreeing to participate in an informal resolution. If parties agree to an informal resolution, the District does not have to complete a full investigation and adjudication of a report of sexual misconduct.

Complaints filed verbally and/or in writing through the informal procedure will be resolved within forty-five (45) calendar days. The parties may agree to extend this 45-day deadline by mutual agreement or extenuating circumstances.

1. Upon receipt of an informal complaint the appropriate administrator will do the following:
 - a. Meet with the complainant within five (5) calendar days to make an initial assessment of the complaint and determine whether it is a discrimination complaint covered by these procedures and the District policy on Nondiscrimination.
 - i. If, the administrator determines that the complaint is not properly a discrimination complaint, the administrator will refer the concerned individual to the appropriate process or department.
 - ii. If the complaint involves discrimination, the administrator shall:
 - b. Provide a copy of these policies and procedures to the complainant and explain the informal and formal complaint procedures.

- c. Inform the complainant he/she is not required to participate in any mediation or other type of resolution.
- d. Explain that he or she may also file a non-employment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR), and that employment-based complaints may be filed with the California Department of Fair Employment and Housing (DFEH), or the U.S. Equal Employment Opportunity Commission (EEOC).
- e. State that the District Officer ultimately responsible for the processing and handling of discrimination complaints is the Vice Chancellor of Human Resources.
- f. Provide written notice to the Vice Chancellor of Human Resources within ten (10) working days of the complaint when the complainant wishes to pursue the informal process. The notice shall include a summary of the complaint.
- g. Confer with the Vice Chancellor of Human Resources and when necessary request the District designee's assistance.
- h. Notify the respondent of the complaint within ten (10) calendar days of the complaint.
- i. Make reasonable and fair efforts to resolve the complaint and will document any resolution the parties will sign any resolution reached by agreement of the parties and each shall receive a copy. If the parties cannot reach an agreement and the administrator is required to make a decision, each party will receive the administrator's written decision on the complaint. The administrator shall provide a copy of the resolution of the complaint to the Vice Chancellor of Human Resources. The Vice Chancellor of Human Resources shall maintain the investigation file.

C. Formal Complaint Procedure (Step Two)

1. If the complainant is not satisfied with the resolution in the informal complaint procedure, or if the complainant decides to forgo the informal process, he/she may file a formal complaint by filing a written complaint using the District's formal complaint form with the Vice Chancellor of Human Resources. If the Vice Chancellor of Human Resources is the subject of the complaint, the complaint must be filed with the Chancellor. The Vice Chancellor of Human Resources is located in the San Jose/Evergreen Community College District Office. The phone number for the Vice Chancellor of Human Resources is (408) 270-6404. The mailing address is 40 South Market, San Jose, CA 95113.

The following deadlines apply to formal complaints:

- a. A complainant must file any complaint not involving employment, within one year of the date of the alleged discrimination, or within one year of the date on which the

- complainant knew or should have known of the facts underlying the allegation of discrimination.
- b. A complainant must file any complaint alleging discrimination in employment, within one-hundred-eighty (180) calendar days of the date the alleged discrimination occurred. The administrator should extend this period by no more than ninety (90) calendar days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the one-hundred-eighty (180) days.
 - c. If the complainant files a complaint alleging discrimination or harassment in employment beyond the timeline in subsection “b” above, but no longer than one year, the District may nonetheless conduct an internal investigation as appropriate to address and/or remedy the allegations but is under no obligation to comply with the specific procedures required by the California Code of Regulations, Title 5, section 59300 et Seq.
2. The District will advise complainants that they may also file their non-employment-based complaints with OCR and their employment-based complaints with DFEH and/or EEOC. The District shall forward a copy of any filing by the complainant with DFEH or the EEOC to the State Chancellor's Office for a determination of whether the issues presented require an independent investigation.
 3. The complainant shall describe in detail the alleged discriminatory conduct. All written complaints should be signed and dated by the complainant, and shall contain, to the best of the complainant's ability at least the name(s) of the individual(s) involved, the date(s) of the event(s) at issue, and a detailed description of the actions constituting the alleged harassment or discrimination. The complainant should also include the names, addresses and phone numbers of witnesses or potential witnesses to the extent he or she has this information available.
 4. The Vice Chancellor of Human Resources or his/her designee shall immediately send a copy of all formal complaints filed in accordance with section 59328 of the Title 5 regulations to the Chancellor of the California Community College System.

If the complaint is defective in any of the following ways:

- The complainant fails to use the proper complaint form, either the District or the State Chancellor Office's form;
- The complaint fails to describe in detail the alleged discriminatory conduct (AP 3430);
- The complaint is not signed and dated by the complainant;
- The complaint does not identify the name of the individual(s) involved, the date of the event at issue, and a detailed description of the actions constituting the alleged harassment or discrimination;
- The complaint fails to be submitted within the designated time period.

The Vice Chancellor of Human Resources (VCHR) will immediately return it to the complainant and inform the complainant that the complaint does not meet these requirements and those of section 59328, and shall specify in what requirement the complaint is defective. The VCHR will also send a copy of this notice to the State Chancellor's Office. The complainant shall have seven (7) working days to file an amended complaint.

5. The Vice Chancellor of Human Resources (VCHR) may appoint an appropriate administrator to conduct an impartial fact-finding investigation. This administrator will preferably be someone in the levels of supervision above the immediate supervising administrator of either the complainant or the individual complained against (respondent). The Vice Chancellor of Human Resources may appoint an independent third party to investigate, or may conduct the investigation himself or herself.
6. Within ten (10) working days of receiving the complaint, the Vice Chancellor of Human Resources (VCHR) or District designee shall notify the respondent of the complaint and shall provide the respondent a copy of the complaint. The VCHR or District designee will also send the respondent a copy of these procedures. The VCHR or District designee will inform the respondent of his/her right to have a representative present during any interview and will direct the respondent not to make contact or to discuss the issue with the complainant or potential witnesses. All employees must cooperate with lawful investigations.
 - a. The investigator shall meet separately with the complainant and respondent to review the scope and nature of the complaint; request names of witnesses or documents that may assist in the investigation. When possible, the investigator shall summarize for each party the information gathered in the course of the investigation so that they may respond to any adverse information.

The investigator will review all information presented and incorporate such information into an investigative report. The investigator will maintain confidentiality to the extent possible. The investigator will prepare a written report setting out the results of the investigation. The written report shall include the following:

- a. A description of the circumstances giving rise to the complaint.
 - b. A summary of the testimony provided by each witness including the complainant, respondent, and any viable witnesses identified by the complainant or respondent.
 - c. An analysis of any relevant data or other evidence collected during the course of the investigation.
 - d. Any other information deemed appropriate.
7. The investigator will send his/her report to the Chief Executive Officer (CEO) of the campus, or his/her designee.
 8. The CEO or his/her designee will:
 - a. Be responsible for determining whether there is probable cause to believe that discrimination or harassment occurred with respect to each allegation in the complaint.
 - b. Consider the severity of the conduct, the pertinent background, and other relevant District policies in making his/her recommendations.
 - c. If the CEO or his/her designee finds probable cause to conclude that discrimination or harassment occurred, the CEO or his/her designee will make recommendations for corrective action that may include training, or any other measure, including disciplinary action.
 - d. If the CEO or his/her designee recommends disciplinary action, the District will comply with applicable bargaining agreement

provisions or state law.

9. In any case involving employment discrimination, within ninety (90) calendar days of receiving a complaint the District shall complete its investigation, and the Vice Chancellor of Human Resources shall forward to the complainant and respondent the following:
 - a. A copy or summary of the investigative report
 - b. A written notice setting forth:
 - i. The determination of the Chief Executive Officer or his/her designee as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint.
 - ii. A description of actions taken, if any, to prevent similar problems from occurring in the future.
 - iii. The proposed resolution of the complaint.
 - iv. The complainant's right to appeal to the District Board of Trustees and to file a complaint with the Department of Fair Employment and Housing.
 - v. The respondent's right to file with the Vice Chancellor of Human Resources a written response to the Chief Executive Officer's determination. Respondent's written response and the results of the appropriate administrative review shall be included in the investigation file.
10. In any case not involving employment discrimination, within ninety (90) calendar days of receiving a complaint the District shall complete its investigation, and the Vice Chancellor of Human Resources shall forward to the State Chancellor's Office a copy of the investigative report, and to the complainant and respondent:
 - a. A copy or summary of the investigative report.
 - b. A written notice setting forth:
 - i. The determination of the Chief Executive Officer or his/her designee as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint.
 - ii. A description of actions taken, if any, to remedy any discrimination that was believed to have occurred, and to prevent similar problems from occurring in the future.
 - iii. The proposed resolution of the complaint.
 - iv. The complainant's right to appeal to the District Board of Trustees and the State Chancellor's Office.
 - v. The respondent's right to file with the Vice Chancellor of Human Resources a written response to the Chief Executive Officer's determination. Respondent's written response and the results of the appropriate administrative review shall be included in the investigation file.
11. When the Chief Executive Officer or his/her designee finds that disciplinary action is appropriate, the complainant will receive a summarized copy that will exclude the details of the discipline imposed. Personnel matters, in particular discipline actions taken against employees, are considered confidential; therefore, the District may not, unless otherwise mandated by law, release such details.

D. Appeal Rights

1. First level of appeal:

If the complainant is not satisfied with the results of the formal complaint administrative determination, the complainant may appeal by submitting written objections, to the District Board of Trustees, through the District Chancellor, within fifteen (15) calendar days from the receipt date of the administrative determination.

The District's governing board will issue a final District decision on the matter within forty- five (45) calendar days after receiving the appeal. Alternatively, if the governing board does not act within forty-five (45) calendar days, the administrative determination will become the final District decision in the matter.

The Vice Chancellor of Human Resources shall:

- a. In cases involving employment discrimination, forward a copy of the final decision rendered by the Board of Trustees on the appeal and a notice informing complainant of his/her right to file a complaint with the DFEH or EEOC where the case is within the jurisdiction of that agency, to the complainant.
- b. In cases not involving employment discrimination, forward a copy of the final decision rendered by the Board of Trustees on the appeal and the notice informing complainant of his/her right to appeal to the State Chancellor's Office to the complainant, and to the State Chancellor's Office.

2. Second level of appeal:

If the complainant is not satisfied with the District Board of Trustees' decision, the complainant shall have the right to file a written appeal with the State Chancellor's Office in any case not involving employment discrimination. The State Chancellor's Office will also only accept appeals based on the protected categories enumerated in section 59300 of Title 5. Appeals to the State Chancellor's Office must be filed within thirty (30) calendar days after the Board of Trustees has issued the final District decision or allowed the administrative determination to become final by taking no action, or from the date of the notice provided pursuant to section 59338(b) or (d) , whichever is later. The appeal must be in writing and 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 forty-five 45 days from that date.

In any case involving employment discrimination, the complainant may, at any time before or after the final District decision is rendered, file a complaint with the DFEH or EEOC where the complaint is within the jurisdiction of that agency.

E. Forward Provision of Information to State Chancellor

Within one-hundred-fifty (150) days of receiving a complaint, which does not involve employment discrimination, the District will forward it to the State Chancellor's Office:

1. 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 the governing board's decision to take no action on the appeal within forty five 45 days.
2. A copy of the notice of appeal rights the District sent the complainant.

3. A copy of the complainant's appeal of the District's administrative determination; or a statement that the complainant has not appealed to the District Board of Trustees; and
4. Such other information as the State Chancellor may require.

For a period of at least three years after closing a case, including a case involving employment discrimination, the VCHR or District designee shall retain and make available to the State Chancellor upon request the original complaint, the documents referenced in sections 59336 and 59338, and the documents identified in the preceding sections.

F. Extensions

If for reasons beyond its control, the District is unable to comply with the ninety 90-day or one-hundred-fifty 150-day deadlines specified above the VCHR or District designee will file a written request to the State Chancellor for an extension of the deadlines established by Title 5 in sections 59336 and/or 59340. When necessary, the District must request an extension whether or not the case involves employment discrimination. The District must request the extension no later than ten (10) days before the expiration of the established deadline and shall set forth the reasons for the request and the date by which the District expects to be able to submit the required materials.

The District must send a copy of the request for an extension to the complainant, and notify him/her that he/she may file written objections with the State Chancellor within five (5) calendar days of receipt.

The State Chancellor may grant the request unless delay would be prejudicial to the investigation. If the State Chancellor grants an extension of the ninety 90-day deadline, the one-hundred-fifty 150-day deadline is automatically extended by an equal amount.

Last Modified by Lisa Owen on December 15, 2017