



Administrative Regulation
Chapter 3 – General Institution

AR 3435 DISCRIMINATION AND HARASSMENT COMPLAINTS AND INVESTIGATIONS

1. Purpose

The purpose of this Administrative Regulation is to implement provisions of state and federal law which together prohibit discrimination, harassment or retaliation against persons or groups, or those associated with them on the basis of actual or perceived characteristics related to ethnic group identification, national origin, immigration status, religion, age, sex, or gender, gender identification, gender expression, military and veteran status, marital status, medical condition, race, color, ancestry, sexual orientation, or physical or mental disability, or any other characteristic protected under applicable federal or state law. These laws require that protected persons and groups, or those associated with them, based upon an actual or perceived characteristics listed in this section, shall neither be denied full and equal access to the benefits of, nor be subjected to discrimination under, any program or activity that is administered by, funded directly by, or receives any financial assistance from the Chancellor or Board of Governors of the California Community Colleges, based upon an actual or perceived characteristic listed above.

The Santa Monica Community College District (District) is committed to providing an academic and work environment free of discrimination, harassment, and retaliation. This Administrative Regulation is intended to ensure that District programs and activities are available to all persons without unlawful discrimination. It defines unlawful discrimination, harassment and retaliation, and sets forth a procedure for the investigation and resolution of complaints of unlawful discrimination, harassment, and retaliation by or against any employee, student or third party who believes they have been discriminated against in violation of this procedure and the related policy.

This administrative regulation applies to all aspects of the academic environment, including but not limited to classroom conditions, grades, academic standing, employment opportunities, scholarships, recommendations, disciplinary actions, and participation in any community college activity. In addition, this Administrative Regulation applies to all terms and conditions of employment.

Employees who violate this Administrative Regulation may, in accordance with all applicable laws and collective bargaining agreements, be subject to disciplinary action up to and including dismissal. Students who violate this Administrative Regulation may, in accordance with applicable laws and district administrative regulations, be subject to disciplinary measures up to and including expulsion.

For sexual harassment under Title IX, Complainants must proceed under AR 3434 Prohibition of Sexual Harassment under Title IX.

2. Definitions

For purposes of this regulation, the following definitions shall apply:

California Community College Chancellor's Office: The California Community College Chancellor's Office (Chancellor's Office) is the administrative branch of the California Community College system, providing legal, regulatory, and financial guidance to the Districts and Colleges of the system.

Complaint: Complaint means a written or verbal statement that alleges unlawful discrimination and contains the information required by this Administrative Regulation. A complaint can be made by a student, an employee, parent of a minor, or an individual with legal authority on behalf of a student or employee. A complaint must allege facts that, if true, would constitute a violation of state or federal laws prohibiting unlawful discrimination.

Complainant: A Complainant is an individual who brings the complaint.

Days: Days means calendar days.

District: Refers to the Santa Monica Community College District, also known as Santa Monica College.

Employee: Employee refers to all faculty, staff, administrators, and managers of the District.

Neutral Investigator: "Neutral investigator" means an outside investigator or an internal investigator who is not in the chain of command of the Respondent, not substantially implicated by the allegations in the complaint, and who is otherwise impartial. Neutral investigators shall be properly trained to conduct such investigations.

Party or Parties: As used in this regulation, Party, or the plural, Parties, refers to either the Complainant and/or the Respondent.

Respondent: A Respondent is an individual alleged to be responsible for unlawful discrimination.

Retaliation: Any act of reprisal against a person who is involved in a complaint and or investigation of unlawful discrimination; such persons include but are not limited to the Complainant, the Respondent, witnesses, investigators, and adjudicators. Examples of actions that might be retaliation against participants in the complaint process include: (a) singling the person out for harsher treatment; (b) lowering a grade or evaluation; (c) failing to hire, failing to promote, withholding pay increase, demotion, or discharge; (d) providing negative information about the person in order to interfere with their prospects for employment, admission, or academic program.

Sanctions: Those corrective measures available to the District upon the finding of the Respondent's responsibility for violations of this regulation and applicable District policies. Sanctions will be imposed in accordance with established disciplinary procedures.

Unlawful Discrimination: Unlawful discrimination means unfair or unequal treatment of an individual (or group) based upon an actual or perceived characteristic related to ethnic group identification, national origin, immigration status, religion, age, sex, or gender, gender identification, gender expression, military and veteran status, marital status, medical condition, race, color, ancestry, sexual orientation, or physical or mental disability, or any other characteristic protected under applicable federal or state law. Examples of unlawful discrimination include, but are not limited to:

Environmental: A hostile academic or work environment may exist where it is permeated by conduct and/or comments directed at an individual or group based on gender, race, nationality, sexual orientation or other protected status; or gratuitous comments regarding gender, race, sexual orientation, or other protected status that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from an unwarranted focus on racist or sexist topics or statements in the classroom or work environment. It can also be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, genders or other protected statuses. An environment may also be hostile toward anyone who merely witnesses unlawful discrimination or harassment in their immediate surroundings, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work.

Physical: Inappropriate or offensive touching. This may include, but is not limited to, touching someone's hair, blocking someone's path, grabbing or pulling at someone's clothing.

Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's protected class.

Visual or Written: The display or circulation of visual or written material that degrades an individual or group based on their protected class. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions.

3. Oversight of Complaint Procedure

The Superintendent/President shall assign the Assistant Director of Human Resources (Compliance and Title IX) (hereinafter "Assistant Director") to serve as the District officer responsible for receiving complaints of unlawful discrimination and harassment and coordinating investigations. Whenever this Administrative Regulation requires action by the Assistant Director, such action may be taken by a designee.

The investigation of complaints shall be assigned to a neutral investigator.

4. Filing of the Complaint

Any student, employee, parent of a minor, or an individual with legal authority on behalf of a student or employee who believes the student or employee has been discriminated against or harassed by a student, employee, or third party in violation of this procedure and the related policy may file a complaint.

Any person who has suffered harassment, discrimination, or retaliation or who has learned of harassment, discrimination, or retaliation may report such allegations to the Assistant Director. All supervisors and managers must report to the Assistant Director incidents of harassment and discrimination, the existence of a hostile, offensive, or intimidating work environment, and acts of retaliation.

The District will investigate complaints involving acts that occur off campus 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.

4.1 Reporting Concerns without Filing a Complaint

Any person may report concerns orally or in writing to the Assistant Director.

Upon receipt of such a report, the Assistant Director will notify the person of their right to file a complaint if the incident falls within the timeline for a complaint and explain the procedure for doing so. If the Complainant declines to file a complaint, the Complainant retains the option to file a formal complaint within the designated timelines.

If the individual chooses not to file a complaint, or if the alleged conduct falls outside the timeline to file a complaint, the Assistant Director shall consider the allegations contained in the report and determine the appropriate course of action. This may include efforts to informally resolve the matter, or a fact-finding investigation. The Assistant Director shall not disregard any allegations of harassment, discrimination, or retaliation solely on the basis that the alleged conduct falls outside the deadline to file a complaint.

4.2 Complaints

Complaints of unlawful discrimination may be written or verbal, and may be made by a student, employee, parent of a minor, or individual with legal authority on behalf of a student or employee.

A complaint must allege facts that, if true, would constitute a violation of federal law, state law, or District policies or regulations prohibiting unlawful discrimination. Complaints must be filed with the Assistant Director unless the person submitting the complaint alleges discrimination, harassment, or retaliation against the Assistant Director, in which case it should be submitted directly to the Vice President of Human Resources.

The District may request, but shall not require the Complainant to submit a formal complaint on the form prescribed by the District. A copy of the District's form is available by contacting the Office of Human Resources HRInquiries@smc.edu and is available online at <https://www.smc.edu/administration/human-resources/complaints-concerns/>

4.3 Time for Filing Complaints

Complaints must be filed in a timely manner. Failure to report harassment, discrimination or retaliation impedes the District's ability to investigate the matter and stop the behavior. Anyone who believes they are being harassed, discriminated or retaliated against should file a complaint as soon as is feasible. Complaints must be filed no later than:

- Non-employment-related complaints alleging discriminatory, harassing, or retaliatory conduct 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 allegation(s) of discrimination, harassment, or retaliation; and
- Employment related complaints alleging discrimination, harassment, or retaliation must be filed within 180 days of the date of the alleged discriminatory, harassing, or retaliatory conduct, except that this period shall be extended by no more than 90 days following the expiration of the 180 days if the Complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

4.4 Where to File a Complaint

Complaints may be submitted verbally or in writing to the attention of the Assistant Director or any District Administrator.

Any District employee who receives a harassment or discrimination complaint shall notify and forward said complaint, if in writing, to the Assistant Director immediately.

Written complaints can be filed in any of the following ways:

- email to HRInquiries@smc.edu
- mail to Santa Monica College, Office of Human Resources, att: Assistant Director of Human Resources (Compliance and Title IX), 1900 Pico Boulevard, Santa Monica, CA 90405;
- in person to the Office of Human Resources at 2714 Pico Boulevard, Suite #210, Santa Monica, CA 90405.

4.5 Notification

Following receipt of a complaint, the District will provide the Complainant and Respondent written notice setting forth the following information:

- Receipt of the complaint and the allegations set forth in the complaint.
- Commencement of an impartial fact-finding investigation.
- The estimated time to complete the investigation, which normally will be completed within 90 days.
- The name of the person conducting the investigation.
- Recommendation that the Parties should not conduct their own investigation.
- The right of Parties to be represented by a person of their own choice during any investigatory process.
- The potential consequences of not complying with the investigation or of impeding the investigation in any manner, including but not limited to retaliation against students and/or employees.

- The right of either Party to meet with the investigator and provide the investigator with any documents/information.
- Notification to the Complainant filing non-employment related complaints that they may file their nonemployment related complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) when such a complaint is within that agency's jurisdiction.
- Notification to the Complainant filing employment related complaints that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the California Civil Rights Department (CRD) when such a complaint is within that agency's jurisdiction.
- Notification to the Complainant that they have a right to file a complaint with local law enforcement, if the act complained of is also a criminal act and that the District will proceed with its investigation even if the Complainant files a complaint with local law enforcement.
- Notification to the Parties of a list of available resources, such as counseling, health, and mental health services.

5. Interim Measures

The District may pursue interim measures to protect the District community during the pendency of an investigation. These measures may include:

- Seeking a judicial order barring a student from entering District property as authorized by Education Code Section 76030(b).
- Seeking a judicial order barring an employee from entering District property as authorized by Code of Civil Procedure Sections 527.6 and 527.8.
- Placing an employee on paid administrative leave pending the outcome of the investigation. In some circumstances, administrative leave is subject to Education Code Section 87623.
- Seeking an interim suspension of a student in accordance with Administrative Regulation 4410. In any such proceeding which seeks a suspension pending conclusion of the investigation under this Administrative Regulation, the issues shall be limited to whether there is reasonable cause that a violation of this Administrative Regulation occurred, that the student committed such violation, and that the interim suspension is necessary in order to protect the safety or welfare of persons or property.
- Directing the Parties to have no contact with one another during the pendency of the investigation.

6. Defective Complaint

(a) When the District receives a complaint that does not meet the requirements outlined under Section 4 of this Administrative Regulation, the District shall notify the Complainant in writing within 14 days that the complaint does not contain allegations of unlawful discrimination that are sufficient under Section 4 to trigger an unlawful discrimination investigation. The District shall specify why the complaint is defective.

(b) If the defect is based on the Complainant's failure to state sufficient facts to support a claim of unlawful discrimination, the District shall offer the Complainant an opportunity to proffer additional facts to support their claims through an intake interview, which shall be scheduled as soon as reasonably convenient for the Parties.

(c) If, after the intake interview, the District determines that a Complainant has still not stated sufficient facts to support a claim of unlawful discrimination, the District shall provide the Complainant with a written determination explaining the basis for dismissing the complaint within 14 days of the intake interview. The District must also notify the Complainant of their right to appeal this determination directly to the Chancellor's Office pursuant to Section 12 of this Administrative Regulation.

7. Informal Resolution

Upon receiving notification of a harassment or discrimination complaint, the Assistant Director may undertake efforts to informally resolve the charges with the Complainant's consent. This may include but not limited to mediation, rearrangement of work/academic schedules, providing informal counseling, training, etc.

The Assistant Director must advise all Parties that they need not participate in an informal resolution of the complaint, as described above, and they have the right to end the informal resolution process at any time.

Efforts at informal resolution may include an investigation. The Assistant Director shall determine when an investigation is warranted.

Efforts at an informal resolution may continue after a written or verbal complaint is made. The District may proceed with an investigation notwithstanding an informal resolution. The investigation must be completed unless the matter is informally resolved and the Complainant dismisses the complaint.

Any efforts at informal resolution after a written or verbal complaint is made shall be completed within ninety (90) days.

The timelines related to Section 10 of this Administrative Regulation shall be tolled while the Parties are engaged in good faith efforts at informal resolution.

8. District Investigation

The District shall promptly investigate every complaint and claim of unlawful discrimination. Upon receiving a complaint that is properly made, the Assistant Director shall authorize, supervise, and assign an investigator to investigate the complaint.

Where the Parties opt for an 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.

The investigation will include interviews with the Complainant, the Respondent, and any other persons who may have relevant knowledge concerning the complaint.

8.1 Confidentiality

The District 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. The District does not reveal information about ongoing investigations except as necessary to fulfill its legal obligations.

The District will keep the investigation confidential to the extent possible, but it cannot guarantee absolute confidentiality because disclosing certain information on a "need-to-know-basis" is essential to a thorough investigation and to protect the rights of Respondents during the investigative process and any ensuing discipline.

When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the Complainant's age; whether there have been other harassment complaints about the same individual; the accused individual's rights to receive information about the allegations in order to respond to the charges; and whether the information is maintained by the District as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15.

8.2 Investigation Steps

The District will fairly and objectively investigate complaints. Employees designated to serve as investigators under this Administrative Regulation shall have adequate training on what constitutes unlawful discrimination under this Administrative Regulation and the distinction between proceeding under this Administrative Regulation and proceedings under the Title IX Administrative Regulation (AR 3434).

The investigator must be free of any real or perceived conflicts of interest related to the persons and issues of the investigation, and must be able to investigate the allegations impartially.

The investigator shall:

- Interview the Parties
- Review relevant evidence such as personnel/academic files of all involved Parties;
- Identify and interview witnesses and evidence identified by each Party;
- Identify and interview any other witnesses and obtain additional evidence, if needed; and
- Remind all individuals interviewed of the District's no-retaliation policy

The investigator shall review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, considering all factual information and the totality of the circumstances, including the nature of the verbal, physical, or visual conduct, and the context in which the alleged incidents occurred.

The investigator shall evaluate the complaint using a preponderance of the evidence standard. Thus, after considering all the evidence gathered during the course of the investigation, the District will decide whether it is more likely than not that discrimination, harassment or retaliation has occurred, and constitute a violation of federal law, state law, or District policies or regulations prohibiting unlawful discrimination, harassment or retaliation.

8.3 Timeline for Completion

The District will undertake the investigation promptly. The investigation shall be completed using the steps detailed in this Administrative Regulation and prepare a written report and the District shall notify the Complainant and Respondent of the outcome within 90 days of the District receiving the complaint.

8.4 Cooperation Expected

All employees and students are expected to cooperate with a District investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a Complainant, a Respondent, or witnesses does not relieve the District of its obligation to investigate. The District will investigate a complaint with or without the cooperation of the Parties.

8.5. Written Report

The results of the investigation of a complaint shall be set forth in a written report that should include the following information:

- A description of the circumstances giving rise to the formal complaint.
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed.
- A summary of all interviews conducted with information relevant to the allegations.
- An explanation of why an identified potential witness was not interviewed
- An analysis of relevant documents or other evidence collected during the course of the investigation, including a list of relevant documents.
- A specific finding as to whether each factual allegation in the complaint occurred based on the preponderance of the evidence standard.
- Any other information deemed appropriate by the District.

9. Extension of Time

If the District is unable to comply with the 90-day deadline, the District may extend the time to respond by up to 45 additional days. An extension may be taken only once without permission from the Chancellor's Office, and must be necessary for one of the following reasons:

- A need to interview a party or witness who has been unavailable.
- A need to review or analyze additional evidence, new allegations, or new complaints related to the matter.
- To prepare and finalize an administrative determination.

The District shall send a written notice to the Complainant and the Respondent indicating the necessity of an extension, the justification for the extension, and the number of days the deadline will be extended.

The District shall send this notice no later than 10 days prior to the initial deadline.

The District may request additional extensions from the Chancellor's Office after the initial 45-day extension. The District shall send a copy of the extension request to the Complainant and to a Respondent who is aware of an investigation. The Complainant and Respondent may each file a written objection with the Chancellor's Office within five (5) days of receipt.

The Chancellor's Office may grant the extension for good cause, unless delay would be unduly prejudicial to the complainant or investigation.

10. Administrative Determination

Within 90 days of receiving a formal complaint, the District shall complete its investigation and forward a summary of the report, and written notice to the Complainant setting forth all of the following:

- The determination by the Vice President of Human Resources as to whether unlawful discrimination occurred with respect to each allegation in the complaint based on a preponderance of the evidence standard and the basis for that determination including factual findings;
- In the event a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future.
- The proposed resolution of the complaint if appropriate.
- In the case of complaints not involving employment discrimination, the Complainant's right to appeal to the District's Board of Trustees and the California Community Colleges Chancellor's Office.
- In the case of complaints involving employment discrimination, the Complainant's right to appeal to the District's Board of Trustees and to file a complaint with the California Civil Rights Department (CRD).
- In matters involving student sexual misconduct, the Respondent's right to appeal to the District's Board of Trustees any disciplinary sanction imposed upon the Respondent.

When a District provides the Complainant with any information, the District shall also provide a summary of the report, and written notice to the Respondent of the following:

- The Vice President of Human Resources' determination as to whether unlawful discrimination occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard and the basis for that determination including factual findings;
- The proposed resolution of the complaint, including any disciplinary action against the Respondent if appropriate.
- In matters involving student sexual misconduct not subject to Title IX, the Respondent's right to appeal to the local governing board any disciplinary sanction imposed upon the Respondent.

- In the written Administrative Determination to an employee Respondent which sustains the allegation(s) a statement that the Administrative Determination will be placed in the personnel file of the Respondent. The Respondent has the right to submit a response which will also be placed in their personnel file.

In matters involving an academic employee placed on involuntary paid administrative leave, the District shall complete its investigation within 90 working days of the administrative leave commencing, unless the period of paid administrative leave is extended by agreement of the employee and employer for a period not exceeding 30 additional calendar days. The extension of time provisions of Section 9 below shall not apply to investigations involving an academic employee placed on involuntary paid administrative leave.

11. Discipline, Sanctions, and Corrective Action

If harassment, discrimination, or retaliation occurred in violation of federal law, state law, or District's policies or administrative regulations prohibiting unlawful discrimination, the District shall take disciplinary and/or corrective action against the Respondent and any other remedial action it determines to be appropriate consistent with state and federal law. The action will be prompt, effective, and commensurate with the severity of the offense.

If the District imposes discipline, sanctions or corrective action, the nature of such will not be communicated to the Complainant. However, the District may disclose information about the discipline, sanction or corrective action imposed on an individual who was found to have engaged in harassment when the discipline, sanction or corrective action directly relates to the Complainant; for example, the District may inform the Complainant that the Respondent must stay away from the Complainant.

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

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

The District will ensure that Complainants and witnesses know how to report any subsequent problems.

If the District cannot take disciplinary action against the Respondent because the Complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

12. Appeals

12.1 Appeal to District's Governing Board

If the Complainant is not satisfied with the results of the administrative determination, they may, within 30 days from the date of the Administrative Determination letter, submit a written appeal to the District's Board of Trustees.

In a complaint involving student sexual misconduct not subject to Title IX, a Respondent who is not satisfied with the results of the administrative determination may submit a written appeal to the District's Board of Trustees within 30 days, from the date of the Administrative Determination letter.

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 days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the Complainant and the Respondent. The Complainant shall also be notified of their right to appeal this decision.

If the Board does not act within 45 days, the administrative determination shall be deemed approved on the 46th day and shall become the final decision of the District in the matter. The District shall promptly notify the Complainant and the Respondent of the Board's action, or if the Board took no action, that the administrative determination is deemed approved.

In any case not involving employment discrimination, harassment, or retaliation, the District shall promptly forward to the Complainant, and the Respondent, a copy of the final District decision rendered by the Board of Trustees, if any, and notice of the Complainant's right to appeal the District's decision to the California Community Colleges Chancellor's Office within 30 days after the Board issued the final District decision or permitted the administrative decision to become final.

In any case involving employment discrimination, harassment, or retaliation, the District shall promptly forward to the Complainant and the Respondent the final District decision rendered by the Board of Trustees that includes the Complainant's right to file a complaint with the California Civil Rights Department (CRD), where the case is within the jurisdiction of that agency.

In any case involving employment discrimination, including workplace harassment, the Complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the California Civil Rights Department (CRD), where the case is within the jurisdiction of that agency.

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

12.2 Appeal to Chancellor

In any case not involving employment discrimination, the complainant may file a written appeal with the Chancellor within thirty (30) days from the date of the District's notice of final decision. Such appeals shall be processed pursuant to the provisions of section 59350 et seq. of Title 5 of the California Code of Regulations. The appeal must include copies of the complaint, the decision of the governing board, and the notice of final decision.

In any case involving employment discrimination, the Complainant may, before or after the final district decision is rendered, file a complaint with the California Civil Rights Department (CRD).

In any complaint dismissed pursuant to Section 6 of this Administrative Regulation, a Complainant may file a written appeal with the Chancellor within thirty (30) days from the date of the notice of dismissal.

For any appeal to the Chancellor, the District shall provide all relevant, non-privileged documents upon request of the Chancellor

13. Remand

The Chancellor has the authority to remand any matter to the District for any of the following reasons:

- To cure defects in the investigation or in procedural compliance.
- To consider new evidence not available during the investigation despite the Complainant's due diligence that would substantially impact the outcome of the investigation.
- To modify or reverse a decision of the District's Board of Trustees based upon misapplication of an applicable legal standard or an abuse of discretion.

If the Chancellor remands a matter to the District, the District shall take necessary action and issue a decision after remand within 60 days. In any case not involving employment discrimination, the Complainant may appeal the District's amended determination to the Chancellor within 30 days by following the appeal procedures above.

14. Disclosures to the Chancellor

Upon request of the Chancellor, the District shall provide copies of all documents related to a discrimination complaint, including the following:

- The original complaint
- Any investigative report unless subject to the attorney-client privilege
- The written notice to the Complainant setting forth the results of the investigation
- The final district administrative decision rendered by the Board, or a statement indicating the date on which the administrative determination became final
- Other non-privileged documents or information such as a copy of the notification to the Complainant of their appeal rights, and the Complainant's appeal of the District's administrative determination, as the Chancellor requests

The District shall provide to the Chancellor's Office an annual report with the following information:

- The number of employment and non-employment discrimination complaints and informal charges received in the previous academic year
- The number of complaints and informal charges resolved in the previous academic year
- The number of complaints of unlawful discrimination received in the previous academic year, and the number of those complaints that were sustained in whole or in part
- Any other information requested by the Chancellor's Office

15. File Retention

The District will retain on file for a period of at least seven (7) years after closing the case copies of:

- the original complaint
- the investigatory report
- the summary of the report if one is prepared
- the notice provided to the Parties, of the District's administrative determination and the right to appeal
- any appeal
- the District's final decision

16. Dissemination of Policy and Procedures

District policy and procedures related to harassment will include information that specifically addresses sexual violence. District policy and procedures will be provided to all students, all employees, all volunteers who will regularly interact with students, and each individual or entity under contract with the District to perform any service involving regular interaction with students at the District. District policy and procedures related to harassment will also be posted on campus and on the District's website.

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

17. Training and Education

17.1. Supervisors and Employees

Every two years, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees. All new employees must be provided with the training and education within six months of commencing their position.

The training and education required by this regulation shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment, a review of "abusive conduct," and harassment based on gender

identity, gender expression, and sexual orientation. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. Supervisor's harassment training must also address potential exposure and liability for employers and individuals, supervisor's obligation to report sexual harassment, discrimination, and retaliation when they become aware of it, appropriate remedial measures to correct harassing behavior.

The District will maintain appropriate records of the training provided, including the names of the employees trained, whether a supervisory or nonsupervisory employee, the date of training, the length of the training, sign in sheets, copies of all certificates of attendance or completion issued, the type of training provided, a copy of all written or recorded training materials, and the name of the training provider. If the training is provided by webinar, the District will maintain a copy of the webinar, all written materials used by the training and all written questions submitted during the webinar, and document all written response or guidance the trainer provided during the webinar. The District will retain these records for at least two years.

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

17.2 Substantive Changes

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

18. Education and Prevention for Student

In order to take proactive measures to prevent sexual harassment and violence toward students, the District will provide preventive education programs and make victim resources, including comprehensive victim services, available. The District will include such programs in their orientation programs for new students, and in training for student athletes and coaches. These programs will include discussion of what constitutes sexual harassment and sexual violence, the District's policies and disciplinary procedures, and the consequences of violating these policies. A training program or informational services will be made available to all students at least once annually.

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

19. Academic Freedom

No provision of this administrative regulation shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. Freedom of speech and academic freedom are, however, not without limit, and this procedure will not protect speech or expressive conduct that violates federal or California anti-discrimination laws.

20. Discipline for Student Sexual Misconduct Not Subject to Title IX

In cases of a student sexual misconduct that are not subject to Title IX, if a student Respondent is subject to severe disciplinary sanctions, and the credibility of witnesses was central to the investigative findings, any hearing before the Student Conduct Appeals Committee shall provide an opportunity for the student Respondent to cross-examine witnesses indirectly at a live hearing, either in person or by videoconference. The investigator shall not be a member of the Student Conduct Appeals Committee.

The District shall appoint a neutral third party to attend the hearing solely for the purpose of asking any questions to the witnesses. The neutral third party shall not be the student Respondent, the student Respondent's representative, or any individual charged with making a final determination regarding discipline.

The student Respondent may submit written questions before and during the cross-examination, including any follow-up questions. The neutral third-party asking questions shall not exclude any questions unless there is an objection to the question by any individual charged with making a final determination regarding discipline.

In cases of student sexual misconduct subject to Title IX, the District must comply with the federal Department of Education's Title IX regulations, 34 C.F.R. Part 106, as set forth in AR 3434.

References

- California Education Code, sections 212.5, 231.5, 66281.5, and 67386;
- Government Code, section 12950.1;
- California Code of Regulations, title 5, sections 59320, 59324, 59326, 59328, and 59300 et seq.;
- California Government Code, Title 2, sections 11023 and 11024

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Revisions reviewed and approved by DPAC: June 14, 2023

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