

General Institution

1 **AP 3435 DISCRIMINATION AND HARASSMENT INVESTIGATIONS**

2 **References:**

- 3 Education Code, Section 66281.5;
- 4 Government Code, Section 12950.1;
- 5 Title 5, Sections 59320, 59324, 59326, 59328, and 59300 et seq.;
- 6 34 C.F.R., Section 106.8(b)

7 The District is committed to providing an academic and work environment that respects
8 the dignity of individuals and groups. All forms of harassment are contrary to basic
9 standards of conduct between individuals and are prohibited by state and federal law, as
10 well as this procedure, and will not be tolerated.

11 These complaint procedures apply to complaints alleging discrimination, harassment, or
12 retaliation on the basis of national origin, religion, age, gender, gender identity, gender
13 expression, race or ethnicity, color, medical condition, genetic information, ancestry,
14 sexual orientation, marital status, physical or mental disability, pregnancy, or military and
15 veteran status, or because an individual is perceived to have one or more of the foregoing
16 characteristics, or based on association with a person or group with one or more of these
17 actual or perceived characteristics. See also Board Policy and Administrative Procedure
18 3410 titled Nondiscrimination and Administrative Procedure 3430 titled Prohibition of
19 Harassment.

20 **Filing a Timely Complaint:** Since failure to report discrimination, including harassment,
21 impedes the District's ability to stop the behavior, the District strongly encourages anyone
22 who believes he or she has been or is being harassed or discriminated against to file a
23 complaint. The District also strongly encourages the filing of such complaints within thirty
24 (30) days of the alleged incident. While all complaints are taken seriously and will be
25 reviewed, assessed, and investigated promptly as appropriate, delay in filing impedes the
26 District's ability to investigate and remediate.

27 All managers have a mandatory duty to report incidents of harassment and discrimination;
28 the existence of a hostile, offensive or intimidating work environment; and acts of
29 retaliation.

30 The District will investigate complaints involving acts that occur off campus if they are
31 related to an academic or work activity.

32 **Communicating that the Conduct is Unwelcome:** The District further encourages
33 students and employees who believe they are being subjected to harassment to let the

34 offending person know immediately and firmly that the conduct or behavior is unwelcome,
35 offensive, in poor taste and/or inappropriate.

36 **Oversight of Complaint Procedure:** The Vice President of Human Resources is the
37 "responsible District officer" charged with receiving complaints of discrimination, including
38 harassment, and coordinating their investigation.

39 The actual investigation of complaints may be assigned by the Vice President of Human
40 Resources to other staff or to outside persons or organizations under contract with the
41 District. This shall occur whenever the Vice President of Human Resources is named in
42 the complaint or implicated by the allegations in the complaint.

43 **Who May File a Complaint:** Any student, employee, or third party who believes he/she
44 or any individual has been discriminated against or harassed by a student, employee, or
45 third party in violation of this procedure and the related policy.

46 **Where to File a Complaint:** A student, employee, or third party who believes he/she or
47 any individual has been discriminated against or harassed in violation of this policy and
48 these procedures, or that a student has been subjected to discrimination, including
49 harassment, or who has witnessed or has knowledge of such discrimination, may make
50 a complaint orally or in writing, within one year of the date of the alleged harassment or
51 the date on which the complainant knew or should have known of the facts underlying the
52 complaint. In accordance with timeline mandates, complaints filed after one year will be
53 accepted and addressed as applicable, however, delays in filing impedes the District's
54 ability to investigate and remediate promptly.

55 If a complainant decides to file a formal written unlawful discrimination or harassment
56 complaint against the District, he/she may file the complaint on a form prescribed by the
57 State Chancellor's Office. These approved forms are available from the Vice President
58 of Human Resources and at the following URL:
59 <http://extranet.cccco.edu/Divisions/Legal/Discrimination.aspx>

60 The completed form must be filed with any of the following:

- 61 • the Vice President of Human Resources;
- 62 • the Vice President of Student Services
- 63 • the President's Office; and/or
- 64 • the State Chancellor's Office.

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

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

70 Any District employee who receives an alleged harassment or discrimination complaint
71 shall notify the Vice President of Human Resources immediately.

72 The District prohibits all forms of discrimination, intimidation, or harassment against any
73 individual who files or otherwise participates in the filing or investigation of a complaint of
74 discrimination. Persons who believe they have been subjected to retaliation may file a
75 complaint under these procedures.

76 **Intake and Processing of the Complaint:** Upon receiving notification of an alleged
77 harassment or discrimination complaint, the Vice President of Human Resources and/or
78 designee shall:

- 79 • Undertake efforts to informally resolve the charges, including but not limited to
80 mediation, rearrangement of work/academic schedules; obtaining apologies;
81 providing informal counseling and/or training, etc.
- 82 • Advise the complainant that he/she need not participate in an informal resolution
83 of the complaint, as described above, and has the right to end the informal
84 resolution process at any time. Mediation is not appropriate for resolving incidents
85 involving sexual violence.
- 86 • Advise complainants that he/she may file a complaint with the Office of Civil Rights
87 (OCR) of the U.S. Department of Education and employee complainants may file
88 a complaint with the California Department of Fair Employment and Housing. All
89 complainants should be advised that they have a right to file a complaint with local
90 law enforcement. They also should be advised of their option to be accompanied
91 by a support person throughout the process. The District must respond even if the
92 complainant files a complaint with local law enforcement. In addition, the District
93 should ensure that complainants are aware of any available resources, such as
94 counseling, health, and mental health services. The Vice President of Human
95 Resources or designee shall also notify the State Chancellor's Office of the
96 complaint when required by law.
- 97 • Take interim steps to protect a complainant from coming into contact with an
98 accused individual, especially if the complainant is a victim of sexual violence. The
99 Vice President of Human Resources should notify the complainant of his or her
100 options to avoid contact with the accused individual and allow students to change
101 academic situations as appropriate. For instance, the District may prohibit the
102 accused individual from having any contact with the complainant pending the
103 results of the investigation. When taking steps to separate the complainant and
104 accused individual, the District shall minimize the burden on the complainant. For
105 example, it is not appropriate to remove complainants from classes or housing
106 while allowing accused individuals to remain.
- 107 • Authorize the investigation of the complaint, and supervise and/or conduct a
108 thorough, prompt and impartial investigation of the complaint, as set forth below.
109 When complainants opt for informal resolution, the Vice President of Human
110 Resources or designee will determine whether further investigation is necessary
111 to ensure resolution of the matter and utilize the investigation process outlined
112 below as appropriate. In the case of a formal complaint, the investigation will
113 include interviews with the complainant, the accused, and any other persons who

114 may have relevant knowledge concerning the complaint. This may include victims
115 of similar conduct.

- 116 • Review the factual information gathered through the investigation to determine
117 whether the alleged conduct constitutes harassment, or other unlawful
118 discriminatory conduct, giving consideration to all factual information and the
119 totality of the circumstances, including the nature of the verbal, physical, visual, or
120 sexual conduct, and the context in which the alleged incidents occurred.
- 121 • Set forth the results of the investigation in a written report. The written report shall
122 include an explanation of the District’s investigative process, a description of the
123 circumstances giving rise to the complaint, a summary of the testimony of each
124 witness, an analysis of any relevant data or other evidence collected during the
125 investigation, a specific finding as to whether the preponderance of the evidence
126 establishes that discrimination did or did not occur with respect to each allegation
127 in the complaint and the reasons for that finding, a description of actions the District
128 will take to prevent similar conduct, the proposed resolution of the complaint, the
129 complainant’s right to appeal to the District’s Board of Trustees, and if the
130 complainant is a student, the right to appeal to the State Chancellor. If the
131 complainant is an employee, the report shall include the right to file an
132 administrative complaint with the Department of Fair Employment and Housing.
133 The report may contain any other appropriate information
- 134 • Provide the complainant and accused with a copy or summary of the investigative
135 report within ninety (90) days from the date the District received the complaint.
136 The complainant and accused shall also be provided with a written notice setting
137 forth the determination of the President/Superintendent or designee as to whether
138 harassment or other discriminatory conduct did or did not occur with respect to
139 each allegation in the complaint; a description of action taken, if any, to prevent
140 similar problems from occurring in the future; the proposed resolution of the
141 complaint; and notice of the parties’ rights to appeal to the Board of Trustees and
142 the State Chancellor’s Office. The results of the investigation and the
143 determination as to whether harassment or other discriminatory conduct occurred
144 shall also be reported to the accused, and the appropriate academic or
145 administrative official(s). Reports to the complainant shall be prepared so as not
146 to violate any applicable privacy rights of the accused.

147 **Investigation of the Complaint:** The District shall promptly investigate every complaint
148 of harassment or discrimination. No claim of workplace or academic harassment or
149 discrimination shall remain unexamined. This includes complaints involving activities that
150 occur off campus and in connection with all of the academic, educational, extracurricular,
151 athletic, and other programs of the District, whether those programs take place in the
152 District’s facilities, on a District bus, or at a class or training program sponsored by the
153 District at another location.

154 As set forth above, where the complainant opts for an informal resolution, the Vice
155 President of Human Resources may limit the scope of the investigation, as appropriate.
156 The District will keep the investigation confidential to the extent possible, but cannot
157 guarantee absolute confidentiality because release of some information on a “need-to-

158 know-basis” is essential to a thorough investigation. When determining whether to
159 maintain confidentiality, the District may weigh the request for confidentiality against the
160 following factors: the seriousness of the alleged harassment; the complainant’s age;
161 whether there have been other harassment complaints about the same individual; and
162 the accused individual’s rights to receive information about the allegations if the
163 information is maintained by the District as an “education record” under the Family
164 Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code
165 Federal Regulations Part 99.15. The District will inform the complainant if it cannot
166 maintain confidentiality.

167 **Investigation Steps:** The District will fairly and objectively investigate harassment and
168 discrimination complaints. Employees designated to serve as investigators under this
169 policy shall have adequate training on what constitutes sexual harassment, including
170 sexual violence, and/or the form of discrimination alleged in the complaint, and on how
171 the District’s grievance procedures operate. The investigator may not have any real or
172 perceived conflicts of interest and must be able to investigate the allegations impartially.

173 Investigators will use the following steps: interviewing the complainant(s); interviewing
174 the person who was the subject of the discrimination if different; interviewing the accused
175 individual(s); interviewing anyone who witnessed the reported discrimination; interviewing
176 individuals identified as having relevant information; identifying and interviewing
177 witnesses and evidence identified by each party; identifying and interviewing any other
178 witnesses, if needed; reminding all individuals interviewed of the District’s no-retaliation
179 policy; considering whether any involved person should be removed from the campus
180 pending completion of the investigation; reviewing any records, notes, memoranda,
181 correspondence, or statements related to the discrimination complaint, and
182 personnel/academic files of all involved parties; reaching a conclusion as to the
183 allegations and any appropriate disciplinary and remedial action; and seeing that all
184 recommended action is carried out in a timely fashion. When the District evaluates the
185 complaint, it shall do so using a preponderance of the evidence standard. Thus, after
186 considering all the evidence it has gathered, the District will decide whether it is more
187 likely than not that discrimination or harassment has occurred.

188 **Timeline for Completion:** The District will undertake its investigation as promptly and
189 swiftly as possible. To that end, the investigator shall complete the above steps, and
190 prepare a written report within sixty (60) to ninety (90) days of the District receiving the
191 complaint.

192 **Cooperation Encouraged:** All employees and students are expected to cooperate with
193 a District investigation into allegations of harassment or discrimination. Lack of
194 cooperation impedes the ability of the District to investigate thoroughly and respond
195 effectively. However, lack of cooperation by a complainant or witnesses does not relieve
196 the District of its obligation to investigate. The District will conduct an investigation if it
197 discovered that harassment or any other form of discrimination is, or may be occurring,
198 with or without the cooperation of the alleged victim(s) and regardless of whether a
199 complaint is filed.

200 **Discipline and Corrective Action**

201 If harassment, discrimination and/or retaliation occurred in violation of Board Policy or this
202 procedure, the District shall take disciplinary action against the accused and will take
203 steps to stop the discrimination, prevent recurrence, and remedy discriminatory effects
204 on the complainant and others, if appropriate. The action will be prompt, effective, and
205 commensurate with the severity of the offense. Remedies for the complainant might
206 include, but are not limited to:

- 207 • providing an escort to ensure that the complainant can move safely between
208 classes and activities;
- 209 • ensuring that the complainant and alleged perpetrator do not attend the same
210 classes or work in the same work area;
- 211 • preventing offending third parties from entering campus;
- 212 • providing counseling services;
- 213 • providing medical services;
- 214 • providing academic support services, such as tutoring;
- 215 • arranging for a student complainant to re-take a course or withdraw from a class
216 without penalty, including ensuring that any changes do not adversely affect the
217 complainant's academic record;
- 218 • reviewing any disciplinary actions taken against the complainant to see if there is
219 a causal connection between the harassment and the misconduct that may have
220 resulted in the complainant being disciplined;
- 221 • providing any services denied as a result of discrimination; and
222 • reviewing a grade awarded as a result of discrimination.

223 If discipline is imposed, the nature of the discipline will not be communicated to the
224 complainant. However, the District may disclose information about the sanction imposed
225 on an individual who was found to have engaged in harassment or other discrimination
226 when the sanction directly relates to the complainant; for example, the District may inform
227 the complainant that the harasser must stay away from the complainant.

228 Disciplinary actions against employees and students will conform to all relevant statutes,
229 regulations, personnel and student policies and procedures, including the provisions of
230 any applicable collective bargaining agreement.

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

234 The District will ensure that complainants and witnesses know how to report any
235 subsequent problems, and should follow-up with complainants to determine whether any
236 retaliation or new incidents of harassment have occurred. The District shall take
237 reasonable steps to ensure the confidentiality of the investigation and to protect the
238 privacy of all parties to the extent possible without impeding the District's ability to
239 investigate and respond effectively to the complaint.

240 If the District cannot take disciplinary action against the accused individual because the

241 complainant refuses to participate in the investigation, it should pursue other steps to limit
242 the effects of the alleged harassment and prevent its recurrence.

243 **Appeals**

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

247 If the complainant is not satisfied with the results of the administrative determination,
248 he/she may, within fifteen (15) days of issuance of the determination to the complainant
249 by the District, submit a written appeal to the Board of Trustees. The Board of Trustees
250 shall review the original complaint, the investigative report, the administrative decision,
251 and the appeal. The Board shall issue a final District decision in the matter within forty-
252 five (45) days after receiving the appeal. A copy of the decision rendered by the Board
253 of Trustees shall be forwarded to the complainant and to the State Chancellor's Office.
254 The complainant shall also be notified of his/her right to appeal this decision.

255 If the Board of Trustees does not act within forty-five (45) days the administrative
256 determination shall be deemed approved by default and shall become the final decision
257 of the District in the matter.

258 In any case not involving employment discrimination, the complainant shall have the right
259 to file a written appeal with the State Chancellor's Office within thirty (30) days after the
260 Board of Trustees issued the final District decision or permitted the administrative
261 decision to become final. Such appeals shall be processed pursuant to the provision of
262 Title 5 Section 59350.

263 In any case involving employment discrimination, including workplace harassment, the
264 complainant may, at any time before or after the issuance of the final decision of the
265 District, file a complaint with the Department of Fair Employment and Housing. In such
266 cases, the complainant may also file a petition for review with the State Chancellor's
267 Office within thirty (30) days after the Board of Trustees issues the final decision or
268 permits the administrative decision to become final.

269 Within one hundred fifty (150) days of receiving a formal complaint which does not involve
270 employment discrimination, the District shall forward to the State Chancellor's Office the
271 original complaint, the investigative report, a copy of the written notice to the complainant
272 setting forth the results of the investigation, a copy of the final administrative decision
273 rendered by the Board of Trustees or indicating the date upon which the decision became
274 final, and a copy of the notification to the complainant of his/her appeal rights. If, due to
275 circumstances beyond its control, the District is unable to comply with the 150-day
276 deadline for submission of materials, it may file a written request for an extension of time
277 no later than ten (10) days prior to the expiration of the deadline.

278 **Dissemination of Policy and Procedures**

279 Board Policy and Administrative Procedures related to harassment will include
280 information that specifically addresses sexual violence. District policy and procedures
281 will be provided to all students, faculty members, members of the administrative staff and
282 members of the support staff, and will be posted on campus and on the District's website.

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

287 **Training**

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

292 The training and education required by this procedure shall include information and
293 practical guidance regarding the federal and state statutory provisions concerning the
294 prohibition against and the prevention and correction of sexual harassment and the
295 remedies available to victims of sexual harassment in employment. The training and
296 education shall also include practical examples aimed at instructing managers in the
297 prevention of harassment, discrimination, and retaliation, and shall be presented by
298 trainers or educators with knowledge and expertise in the prevention of harassment,
299 discrimination, and retaliation.

300 Training of all staff shall be conducted. This includes counselors, faculty, health
301 personnel, law enforcement officers, coaches, and all staff who regularly interact with
302 students. Training for academic staff should emphasize environmental harassment in the
303 classroom. The District will also provide training to students who lead student
304 organizations. The District should provide copies of the sexual harassment policies and
305 training to all District law enforcement unit employees regarding the grievance procedures
306 and any other procedures used for investigating reports of sexual violence.

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

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

314 **Education and Prevention for Students**

315 In order to take proactive measures to prevent sexual harassment and violence toward
316 students, the District will, under the direction of the Director of Diversity, Compliance, and

317 Title IX, provide preventive education programs and make victim resources, including
318 comprehensive victim services, available. The District will include such programs in
319 orientation programs for new students, and in training for student athletes and coaches.
320 These programs will include discussion of what constitutes sexual harassment and sexual
321 violence, the District's policies and disciplinary procedures, and the consequences of
322 violating these policies. A training program or informational services will be made
323 available to all students at least once annually.

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

Office of Primary Responsibility: Vice President, Human Resources

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