

DISCRIMINATION AND HARASSMENT INVESTIGATIONS

(Administrative Procedure 3435)

Filing a Timely Complaint. Since failure to report harassment and discrimination impedes the Feather River Community College District's (the District) ability to stop the behavior, the District strongly encourages employees and students who believe they are being harassed or discriminated against, to file a complaint. The District also strongly encourages the filing of such complaints within 30 days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the District's ability to gather relevant evidence, complete an investigation and remediate, if necessary.

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

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

Oversight of Complaint Procedure. The Director of Human Resources is the "responsible District officer" charged with receiving complaints of discrimination or harassment, and coordinating their investigation. The actual investigation of complaints may be assigned by the Superintendent/President to other staff or to outside persons or organizations under contract with the District. For example, this shall occur whenever the Director of Human Resources is named in the complaint or implicated by the allegations in the complaint.

Where to File a Complaint. A student, employee or other person associated with the District who believes he or she has been discriminated against or harassed in violation of these policy and procedures may make a complaint orally or in writing, within one year of the date of the alleged harassment or discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the complaint.

If a complainant decides to file a formal written unlawful discrimination complaint against the District or an unlawful harassment complaint against the District or an individual, he or she must file the complaint on a form prescribed by the CCC Chancellor's Office. These approved forms are available from the Director of Human Resources and at the following URL:

www.cccco.edu/divisions/legal/discrimination/discrimination.htm

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

- the Director of Human Resources;
- the Superintendent/President; and/or
- the Chancellor of the California Community Colleges.

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

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

Any District employee who receives an oral or written harassment or discrimination complaint shall notify the Director of Human Resources immediately.

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

- Undertake efforts to informally resolve the charges. (Informal resolution, if agreed to by the complainant, may include but not be limited to mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling and/or training, etc.);
- Advise the complainant that he or she need not participate in an informal resolution of the complaint, as described above;
- Notify the person bringing the charges of his or her right to file a complaint under Title V section 59328;
- Advise the complainant that he or she may file his or her non-employment based complaint with the Office of Civil Rights of the U.S. Department of Education (OCR.) The Director of Human Resources shall also notify the Chancellor of California Community Colleges of the complaint.
- Authorize the investigation of the complaint, and supervise and/or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. Where the parties of a complaint opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. In the case of a formal complaint, the investigation will include interviews with the complainant, the accused, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.
- Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.
- Set forth the results of the investigation in a written report. The written report shall include a description of the circumstances giving rise to the complaint, a summary of the testimony of each witness, an analysis of any relevant data or other evidence collected during the investigation, a specific finding as to whether harassment or discrimination did or did not occur with respect to each allegation in the complaint, and any other appropriate information.
- Provide the complainant and accused with a summary of the investigative report within ninety (90) calendar days from the date the District received the complaint. The complainant and accused shall also be provided with a written notice setting forth the determination of the Superintendent/President or designee as to whether harassment or other discriminatory conduct did or did not occur with respect to each allegation in the complaint; a description of action taken, if any, to prevent similar problems from occurring in the future; the proposed resolution of the complaint; and notice of the parties' rights to appeal to the District's Board of Trustees and the state Chancellor's Office. The results of the investigation and the determination as to whether harassment or other discriminatory conduct occurred shall also be reported to the accused, and the appropriate academic or administrative official(s). Reports to the complainant shall be prepared so as not to violate any applicable privacy rights of the accused, the complainant or other witnesses.

Defective Complaint. When the District receives a complaint which it finds does not meet the requirements of these procedures, the Director of Human Resources or designee shall notify the complainant and shall specify in what requirement the complaint is defective.

Investigation of the Complaint. The District shall promptly investigate every complaint of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. As set forth above, where the complainant opts for an informal resolution, the Director of Human Resources may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a “need-to-know-basis” is essential to a thorough investigation.

Investigation Steps. The District will fairly and objectively investigate harassment and discrimination complaints utilizing the following steps: interviewing the complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses, if any; reviewing any and all relevant documents or other tangible evidence; reminding all individuals interviewed of the District’s no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reaching a conclusion as to the allegations and any appropriate disciplinary and remedial action; and seeing that all recommended action is carried out in a timely fashion.

Timeline for Completion. The District will undertake its investigation promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report within ninety (90) calendar days of the District receiving the complaint.

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

Discipline and Corrective Action

If harassment, discrimination and/or retaliation occurred in violation of the policy or procedure, the District shall take disciplinary action against the accused and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense. If discipline is imposed, the nature of the discipline will not be communicated to the complainant, if the accused person’s right to privacy outweighs the complainant’s need to know what actions have been taken to prevent similar problems from occurring in the future.

Disciplinary actions against faculty, staff and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.

The District shall also take reasonable steps to protect the complainant from further harassment, and/or discrimination, and to protect the complainant and witnesses from retaliation as a result of communicating the complaint and/or assisting in the investigation. The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the extent possible without impeding the District’s ability to investigate and respond effectively to the complaint.

Appeals for employment related discrimination claims:

If the complainant is not satisfied with the results of the administrative determination, he or she may, within fifteen (15) days, submit a written appeal to the Board of Trustees. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within forty-five (45) days after receiving the appeal. If the Board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final decision of the District in the matter. In any case involving employment discrimination, the complainant shall also be notified of his or her right to file a complaint with the Department of Fair Employment and Housing (DFEH), where the case is within the jurisdiction of that agency.

Appeals for non-employment related discrimination claims:

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

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

The complainant shall have the right to file a written appeal with the state Chancellor's Office within thirty days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Section 59350 of Title 5 of the California Code of Regulations.

In any case involving employment discrimination, including workplace harassment, the complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the Department of Fair Employment and Housing. In such cases, the complainant may also file a petition for review with the state Chancellor's Office within thirty days after the governing board issues the final decision or permits the administrative decision to become final.

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

Dissemination of Policy and Procedures

District Policy and Procedures related to harassment and discrimination will be provided to all students, faculty members, members of the administrative staff and members of the support staff, and will be posted on campus.

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

Training

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

The training and education required by this procedure shall follow the guidelines from Title 2, section 7288.0 regarding Sexual Harassment Training and Education. In general, the content of the training shall include but is not limited to:

- (1) A definition of unlawful sexual harassment under FEHA and Title VII. In addition to a definition of sexual harassment, an employer may provide a definition of and train about other forms of harassment covered by the FEHA, as specified in Government Code section 12940(j), and discuss how harassment of an employee can cover more than one basis.
- (2) FEHA and Title VII statutory provisions and case law principles concerning the prohibition against and the prevention of unlawful sexual harassment, discrimination and retaliation in employment.
- (3) The types of conduct that constitute sexual harassment.
- (4) Remedies available for sexual harassment.
- (5) Strategies to prevent sexual harassment in the workplace.
- (6) "Practical examples," such as factual scenarios taken from case law, news and media accounts, hypotheticals based upon workplace situations and other sources which illustrate sexual harassment, discrimination and retaliation using training modalities such as role plays, case studies and group discussions.
- (7) The limited confidentiality of the complaint process.
- (8) Resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment.
- (9) The employer's obligation to conduct an effective workplace investigation of a harassment complaint.
- (10) Training on what to do if the supervisor is personally accused of harassment.
- (11) The essential elements of an anti-harassment policy and how to utilize it if a harassment complaint is filed. The employer shall give each supervisor a copy of its anti-harassment policy and require each supervisor to read and to acknowledge receipt of that policy.

The training shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. The trainers or educators shall be qualified according to Section 7288.0 of Title 2 of the California Code of Regulations.

Training of all staff will be conducted. Training for academic staff should emphasize environmental harassment in the classroom.

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

A training program or informational services will be made available to all students at least once annually. The student training or informational services shall include an explanation of the policy, how it works, and how to file a complaint.

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

Reference: Education Code Section 66281.5; Government Code 12950.1; California Code of Regulations, Title 2, Section 7288.0 and Title 5, Sections 59300 et seq.; 34 C.F.R. Section 106.8(b)

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