Administrative Procedure 3410 - Nondiscrimination Procedure

Board Policy 3410 - Nondiscrimination Policy

Administrative Procedure 3435 - Discrimination and Harassment Investigations
**AP 3410 Nondiscrimination**

**Nondiscrimination References for Education Programs:**
- Education Code Sections 66250 et seq., 200 et seq., and 72010 et seq.;
- Title 5 Sections 59300 et seq.;
- Accreditation Standard II.B.2.c
- Title IX

**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.

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**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 Education Code, “gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means 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.

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

**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, pregnancy, or military and veteran status.
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.

Effective 6/26/14
BP 3410 Nondiscrimination

References:

- Education Code Sections 66250 et seq., 72010 et seq., and 87100 et seq.;
- Title 5 Sections 53000 et seq. and 59300 et seq.;
- Government Code Sections 12926.1 and 12940 et seq.;
- Accreditation Standard II.B.2.c

The District is committed to equal opportunity in educational programs, employment, and all access to institutional programs and activities.

The District, and each individual who represents 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 military and veteran status, 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.

The CEO shall establish administrative procedures that ensure all members of the college community can present complaints regarding alleged violations of this policy and have their complaints heard in accordance with the Title 5 regulations and those of other agencies that administer state and federal laws regarding nondiscrimination.

No District funds shall ever be used for membership, or for any participation involving financial payment or contribution on behalf of the District or any individual employed by or associated with it, to any private organization whose membership practices are discriminatory on the basis of national origin, religion, age, gender, gender identity, gender expression, race, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, pregnancy, or military and veteran status, or because he/she is perceived to have one or more of the foregoing characteristics, or because of his/her association with a person or group with one or more of these actual or perceived characteristics.

Replaces Board Policy 811

See Administrative Procedure 3410.

Effective 6/26/14
AP 3435  Discrimination and Harassment Investigations

References:
Education Code Section 66281.5;
Government Code Section 12950.1;
Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et seq.;
34 Code of Federal Regulations Section 106.8(b)

This Administrative Procedure covers both informal and formal discrimination and harassment complaints. The processes for filing both types of complaints are described in further detail below.

Who may file a discrimination or harassment complaint?

Any student, employee, or third party who believes he or she has been discriminated against or harassed by a student, employee, or third party in violation of this procedure and the related policy.

Where to file a complaint?

The Assistant Superintendent/Vice President of Human Resources for Santa Clarita Community College District is the “responsible District officer” charged with receiving complaints of discrimination or harassment, 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.

If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, he or she shall file the complaint on a form prescribed by the State Chancellor’s Office. These approved forms are available in the Human Resources Office and they are on the State Chancellor’s website at:

http://exTRANET.CCCCO.EDU/divisions/Legal/Discrimination.aspx

The complaint must be filed with any of the following:

- The Chancellor of the Santa Clarita Community College District;
- Assistant Superintendent/Vice President of Human Resources for Santa Clarita Community College District; or
- The State Chancellor’s Office.

Any District employee who receives a harassment or discrimination complaint shall notify the Assistant Superintendent/Vice President of Human Resources for Santa Clarita Community College District immediately.
Filing a Timely Complaint

In any complaint not involving employment, the complaint shall be filed within one year of the date of the alleged unlawful discrimination or harassment or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination or harassment.

In any complaint alleging discrimination in employment, the complaint shall be filed within 180 calendar days of the date of the alleged discrimination or harassment. This period may be extended up to 90 calendar days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

Since failure to report harassment and discrimination impedes the District’s ability to stop the behavior, the District strongly encourages anyone who believes they are being harassed or discriminated against, to file a complaint. The District also strongly encourages the filing of such complaints within 30 days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the District’s ability to investigate and remediate.

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.

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.

Informal Complaint Procedure

When a person brings charges of unlawful discrimination or harassment to the attention of the District’s responsible officer, that officer will:

A. Undertake efforts to informally resolve the charges.

B. Advise the complainant that he or she need not participate in informal resolution.

C. Advise the complainant that he or she has the right to end the informal resolution process at any time. Mediation is not appropriate for resolving incidents involving sexual violence.
D. Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for doing so.

E. Assure the complainant that he or she will not be required to confront or work out problems with the person accused of unlawful discrimination or harassment.

F. Advise the complainant that he or she may file a non-employment-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.

G. 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.

The purpose of the informal resolution process is to allow an individual who believes she/he has been unlawfully discriminated against or 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 or harassment. 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.

The Assistant Superintendent/Vice President, Student Services and the Assistant Superintendent/Vice President, Human Resources will either serve as mediators in this informal process, or will appoint someone to serve as the District’s mediator.

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 formal complaint is filed an investigation is required to be conducted 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 formal written complaint will not exceed the ninety (90) day period for rendering the administrative determination.

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.

Filing of Formal Written Complaint

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

If the District receives a complaint alleging discrimination or harassment in employment, it shall:

1. Advise the complainant 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); and
2. Forward a copy of any filing by the complainant with the DFEH or the EEOC to the Chancellor’s Office for a determination of whether the issues presented require an independent investigation of the matter.

Threshold Requirements Prior to Investigation of a Formal Written Complaint

When a formal written complaint is filed, it will be reviewed within fourteen (14) days to determine if the complaint meets the following requirements:

A. The complaint must be filed on a form prescribed by the State Chancellor’s Office.
B. The complaint must allege unlawful discrimination or harassment prohibited under Board Policies 3430 and 3410.

C. The complaint must be filed by one who alleges that he or she has personally suffered unlawful discrimination or harassment or by one who has learned of such unlawful discrimination in his or her official capacity as a classified employee, faculty member or administrator.

D. In any complaint not involving employment, the complaint must be filed within one year of the date of the alleged unlawful discrimination or harassment 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.

E. 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.

Defective Complaints

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. The notice will inform the complainant that the complaint does not meet the requirements of this procedure 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.

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.

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.
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.

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 this unlawful discrimination policy.

Administrative Determination

The Santa Clarita 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.

In any case not involving employment discrimination, within 90 days of receiving an unlawful discrimination complaint the responsible District officer will complete the investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all the following to both the complainant and the State Chancellor:

A. 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.

B. A description of actions taken, if any, to prevent similar problems from occurring in the future.

C. The proposed resolution of the complaint.

D. The complainant’s right to appeal to the District Board of Trustees and The State Chancellor’s Office.

In any case involving employment discrimination, within 90 days of receiving an unlawful discrimination complaint 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:
A. The determination of the chief executive officer or his/her designee as to whether there is probably cause to believe discrimination occurred with respect to each allegation in the complaint.

B. A description of actions taken, if any, to prevent similar problems from occurring in the future.

C. The proposed resolution of the complaint.

D. The complainant’s right to appeal to the District Board of Trustees and file a complaint with the Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH).

The District will retain 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.

**Discipline and Corrective Action**

If harassment, discrimination or retaliation occurred in violation of the policy or procedure, the District shall take disciplinary action against the accused and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense. Remedies for the complainant might include, but are not limited to:

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes or work in the same work area;
- preventing offending third parties from entering campus;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;
- arranging for a student-complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant’s academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.
If discipline is imposed, the nature of the discipline will not be communicated to the complainant. However, the District may disclose information about the sanction imposed on an individual who was found to have engaged in harassment when the sanction directly relates to the complainant; for example, the District may inform the complainant that the harasser must stay away from the complainant.

**Complainant's Appeal Rights**

At the time the administrative determination and summary are mailed to the complainant, the responsible District officer or his/her designee shall notify the complainant of his or her appeal rights as follows:

- The complainant has the right to file an appeal to the District’s Board of Trustees within 15 days from the date of the administrative determination.
- The District’s Board of Trustees will review the original complaint, the investigative report, the administrative determination, and the appeal.
- The District Board of Trustees will issue a final District decision in the matter within 45 days after receiving the appeal.
- Alternatively, the Board of Trustees 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 Board of Trustees will be forwarded to the complainant and to the State Chancellor's Office.

In any case involving a student complaint, the complainant shall have the right to file a written appeal with the State Chancellor’s Office within thirty days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Title 5 Section 59350.

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 DFEH. In such cases, the complainant may also file a petition for review with the State Chancellor’s Office within thirty (30) days after the governing board issues the final decision or permits the administrative decision to become final.

All appeals shall be in writing.
Forward to State Chancellor

Within 150 days of receiving a formal complaint, the District shall forward to the State Chancellor’s Office the original complaint, the investigative report, a copy of the written notice to the complainant setting forth the results of the investigation, a copy of the final administrative decision rendered by the Board or indicating the date upon which the decision became final, and a copy of the notification to the complainant of his/her appeal rights. If, due to circumstances beyond its control, the District is unable to comply with the 150-day deadline for submission of materials, it may file a written request for an extension of time no later than ten days prior to the expiration of the deadline.

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.

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 this procedure 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 five days of receipt.

The State Chancellor may grant the request unless delay would be prejudicial to the complainant. 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.

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

The District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees once every two years. All new supervisory employees must be provided with the training and education within six months of their assumption of a supervisory position.

The definition of “supervisor” under AB 1825 (Gov. Code Section 12950.1) is very broad. It includes not only those who hire or fire employees, but also individuals who may assign or direct the work of others. For the purpose of this training, “supervisors” at that Santa Clarita Community College District include:

- All management employees,
- Faculty department chairs, program directors, and grant project managers,
- All employees who oversee, direct, or assign the work of other employees, short-term temporary employees, student workers, or volunteers.

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 and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. 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.

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

Education and Prevention for Students

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.

Replaces Board Policy 812 and Administrative Procedure 813

Effective 6/26/14