

Procedures to Resolve Complaints Regarding Harassment and Discrimination

AP 4640

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. The 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.

Resolving Employee-to-Employee, Student-to-Employee or Student-to-District Complaints

If the complaint is filed by an employee of the District against another employee, or a student against an employee or program of the District, such complaints shall be processed in accordance with the procedures outlined below for *Resolving Employee and Student Complaints*.

Resolving Student-to-Student Complaints

If the complainant is a student and the respondent is also a student, such complaints shall be processed in accordance with the procedures outlined below for *Resolving Student-to-Student Complaints*.

Resolving Employee-to-Student Complaints

Employees who believe they are being harassed by students should refer to the appropriate college regulations on disruptive students.

Resolving Employee-to-Third Party or Student-to-Third Party Complaints

Complaints by students or employees regarding harassment or discrimination by third parties who are not themselves students or employees shall be investigated. The District shall forward the complaint to the responsible party with a written request for 1) an investigation of the incident(s) giving rise to the complaint, and 2) a report of the findings to be sent to the District. This District will also review the matter and take appropriate action where possible.

I. Discrimination and Harassment Policy

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 harassment or discrimination in whole or in part on the basis of ethnic group identification, race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or gender, age, sexual orientation or any

other legally protected status, or on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics, 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 comprehensive District policy for Harassment and Discrimination is contained in District Board Policy 4640.

II. Employee and Student Notification, Training and Education

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

Each new District employee is required to sign a form acknowledging receipt of the policy and procedures. The District shall offer training to all staff annually. Because of their special responsibilities under the law, District administrators and supervisors are required to participate in mandatory training within 6 months of employment and thereafter once every two years. Such training shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of harassment, discrimination and retaliation.

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 harassment and discrimination as it pertains to students, is provided as part of any orientation program conducted for new students.

The District will disseminate the information regarding District policies and appropriate procedures on unlawful harassment and discrimination to all employees and students and announce the policies and procedures 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.

III. Retaliation

It is unlawful for anyone to retaliate against someone who files a harassment or 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 the District harassment and discrimination policy.

IV. Academic Freedom

The Foothill-De Anza Community College District Board of Trustees reaffirms its commitment to academic freedom, and recognizes that academic freedom does not allow harassment or any other form of unlawful discrimination. The lecture, content, and discourse that are an integral part of the course content and discourse (including rhetorical strategies) shall in no event constitute harassment or discrimination. It is recognized that an essential function of education is a probing of 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 for cases not involving employment discrimination, to the State Chancellor's Office pursuant to Section 59339 to review the administrative determination of the District regarding a complaint of harassment or discrimination.
2. **Campus Coordinator:** The designated campus administrator responsible for implementing the harassment and discrimination policy and procedures and for resolving informal complaints on each campus.
 - a. De Anza College Campus Coordinator: Dean of Student Development and EOPS, 21250 Stevens Creek Boulevard, Cupertino, CA 95014, (408) 864-8828;
 - b. Foothill College Campus Coordinator: Dean of Student Affairs and Activities, 12345 El Monte Road, Los Altos Hills, CA 94022, (650) 949-7241
3. **Central Services Coordinator:** The designated Central Services administrator responsible for implementing the harassment and discrimination policy and procedures, and for resolving informal complaints at Central Services.
 - a. Central Services Coordinator: Director of Human Resources, Office of Human Resources and Equal Opportunity, 12345 El Monte Road, Los Altos Hills, CA 94022, (650) 949-6210

*Foothill-De Anza Community College District
Administrative Procedures*

4. **Complaint:** A written and signed statement meeting the requirements of Section 59328 of Title 5, California Code of Regulation which alleges unlawful harassment or discrimination.
5. **Complainant(s):** An individual or group of individuals who believes that he/she has been the victim of harassment or discrimination.
6. **Days:** Calendar days, unless otherwise specified.
7. **Determination Panel:** The Determination Panel, 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, when the complaint is Employee-to-Employee, Student-to-Employee or Student-to-Program/Activity/College. Every effort is made to incorporate broad representation on the Determination Panel.

When the complaint is Student-to-Student the appropriate student Due Process Procedures at the college will be invoked to identify the person(s) responsible for determining the findings of a formal investigation.

8. **District Officer:** The person responsible for coordinating the formal investigation of all harassment and discrimination complaints filed by or against a faculty, staff or administrative employee, and for overseeing informal resolution processes.
 - a. District Officer: Vice Chancellor, Office of Human Resources and Equal Opportunity (650) 949-6210.
9. **Gender:** Means sex, and includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.
10. **Mental disability:** Includes, but is not limited to, all of the following:
 - a. Having any mental or psychological disorder or condition such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disability that limits a major life activity.
 - b. Any other mental or psychological disorder or condition not described in paragraph (a) that requires specialized supportive services.
 - c. Having a record or history of a mental or psychological disorder or condition described in paragraph (a) or (b) which is known to the District.
 - d. Being regarded or treated by the District as having, or having had, any mental condition that makes achievement of a major life activity difficult.
 - e. Being regarded or treated by the District as having or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (a) or (b).

“Mental disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

11. **Physical Disability:** Includes, but is not limited to, all of the following:
- a. Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following: a) affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; and b) limits a major life activity.
 - b. Any other health impairment not described in paragraph (a) that requires specialized supportive services.
 - c. Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (a) or (b) which is known to the District.
 - d. Being regarded or treated by the District as having, or having had, any physical condition that makes achievement of a major life activity difficult.
 - e. Being regarded or treated by the District as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (a) or (b).

“Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

12. **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.
13. **Respondent(s):** An individual or group of individuals against whom a claim of harassment or discrimination is made.
14. **Sex:** Includes, but is not limited to, pregnancy, childbirth or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is not limited to, a person’s gender, as defined above (see #9). Discrimination on the basis of sex or gender also includes sexual harassment.
15. **Sexual Harassment:** Sexual harassment may be verbal, written, physical or environmental and, as such, is a form of unlawful harassment.

*Foothill-De Anza Community College District
Administrative Procedures*

Sexual harassment consists of 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.

“Quid pro quo” harassment occurs when submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decision affecting the individual.

“Hostile environment” harassment occurs when the conduct is sufficiently pervasive or severe such that the conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment. Subjective perception alone is insufficient evidence for a claim to be valid; an objective appraisal must be considered as well. The conduct shall be evaluated from the objective viewpoint of a reasonable person facing the same conditions.

Examples include but are 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, or 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

*Foothill-De Anza Community College District
Administrative Procedures*

duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.

- Awarding educational or employment benefits, such as grades or duties or shifts, recommendation, reclassification, etc., to any student or employee with whom the decision-maker has a sexual relationship and denying such benefits to other students or employees.

16. **Sexual Orientation:** Heterosexuality, homosexuality, or bisexuality.

17. **Unlawful Harassment:** Comes in many forms and may include but is not limited to the conduct described below:

Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race, gender, sexual orientation, or other status protected by law. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status or sexual orientation; unwelcome flirting, whistling, or propositions, demands for sexual favors, verbal abuse, threats or intimidation.

Physical: Inappropriate or offensive touching, assault, or physical interference with free movement. This may include but is not limited to kissing, patting, lingering or intimate touches, grabbing, pinching, unnecessarily brushing against or blocking another person, or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's race, gender, sexual orientation or other status protected by law. It may also include leering or staring.

Visual or Written: The display or circulation of visual or written material that degrades an individual or groups based on race, gender, sexual orientation or other status protected by law. This may include but is not limited to posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions.

Environmental: A hostile academic or work environment exists where it is permeated by innuendo or insults or abusive comments directed at an individual or group based on race, gender, sexual orientation or other status protected by law. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in his or her immediate surroundings, although the conduct is directed at others.

For an unlawful harassment or hostile environment claim to be valid, in general the conduct must be sufficiently severe or pervasive so as to alter the conditions of the employment or educational environment. Subjective perception alone is insufficient evidence for a claim to be valid; an objective appraisal must be considered as well. The conduct shall be evaluated from the objective viewpoint of a reasonable person facing the same conditions.

*Foothill-De Anza Community College District
Administrative Procedures*

18. **Student:** A currently enrolled student, a person who has filed an application for admission to the college, or a former student.
19. **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 harassment and discrimination 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.

A. How To File A Complaint

The District encourages its employees and students to contact the appropriate Campus Coordinator or Central Services 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 harassment or discrimination. The designated Coordinator for:

- Foothill College is the Dean of Student Affairs and Activities, 12345 El Monte Road, Los Altos Hills, CA 94022, (650) 949-7241;
- De Anza College is the Dean of Student Development and EOPS, 21250 Stevens Creek Boulevard, Cupertino, CA 95014, (408) 864-8828;
- Central Services is the Director of Human Resources, Office of Human Resources and Equal Opportunity (650) 949-6210.

For formal complaints, a completed and signed Unlawful Harassment and Discrimination Complaint forms shall be mailed or taken to the Human Resources Office, to the attention of the 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 harassed or 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 contact the designated Campus or Central Services Coordinator to discuss his or her concerns.
2. The Coordinator shall meet with the concerned individual to:
 - a. Understand the nature of the concern and 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 of legal protection against retaliation for filing a complaint of unlawful discrimination or harassment.
 - g. Advise the complainant that he/she may file a complaint with the following where the complaint is within the jurisdiction of these agencies:
 - If non-employment related, with the Office for Civil Rights/San Francisco, U.S. Department of Education, in accordance with procedures available via the website at www.de.gov/ocr, Filing a complaint with the Office of Civil Rights may be made before, during or after use of the District complaint process.
 - If employment related, with: 1) the Department of Fair Employment and Housing (DFEH), in accordance with procedures available via the website at www.dfeh.ca.gov; and/or 2) the U.S. Equal Employment Opportunity Commission (EEOC), in accordance with procedures available via the website at www.eeoc.gov.
3. The Campus or Central Services Coordinator shall advise the complainant and respondent that each may be accompanied by a representative throughout the informal process.

*Foothill-De Anza Community College District
Administrative Procedures*

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

To initiate a formal complaint, the complainant shall complete and sign 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: www.cccco.edu (click to System Office/Divisions/Legal Affairs).

The completed form shall be filed with the Vice Chancellor of Human Resources and Equal Opportunity or his/her designee.

On the Complaint form, the complainant shall describe in detail the alleged harassment or discrimination 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.

D. Criteria for a Formal Complaint

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

- a. The complaint alleges unlawful harassment or discrimination prohibited under Section 59300 of Title 5, California Code of Regulations;
- b. The complaint is filed by someone who alleges that he or she has personally suffered unlawful harassment or discrimination, or by someone who has learned of such unlawful harassment or discrimination in his or her official capacity as a District employee;

*Foothill-De Anza Community College District
Administrative Procedures*

- c. In any complaint not involving employment (i.e., student vs. employee), the complaint 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; and
- d. In any complaint involving employment (i.e., employee vs. employee), the complaint is filed within 180 days (six months) of the date of the alleged unlawful harassment or 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.

E. Defective Complaints

The District will notify the complainant and the Chancellor of a defective complaint within three (3) working days of receipt by the District Officer (Vice Chancellor of Human Resources or her/his designee) that the complaint does not meet the criteria for a formal complaint with an explanation as to why the complaint is defective.

F. Complaints Filed with DFEH or EEOC

If a complainant files a complaint with the Department of Fair Employment and Housing (DFEH) or with the Equal Employment Opportunity Commission (EEOC), such complaint will be forwarded to the Vice Chancellor for Human Resources and Equal Opportunity. The Vice Chancellor shall forward a copy of the filing to the State Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under these procedures.

VIII. Confidentiality

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 and requirements.

If the complainant requests that his or her name not be revealed, the Complainant shall be informed that the process of investigation and determination is considered to be a confidential process, to the extent allowed by law, but that anonymity of the complainant cannot be guaranteed. The inability to reveal the name of a complainant or facts that are likely to reveal the identity of the complainant can severely limit the ability of the District/College to respond. Persons accused of wrongdoing have a right to present their side of the matter and the District may be required to reveal the complainant's name or facts that are likely to disclose the complainant's identity as part of the investigative process. The District/College shall further inform the complainant of its obligation to investigate a complaint once it is formally notified of the complaint.

*Foothill-De Anza Community College District
Administrative Procedures*

Complainants and witnesses must understand the possibility that they may be charged with allegations of defamation if they circulate the charges outside of the District's process. In general, persons who are participating in a District investigative or disciplinary process that is related to a charge of discrimination are protected from tort claims such as defamation. However, persons who make allegations outside of these processes or who discuss their claims with persons outside of the process may expose themselves to tort charges.

Respondents have the obligation to preserve confidentiality but also the right to gather evidence from others who may have first-hand knowledge of circumstances and events related to the complaint.

In any case, complainant, witnesses and respondents shall not interfere with the District's/College's obligation to conduct an investigation.

IX. Investigation Upon Filing a Formal Written Complaint

Once a complaint is submitted on the required form(s) and in accordance with the criteria prescribed above, and is signed by the complainant, the complaint is considered to be formal and the formal complaint procedures will be followed.

A. Timeline and Extension to Complete the Investigation

Within ninety (90) days of receiving a complaint of unlawful harassment or discrimination filed under Title 5, Sections 59300 et seq., the District or College will complete its investigation and the District will forward the appropriate notices to the State Chancellor's Office, the Complainant and the Respondent.

If for reasons beyond its control, the District is unable to comply with the 90-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 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 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 all other timelines are automatically extended by an equal amount.

B. Notice to the State Chancellor's Office

Once a formal complaint is properly filed as described above a copy of the complaint shall be immediately forwarded to the State Chancellor's office.

C. Notice to the Complainant

Once a formal complaint is properly filed as described above, the District Officer shall:

- a. Notify the complainant that the complaint has been received.
- b. Provide the complainant with a copy of the District policy and procedure concerning unlawful harassment and discrimination and inform the complainant of her/his rights under any relevant complaint procedure, policy or collective bargaining agreement.
- c. Advise the complainant of his/her right of legal protection against retaliation for filing a complaint of unlawful harassment or discrimination.
- d. Advise the complainant of both the limits and obligations of confidentiality and anonymity within the constraints of the investigative process.
- e. Advise the complainant that he/she may file a complaint with the following where the complaint is within the jurisdiction of these agencies:
 - If non-employment related, with the Office for Civil Rights/San Francisco, U.S. Department of Education, in accordance with procedures available via the website at www.de.gov/ocr,
 - If employment related, with: 1) the Department of Fair Employment and Housing (DFEH), in accordance with procedures available via the website at www.dfeh.ca.gov; and/or 2) the U.S. Equal Employment Opportunity Commission (EEOC), in accordance with procedures available via the website at www.eeoc.gov.

Notice to the complainant shall occur as soon as possible and appropriate within the circumstances, normally within five (5) working days.

D. Notice to Respondent

Once a formal complaint is properly filed as described above, the District Officer shall:

- a. Notify the respondent(s) that a complaint has been filed.
- b. Provide the respondent(s) with a copy of the complaint and a copy of the District policy and procedure concerning unlawful harassment and discrimination.
- c. Advise the respondent that an assessment of the accuracy of the allegations has not yet been made.
- d. Advise the respondent that the complaint will be investigated and that s/he will be provided an opportunity to present her/his side of the matter and respond to each allegation.

- e. Advise the respondent that s/he has the right to have a representative present during the investigation.
- f. Advise the respondent that any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.
- g. Advise the respondent of both the limits and obligations of confidentiality and anonymity within the constraints of the investigation.

Notice to the respondent shall occur as soon as possible and appropriate within the circumstances, normally within five (5) working days.

E. Investigation Assignment

As soon as possible, usually within three (3) working days upon receipt of a complaint filed in accordance with the regulations, an investigator shall be assigned to investigate the complaint. The investigator may be a staff person, where appropriate, or an outside person or organization under contract with the District to perform such services.

In the event of a Student-to-Student complaint, the investigation will be assigned to the Campus Coordinator who shall assign an investigator and ensure an investigation is completed in accordance with these procedures.

F. The Investigator's Responsibility

The investigator shall, as soon as possible, usually within ten (10) working days of being assigned to investigate the complaint:

- 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.

As soon as possible, usually 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 identify witnesses and may present documents in support of their positions. The parties may present written and oral evidence. The proceedings may be recorded on audio tape or such other method (such as stenographic record) as mutually agreed upon by the formal process investigator and the interviewee.

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:

- Contact the complainant and respondent separately to give an overview of the steps taken during the investigation and to request additional information.
- Ask the complainant and respondent for the names of any other persons the investigator should attempt to speak with or if there is any thing else he/she would like for the investigator to review before finalizing the report.
- Prepare a written report setting forth the results of the investigation. 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, the respondent and any witnesses identified by the complainant and respondent;
 - c. An analysis of any relevant data or other evidence collected during the course of the investigation; and
 - d. Any other information deemed appropriate.

X. Administrative Determination

A.1 Administrative Determination — *Resolving Employee-to-Employee, Student-to-Employee or Student-to-District Complaints*

After completion of the investigation, the “Determination Panel” shall review the investigative report, and make a specific finding as to whether there is probable cause to believe that harassment or discrimination occurred with respect to each allegation in the complaint, and recommend to the administration appropriate action, including discipline, if any, to resolve the complaint and prevent similar problems from occurring in the future. The Panel, at its discretion, may invite the investigator to meet with the Panel, to present information considered as part of the investigation report and to answer questions prior to making its determination.

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.

Upon conclusion of its consideration of the information presented, the Panel shall prepare a report of its findings.

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.

A.2 Administrative Determination — *Resolving Student-to-Student Complaints*

The college shall, in accordance with its student Due Process Procedures review the investigation report and making a specific finding as to whether there is probable cause to believe that harassment or discrimination occurred with respect to each allegation in the complaint. The 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 Due Process Procedures shall be invoked and the respondent shall have all the rights offered to him or her pursuant to the Due Process Procedures. If the finding is that 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.

- At the conclusion of the Administrative Determination – the College shall forward to the Vice Chancellor for Human Resources and Equal Opportunity:
 - a. A copy of the investigative report and all corresponding materials and documents prepared or reviewed as part of the investigation;
 - b. A copy of the determination report and recommendation, and all corresponding materials used to arrive at the determination and recommendation;
 - c. Copies of all correspondence;
 - d. Copies of all corrective or disciplinary action notices.

XI. Final Notices

In any case **not** involving employment discrimination the District Officer will forward:

- To the State Chancellor:
 - a. A copy of the investigative report; and
 - b. A copy of the written notice to the complaint as set forth below.
- To the Complainant:
 - a. A copy or summary of the investigative report; and
 - b. Written notice setting forth the following:
 1. The decision of the Determination Panel as to whether there is probable cause to believe harassment or 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.

*Foothill-De Anza Community College District
Administrative Procedures*

- To the respondent:
 - a. A copy or summary of the investigative report.

In any case involving employment discrimination, within 90 days of receiving a complaint, the District shall complete its investigation and forward:

- To the State Chancellor:
 - a. A copy of the investigative report; and
 - b. A copy of the written notice to the Complainant as set forth below.
- To the Complainant:
 - a. A copy or summary of the report; and
 - b. Written notice setting forth all the following to the complainant:
 1. The decision of the Determination Panel as to whether there is probably 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 file a complaint with the Department of Fair Employment and Housing.
- To the Respondent:
 - a. A copy or summary of the investigation report;
 - b. A copy of the Determination Panel's report;
 - c. Notice of the Respondent's right to submit a written response to the Administrative Determination in accordance with XII Respondent Right to Respond.

XII. Respondent Right 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. The written response shall be included in the investigation file and shall be included in the information provided to the Board should the complainant file an appeal.

If disciplinary action is taken, the respondent may be entitled to protections provided by the Education Code, the Government Code and/or an applicable collective bargaining agreement.

XIII. Complainant Right 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:

A. 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 notice of the administrative determination. Complainants must submit all appeals in writing.

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.

In any case not involving employment discrimination, the District shall forward:

- To the complainant, with a copy to the State Chancellor:
 - a. A copy of the final decision rendered by the District Board of Trustees, which shall include the complainant's right to appeal the Board's decision to the State Chancellor.

In any case involving employment discrimination, the District shall forward:

- To the complainant:
 - a. A copy of the final decision rendered by the District Board of Trustees, which shall include the complainant's right to file a complaint with the Department of Fair Employment and Housing (DFEH).

B. Second Level of Appeal

In any case not involving employment discrimination, the complainant has the right to file an appeal with the California Community College Chancellor's Office within 30 days from 1) the date of notice of the Board of Trustees' final District decision; or 2) expiration of the 45-day review period during which the Board of Trustees elected to take no action, thereby affirming the administrative decision. 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.

*Foothill-De Anza Community College District
Administrative Procedures*

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 and timelines as defined by that agency.

Complainants must submit all appeals in writing.

C. Final Notification to the State Chancellor

In any case *not* involving employment discrimination, 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;
- A copy of the complainant's appeal of the District's determination;
- Any other information that the State Chancellor may require.

OR

- Notify the State Chancellor that the complainant has not filed an appeal with the Board of Trustees and that the District has closed its file.

D. Extension of Timeline

If for reasons beyond its control, the District is unable to comply with the 150-day deadline 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 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 will be advised that he or she 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.

XIV. Recordkeeping

All records associated with a formal complaint shall be retained and made available to the State Chancellor upon request for a period of at least three years after closing a case.

XV. Right to Privacy

An individual's right to privacy is protected by the laws of the state, and is deemed an inalienable right under Article I, Section 1 of the California Constitution. Disciplinary actions taken against employees are generally considered confidential. Where an investigation reveals the need for disciplinary action, the complainant may wish to have information about the disciplinary actions the District took. However, the privacy rights of the persons involved often prevent the District from providing such information. In student disciplinary actions for sexual assault/physical abuse charges, Education Code section 76234 provides that the victim shall be informed of the disciplinary actions but that the victim must keep the information confidential.

References

California Code of Regulations, Title 5, Section 59300 et seq.

California Education Code, Title 1, Section 231.5

California Code of Regulations, Title 3, Sections 66250 et seq.

California Government Code, Title 2, Division 3, Part 2.8

Reviewed by Chancellor's Advisory Council 10/16/06

Amendments reviewed by Chancellor's Advisory Council 5/15/09

Approved by Board 8/31/09