

AP 3410 Unlawful Discrimination

Reference:

Title 5, Sections 59300, et seq.

1.0 Introduction

1.1 These are the written procedures for filing and processing complaints of unlawful discrimination and sexual harassment at North Orange County Community College District. These 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.

1.2 A copy of the District's unlawful discrimination policy will be displayed in a prominent location in the main administrative building or other areas where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

Authority: 20 U.S. Code Section 1681 et seq.; Education Code, Sections 66270, 66271.1, and 66281.5; Government Code, Sections 11135-11139.5; California Code of Regulations, Title 5, Section 59326. Reference: California Code of Regulations, Title 5, Sections 59300 *et seq.*; 34 C.F.R. Section 106.8(b)

2.0 The District's prohibitions on unlawful discrimination and unlawful harassment (including sexual harassment) are set out in Board Policies 3410, Unlawful Discrimination, and 3430, Prohibition of Harassment.

3.0 Responsible District Officer

3.1 The Vice Chancellor of Human Resources is designated by the District as the single District Officer responsible for receiving all unlawful discrimination complaints filed pursuant to section 59328 of Title 5 of the California Code of Regulations (formal complaints), and for coordinating their investigation.

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3.2 Informal charges of unlawful discrimination should be brought to the attention of the Responsible District Officer, who shall oversee the informal resolution process pursuant to section 59327. 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.

3.3 Administrators, faculty members, other District employees, and students shall direct all complaints of unlawful discrimination to the Responsible District Officer.

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Employees with supervisory responsibilities who witness or receive reports of sexual harassment are required to immediately report such conduct to the Responsible District Officer.

Authority: California Code of Regulations, Title 5, Section 59324; and 34 C.F.R. § 106.8.

4.0 Students and Employees Notice, Training, and Education

4.1 The 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 semester of the academic year after the policy is adopted.

4.2 All District employees will receive this training and/or 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 sexual harassment training at least once every two years. All new supervisory employees shall be provided with sexual harassment training within six months of assuming a supervisory position. 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.

4.3 A training program or informational services will be made available to all students at least once annually. The student training or informational services should 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 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 semester, or summer session, as applicable.

Authority: Ed. Code, Section 66281.5; California Code of Regulations, Title 5, Sections 59324 and 59326. Reference: California Code of Regulations, Title 5, Section 59300 et seq.; 34 C.F.R. Section 106.8(b); Government Code Section 12950.1.

5.0 **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 administrative procedure.

Authority: 20 U.S. Code Sections 1681 et seq.; 34 C.F.R. Section 106; California Code of Regulations, Title 5, Sections 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.

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6.0 Informal Resolution

- 6.1 When a person brings charges of unlawful discrimination to the attention of the District as provided in Section 3.0 of these procedures, the Responsible District Officer or designee will:
- 6.1.1 undertake efforts to informally resolve the charges;
 - 6.1.2 advise the complainant that he or she need not participate in informal resolution;
 - 6.1.3 notify the person bringing the charge of his or her right to file a formal complaint as provided in section 7.0 of these procedures, and of the procedure for filing such a complaint;
 - 6.1.4 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;
 - 6.1.5 advise the complainant that he or she may file his or her employment-based 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.
- 6.2 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.
- 6.3 Selection of informal resolution by the complainant does not extend the time limitations for filing a formal complaint.
- 6.4 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 must be completed unless the matter is informally resolved and the complainant dismisses the complaint or the complainant files with the DFEH and the Chancellor elects not to require further investigation pursuant to Title 5, section 59328(f)(2). 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.
- 6.5 Allegations of unlawful discrimination made by parties who have not personally suffered unlawful discrimination, and thus are not complainants under the description set out in Title 5, section 59328(a), are not covered by Title 5. However, the District may process and investigate such allegations under the above informal or formal complaint process (as required by federal regulations governing OCR). When such a complaint is processed under the formal process, the complainant's

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appeal rights shall be up to and including the first-level appeal to the Governing Board. All complainants shall be advised of their right to file complaints with the OCR (for non-employment matters) and with EEOC or DFEH (for employment matters).

- 6.6 In employment-related cases, if the complainant also files with the Department of Fair Employment and Housing or with the U.S. Equal Employment Opportunity Commission, upon receipt by the District 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 or the U.S. Equal Employment Opportunity Commission.
- 6.7 The District will provide 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: California Code of Regulations, Title 5, Sections 59327, 59328, 59334, 59336, and 59339; NLRB v. Weingarten, Inc. (1975) 420 U.S. 251.

7.0 Formal Complaint

7.1 Filing Complaint

- 7.1.1 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's Office of Diversity and Compliance, the District website, and at the State Chancellor's website, as follows:

http://www.nocccd.edu/files/discrimination_complaint_form_95912.pdf

<http://extranet.cccco.edu/Divisions/Legal/Discrimination.aspx#CmpltForm>

- 7.1.1.1 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.
- 7.1.2 If a complaint of unlawful discrimination is presented in another written format, such as a letter, the District may request that the complainant complete the form. If there is a delay in obtaining a completed form, or the complainant refuses to transfer the information or otherwise complete the form but wishes to pursue the formal complaint process, the District may attach the letter to the form and open a formal investigation. While a complaint filed in an improper form is still procedurally defective under Title 5 standards, the merits of the complaint itself may still be valid and must be addressed. The timelines set out by Title 5 and this procedure

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for filing complaints (Title 5, sections 59328(d) and (e) shall be calculated based on the initial complaint—regardless of the form in which it is filed.

- 7.1.3 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. The accused individual(s) do not have a right to a copy of the actual complaint.

Authority: California Code Regulations, Title 5, Sections 59311 and 59328.

- 7.2 **Threshold Requirements Prior to Investigation of a Formal Written Complaint:** An investigation of alleged unlawful discrimination prohibited by this subchapter will be initiated by filing a complaint that meets the following requirements:

- 7.2.1 The complaint of unlawful discrimination shall 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. The exception to this general rule is addressed in the “Informal Resolution” section 6.0.

7.3 Timeliness

- 7.3.1 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.

- 7.3.2 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.

- 7.4 In any complaint alleging discrimination in employment, the District shall:

- 7.4.1 Advise the complainant that he or she may file the complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies; and

- 7.4.2 Forward a copy of any filing by the complainant with the DFEH to the State Chancellor’s Office for a determination of whether the issues

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presented require an independent investigation of the matter under the provisions of this subchapter.

- 7.5 Defective Complaint: When the District receives a complaint which it finds does not meet the requirements of Title 5, section 59328 the District shall immediately notify the complainant and the Chancellor of the California Community Colleges that the complaint does not meet the requirements of Title 5, Section 59328 and shall specify in what requirement the complaint is defective.

Authority: California Code of Regulations, Title 5, Sections 59328 and §59332.

- 7.6 Notice to State Chancellor or District: Immediately upon receiving a complaint filed in accordance with Title 5 section 59328, the District shall forward a copy of the complaint to the State Chancellor.

Authority: California Code of Regulations, Title 5, Section 59330.

- 7.7 Complaints Filed with the State Chancellor: Upon receiving a complaint filed pursuant to Title 5 section 59328, the Chancellor will immediately forward a copy of the complaint to the District's designated responsible officer who shall respond pursuant to Title 5 section 59332 or initiate the investigation required pursuant to Title 5 section 59334. In any complaint alleging employment discrimination, the Chancellor shall notify the complainant that he or she has the right to file with the Department of Fair Employment and Housing (DFEH) or the U. S. Equal Opportunity Employment Commission where the complaint is within the jurisdiction of those agencies.

8.0 Confidentiality of the Process

- 8.1 Investigative processes can best be conducted within a confidential climate, and the District does not reveal information about such matters except as necessary to fulfill its legal obligations. However, potential complainants are sometimes reluctant to pursue a complaint if their names will be revealed.
- 8.2 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.
- 8.3 If a complainant insists that his or her name not be revealed, the Responsible District 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.
- 8.4 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

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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.

- 8.5 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: California Const. Art. I, Section 1; Civil Code Section 47; Ed. Code, Sections 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.

9.0 District Investigation of Formal Complaint

- 9.1 Upon receiving a complaint that is properly filed in accordance with section 59328, the District will commence an impartial fact-finding investigation of that complaint and notify the complainant and State Chancellor that it is doing so. The results of the investigation shall be set forth in a written report that shall include at least all of the following:
- 9.1.2 a description of the circumstances giving rise to the complaint;
 - 9.1.3 a summary of the testimony provided by each witness, including the complainant and any viable witnesses identified by the complainant in the complaint;
 - 9.1.4 an analysis of any relevant data or other evidence collected during the course of the investigation;
 - 9.1.5 a specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint; and
 - 9.1.6 any other information deemed appropriate by the District.
- 9.2 During the course of the investigation, involved persons (including complainant(s), accused person(s), witness(es)) shall be interviewed and relevant documents collected and reviewed, as applicable. All interviewed persons shall be advised of the prohibition against retaliation.

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- 9.3 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.

10.0 Discipline and Corrective Action

- 10.1 If unlawful harassment, discrimination, sexual assault, and/or retaliation occurred in violation of Board Policies 3410, Unlawful Discrimination, and 3430, Prohibition of Harassment, 3540, Sexual Assaults and Other Sexual Misconduct, and this procedure, the District shall take disciplinary action against the accused and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense. If discipline is imposed, the nature of the discipline will not be communicated to the complainant except to the degree permitted in student disciplinary actions for sexual assault/physical abuse charges under Education Code, section 76234.
- 10.2 Disciplinary actions against faculty, staff, and students (up to and including discharge, expulsion, or termination of contract) will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.
- 10.3 The District shall also take reasonable steps to protect the complainant from further harassment, and/or discrimination, and to protect the complainant and witnesses from retaliation as a result of communicating the complaint and/or assisting in the investigation. The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the extent possible without impeding the District's ability to investigate and respond effectively to the complaint.
- 10.4 Employees should be aware that if they engage in unlawful discrimination, such acts are outside the course and scope of their employment and may result in personal liability to the employee.

11.0 Administrative Determination

- 11.1 In any case not involving employment discrimination, within ninety (90) days of receiving a formal complaint filed in accordance with section 7.0 of these procedures, the District shall complete its investigation and forward a copy of the investigative report (see District Investigation section 9.0 (Title 5 section 59334)) 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 State Chancellor:
- 11.1.1 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;
- 11.1.2 a description of actions taken, if any, to prevent similar problems from occurring in the future;

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- 11.1.3 the proposed resolution of the complaint; and
 - 11.1.4 the complainant's right to appeal to the District governing board and the Chancellor of the California Community Colleges, pursuant to Title 5 sections 59338 and 59339.
- 11.2 In any case involving employment discrimination, within ninety (90) days of receiving a formal complaint (see section 7.0) 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:
- 11.2.1 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;
 - 11.2.2 a description of actions taken, if any, to prevent similar problems from occurring in the future;
 - 11.2.3 the proposed resolution of the complaint; and
 - 11.2.4 the complainant's right to appeal to the District governing board and to file a complaint with the Department of Fair Employment and Housing.

Authority: California Code of Regulations, Title 5, section 59336.

- 11.3 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.

12.0 Complainant's Appeal Rights

12.1 Appeal to District Governing Board (Board of Trustees)

- 12.1.1 If the complainant is not satisfied with the results of the administrative determination rendered pursuant to section 11.0 of these procedures, the complainant may file a written appeal to the District governing board (Board of Trustees) within fifteen (15) days from the date of notice pursuant to section 11.0 of these procedures that sets forth the administrative determination and the complainant's appeal rights.
- 12.1.2 The governing board (Board of Trustees) 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.
 - 12.1.2.1 In any case not involving employment discrimination, the District shall promptly 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 (Board of Trustees)

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that includes notice of the complainant's right to appeal the District's decision to the Chancellor of the California Community Colleges (set forth below).

12.1.2.2 In any case involving employment discrimination, the District shall promptly forward to the complainant a copy of the final District decision rendered by the governing board (Board of Trustees) 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.

12.1.3 Alternatively, if the governing board (Board of Trustees) does not act within forty-five (45) days, the administrative determination shall be deemed approved and shall become the final District decision in the matter.

12.1.3.1 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 (Board of Trustees) 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.

12.1.3.2 In any case involving employment discrimination, the District shall notify the complainant that the governing board (Board of Trustees) 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.

12.2 Appeal to the Chancellor of the California Community Colleges

12.2.1 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 12.1 of these procedures, the complainant shall have the right to file a written appeal with the Chancellor of the California Community Colleges 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 pursuant to section 59338 (or from the date of the notice provided pursuant to section 12.1.2 or 12.1.3 whichever is later). Such appeals shall be processed pursuant to the provisions of Title 5 section 59350, et seq. 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

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under penalty of perjury that no response was received from the governing board within forty-five (45) days from that date.

- 12.2.2 In any case involving employment discrimination, the complainant may, at any time before or after the final District decision is rendered, file a complaint with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency.
- 12.2.3 A decision by the State Chancellor is subject to judicial review by the District, as provided by section 1094.5 of the Code of Civil Procedure. (See Title 5 California Code of Regulations section 59362.)
- 12.2.4 Complainants must submit all appeals in writing.
- 12.2.5 The Title 5 process, which is set out in this Administrative Procedure provides no corresponding appeal rights to other parties aside from the complainants.

Authority: California Code of Regulations, Title 5 Sections 59338 and 59339.

13.0 Provision of Information to State Chancellor

- 13.1 In any case not involving employment discrimination, within 150 days of receiving a complaint the Responsible District Officer will either:
 - 13.1.1 Forward the following to the State Chancellor:
 - 13.1.1.1 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.
 - 13.1.1.2 A copy of the notice of appeal rights the District sent the complainant.
 - 13.1.1.3 Any other information the State Chancellor may require; or
 - 13.1.2 Notify the State Chancellor that the complainant has not filed an appeal with the District governing board and that the District has closed its file.
- 13.2 The District will keep these documents on file for a period of at least three years after closing the case, including cases involving employment discrimination, make them available to the State Chancellor upon request.

Authority: California Code Regulations, Title 5, sections 59338 and 59340.

14.0 Extensions

- 14.1 If for reasons beyond its control, the District is unable to comply with the 90-day or 150-day deadlines specified in section 13.0 for submission of materials to the

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complainant and that State Chancellor's Office, the Responsible District Officer or designee may file a written request that the Chancellor of the California Community Colleges grant an extension of the deadline. Where an extension is deemed necessary by the District, it must be requested from the State Chancellor regardless of whether or not the case involves employment discrimination. The request shall be submitted no later than ten (10) days prior to the expiration of the deadline established by Title 5 in sections 59336 and/or 59340 and shall set forth the reasons for the request and the date by which the District expects to be able to submit the required materials.

- 14.2 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 State Chancellor within five (5) days of receipt.
- 14.3 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 90-day deadline or the 150-day deadline is automatically extended by an equal amount.
- 14.4 If the District fails to comply with the requirements of Title 5 sections 59336 or 59340 by the required deadline, including any extensions granted pursuant to the above-mentioned procedures, the Chancellor may proceed to review the case as provided in Title 5 sections 59350 et seq. based on the original complaint and any other relevant information then available.

Authority: California Code of Regulations, Title 5, section 59342

15.0 Definitions

- 15.1 "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.
- 15.2 "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.
- 15.3 "Days" means calendar days.
- 15.4 "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.

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- 15.5 "Formal 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. (and these procedures).
- 15.6 "Gender" means sex, and includes a person's gender identity and gender related expression, appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.
- 15.7 "Mental disability" includes, but is not limited to, all of the following:
- 15.7.1 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:
 - 15.7.1.1 "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.
 - 15.7.1.2 A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.
 - 15.7.1.3 "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.
 - 15.7.2 Any other mental or psychological disorder or condition not described in section 15.7.1 that requires special education or related services.
 - 15.7.3 Having a record or history of a mental or psychological disorder or condition described in section 15.7.1 or 15.7.2, which is known to the District.
 - 15.7.4 Being regarded or treated by the District as having, or having had, any mental condition that makes achievement of a major life activity difficult.
 - 15.7.5 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 section 15.7.1 or 15.7.2.
 - 15.7.6 "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.
- 15.8 "Physical disability" includes, but is not limited to, all of the following:

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- 15.8.1 Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:
 - 15.8.1.1 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.
 - 15.8.1.2 Limits a major life activity. For purposes of this section:
 - 15.8.1.2.1 "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.
 - 15.8.1.2.2 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.
 - 15.8.1.2.3 "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.
- 15.8.2 Any other health impairment not described in section 15.8.1 that requires special education or related services.
- 15.8.3 Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in section 15.8.1 or 15.8.2, which is known to the District.
- 15.8.4 Being regarded or treated by the District as having, or having had, any physical condition that makes achievement of a major life activity difficult.
- 15.8.5 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 section 15.8.1 or 15.8.2.
- 15.8.6 "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.
- 15.9 "Responsible District Officer" means the officer identified by the District to the State Chancellor's Office as the person responsible for receiving complaints filed

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pursuant to section 59328 of Title 5 of the California Code of Regulations, and for coordinating their investigation.

- 15.10 “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but it not limited to, a person’s gender, as defined in section 422.56 of the Penal Code. Discrimination on the basis of sex or gender also includes sexual harassment.
- 15.11 “Sexual harassment” means 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 work or educational setting, under any of the following conditions:
- 15.11.1 Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
 - 15.11.2 Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
 - 15.11.3 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.
 - 15.11.4 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 District.
- 15.12 Examples of sexual harassment include but are not limited to the following:
- 15.12.1 Making unsolicited or unwelcome 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, and e-mails. Examples of possible verbal sexual harassment include, but are not limited to: leering, gestures, display of sexually aggressive objects or pictures, cartoons, or posters. Examples of possible physical sexual harassment include, but are not limited to inappropriate or offensive touching or interfering with free movement such as kissing, grabbing, or blocking another person.
 - 15.12.2 Continuing to express sexual interest after being informed that the interest is unwelcomed.
 - 15.12.3 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: threatening to withhold, or actually withholding, grades earned or deserved; suggesting a poor performance evaluation will be

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prepared; or suggesting a scholarship recommendation or college application will be denied.

- 15.12.4 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.
- 15.12.5 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.
- 15.12.6 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.
- 15.12.7 Awarding educational or employment benefits, such as grades or duties or shifts, recommendations, etc., to any student or employee with whom the decision maker has a sexual relationship and denying such benefits to other students or employees.
- 15.12.8 Other unlawful harassment: In addition to sexual harassment, unlawful harassment can also include harassment based on other protected status defined by this procedure or BP3410 that meets the criteria set out in 15.11.1 through 15.11.4 as applied to the applicable protected status.

15.13 "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.

15.14 "Unlawful discrimination" means any complaint of unlawful discrimination based on a category protected under Title 5, section 59300, including retaliation and sexual harassment.

Authority: Government Code, Section 12926; Education Code, Section 212.5; California Code of Regulations, Title 5, Section 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.

16.0 **Academic Freedom:** The District supports the principle of academic freedom, and the provisions of this policy are not intended to prohibit bona fide academic program and course requirements. However, the exercise of academic freedom with respect to course content and discourse does not extend to any form of unlawful discrimination in violation of this policy.

17.0 Consensual Relationships

17.1 Within the North Orange County Community College District, sexual harassment is prohibited regardless of the status and/or relationship the affected parties may have.

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- 17.1.1 Employees shall not enter into or maintain a romantic or sexual relationship with a student or employee over whom that employee exercises or influences academic, administrative, supervisory, evaluative, teaching, counseling, coaching, or extracurricular authority. Examples of extracurricular authority include, but are not limited to, overseeing student organizations or activities, being an advisor to a student club, and responsibility over a college event or competition.
- 17.1.2 There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the administrator, faculty, or staff member must evaluate the student's or employee's work or make decisions affecting the employee or student. Decisions affecting the other person include, but are not limited to, grading, evaluating, counseling, advising, supervising, coaching, scheduling, or otherwise influencing that person's education, employment, or participation in any District activity. The relationship may create an appearance of impropriety and lead to charges of favoritism by other students or employees. A consensual sexual relationship may change with the result that sexual conduct that was once welcome becomes unwelcome and harassing.
- 17.1.3 Employees shall immediately notify their supervisor or Human Resources if a romantic or sexual relationship exists or could develop so that steps may be taken to eliminate or mitigate the employee's authority or influence of the other individual within the District's education programs or activities. Such action by the District is a proactive and preventive measure to avoid possible charges of harassment and potential conflicts of interest, while supporting employees' freedom of association. Such action does not constitute discipline against any affected employee. As in any case of sexual harassment, if conduct is determined to be unwelcome, then the District may pursue discipline and/or other corrective actions. Additionally, the employee may face personal liability for the actions deemed to constitute sexual harassment.
- 18.0 **Record Retention:** Unlawful 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. Unlawful 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.

Authority: California Code of Regulations, Title 5, Section 59020.

See Board Policy 3410, Unlawful Discrimination, Board Policy 3430, Prohibition of Harassment, Board Policy 3540, Sexual Assaults and Other Sexual Misconduct, and Administrative Procedure 3540, Sexual Assaults and Other Sexual Misconduct

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