

BP 3430 PROHIBITION OF DISCRIMINATION/SEXUAL HARASSMENT (Policy and Procedures)

Reference:

Education Code Sections 212.5; 44100; 66252; 66281.5; Government Code 12950.1;

Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e. Title 5 Sections 59300 et seq.

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Introduction and Scope

These are the written policies and procedures for filing and processing complaints of discrimination at Santa Barbara Community College District. These policies and 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 discrimination will be displayed on the college website and in a prominent location in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

Authority: 20 U.S.C. § 1681 et seq.; Ed. Code, §§ 66270, 66271.1, 66281.5; Gov. Code, §§ 11135-11139.5; Cal. Code Regs., tit. 5, § 59326. Reference: Cal. Code Regs., tit. 5, §§ 59300 et seq.; 34 C.F.R. § 106.8(b).

Discrimination Policy

The policy of the Santa Barbara Community College District is to provide an educational and employment environment in which no person shall be denied full and equal access to, the benefits of, or be subjected to discrimination, in whole or in part, on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability, 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, in 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 policy of the Santa Barbara Community College District is to provide an educational and employment environment free from unwelcome sexual advances, requests for sexual favors, sexual favoritism, or other verbal or physical conduct or communications constituting sexual harassment.

The policy of the Santa Barbara Community College District is to comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973 in the development, procurement, maintenance, or use of electronic or information technology and respond to and resolve discrimination complaints regarding accessibility. Such complaints will be treated as complaints of discrimination on the basis of disability.

Employees, students, or other persons acting on behalf of the District who engage in discrimination as defined in this policy or by state or federal law may be subject to discipline, up to and including suspension, discharge, expulsion, or termination of contract.

In so providing, the Santa Barbara Community College District hereby implements the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code, §§ 66250 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101).

Authority: Cal. Code Regs., tit. 5, § 59300; Ed. Code §§ 66250 et seq., 66271.1, 66700, and 70901; Gov. Code § 11138. Reference: Ed. Code §§ 66250 et seq. and 72011; Gov. Code, §§ 11135-11139.5; Penal Code §§ 422.6 and 422.55; 20 U.S.C. § 1681; 29 U.S.C. §§ 794; 42 U.S.C. §§ 6101, 12100 et seq. and 2000d; 36 C.F.R. § 1194.

Definitions

Definitions applicable to nondiscrimination policies are as follows:

- “ **Discrimination**” means conduct or decisions inappropriately based on a category protected under title 5, section 59300, including ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability , 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. Discrimination based on sex includes sexual harassment and or discrimination based on gender and retaliation.
- “**Sexual harassment**” is 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, and 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 decision-maker has a sexual relationship and denying such benefits to other students or employees.
- **"Sexual orientation"** means heterosexuality, homosexuality, or bisexuality.
 - **"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 "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.
 - **"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.

- **"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 include 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.
- **"Retaliation"** refers to detrimental action taken against an individual based on the fact that the individual has brought a complaint, has been a witness in a complaint investigation or has associated with a party or witness to a complaint. Retaliation may be a separate basis for discipline.
 - **"District"** means the Santa Barbara 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 any other organization associated with the District or its college(s) that receives state funding or financial assistance through the District.
 - **"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, sections 59300 et seq.
 - **"Appeal"** means a request by a complainant made in writing to the Santa Barbara 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.
 - **"Days"** means calendar days.
 - **"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.

Authority: Gov. Code, § 12926; Cal. Code Regs., tit. 5, §§ 59300, 59311; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, Office for Civil Rights, January 19, 2001.

Notice, Training, and Education for Students and Employees

The Santa Barbara Community College District's responsible officer shall make arrangements for or provide training to employees and students on the District's 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 discrimination at the beginning of the first term of the college year after the policy is adopted.

All District employees will receive this training and a copy of the 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.

A training program or informational services will be made available to all students at least once annually through the office of the Dean of Educational Programs who is responsible for student discipline. The student training or informational services will include 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 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.

Authority: Ed. Code, § 66281.5; Cal. Code Regs., tit. 5, §§ 59324 and 59326.
Reference: Cal. Code Regs., tit. 5, §§ 59300 et seq.; 34 C.F.R. § 106.8(b).

Retaliation

It is a form of discrimination for anyone to retaliate against someone who files a 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 discrimination policy.

Authority: 20 U.S.C. §§ 1681 et seq.; 34 C.F.R. § 106; Cal. Code Regs., tit. 5, §§ 59300 et seq.; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, Office for Civil Rights, January 19, 2001.

Academic Freedom

The Santa Barbara Community College District Governing Board reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow any form of 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.

When investigating discrimination complaints containing issues of academic freedom, Santa Barbara Community College District will consult with a faculty member appointed by the Academic Senate with respect to contemporary practices and standards for course content and delivery.

Reference: *Cohen v. San Bernardino Valley College* (1995) 883 F.Supp. 1407, 1412-1414, *affd. in part and revd. in part on other grounds*, (1996) 92 F.3d 968; Cal. Code Regs., tit. 5, § 59302.

Responsible District Officer

The Santa Barbara Community College District has identified the Vice President of Human Resources and Legal Affairs to the State Chancellor's Office and to the public as the single District officer responsible for receiving all 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 also 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 discrimination to the responsible District officer.

Authority: Cal. Code Regs., tit. 5, § 59324; 34 C.F.R. § 106.8.

Complaint Procedures

In accordance with Board policy prohibiting discrimination and sexual harassment, the purpose of these procedures is to provide both an informal and formal process for the filing and investigation of complaints, to prohibit retaliation against victims of discrimination, and to work toward its prevention. Copies of this policy and procedures are available in the office of the Dean of Educational Programs who is responsible for student discipline and the office of Human Resources/Legal Affairs on the main campus at 721 Cliff Drive, Santa Barbara, CA 93109 and at the offices of the Wake and the Schott Centers of the Continuing Education Division (300 N. Turnpike Road and 310 W. Padre Street, Santa Barbara, respectively).

Informal Procedure

The purpose of the informal resolution process is to allow an individual who believes she/he has been 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. The informal resolution process will not be required as a prerequisite to the formal process.

When a person brings charges of 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 non-employment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR), 50 Beale Street, Suite 7200, San Francisco, CA 94105, 415.486.5555, 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.
- (7) Advise the individual(s) against whom the charges have been made of the fact and nature of the charges and of the rights of those charged in the event an investigation will be conducted at the informal level.

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.

Authority: Cal. Code Regs., tit. 5, §§ 59327, 59328, 59334, 59336, and 59339; *NLRB v. Weingarten, Inc.* (1975) 420 U.S. 251.

Filing of Formal Written Complaint

If a complainant decides to file a formal written 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:

<http://www.cccco.edu/divisions/legal/discrimination/discrimination.htm>

The completed form must be filed with the responsible district officer or mailed directly to the State Chancellor's Office of the California Community Colleges.

Authority: Cal. Code Regs., tit. 5, §§ 59311 and 59328.

Investigation Upon Filing a Formal Written Complaint

1. Within five (5) working days upon receipt of a complaint filed in accordance with the regulations, the responsible district officer, the Vice President of Human Resources and Legal Affairs, shall commence an investigation, or shall appoint an investigator to investigate the charges.
2. Once a complaint is filed in accordance with the regulations, the respondent will be notified of the allegation(s) and given a copy of these procedures. This shall occur as soon as possible and appropriate under the circumstances (normally within five (5) working days). The respondent(s) shall also be advised of the following:
 - a. Assessment of the accuracy of the allegations has not yet been made;
 - b. The complaint will be investigated;

- c. He or she will be provided an opportunity to present his or her side of the matter; and
 - d. Any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.
3. The investigator shall, within ten (10) working days of the complainant's referral to the formal process, give the complainant an opportunity to meet with the investigator to review the nature of the complaint and identify the scope and nature of the investigation. If the complainant fails to meet with the investigator within a reasonable time (usually 15 working days), the investigator will continue the investigation to the best of its abilities based on the written formal complaint. Within ten (10) working days of meeting with the complainant, or 15 days as noted above, the investigator shall give the respondent an opportunity to meet with the investigator to receive the respondent's answer to the complaint and to review with 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 investigator will continue the investigation to the best of its abilities.
4. The investigator shall complete a full impartial fact-finding investigation. Parties may offer the names of witnesses to be interviewed and may present documents in support of their positions. The proceedings may be recorded on audio tape or such other method such as videotape or stenographic record as the formal process investigator may direct.
5. The investigator will review all credible factual information presented and incorporate such information into the investigative report. Confidentiality will be maintained to the extent possible. Once the investigation is complete, the investigator will meet with the complainant and respondent separately to give an overview of the steps taken during the investigation.

Complainant and respondent will also be asked for the names of any others the investigator should speak with or if there is anything else he/she would like for the investigator to review before finalizing his/her report, and to request additional information.

6. The results of the investigation shall be set forth in a written report and presented to the responsible area administrator (s) which shall include:
 - a. a description of the circumstances giving rise to the complaint;
 - b. a summary of the information provided by each witness, including the complainant and any witnesses identified by the complainant in the complaint;
 - c. an analysis of any relevant data or other evidence collected during the course of the investigation;
 - d. any other information deemed appropriate.

7. The appropriate area administrator shall be responsible for reviewing the investigative report and for making a specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint. The finding shall take into consideration the severity of the conduct, the pervasiveness of the conduct, the pertinent background, and other relevant District policies.

Threshold Requirements Prior to Investigation of a Formal Written Complaint

When a formal written complaint is filed it will be reviewed 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 discrimination prohibited under title 5, section 59300.
- The complaint must be filed by one who alleges that he or she has personally suffered discrimination or by one who has learned of such 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 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 discrimination.
- In any complaint alleging discrimination in employment, the complaint shall be filed within 180 days of the date the alleged 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.

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

Defective Complaint

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.

Authority: Cal. Code Regs., tit. 5, § 59330.

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 district officer and investigator 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.

Authority: Cal. Const. Art. I, § 1; Civil Code § 47; Ed. Code, §§ 76234 and 87740;

Silberg v. Anderson (1990) 50 Cal.3d. 205; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, Office for Civil Rights, January 19, 2001.

Administrative Determination

In any case not involving employment discrimination, within 90 days of receiving a 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 summary 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;
- (c) the proposed resolution of the complaint; and
- (d) the complainant's right to appeal to the District governing board and the State Chancellor.

In any case involving employment discrimination, within 90 days of receiving a 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 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;
- (c) the proposed resolution of the complaint; and
- (d) the complainant's right to appeal to the District governing board and to file a complaint with 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.

The Santa Barbara 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.

Authority: Cal. Code Regs., tit. 5, § 59336.

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 evidence showing the date on which the complainant filed an appeal with the governing board, and a statement under penalty of perjury that no response was received from the governing board within 45 days from that date.

Complainants must submit all appeals in writing.

Authority: Cal. Code Regs., tit. 5, §§ 59338 and 59339.

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.

Authority: Cal. Code Regs., tit. 5, §§ 59338 and 59340.

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 investigation. 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.

Authority: Cal. Code Regs., tit. 5, § 59342.

Record Retention

Discrimination records that are part of an employee's employment records may be classified as Class-1 Permanent records and retained indefinitely or microfilmed in accordance with title 5, California Code of Regulations, section 59022. Discrimination records of a student that are deemed worthy of preservation but not classified as Class-1 Permanent may be classified as Class-2 Optional records or as Class-3 Disposable records, to be retained for a period of three years.

Records related to a student discrimination complaint will be deemed worthy of preservation if, at the end of three years after the case is closed, a complaint on similar grounds has been filed against the same employee. In such cases, the records shall continue to be classified as Class 2 records and retained at least until complaints against that particular employee have been resolved.

Authority: Cal. Code Regs., tit. 5, § 59020.