

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

Administrative Procedures: Investigation and Resolution of Complaints Regarding Harassment and Discrimination (Pursuant to California Code of Regulations, Title 5, Sections 59300 et seq.)

INTRODUCTION AND SCOPE

Members of a college community - students, faculty, staff and visitors - must be able to study and work in an atmosphere of mutual respect and trust. Foothill-De Anza Community College District is actively committed to creating and maintaining an environment which respects the dignity of individuals and groups.

The goal of the Foothill-De Anza Community College District is to have a process that is sensitive to both the needs of students, staff and individuals who interact with the college community, and the rights of those against whom allegations have been made.

The policy of the Foothill-De Anza Community College District is to provide an educational and employment environment in which no person shall be unlawfully subjected to discrimination on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, marital status, or physical or mental disability or be unlawfully denied full and equal access to or the benefits of, any program or activity that is administered by, funded directly by, or that receives any financial assistance from the State Chancellor or Board of Governors of the California Community Colleges.

The procedures outlined below govern the process of complaints filed by an employee of the District against another employee, or a student against an employee of the District. If the complainant is a student and the respondent is also a student, such complaints shall be referred and handled pursuant to the District's *Procedures to Resolve Student-To-Student Complaints of Sexual Harassment and Discrimination*. Employees who believe they are being harassed by students should refer to the appropriate college regulations on disruptive students.

I. SEXUAL HARASSMENT POLICY

The Foothill-De Anza Community College District provides an educational, employment and business environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment as defined and otherwise prohibited by federal and state law. The comprehensive District policy for Sexual Harassment is contained in District Board Policy 4640.

II. EMPLOYEE AND STUDENT NOTIFICATION, TRAINING AND EDUCATION

The District provides training and information to employees and students on the District's unlawful discrimination and sexual harassment policy and procedures. Faculty, administrators and classified staff receive a copy of the District's written policy on unlawful discrimination and sexual harassment at the beginning of each academic year.

Each new District employee is required to attend training and receive a copy of the unlawful discrimination and sexual harassment policies and procedures during the first year of employment and thereafter once every three years. Because of their special responsibilities under the law, District administrators and supervisors are required to participate in mandatory annual training.

District employees involved in any aspect of investigating or resolving a complaint of harassment or discrimination receive training in the handling of such complaints in advance of their service in such capacity.

A training program or informational service is available to all students at least once annually. The student training or informational service includes an explanation of the policy, how it works, and how to file a complaint. In addition, a copy of the District's written policy on unlawful discrimination and sexual harassment, as it pertains to students, is provided as part of any orientation program conducted for new students.

III. RETALIATION

It is unlawful for anyone to retaliate against someone who files a sexual harassment or other unlawful discrimination complaint, who refers a matter for investigation of a 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.

IV. ACADEMIC FREEDOM

The Foothill-De Anza Community College District Board of Trustees reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow sexual harassment or any other form of unlawful discrimination. The lecture, content, and discourse that are an intrinsic part of the course content shall in no event constitute sexual harassment or other form of unlawful discrimination. It is recognized that an essential function of education is a probing of received opinions and an exploration of ideas that may unsettle some students. The Foothill-De Anza Community College District values the faculty's right to teach and the student's right to learn. Finally, nothing in these policies and procedures shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity. In cases involving questions of academic freedom the District shall consult with the Academic Senates whenever possible or with other appropriate faculty representatives as needed.

V. DEFINITIONS

Definitions applicable to nondiscrimination policies are as follows:

1. **Appeal:** A request by a complainant made in writing to the District Board of Trustees pursuant to Section 59338 of the California Code of Regulations, Title 5, and/or to the State Chancellor's Office pursuant to Section 59339 to review the administrative determination regarding a complaint of discrimination.
2. **Campus Coordinator:** The designated campus administrator responsible for implementing the harassment and discrimination policy and procedures on each campus.
3. **Complaint:** A written and signed statement meeting the requirements of Section 59328 of Title 5, California Code of Regulation which alleges unlawful discrimination in violation of this subchapter.
4. **Complainant(s):** An individual or group of individuals who believe that he/she/they have been victim of harassment or discrimination.
5. **Days:** Calendar days, unless otherwise specified.
6. **Determination Panel:** This group, composed of the Vice Chancellor of Human Resources, and the two college Presidents or persons appointed by any of them as designees, is responsible for determining the findings of a formal investigation and recommending appropriate action. Every effort is made to incorporate broad representation on the Determination Panel.

7. **Discrimination on the basis of sex:** Sexual harassment or discrimination on the basis of gender.
8. **District Coordinator:** The person responsible for coordinating the formal investigation of all harassment and discrimination complaints filed by or against a faculty, staff or administrative employee.
9. **Representative:** A person selected by the complainant or the respondent to advise them in this process. A representative may be a union representative, colleague, legal counsel or another individual selected by the party.
10. **Respondent(s):** An individual or group of individuals against whom a claim of harassment or discrimination is made.
11. **Sexual harassment:** A form of sex discrimination that includes unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the workplace or in the educational setting, and includes but is not limited to:
 - Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. (Examples of sexual harassment which appear in a written form include, but are not limited to: suggestive or obscene letters, notes, invitations. Examples of verbal sexual harassment include, but are not limited to: derogatory comments, slurs, jokes, or epithets. Examples of physical sexual harassment include, but are not limited to: assault, unwelcome touching, impeding or blocking movements. Examples of visual sexual harassment include, but are not limited to: leering, gestures, displays of sexually aggressive objects or pictures, cartoons, or posters).
 - Continuing to express sexual interest after being informed that the interest is unwelcome.
 - Making reprisals, threats of reprisal, or implied threats of reprisal following rebuff of harassing behavior. The following are examples of this type of sexual harassment within the learning place: implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied.
 - Engaging in explicit or implicit coercive sexual behavior within the work environment which is used to control, influence, or affect an employee's career, salary, and/or work environment.
 - Engaging in explicit or implicit coercive sexual behavior within the educational environment that is used to control, influence, or affect a student's educational opportunities, grades, and/or learning environment.
 - Offering favors or educational or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.
12. **Working Days:** The days that the District Office is open for customary business.

VI. RESPONSIBLE DISTRICT OFFICER

The Vice Chancellor of Human Resources and Equal Opportunity, is the District officer responsible for the administration and implementation of these policies and procedures. The Vice Chancellor may be contacted at (650) 949-6210, Foothill-De Anza Community College District, 12345 El Monte Road, Los Altos Hills, CA 94022.

VII. COMPLAINT PROCEDURES

In accordance with Board policy prohibiting unlawful discrimination and sexual harassment, the purpose of these procedures is to provide both an informal and a formal process for the filing and investigation of complaints, to prohibit retaliation against victims of discrimination, and to work toward its prevention.

An individual who believes that he/she has been unlawfully discriminated against or sexually harassed in any program or activity that is funded directly by, or that receives any financial assistance from the State Chancellor or Board of Governors of the California Community Colleges, may file a complaint with a Campus or District Coordinator or with the Vice Chancellor of Human Resources and Equal Opportunity.

A. How To File A Complaint

The District encourages its employees and students to contact the appropriate Campus Coordinator prior to filing a formal complaint or to obtain assistance in determining whether or not an individual has been or is a victim of discrimination or sexual harassment. The designated Campus Coordinator for Foothill College is Don Dorsey, Dean of Student Affairs and Activities, 12345 El Monte Road, Los Altos Hills, CA 94022, (650) 949-7241; the designated Campus Coordinator for De Anza College is Trudy J. Walton, Dean of Student Development and EOPS, 21250 Stevens Creek Boulevard, Cupertino, CA 95014, (408) 864-8828; for Central Services, please call the Office of Human Resources and Equal Opportunity (650) 949-6210.

For formal complaints, completed and signed Unlawful Harassment and Discrimination Complaint forms are to be mailed or taken to the Human Resources Office, to the attention of Jane Enright, Vice Chancellor of Human Resources and Equal Opportunity, Foothill-De Anza Community College District, 12345 El Monte Road, Los Altos Hills, CA 94022.

A copy of these procedures, and the District's Unlawful Discrimination Complaint forms, are available in the District Human Resources Office, the Office of the Dean of Student Development and EOPS (De Anza), the Office of the Dean of Student Affairs and Activities (Foothill), and the Office of the Vice President for Student Services (De Anza). Complaint procedures and forms are also available online and can be accessed via the District's Web site at <http://hr.fhda.edu/diversity/policies>.

B. Informal Complaint Procedure

The purpose of the informal complaint procedure is to allow individuals who believe that they have been discriminated against to resolve the issue through a mediation process rather than a more formal procedure. If informal resolution of the concern is possible, it is not necessary to pursue a formal complaint.

1. A person who alleges that he or she has personally suffered harassment or discrimination, or would like assistance in determining whether or not he or she has been or is a victim of harassment or discrimination, should be referred to the designated Campus Coordinator at either campus or may contact the District Coordinator directly to discuss his or her concerns.

2. The Campus or District Coordinator shall meet with the concerned individual to:
 - a. Undertake efforts to informally resolve the complaint;
 - b. Give the complainant a copy of the District policy and procedure concerning such unlawful harassment and discrimination and inform the complainant of his or her rights under any relevant complaint procedure, policy or collective bargaining procedure.
 - c. Advise the complainant that he or she need not participate in informal resolution;
 - 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;
 - f. Advise the complainant that he or she may file a nonemployment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR), 50 United Nation Plaza, Room 239, San Francisco, CA 94102, where such a complaint is within that agency's jurisdiction, or if employment-related with the Department of Fair Employment and Housing (DFEH), 30 Van Ness Avenue, Suite 300, San Francisco, CA 94102, and/or the U.S. Equal Employment Opportunity Commission (EEOC), 901 Market Street, Suite 500, San Francisco, CA 94103, where the complaint is within the jurisdiction of those agencies at the time of filing an informal complaint, or during or after use of the District harassment or discrimination formal complaint process.
3. Both parties shall be advised that they may be accompanied by a representative throughout the informal process.
4. If the parties agree to a proposed resolution that does not include disciplinary action, the resolution shall be implemented and the informal process shall be concluded. At any time during the informal process, the complainant may initiate a formal complaint by completing and signing the District's Unlawful Harassment and Discrimination Complaint form or an approved form obtained from the California State Chancellor's Office.
5. Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant to Section 59334 of Title 5, California Code of Regulations, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. Any efforts at informal resolution after the filing of a written complaint will not exceed the 90-day period for rendering the administrative determination pursuant to Title 5, section 59336.

C. Formal Complaint Procedure

A formal written unlawful discrimination complaint should be filed on the District's Unlawful Harassment and Discrimination Complaint form. The District's complaint form can be obtained from the District Web site at <http://hr.fhda.edu/diversity/policies>. An approved complaint form can also be obtained from the State Chancellor's Web site as follows: <http://betasite.cccco.edu/divisions/legal/Discrimination/discrimination.htm>.

The completed form will be filed with the Vice Chancellor of Human Resources and Equal Opportunity or designee.

On the Complaint form, the complainant shall describe in detail the alleged discrimination or harassment and the action the complainant requests to resolve the matter. The complaint must be signed and dated and shall contain at least the name(s) of the individual(s) involved, the approximate date(s) of the event(s) at issue and a description of the actions constituting the alleged harassment or discrimination.

VIII. INVESTIGATION UPON FILING A FORMAL WRITTEN COMPLAINT

Once a complaint is put in writing on the form(s) prescribed above and is signed by the complainant, the complaint is considered to be formal and the formal complaint procedures will be followed.

When a formal written complaint is filed, an investigation will be initiated if the complaint meets the following requirements:

- The complaint alleges unlawful discrimination prohibited under Section 59300 of Title 5, California Code of Regulations.
- The complaint is filed by someone who alleges that he or she has personally suffered unlawful discrimination or by someone who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administrator/supervisor.
- The complaint is non-employment-based (i.e., student vs. employee) and is 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 of unlawful discrimination.
- The complaint is employment-based (i.e., employee vs. employee) and is filed within 180 days (six months) of the date of 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.

Defective complaints will be returned within three (3) working days of receipt by the Vice Chancellor of Human Resources or designee to the complainant with a complete explanation of why an investigation could not be initiated under Title 5, California Code of Regulations, Section 59300 et seq.

Within three (3) working days upon receipt of a complaint filed in accordance with the regulations, the Vice Chancellor of Human Resources and Equal Opportunity shall assign the actual investigation of complaints to other staff or to outside persons or organizations under contract with the District, and shall forward a copy of the complaint to the State Chancellor's Office. Similarly, when the State Chancellor's Office receives a complaint filed in accordance with the regulations a copy will be forwarded to the District.

Once a complaint is filed in accordance with the regulations, the respondent(s) shall be advised of that filing and shall be forwarded a copy of the complaint and these procedures. This shall occur as soon as possible and appropriate under the circumstances (normally within five (5) working days). The respondent(s) shall also be advised of the following:

- a. Assessment of the accuracy of the allegations has not yet been made;
- b. The complaint will be investigated;

- c. He or she will be provided an opportunity to present his or her side of the matter; and,
- d. Any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.

The investigator shall, within ten (10) working days of the complainant's referral to the formal process, give the complainant an opportunity to meet with the investigator to review the nature of the complaint and identify the scope and nature of the investigation. If the complainant fails to meet with the investigator within a reasonable time (usually 15 working days), the District will continue the investigation to the best of its abilities based on the written formal complaint.

Within ten (10) working days of meeting with the complainant, or 15 days as noted above, the investigator shall give the respondent an opportunity to meet with the investigator to receive the respondent's answer to the complaint and to review with the respondent the scope and nature of the investigation. If the respondent fails to meet with the investigator within a reasonable time, (usually 15 working days), the District will continue the investigation to the best of its abilities.

The investigator shall complete a full impartial fact-finding investigation. Parties may request the presence of witnesses and may present documents in support of their positions. Both parties shall be advised that they may be accompanied by a representative throughout the formal process. The parties may present written and oral evidence. The proceedings may be recorded on audio tape or such other method (such as videotape or stenographic record) as the formal process investigator may direct.

The investigator will review all credible factual information presented and incorporate such information into the investigative report. Confidentiality will be maintained to the extent possible. Once the investigation is complete, the investigator will meet with the complainant and respondent separately to give an overview of the steps taken during the investigation. Complainant and respondent will also be asked for the names of any others the investigator should speak with or if there is any thing else he/she would like for the investigator to review before finalizing the report, and to request additional information.

The results of the investigation shall be set forth in a written report and presented to the Determination Panel. The report shall include the following:

- a. a description of the circumstances giving rise to the complaint;
- b. a summary of the information provided by each witness, including the complainant and any witnesses identified by the complainant in the complaint;
- c. an analysis of any relevant data or other evidence collected during the course of the investigation;
- d. any other information deemed appropriate.

After completion of the investigation, the investigator shall meet with the "Determination Panel" which shall be responsible for reviewing the investigative report, and making a specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint, and recommending to the administration appropriate discipline, if any. The Panel's findings shall take into consideration the severity of the conduct, the pervasiveness of the conduct, the pertinent background, and other relevant District policies.

If disciplinary action is recommended, appropriate contractual and statutory processes shall be invoked. If the Determination Panel finds there is no evidence to sustain the allegations, the record shall be kept confidential except to the extent that disclosure may be required by law.

IX. CONFIDENTIALITY

The District shall inform the complainant that the law protects them against retaliation for filing an unlawful discrimination or sexual harassment complaint. If the complainant requests that his or her name not be revealed, the District shall explain that the process of investigation and determination is a confidential process but that it cannot guarantee the anonymity of the complainant. The District shall further inform the complainant of its obligation to investigate a complaint once it is formally notified of the complaint.

X. RIGHT TO PRIVACY

If an employee is dismissed as a result of an unlawful discrimination or sexual harassment charge, Education Code Section 87740 requires that confidentiality be maintained as to the dismissal and the reasons therefore. In a disciplinary action for a sexual assault/physical abuse charge, Education Code Section 76234 provides that the victim shall be informed of the results of the disciplinary action, but further states that the victim shall keep that information confidential. In addition, an individual's right to privacy is not only protected by the laws of the state, but is deemed an inalienable right under Article I, Section 1 of the California Constitution. Therefore, it is the policy of the Foothill-De Anza Community College District that persons provided with protected information in conjunction with an unlawful discrimination complaint may be required to sign a confidentiality agreement.

XI. ADMINISTRATIVE DETERMINATION

Within ninety (90) days of receiving an unlawful discrimination or sexual harassment complaint filed under Title 5, Sections 59300 et seq., the District will complete its investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant and respondent, and written notice setting forth all the following to both the complainant and the Chancellor:

1. The decision of the Determination Panel as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
3. The proposed resolution of the complaint; and
4. The complainant's right to appeal to the District Board of Trustees and to the State Chancellor of the California Community Colleges.

XII. COMPLAINANT RIGHTS TO APPEAL

Complainants may appeal the results of the District's administrative determination. When the administrative determination and a copy of the investigative report or summary is mailed to the complainant, the District will notify the complainant of his or her appeal rights as follows:

First level of appeal:

The complainant has the right to file an appeal with the District's Board of Trustees within 15 days from the date of the administrative determination. The Board of Trustees will review the original complaint, the investigative report, the administrative determination, and the appeal. The Board of Trustees will either:

- (a) issue a final District decision in the matter within forty-five (45) days after receiving the appeal; or

- (b) 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 District Board of Trustees will be forwarded to the complainant and to the State Chancellor's Office.

Second level of appeal:

The complainant has the right to file an appeal with the California Community College Chancellor's Office in any case not involving employment-related discrimination within 30 days from the date that the District Board of Trustees issues the final District decision or permits the administrative determination to become final by taking no action within 45 days. The appeal must be accompanied by a copy of the decision of the Board or evidence showing the date on which the complainant filed an appeal with the Board, and a statement under penalty of perjury that no response was received from the Board within 45 days from that date.

In any case involving employment discrimination, the complainant may, at any time before or after the final District decision is rendered, file a complaint with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency. In addition, the complainant may file an appeal with the California Community College Chancellor's Office within 30 days from the date that the District Board of Trustees issues the final District decision or permits the administrative determination to become final by taking no action within 45 days. The appeal must be accompanied by a copy of the decision of the Board or evidence showing the date on which the complainant filed an appeal with the Board, and a statement under penalty of perjury that no response was received from the Board within 45 days from that date.

Complainants must submit all appeals in writing.

XIII. RESPONDENT RIGHTS TO RESPOND

Upon receipt of the administrative determination, the respondent shall also be notified that he or she may submit a written response within ten (10) days to the Vice Chancellor of Human Resources and Equal Opportunity. The written response shall be included in the investigation file.

XIV. FORWARD TO THE STATE CHANCELLOR

Within 150 days of receiving a complaint, the District will forward the following to the State Chancellor of the California Community Colleges in Sacramento:

- A copy of the final District decision rendered by the Board of Trustees, or a statement indicating the date on which the administrative determination became final as a result of taking no action on the appeal within 45 days.
- A copy of the notice of appeal rights that was sent by the District to the complainant.
- Any other information that the State Chancellor may require.

XV. 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 District will file a written request that the 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 Title 5 in Sections 59336 and/or 59340 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 may file written objections with the Chancellor within five (5) days of receipt.

The 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 Chancellor the 150-day deadline is automatically extended by an equal amount.

XVI. DISSEMINATION

The District will disseminate the information regarding District policies and appropriate procedures on unlawful discrimination and sexual harassment to all employees and students and to announce its existence in prominent places throughout the District including, but not limited to, the college catalogue and schedule of classes, in appropriate employee and/or student publications, on official District and Union bulletin boards, and by direct communication to employees.