CHAPTER:  Board of Trustees

Procedure on Harassment

Purpose:

The MiraCosta Community College District is committed to providing an academic and work environment free of harassment. This Policy defines harassment, and sets forth a procedure for the investigation and resolution of complaints of such harassment by or against any faculty member, staff member or student within the community college district.

Policy:

Harassment consists of virtually any form or combination of offensive or abusive verbal, physical, visual or environmental conduct. Discriminatory harassment is harassment based on actual or perceived race, religious creed, gender, national origin, ancestry, disability, medical condition, marital status, age or sexual orientation. Discriminatory harassment violates state and federal laws, as well as this Policy, and will not be tolerated. It is also illegal to retaliate against any individual for filing a complaint of harassment or for participating in a harassment investigation, and retaliation constitutes a violation of this Policy.

This Policy applies to all aspects of the academic environment, including but not limited to classroom conditions, grades, academic standing, employment opportunities, scholarships, recommendations, disciplinary actions, and participation in any community college activity. In addition, this Policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities and compensation.

Faculty and staff members who violate this Policy may be subject to disciplinary action up to and including termination. Students who violate this Policy may be subject to disciplinary measures up to and including expulsion.

Definition:

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature when:

1. submission to the conduct is made a term or condition of an individual's employment, academic status, or progress;

2. submission to, or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual;
3. 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; or

4. submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the community college.

This definition encompasses two kinds of sexual harassment:

1. "Quid pro quo" sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.

2. "Hostile environment" sexual harassment occurs when unwelcome conduct based on sex is sufficiently severe or pervasive so as to alter the conditions of an individual's learning or work environment, unreasonably interfere with an individual's academic or work performance, or create an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile.

Sexual harassment can consist of virtually any form or combination of verbal, physical, visual or environmental conduct. It need not be explicit, nor even specifically directed at the victim. Sexually harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the victim would perceive the conduct as harassment based on sex.

Examples:

Sexual harassment includes, but is not limited to the following misconduct:

1. **Verbal**: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on sex. 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 or propositions; demands for sexual favors; verbal abuse, threats or intimidation of a sexual nature; or sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular gender.

2. **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, leering, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures.

3. **Visual or Written**: The display or circulation of offensive sexually-oriented visual or written material. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.
4. **Environmental**: An academic or work environment that is permeated with sexually-oriented talk, innuendo, insults or abuse not relevant to the subject matter of the class. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom. An environment may be hostile if unwelcome sexual behavior is directed specifically at an individual or if the individual merely witnesses unlawful harassment in his or her immediate surroundings. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening and whether the conduct unreasonably interferes with an individual’s learning or work.

Romantic or sexual relationships between supervisors and employees, or between faculty or staff members and students are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the faculty or staff member must evaluate the student’s work or make academic decisions affecting the student. The relationship may create an appearance of impropriety and lead to charges of favoritism by other students. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing. By definition, sexual harassment is not within the course and scope of an individual’s employment with the community college district.

**Complaint Procedure:**

1. The community college district shall identify to each faculty member, staff member, student, the general public, and the Chancellor of the California Community Colleges, a single person as the “responsible district officer” charged with receiving complaints of sexual harassment and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district, and this shall occur whenever the designated officer is named in the complaint or implicated by the allegations in the complaint.

2. A student who believes he or she has been sexually harassed may make a complaint orally or in writing, within one year of the date of the alleged harassment or the date on which the complainant knew or should have known of the facts underlying the complaint, to any of the following:

   a. the responsible district officer (the Director of Human Resources);
   b. any academic advisor;
   c. the Vice President of Student Services;
   d. the President/Superintendent;
   e. the Chancellor of the California Community Colleges.

3. A faculty or staff member who believes he or she has been sexually harassed may make a complaint orally or in writing to any of the following:

   a. the responsible district officer (the Director of Human Resources);
   b. any community college district supervisor, administrator, department head or chair;
c. the President/Superintendent;
d. the Chancellor of the California Community Colleges.

4. Any community college district employee who receives a harassment complaint shall notify the responsible district officer immediately.

5. Upon receiving notification of a harassment complaint, the responsible district officer shall:

a. Advise the complainant that he or she need not participate in an informal resolution of the complaint, and that he or she may file a complaint with the Office of Civil Rights of the U.S. Department of Education. The responsible district officer shall also notify the Chancellor of California Community Colleges of the complaint.
b. Authorize the investigation of the complaint, and supervise and/or conduct a thorough, prompt and impartial investigation of the 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.
c. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment 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.
d. 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 discrimination did or did not occur with respect to each allegation in the complaint, and any other appropriate information.
e. Provide the complainant with a copy or summary of the investigative report within ninety (90) days from the date the community college district received the complaint. The complainant shall also be provided with a written notice setting forth the determination of the chief executive officer or his or her designee as to whether sexual harassment 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 complainant’s right to appeal to the district’s governing board and the Chancellor of the California Community Colleges. The results of the investigation and the determination as to whether harassment occurred shall also be reported to the alleged harasser, and any appropriate academic or administrative official.
f. If sexual harassment occurred, the community college district shall take remedial or disciplinary action against the harasser. 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. Disciplinary actions against faculty, staff and students will conform to all relevant statutes, regulations, and personnel policies and procedures.
The community college district shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties.

g. 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 community college district governing board. The governing board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The governing board shall issue a final district decision in the matter within 45 days after receiving the appeal. A copy of the final district decision rendered by the governing board shall be forwarded to the complainant and to the Chancellor. The complainant shall also be notified of his or her right to appeal this decision. If the governing board does not act within 45 days the administrative determination shall be deemed approved and shall become the final decision of the community college district in the matter.

h. The complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days after the governing board issues the final district decision or permits 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, the complainant may, at any time before or after the issuance of the final decision of the community college 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 Chancellor within thirty (30) days after the governing board issues the final decision or permits the administrative decision to become final.

i. Within 150 days of receiving a complaint, the community college district shall forward to the Chancellor 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 governing 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 community college 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 (10) days prior to the expiration of the deadline.
CHAPTER: Board of Trustees

Unlawful Discrimination

Handling Complaints of Unlawful Discrimination1

a. Introduction and Scope  (See Policy ID-4)

These are the written procedures for filing and processing complaints of unlawful discrimination at MiraCosta Community College District. The procedures incorporate the legal principles contained in nondiscrimination provisions of the California Code of Regulations, Title 5, sections 59300 et seq. as well as other state and federal substantive and procedural requirements.

A copy of these written policies on unlawful discrimination will be displayed in a prominent location in the Human Resources department or other area(s) where notices regarding the institution’s rules, regulations, procedures, and standards of conduct are posted.


b. Definitions

Definitions applicable to nondiscrimination policies are as follows:

- "Appeal" means a request by a complainant made in writing to the MiraCosta Community College District governing board pursuant to Title 5, section 59338, and/or to the State Chancellor’s Office pursuant to Title 5, section 59339, to review the administrative determination of the District regarding a complaint of discrimination.
- “Association with a person or group with these actual or perceived characteristics” includes advocacy for or identification with people who have one or more characteristics of a protected category listed under “Unlawful Discrimination Policy” and title 5, section 59300, participation in a group associated with persons having such characteristics, or use of a facility associated with use by such persons.
- "Complaint" means a written and signed statement meeting the requirements of Title 5, section 59328 that alleges unlawful discrimination in violation of the nondiscrimination regulations adopted by the Board of Governors of the California Community Colleges, as set forth at Title 5, section 59300 et seq.
- "Days" means calendar days.
- “Gender” 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.
"Mental disability" includes, but is not limited to, all of the following:

1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities that limits a major life activity. For purposes of this section:
   a) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
   b) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.
   c) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

2) Any other mental or psychological disorder or condition not described in paragraph 1) that requires specialized supportive services.

3) Having a record or history of a mental or psychological disorder or condition described in paragraph 1) or 2), which is known to the District.

4) Being regarded or treated by the District as having, or having had, any mental condition that makes achievement of a major life activity difficult.

5) 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 1) or 2).

"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.¹

"Physical disability" includes, but is not limited to, all of the following:

1) 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.
   b) Limits a major life activity. For purposes of this section:
      (i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
      (ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.
      (iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

2) Any other health impairment not described in paragraph 1) that requires specialized supportive services.

3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph 1) or 2), which is known to the District.
4) Being regarded or treated by the District as having, or having had, any physical condition that makes achievement of a major life activity difficult.
5) 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 1) or 2).
6) "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.2

- “District” means the MiraCosta Community College District or any District program or activity that is funded directly by the state or receives financial assistance from the state. This includes the District Personnel Commission and any other organization associated with the District or its college(s) that receives state funding or financial assistance through the District.
- “Responsible District Officer” means the officer identified by the District to the State Chancellor’s Office as the person responsible for receiving complaints filed pursuant to Title 5, section 59328, and coordinating their investigation. At MiraCosta Community College District this is the Human Resources Director.
- “Sexual harassment” is unlawful discrimination in the form 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, and includes but is not limited to:
  1) Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. (Examples of possible sexual harassment that appear in a written form include, but are not limited to: suggestive or obscene letters, notes, invitations. Examples of possible visual sexual harassment include, but are not limited to: leering, gestures, display of sexually aggressive objects or pictures, cartoons, or posters.)
  2) Continuing to express sexual interest after being informed that the interest is unwelcome.
  3) Making reprisals, threats of reprisal, or implied threats of reprisal following a rebuff of harassing behavior. The following are examples of conduct in an academic environment that might be found to be sexual harassment: 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.
  4) Engaging in explicit or implicit coercive sexual behavior within the work environment which is used to control, influence, or affect the employee’s career, salary, and/or work environment.
  5) Engaging in explicit or implicit coercive sexual behavior within the educational environment that is used to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student.
  6) 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.
  7) Awarding educational or employment benefits, such as grades or duties or shifts, recommendations, reclassifications, etc., to any student or employee with whom the decisionmaker has a sexual relationship and denying such benefits to other students or employees.
• “Sexual orientation” means heterosexuality, homosexuality, or bisexuality.
• “Unlawful discrimination” means discrimination based on a category protected under Title 5, section 59300, including sexual harassment and retaliation.

1 If the Americans with Disabilities Act of 1990 definitions would result in broader protection of the civil rights of individuals with a mental or physical disability, or would include any medical condition not included within these definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of the definitions in Government Code section 12926 and should be included in district policy. (Gov. Code, § 12926(l).)

2 Ibid.


Notice, Training, and Education for Students and Employees

The MiraCosta Community College District’s responsible officer shall make arrangements for or provide training to employees and students on the District’s unlawful discrimination policy and procedures. Faculty members, members of the administrative staff, and members of the support staff will be provided with a copy of the District’s written policy on unlawful discrimination at the beginning of the first quarter or semester of the college year after the policy is adopted.

All District employees will receive this training and a copy of the unlawful discrimination policies and procedures during the first year of their employment. Because of their special responsibilities under the law, supervisors will undergo mandatory training within six months of assuming a supervisory position and annually thereafter. 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.

In addition, a copy of the District’s written policy on unlawful discrimination, as it pertains to students, will be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.


Retaliation

It is unlawful for anyone to retaliate against someone who files an unlawful discrimination complaint, who refers a matter for investigation or complaint, who participates in an investigation of a complaint, who represents or serves as an advocate for an alleged victim or alleged offender, or who otherwise furthers the principles of this unlawful discrimination policy.

Academic Freedom

The MiraCosta Community College District Governing Board reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow any form of unlawful discrimination. It is recognized that an essential function of education is a probing of opinions and an exploration of ideas that may cause some students discomfort. It is further recognized that academic freedom insures 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.


Responsible District Officer

The MiraCosta Community College District has identified the Human Resources Director to the State Chancellor’s Office and to the public as the single District officer responsible for receiving all unlawful discrimination complaints filed pursuant to Title 5, section 59328, and for coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the District. Such delegation procedures will be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint. Administrators, faculty members, other District employees, and students shall direct all complaints of unlawful discrimination to the responsible District officer.

3 The Office for Civil Rights (OCR) advises educational institutions to give one official responsibility for oversight and coordination of all sexual harassment complaints to insure consistent practices and standards in handling complaints as well as coordination of record keeping. This will help ensure that the educational institution can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them. The State Chancellor's Office advises that having the responsible district officer, named pursuant to Title 5, section 59324, coordinate both sexual harassment and other unlawful discrimination complaints satisfies OCR’s instruction on this subject.


Informal/Formal Complaint Procedure

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

1) Undertake efforts to informally resolve the charges;
2) Advise the complainant that he or she need not participate in informal resolution;
3) Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for doing so;
4) Assure the complainant that he or she will not be required to confront or work out problems with the person accused of unlawful discrimination;

5) 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) where such a complaint is within that agency’s jurisdiction.

6) If the complaint is employment-related, the complainant should also be advised that he or she may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where such a complaint is within that agency’s jurisdiction.

Before filing a formal, written complaint, the complainant should attempt to resolve the problem by an informal conference with the parties involved. This informal attempt must be completed within thirty (30) days. Students should contact the Vice President, Student Services, in order to utilize the student due process procedure. Employees and job applicants should contact the Human Resources Director. The Vice President, Student Services and the Human Resources Director will either serve as mediators in this informal process, or will appoint someone to serve as the District’s mediator.

Efforts at informal resolution need not include any investigation unless the responsible District officer determines that an investigation is warranted by the seriousness of the charges. Selecting an informal resolution does not extend the time limitations for filing a formal complaint. Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant to Title 5, section 59334, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. Even if the complainant does dismiss the complaint, the responsible district officer may require the investigation to continue if he or she determines that the allegations are serious enough to warrant an investigation. Any efforts at informal resolution after the filing of a written complaint will not exceed the 90-day period for rendering the administrative determination pursuant to Title 5, section 59336.

In employment-related cases, if the complainant files with the Department of Fair Employment and Housing, a copy of that filing will be sent to the State Chancellor’s Office requesting a determination of whether a further investigation under Title 5 is required. Unless the State Chancellor’s Office determines that a separate investigation is required, the District will discontinue its investigation under Title 5 and the matter will be resolved through the Department of Fair Employment and Housing.

The District will allow for representation where required by law and may allow for representation for the accused and complainant in other circumstances on a case by case basis.

The purpose of the informal resolution process is to allow an individual who believes she/he has been unlawfully discriminated against or sexually harassed to resolve the issue through a mediation process rather than the formal complaint process. Typically, the informal process will be invoked when there is a simple misunderstanding or the complainant does not wish to file a formal complaint. Resolution of an informal complaint may require nothing more than a clarification of the misunderstanding or an apology from the respondent and an assurance that the offending behavior will cease. However, the district is responsible for maintaining a safe and discrimination free educational environment and serious allegations may need to be investigated even if the complaining party considers the matter resolved. In an informal process the district officer shall advise the complainant of his or her rights and responsibilities under both the formal and informal processes. If the complainant declares his or her preference for the informal process, the responsible district officer shall present the complainant with a
document that describes the informal/formal process that contains the basics of complainant’s allegations of unlawful discrimination. This document will clearly indicate that the complainant opted for the informal resolution process and should be signed and dated by the complainant. The informal resolution process will not be made a predicate to the process and investigation of a formal complaint. If a formal complaint is filed, an investigation must be completed within the time required unless it is voluntarily rescinded by a complainant as a result of a successful informal resolution.


Filing of Formal Written Complaint

If a complainant decides to file a formal written unlawful discrimination complaint against the District, he or she must file the complaint on a form prescribed by the State Chancellor. These approved forms are available from the District and also at the State Chancellor’s website, as follows:


The completed form must be filed with the District representative or mailed directly to the State Chancellor’s Office of the California Community Colleges.

Once a complaint is filed, the individual(s) accused of engaging in prohibited discriminatory conduct should be advised of that filing and the general nature of the complaint. This should occur as soon as possible and appropriate under the circumstances. The District will also advise the accused that an assessment of the accuracy of the allegations has not yet been made, that the complaint will be investigated, that the accused will be provided an opportunity to present his/her side of the matter, and that any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.


Threshold Requirements Prior to Investigation of a Formal Written Complaint

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

- The complaint must be filed on a form prescribed by the State Chancellor’s Office.
- The complaint must allege unlawful discrimination prohibited under Title 5, section 59300.
- The complaint must be filed by one who alleges that he or she has personally suffered unlawful discrimination, or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administrator.
- In any complaint not involving employment, the complaint must be 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 specific incident or incidents of alleged unlawful discrimination.
- In any complaint alleging discrimination in employment, the complaint shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period will be extended by no more than 90 days following the expiration of that 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of 180 days.
Additional information about this initial review of complaints can be found in the Guidelines for Processing Formal Title 5 Unlawful Discrimination Complaints prepared by the State Chancellor’s Office.\(^5\)

\(^5\) The Guidelines for Processing Formal Title 5 Unlawful Discrimination Complaints is a procedural aid for processing formal unlawful discrimination complaints. Authority: Cal. Code Regs., tit. 5, § 59328.

**Defective Complaints**

If a complaint is found to be defective it will be immediately returned to the complainant with a complete explanation of why an investigation will not be initiated under California Code of Regulations, title 5, section 59300 et seq. The notice will inform the complainant that the complaint does not meet the requirements of section 59328, and shall specify in what requirement the complaint is defective. A copy of the notice to the claimant will also be sent to the State Chancellor’s Office.

Authority: Cal. Code Regs., tit. 5, § 59328, 59332.

**Notice to State Chancellor or District**

A copy of all complaints filed in accordance with the Title 5 regulations will be forwarded to the State Chancellor’s Office immediately upon receipt. Similarly, when the State Chancellor’s Office receives a complaint a copy will be forwarded to the District.


**Confidentiality of the Process**

Investigative processes can best be conducted within a confidential climate. Therefore, the District does not reveal information about such matters except as necessary to fulfill its legal obligations.

Potential complainants are sometimes reluctant to pursue a complaint if their names will be revealed. 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 to respond. Complainants must also recognize that persons who are accused of wrongdoing have a right to present their side of the matter, and this right may be jeopardized if the District is prohibited from revealing the name of the complainant or facts that are likely to disclose the identity of the complainant.

If a complainant insists that his or her name not be revealed, the responsible officer should take all reasonable steps to investigate and respond to the complaint consistent with the complainant’s request as long as doing so does not jeopardize the rights of other students or employees.

It is also important that complainants and witnesses 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. Complainants, witnesses, and those accused of discrimination will all be asked to sign a confidentiality acknowledgement statement.

Where an investigation reveals the need for disciplinary action, the complainant may wish to have information about what 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 action, but that the victim must keep the information confidential. Disciplinary actions taken against employees are generally considered confidential.6

Complainants must trust the District to take appropriate action and must understand that the District is generally not at liberty to discuss personnel or student matters, particularly disciplinary matters. In some disciplinary cases, the complainant may be required to testify at a hearing, and would therefore be aware of the proposed disciplinary action.


**Administrative Determination**

In any case not involving employment discrimination, within 90 days of receiving an unlawful discrimination complaint filed under Title 5, sections 59300 et seq., the responsible District officer will complete the investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary7 of the report to the complainant, and written notice setting forth all the following to both the complainant and the State Chancellor:

a) the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
b) a description of actions taken, if any, to prevent similar problems from occurring in the future;5
c) the proposed resolution of the complaint; and
d) the complainant’s right to appeal to the District governing board and the State Chancellor.

The MiraCosta Community College District recognizes the importance of and is therefore committed to completing investigations and resolving complaints as quickly as possible, consistent with the requirements for a thorough investigation.

7 It is within the District’s discretion to choose not to include the entire investigative report; however, a summary of an investigative report should, at the very least, include all of the following:
a) a description of the circumstances giving rise to the complaint;
b) a specific finding as to whether there is probably cause to believe that discrimination occurred with respect to each allegation in the complaint:
c) a summary and analysis of the relevant evidence (documents, data, or witness testimony) on which the determination rests; and
d) any other information deemed appropriate by the district.
If it is determined that discrimination did occur, possible remedies to prevent similar problems from occurring in the future include all the standard District disciplinary actions for students and employees, ranging from undocumented reprimand to termination or expulsion. If formal disciplinary action is inappropriate, other possible remedies include training in the pertinent area(s) of unlawful discrimination, apology, and restricting or forbidding contact between the perpetrator and victim.

In any case involving employment discrimination, within 90 days of receiving an unlawful discrimination complaint filed under title 5, sections 59300 et seq., the responsible District officer will complete the investigation and forward a copy or summary of the report to the complainant, and written notice setting forth all the following to the complainant:

a) the determination of the chief executive officer or his/her designee as to whether there is probably cause to believe discrimination occurred with respect to each allegation in the complaint:

b) a description of actions taken, if any, to prevent similar problems from occurring in the future (see footnote 8)

c) the proposed resolution of the complaint; and

d) the complainant’s right to appeal to the District governing board and the Department of Fair Employment and Housing.

The District will keep these documents on file for a period of at least three years after closing the case, and make them available to the State Chancellor upon request.

MiraCosta Community College recognizes the importance of and is therefore committed to completing investigations and resolving complaints as quickly as possible, consistent with the requirements for a thorough investigation.


Complainant’s Appeal Rights

Complainants have appeal rights that they may exercise if they are not satisfied with the results of the District’s administrative determination. At the time the administrative determination and summary is mailed to the complainant, the responsible District officer or his/her designee shall notify the complainant of his or her appeal rights as follows:

- First level of appeal: The complainant has the right to file an appeal to the District’s governing board within 15 days from the date of the administrative determination. The District’s governing board will review the original complaint, the investigative report, the administrative determination, and the appeal.

- The District’s governing board will issue a final District decision in the matter within 45 days after receiving the appeal. Alternatively, the District’s governing board may elect to take no action within 45 days, in which case the original decision in the administrative determination will be deemed to be affirmed and shall become the final District decision in the matter. A copy of the final decision rendered by the District’s governing board 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 governing board 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 governing board or
Complainants must submit all appeals in writing.

9 The Department of Fair Employment and Housing (DFEH) has final jurisdiction over employment-related cases. Therefore, the State Chancellor's Office has agreed to accept DFEH decisions and does not accept appeals in employment discrimination cases.


Forward to State Chancellor

In any case not involving employment discrimination, within 150 days of receiving a complaint, the responsible District officer will forward the following to the State Chancellor:

- A copy of the final District decision rendered by the governing board 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 the District sent the complainant.
- Any other information the State Chancellor may require.

The District will keep these documents on file for a period of at least three years after closing the case, and in any case involving employment discrimination, make them available to the State Chancellor upon request.


Extensions

If for reasons beyond its control, the District is unable to comply with the 90-day or 150-day deadlines specified above for submission of materials to the complainant and the State Chancellor's Office, the responsible District officer will file a written request that the State Chancellor grant an extension of the deadline. The request will be submitted no later than 10 days prior to the expiration of the deadlines established by 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 will be advised that he or she may file written objections with the State Chancellor within 5 days of receipt.

The State Chancellor may grant the request unless delay would be prejudicial to the complainant. If an extension of the 90-day deadline is granted by the State Chancellor, the 150-day deadline is automatically extended by an equal amount.

CHAPTER: Board of Trustees

Americans with Disabilities Act Grievance Procedure

Complaints should be addressed to the Director, Risk Manager who has been designated to coordinate Americans with Disabilities Act compliance efforts.

a. A Complaint should be filed in writing or verbally, contain the name and address of the person filing it, and briefly describe the alleged violation of the regulations. Written complaints must be submitted using the form established by the MiraCosta Community College District. Verbal complaints may be dictated and a scribe in the ADA compliance coordinator’s office will record them onto the form.

b. A complaint should be filed within 30 working days after the complainant becomes aware of the alleged violation. Processing of allegations of discrimination which occurred before this grievance procedure was adopted will be considered on a case-by-case basis.

c. As in all MiraCosta Community College District grievance procedures, every attempt will be made to resolve the allegations at the lowest, most informal level. An investigation, as may be appropriate, shall follow the filing of a complaint. The investigation shall be coordinated by the ADA compliance coordinator and conducted by a specialist in the area of concern. These rules contemplate informal but thorough investigations, affording all interested individuals and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

- If the complainant is a student with an academic accommodation issue, an ad hoc committee of the Academic Accommodations Committee will conduct the investigation.

- The committee, to be selected by members of the Academic Accommodations Committee, will be comprised of the discipline matter specialist, a second faculty member who is not a member of the discipline, a representative from DSP&S, and a student.

- The brochure Academic Accommodations for Students with Disabilities describes guidelines for resolving academic accommodation conflicts. It shall be made available in the offices of Human Resources and DSP&S on the Oceanside campus; the Student Activities offices on the Oceanside campus and the San Elijo campus; and the Dean’s office at the Community Learning Center in Oceanside.

d. A written determination as to the validity of the complaint and a description of the resolution, if any, shall be issued by the ADA compliance coordinator and a copy forwarded to the complainant no later than 30 days after its filing.
e. The ADA compliance coordinator shall maintain the files and records of the MiraCosta Community College District relating to the complaints filed.

f. The complainant can request a reconsideration of the case in instances where s/he is dissatisfied with the resolution. The request for reconsideration should be made within 10 days to the ADA compliance coordinator.

g. The right of an individual to a prompt and equitable resolution of the complaint filed hereunder shall not be impaired by the individual’s pursuit of other remedies such as the filing of an ADA complaint with the responsible federal department or agency. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies, although it is strongly suggested that this procedure be used first.

h. These rules shall be construed to protect the substantive rights of interested individuals, to meet appropriate due process standards, and to assure that the District complies with the ADA when implementing regulations.

i. The ADA compliance coordinator shall provide temporary accommodation for the complainant while the investigation is being conducted.