

## HARTNELL COMMUNITY COLLEGE DISTRICT

AP 3435      Discrimination and Harassment Investigations

References: Education Code Sections s 212.5, 231.5, 66281.5, and 67386; Government Code Section 12950.1; Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et seq.; Title 2 Sections 11023 and 11024; 34 Code of Federal Regulations Section 106.8(b); 20 U.S.C. 1681 et seq.

### Complaints

The law prohibits employeescoworkers, supervisors, managers, students, 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. Furthermore, this policy is the applicable procedure for complaints of unlawful discrimination under Federal law, including Section 504 and Title II, as well as complaints of sex discrimination, including sexual harassment, pursuant to Title IX of the Education Amendments Act of 1972.

A formal complaint is a written and signed statement filed with the District or the California Community Colleges Chancellor's Office that alleges harassment, discrimination, or retaliation in violation of the District's Board Policies, Administrative Procedures or in violation of state or federal law. An informal complaint is any of the following: (1) An unwritten allegation of

within the timeline for a formal complaint, and explain the procedure for doing so. The complainant may later decide to file a formal complaint, if within the timelines to do so. If the individual chooses not to file a formal complaint, or if the alleged conduct falls outside the timeline to file a formal complaint, the Chief Human Resources Officer shall consider the allegations contained in the informal complaint and determine the appropriate course of action. This may include efforts to informally resolve the matter, or a fact-finding investigation.

Investigation of an informal complaint will be appropriate if the Chief Human Resources Officer determines that the allegation(s), if proven true, would constitute a violation of the District policy prohibiting harassment, discrimination, or retaliation. The Chief Human Resources Officer will explain to any individual bringing an informal complaint that the Chief Human Resources Officer may decide to initiate an investigation, even if the individual does not wish the Chief Human Resources Officer to do so. The Chief Human Resources Officer shall not disregard any allegations

It must allege facts with enough specificity to show that the allegations, if true, would constitute a violation of District policies or procedures prohibiting discrimination, harassment, or retaliation;

The complainant must sign and date the Formal Complaint;

All supervisors and managers have a mandatory duty to report 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.

Communicating that the Conduct is Unwelcome: The District further encourages students and staff to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste and/or inappropriate.

Oversight of Complaint Procedure: The Chief Human Resources Officer is the "responsible District officer" charged with ri90.00000912 0 612 792 reW\*ñBT/F3 12 Tf1 0 0 1 25kle

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

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

~~Any District employee who receives a harassment or discrimination complaint shall notify the Chief Human Resources Officer immediately.~~

Intake and Processing of the Complaint: Upon receiving notification of a harassment or discrimination complaint, the Chief Human Resources Officer shall:

Undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules; obtaining apologies;

it is not appropriate to remove complainants from classes or housing while allowing accused individuals to remain.

Authorize the investigation of the complaint, and supervise and/or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below.



party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion. When the District evaluates the complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has





the complainant; for example, the District may inform the complainant that the harasser must stay away from the complainant.

Disciplinary actions against faculty, staff, and students will conform to all relevant statutes, regulations, 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, and/or discrimination, and to protect the complainant and witnesses from retaliation as a result of communicating the complaint and/or assisting in the investigation. The District will ensure that complainants and witnesses know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred. 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.

If the District cannot take disciplinary action against the accused individual 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.

#### Appeals

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

If the complainant is not satisfied with the results of the administratid 9 612 792 rp5(id 9 ft7i/su)-3(l)10/F3.0.71

In any case not involving workplace discrimination, harassment, or retaliation, the complainant shall have the right to file a written appeal with the ~~State~~ California Community Colleges

Sexual harassment may include unwelcome sexual advances, requests for sexual favors, and

Professional, licensed, mental health counselors and pastoral counselors, who provide mental-health counseling to members of the District community, or interns, graduate students, and others supervised by professional licensed counselors, are not required to report any information to the Title IX Coordinator.

Non-professional counselors who work or volunteer in the District's Counseling and Guidance departments, including front desk personnel and student employees in the course of their duties, may maintain confidentiality. They are not required to report actual or suspected sexual misconduct to the Title IX Coordinator in a way that identifies the student without the victims consent. These individuals are limited to the Administrative Assistant and student employees who support counseling services in the Counseling Center (Building B, Main Campus).

Authority over Parties: The District has authority over students, employees, and third parties for alleged violations of this policy that occur on District property. The District has authority over District employees and students for alleged violations of this policy that occur at District activities or events. The District may exercise authority over events that occur off-campus to determine if



victim and accused, for example if the District permits the victim or accused to have a lawyer or other advisor present, it must do so for the other party. Any District imposed restrictions on the ability of a lawyer or other advisor to speak or participate in the interview must also apply equally

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The results of the fact-finding investigation will be set out in a formal investigative report which will include the requirements listed above and a credibility determination of the victim, accused, and witnesses.

Reporting to California Community Colleges Chancellor's Office: The District considers all sexual misconduct complaints to be formal complaints. The Title IX Coordinator or other designated person must notify the State Chancellor's Office of any sexual misconduct complaints. Upon completing the investigation, the District shall forward to the California Community Colleges Chancellor's Office a copy of the investigative report and administrative determination and to the complainant and accused a copy or summary of the investigative report and administrative determination.

#### 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, faculty members, members of the administrative staff and members of the support staff, and will 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.

#### Training

By January 1, 2006, the District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees who are employed as of July 1, 2005. All new supervisory employees must be provided with the training and education within six months of their assumption of a supervisory position. After January 1, 2006, the District shall provide sexual harassment training and education to each supervisory employee once every two years.

The training and education required by this procedure shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against





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.

See Board Policies 3410, 3420, 3430

See Administrative Procedures 3410, 3420, 3430

Superintendent/President Approval Date: May 20, 2015; revised May 29, 2019

