

## **AP 3430 Unlawful Discrimination**

### **1.0 Definitions**

- 1.1 "Appeal" means a request made in writing by a complainant to the North Orange County Community College District governing board, pursuant to section 59338 of Title 5 of the California Code of Regulations, and/or to the State Chancellor's Office pursuant to section 59339 of Title 5 of the California Code of Regulations, to review the administrative determination of the District regarding a complaint of unlawful discrimination as provided in section 7.0 of these procedures.
- 1.2 "Formal Complaint" means a written and signed statement meeting the requirements of section 59328 of Title 5 of the California Code of Regulations that alleges unlawful discrimination in violation of the nondiscrimination regulations adopted by the Board of Governors of the California Community Colleges, as provided in section 59300 et seq. of Title 5 of the California Code of Regulations and section 4.0 of these procedures.
- 1.3 "Days" means calendar days.
- 1.4 "District" means the North Orange County Community College District or any District program or activity that is administered by, directly funded by, or that receives financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.
- 1.5 "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 section 59328 of Title 5 of the California Code of Regulations, and for coordinating their investigation.

### **2.0 Reporting Charges of Unlawful Discrimination:** Individuals who believe they have been subjected to unlawful discrimination, including sexual harassment, may report charges of unlawful discrimination by contacting either of the following:

- 2.1 District Equity and Diversity Officer, District Office of Equity and Diversity, Anaheim Campus, 1830 W. Romneya Drive, Anaheim, CA 92801-1819, telephone (714) 808-4830.
- 2.2 District Director of Human Resources, District Office of Human Resources, Anaheim Campus, 1830 W. Romneya Drive, Anaheim, CA 92801-1819, telephone (714) 808-4818.

### **3.0 Informal Resolution**

- 3.1 When a person brings charges of unlawful discrimination to the attention of the District as provided in section 2.0 of these procedures, the Responsible District Officer or designee will:
  - 3.1.1 undertake efforts to informally resolve the charges;

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- 3.1.2 advise the complainant that he or she need not participate in informal resolution;
  - 3.1.3 notify the complainant of his or her right to file a formal complaint as provided in section 4.0 of these procedures, and of the procedure for filing such a complaint;
  - 3.1.4 advise the complainant, if the complaint is not employment-based, that he or she may file the complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such complaint is within that agency's jurisdiction;
  - 3.1.5 advise the complainant, if the complaint is employment-based, that he or she may file the complaint with the U.S. Equal Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies.
- 3.2 Efforts at informal resolution need not include an investigation unless the Responsible District Officer determines that an investigation is warranted by the seriousness of the charges.
- 3.3 Selection of informal resolution by the complainant does not extend the time limitations for filing a formal complaint.

### **4.0 Formal Complaint**

#### **4.1 Filing Complaint**

- 4.1.1 A formal complaint of unlawful discrimination may 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. Anonymous complaints will not be accepted.
- 4.1.2 The complaint shall be in a form prescribed by the Chancellor of the California Community Colleges. Complaint forms may be obtained from the District Office of Equity and Diversity or from the District Office of Human Resources, as specified in section 2.0 of these procedures. Complaint forms may also be obtained from the District's website at [www.nocccd.edu](http://www.nocccd.edu) or from the website of the Chancellor of the California Community Colleges at [cccoco.edu/divisions/legal/Discrimination/discrimination.htm](http://cccoco.edu/divisions/legal/Discrimination/discrimination.htm).
- 4.1.3 The complaint form must be signed with an original signature.
- 4.1.4 The complaint must allege unlawful discrimination prohibited under section 59300 of Title 5 of the California Code of Regulations.
- 4.1.5 The complaint may be filed with either of the following:

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- 4.1.5.1 the Chancellor of the California Community Colleges;
- 4.1.5.2 the District Equity and Diversity Officer, District Office of Equity and Diversity, Anaheim Campus, 1830 W. Romneya Drive, Anaheim, CA 92801-1819.
- 4.1.5.3 the District Director of Human Resources, District Office of Human Resources, Anaheim Campus, 1830 W. Romneya Drive, Anaheim, CA 92801-1819.
- 4.1.6 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 allegation of unlawful discrimination.
- 4.1.7 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 may be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.
- 4.1.8 Defective Complaint: When the District receives a complaint which it finds does not meet the requirements of subsections 4.1.1 through 4.1.7 of these procedures, the Responsible District Officer or designee shall notify the complainant and the Chancellor of the California Community Colleges and shall specify in what requirement the complaint is defective.

### **5.0 Investigation of Formal Complaint**

- 5.1 When the District receives a formal complaint that is properly filed in accordance with the requirements of subsections 4.1.1 through 4.1.7 of these procedures, the Responsible District Officer or designee will attempt to commence an investigation of the complaint and notify the complainant and Chancellor of the California Community Colleges that it is doing so. Where the complaint is against an employee of the District, the employee will be notified that the complaint has been filed.
- 5.2 If the complaint alleges discrimination in employment, the District will advise the complainant that he or she may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies.
- 5.3 The District may decline to investigate or may discontinue the investigation of a complaint if:
  - 5.3.1 the complaint is defective as provided in subsection 4.1.8 of these procedures;

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- 5.3.2 identical Title 5 allegations have previously been investigated and resolved;
  - 5.3.3 the allegations are a continuation of a pattern of previously filed complaints involving the same or similar allegations that have been found factually or legally unsubstantiated by the District or the Chancellor of the California Community Colleges;
  - 5.3.4 the complaint is unintelligible;
  - 5.3.5 the complaint fails to allege facts that explain why the complainant believes the alleged discrimination was because of a protected characteristic or why the complainant believes he or she was retaliated against for filing a complaint or asserting his or her rights, and after a request by the District for additional information, the complainant again fails to allege facts that explain the basis for the alleged discrimination;
  - 5.3.6 the complainant withdraws the complaint;
  - 5.3.7 the District has forwarded a copy of a filing by the complainant with the Department of Fair Employment and Housing (DFEH) to the Chancellor of the California Community Colleges and the Chancellor determines that an independent investigation is not required.
- 5.4 The District may retain the services of an outside investigator whenever the Responsible District Officer determines such services are necessary or beneficial to the investigation and resolution of the complaint.

### **6.0 Administrative Determination**

- 6.1 In any case not involving employment discrimination, within ninety (90) days of receiving a formal complaint filed in accordance with section 4.1 of these procedures, the District shall complete its investigation and forward a copy of the investigative report to the Chancellor of the California Community Colleges, a summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:
- 6.1.1 the determination of the chief executive officer of the District or designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
  - 6.1.2 a description of actions taken, if any, to prevent similar problems from occurring in the future;
  - 6.1.3 the proposed resolution of the complaint; and
  - 6.1.4 the complainant's right to appeal to the District governing board and the Chancellor of the California Community Colleges.

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- 6.2 In any case involving employment discrimination, within ninety (90) days of receiving a formal complaint filed in accordance with section 4.1 of these procedures, the District shall complete its investigation and forward to the complainant a summary of the investigative report, and written notice setting forth all of the following to the complainant:
- 6.2.1 the determination of the chief executive officer of the District or designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
  - 6.2.2 a description of actions taken, if any, to prevent similar problems from occurring in the future;
  - 6.2.3 the proposed resolution of the complaint; and
  - 6.2.4 the complainant's right to appeal to the District governing board and to file a complaint with the Department of Fair Employment and Housing.
- 6.3 If for reasons beyond its control, the District is unable to complete its investigation within ninety (90) days, the Responsible District Officer or designee may file a written request with the Chancellor of the California Community Colleges for an extension of the deadline, setting 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 shall be sent to the complainant with notice that he or she may file a written objection with the Chancellor within five (5) days of receipt. Where the complaint is against an employee of the District, the employee will be notified of the District's request for an extension.
- 6.4 When the District completes an investigation of a formal complaint of unlawful discrimination against an employee of the District pursuant to these procedures, the employee will be provided with written notice of the District's administrative determination regarding the complaint.

### **7.0 Appeal of Administrative Determination**

#### **7.1 Appeal to District Governing Board**

- 7.1.1 If the complainant is not satisfied with the results of the administrative determination rendered pursuant to section 6.0 of these procedures, the complainant may file a written appeal to the District governing board within fifteen (15) days from the date of notice pursuant to section 6.0 of these procedures that sets forth the administrative determination and the complainant's appeal rights.
- 7.1.2 The governing board will review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final District decision in the matter within forty-five (45) days after receiving the appeal.

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- 7.1.2.1 In any case not involving employment discrimination, the District shall forward to the complainant and to the Chancellor of the California Community Colleges a copy of the final District decision rendered by the governing board that includes notice of the complainant's right to appeal the District's decision to the Chancellor of the California Community Colleges.
- 7.1.2.2 In any case involving employment discrimination, the District shall forward to the complainant a copy of the final District decision rendered by the governing board that includes notice of the complainant's right to file a complaint with the Department of Fair Employment and Housing, where the case is within the jurisdiction of that agency.
- 7.1.3 Alternatively, if the governing board does not act within forty-five (45) days after receiving the appeal, the administrative determination shall become the final District decision in the matter.
  - 7.1.3.1 In any case not involving employment discrimination, the District shall notify the complainant and the Chancellor of the California Community Colleges that the governing board took no action and the administrative action is deemed approved pursuant to section 59338 of Title 5 of the California Codes of Regulations. The complainant shall also be notified of his or her right to appeal the District's decision to the Chancellor of the California Community Colleges.
  - 7.1.3.2 In any case involving employment discrimination, the District shall notify the complainant that the governing board took no action and the administrative action is deemed approved pursuant to section 59338 of Title 5 of the California Code of Regulations. The complainant shall also be notified of his or her right to file a complaint with the Department of Fair Employment and Housing, where the case is within the jurisdiction of that agency.
- 7.1.4 If for reasons beyond its control, the District is unable to provide notice to the complainant and the Chancellor of the California Community Colleges as provided herein, within one hundred fifty (150) days of receiving a formal complaint filed in accordance with section 4.1 of these procedures, the Responsible District Officer or designee may file a written request with the Chancellor of the California Community Colleges for an extension of the deadline, setting 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 shall be sent to the complainant with notice that he or she may file a written objection with the Chancellor within five (5) days of receipt. Where the complaint is against an employee of the District, the employee will be notified of the District's request for an extension.

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### 7.2 Appeal to the Chancellor of the California Community Colleges

- 7.2.1 In any case not involving employment discrimination, if the complainant is not satisfied with the results of the appeal to the District's governing board rendered pursuant to section 7.1 of these procedures, the complainant may file a written appeal to the Chancellor of the California Community Colleges.
- 7.2.2 The appeal must be filed within thirty (30) days from the date that the District's governing board issues the final District decision or permits the administrative determination to become final by taking no action within forty-five (45) days after receiving the complainant's appeal of the District's administrative determination. The appeal must be accompanied by a copy of the decision of the District's 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 forty-five (45) days from that date.
- 7.2.3 A decision by the Chancellor is subject to judicial review by the District, as provided by section 1094.5 of the Code of Civil Procedure.

### 8.0 **Confidentiality**

- 8.1 In conducting investigations of complaints of unlawful discrimination, the District will attempt to protect the confidentiality of the complainant and witnesses, as appropriate, and limit disclosure of information on a "need-to-know" basis. However, because of the District's legal duties in such matters and the potential for conflicting rights, obligations and facts, confidentiality cannot be guaranteed.
- 8.2 The District will take appropriate action against employees or students determined to have engaged in unlawful discrimination. However, privacy rights of students and employees will generally prohibit the District from disclosing the nature of the action taken.
- 8.3 Complainants and witnesses should be aware they could face legal liability if they discuss the allegations in the complaint, or matters related to the investigation outside of the District's investigative process.

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