

Proposed Addition to
Kern Community College District Board Policy Manual
Section Eleven – General Personal/Administration

Governance Process: Share as Information Only

Reason for Revision: To Establish/Amend District Procedure

Unlawful Discrimination Complaint Process

I. Definitions

- 1) Appeal – A written request made by a Complainant to the Kern Community College District Governing Board pursuant to Title 5, section 59338, 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.
- 2) Formal Complaint – A written and signed statement 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. that:
 - a. If not involving employment, is 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.
 - b. Alleging discrimination or harassment in employment is filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period should 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.

A formal complaint may be filed by an individual who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such alleged discrimination or harassment, including District employees in their official capacity, students, or other third parties.

- 3) Informal Complaint – Any complaint of unlawful discrimination, filed within the timelines for a Formal Complaint, where the Complainant wishes to use the informal resolution process.
- 4) Untimely Complaint – Any complaint alleging unlawful discrimination that falls outside the applicable timelines for a Formal Complaint.
- 5) Complainant – An individual who alleges that he or she has personally suffered unlawful discrimination.
- 6) Third-Party Reporter – An individual who files a formal or informal complaint of unlawful discrimination who has not personally suffered unlawful discrimination.
- 7) Days – Calendar days.
- 8) District – Kern Community College District or any District program or activity that is funded directly by the state or receives financial assistance from the state. This includes the District Personnel Commission and any other organization associated with the District or its college(s) that receives state funding or financial assistance through the District.
- 9) Responsible District Officer – 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.
- 10) Unlawful Discrimination – Discrimination, including harassment and retaliation, based on a category protected under Title 5, section 59300. This includes employee conduct that occurs in connection with District employment, even if outside the regular workplace; it includes students in connection with academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, on a District bus, or at a class or training program sponsored by the District at another location.

II. Complaint Procedure

A. Student Assistance

Students wishing to file a complaint are advised that the following individuals are knowledgeable about the process and available to answer questions and assist

students in following the process: The Responsible District Officer (Vice Chancellor, Human Resources), DSPS Coordinator, Title IX Officer (Vice Chancellor, H.R.), Section 504 Officer (Vice Chancellor, H.R.), Human Resources staff, or any college dean.

III. General Procedures

In the event of the notification of an unlawful discrimination complaint, pursuant to Policy 11D4, with the College, the process shall be as indicated below:

As is indicated in Policy 11D4, this process covers alleged unlawful discrimination on the basis of ~~age, race, color, national origin, gender, disability, religion, sexual orientation, marital status,~~ national origin, religion, age, gender, gender identity, gender expression, race or ethnicity, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, pregnancy, or other forms of unlawful discrimination, or because he or she is perceived to have one or more of the foregoing characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics. Formal Complaints not involving employment may be filed within one (1) year of the alleged unlawful discrimination. Formal complaints involving employment must be filed within 180 days of the alleged unlawful discrimination. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the District's ability to investigate and remediate.

1. Responsible District Officer

The Kern Community College District has identified the Vice Chancellor of Human Resources to the State Chancellor's Office and to the public as the single Responsible District Officer assigned to receive all unlawful discrimination complaints.

- a. Where such complaints constitute Formal Complaints pursuant to these procedures and Title 5, section 59328, the Responsible District Coordinator shall coordinate their investigation and resolution in conformance with the District's Title 5 Complaint Procedures described below.
- b. Informal complaints 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 where applicable.

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 shall be used whenever the Officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

In the event a Complainant seeks to file a complaint against the Responsible District Officer he or she may submit the complaint to the Chancellor.

2. Receipt of Complaints

~~1)~~ Any student or employee who feels that he or she is being unlawfully discriminated against is encouraged to file a formal ~~informally notify and resolve the~~ complaint with any of the following Responsible Personnel for resolution:

- ~~• Instructor~~ College Vice President
- ~~• Advisor or Counselor~~ College Human Resources Manager
- ~~• Department/Division Chair~~ Vice Chancellor, Human Resources
- ~~• Dean or Vice President~~ Title IX and Section 504 Compliance Officer
- ~~• Title IX Coordinator~~ Compliance Coordinator
- ~~• College Human Resources Manager or District Human Resources Director~~

~~2)~~ Any student or employee who feels that he or she is being unlawfully discriminated against is ~~entitled to file a formal complaint with any of the following Responsible Personnel for resolution:~~

- ~~• College Vice President~~
- ~~• College Human Resources Manager or District Human Resources Director~~
- ~~• Vice Chancellor, Human Resources~~

~~3)~~ Supervisors shall take immediate action to report and/or remedy any perceived unlawful discrimination based on age, race, color, national origin, gender, disability, religion, sexual orientation, marital status, or other forms of unlawful discrimination.

~~4)~~ At any point in the investigation, the student or the employee has the right to involve more than one ~~(1)~~ of the persons listed above.

~~5)~~ The responsibilities of the person to whom the complaint has been made will include preparing a written description of the complaint as described by the Complainant. Based on the information in the complaint, the recipient of the complaint will implement one (1) of the following courses of action:

- Informal Complaint Procedure, or
- Formal Complaint Procedure

Informal Complaint Procedure

The purpose of the informal complaint process is to allow an individual who believes he/she has been unlawfully discriminated against to resolve the issue through a consultation process rather than the more formal investigative process provided by the College. The steps of the informal procedure are:

- 1) *If the complaint was filed by a third-party reporter, the alleged victim shall be notified of the complaint and given the option to invoke the informal resolution process, as described below. Third party reporters may not invoke the informal resolution process. If the alleged victim does not want to participate in an informal resolution process, the third-party complaint will be treated as a Formal Complaint.*
2. If the Complainant believes that discussions of alleged unlawful discrimination with the alleged perpetrator/respondent or his/her supervisor would be unproductive or inappropriate, the Complainant should consult with the Responsible ~~Personnel~~ District Officer or designee who shall ascertain as much detail as possible including date(s), time(s), description of incident(s), party(ies) involved, witness(es), etc.
3. The Responsible ~~Personnel~~ District Officer or designee will counsel the Complainant regarding the Unlawful Discrimination Complaint procedure. Complainant shall be advised that the informal procedure is not a pre-requisite for filing a formal Unlawful Discrimination complaint. [California Code of Regulations, Section 59327 (a)(3)(2)]
4. The ~~Complainant's~~ allegations of unlawful discrimination shall be kept as confidential as possible by the Responsible ~~Personnel~~ District Officer or designee and shall be used only to provide a factual basis for resolving the complaint.
5. Within ten (10) days of receipt of the informal complaint, the Responsible ~~Personnel~~ District Officer or designee shall contact the alleged perpetrator/respondent in an attempt to resolve the matter informally. ~~The alleged perpetrator/respondent will be asked to respond to the allegations.~~
6. Within ten (10) days of discussing the matter with the alleged perpetrator/respondent, the Responsible Personnel or designee will review the statements of both the Complainant and the alleged perpetrator/respondent and meet individually with each party, and if necessary, meet with witnesses in an attempt to resolve the matter.
7. Steps One (1) through Six (6) ~~Five (5)~~ of this informal procedure shall not exceed the ninety (90) days afforded to Complainants filing a formal complaint. [California Code of Regulations, Section 59336]

Possible Outcomes of the Informal Complaint Procedure

- 1) If the matter is resolved, the Responsible ~~Personnel~~ District Officer or designee will put the resolution in writing and meet with both parties who will review and sign the agreement.
- ~~2) If the parties agree there has been no unlawful discrimination and are satisfied with the resolution, the documents connected with the allegation shall be destroyed by the Responsible Personnel or designee and the complaint will be considered resolved.~~

~~3) If the parties agree that unlawful discrimination has occurred, but are satisfied with the resolution, then the documentation connected with the allegations and resolution will be placed in an employee's official personnel file in the District Office of Human Resources and shall be considered sealed after a period of three (3) years.~~

2) If, after negotiations between the parties, it becomes clear to the Responsible Personnel District Officer or designee that an informal resolution cannot be reached, he/she will convey the determination to both parties. The Responsible Personnel District Officer or designee will also inform the Complainant of the right to file a formal unlawful discrimination complaint under this procedure.

3) The Responsible District Officer retains the right and responsibility to reject an informal resolution where he or she determines that:

a) The seriousness of the allegations require a thorough investigation; or

~~4)b) The proposed resolution precludes disciplinary or remedial steps that the Responsible District Officer believes may be necessary.~~

Formal Complaint Procedure

1) The Complainant or third-party reporter shall initiate the formal complaint procedure by filing a complaint in writing on the District's Unlawful Discrimination Formal Complaint form.

~~2) Within ten (10) days of receipt of the formal complaint, the Responsible Personnel or designee shall contact the alleged perpetrator/respondent in an attempt to resolve the matter informally. The alleged perpetrator/respondent will be asked to respond to the allegations.~~

~~3) Within ten (10) days of discussing the matter with the alleged perpetrator/respondent, the Responsible Personnel or designee will review the statements of both the Complainant and the alleged perpetrator/respondent and meet individually with each party, and if necessary, meet with witnesses in an attempt to resolve the matter.~~

2) If a Complainant or third-party reporter submits a written, formal complaint of discrimination or harassment not on the form described above, the District will seek to have the Complainant or reporter complete and submit the form. However, if the Complainant chooses not to do so, the District will attach the Complainant's/reporter's written complaint to the form and treat it as a formal written complaint. In no instance will the District reject a written complaint on the basis that it was not submitted on the proper form.

When a District receives a complaint which it finds does not meet the requirements of section 59328 the District shall immediately notify the Complainant and the

Chancellor that the complaint does not meet the requirements of section 59328 and shall specify in what requirement the complaint is defective.

Where the complaint is rejected as an untimely complaint, the Responsible District Officer shall still have the authority to initiate an investigation into the allegations. This is a discretionary investigation that is not subject to these procedures.

- 3) The Responsible District Officer may take interim steps to protect a Complainant or alleged victim from coming into contact with an accused individual, especially if the allegations involve sexual violence. Where possible, these steps will not disrupt the employment or education of the alleged victim. The Responsible District Officer should notify the Complainant/alleged victim of his or her options to avoid contact with the accused individual and allow students to change academic situations as appropriate.

The District shall properly investigate every complaint of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. However, the appropriate scope of the investigation will be determined by the Responsible District Officer or his/her designee based on a range of factors such as the severity of the charges, whether the complaint is untimely, the availability of witnesses, and the level of cooperation of the alleged victim.

As set forth above, where the Complainant opts for an informal resolution, the Responsible District Officer may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible, but shall inform Complainants that they cannot guarantee absolute confidentiality because release of some information on a “need-to-know-basis” is essential to a thorough investigation.

In any complaint not involving employment discrimination, the complaint must be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the Complainant knew or should have known of the facts underlying the specific incident or incidents of alleged unlawful discrimination.

In any complaint alleging employment discrimination, the complaint shall be filed within 180 days of the date of the alleged unlawful discrimination, 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 underlying the alleged unlawful discrimination after the expiration of 180 days.

- ~~4) Both parties have a right to be accompanied by a representative at each step in this procedure and shall have the right to present documentary evidence and witness statements.~~

- ~~5) Within ninety (90) days of receiving the formal complaint, the following shall be completed:~~

- ~~a) Investigation of the unlawful discrimination complaint.~~

~~b) A written administrative determination letter to both the Complainant and alleged perpetrator/respondent specifying the following:~~

~~1. All behaviors that were alleged to constitute the unlawful discrimination.~~

~~2. A decision that the unlawful discrimination complaint is substantiated or unsubstantiated.~~

~~3. A description of any corrective action to be taken by the College or District administration. Notice of the Complainant's appeal rights.~~

~~4. Administrative Determination: Only if the investigation substantiates the alleged unlawful discrimination the written administrative letter shall be placed in the perpetrator's personnel file. The administrative letter placed in the perpetrator's official personnel file in the District Office of Human Resources shall be considered sealed after a period of three (3) years. Within ninety (90) days of receiving the formal complaint, the following shall be completed District shall complete its investigation and forward a copy or summary of the investigative report to the Complainant and the accused. Where the formal complaint was filed by a third-party, this administrative determination and report shall be sent to the alleged victim and the accused. A third-party reporter is not entitled to this report, but will be generally advised that the investigation was completed and that the victim and accused have been apprised of the findings.~~

~~The Administrative Determination pursuant to Title 5, section 59336 shall specify the following:~~

~~a) The determination of the Chief Executive Officer or designee as to whether there is probable cause to believe discrimination occurred with respect to the Complainant's allegations;~~

~~b) A description of any actions taken, if any, to stop any discrimination, harassment, or retaliation found, to prevent similar problems from occurring in the future, and to and remedy the effects of the discrimination, harassment, or retaliation on the targeted individual; and~~

~~Notice of the Complainant's appeal rights to the District's Governing Board and the State Chancellor, as set forth below.~~

~~5.6) Only if the investigation substantiates the alleged unlawful discrimination the written administrative letter shall be placed in the perpetrator's personnel file. The administrative letter placed in the perpetrator's official personnel file in the District Office of Human Resources shall be considered sealed after a period of three (3) years.~~

~~6) Complainant's Appeal Rights: The Complainant or the alleged victim if the complaint was filed by a third party, has appeal rights that he or she may~~

exercise if not satisfied with the results of the District's Administrative Determination.

a) First Level of Appeal

7.i. If Complainant/alleged victim is not satisfied with the results of the administrative determination, he/she may submit a written appeal to the Board of Trustees within fifteen (15) days of the date of notice of the administrative determination. The Board shall review the original complaint, the investigative report, administrative determination, and the appeal, and shall issue a decision within forty-five (45) days after the filing of the appeal. If the District's governing board takes no action within forty-five (45) days, the original decision in the administrative determination is deemed upheld and the District shall notify the Complainant of their right to further appeal.

b) Second Level of Appeal

i. The Complainant/alleged victim has the right to file a written appeal with the California Community College Chancellor's Office within thirty (30) calendar days of the District's final decision following an appeal to the District's Governing Board. The written appeal must be accompanied by (1) a copy of the decision of the Governing Board; or (2) evidence showing the date on which the Complainant filed an appeal with the Governing Board, accompanied by a statement under penalty of perjury that the Complainant did not receive a response from the Governing Board within forty-five (45) calendar days from that.

ii) In cases involving employment discrimination, a Complainant-employee may, at any time before or after the issuance of the final decision of the District, file a complaint with the Department of Fair Employment and Housing (DFEH) where the case is within that agency's jurisdiction. In such cases, the Complainant may also file a petition for review with the State Chancellor's Office within thirty days after the Governing Board issues the final decision or permits the administrative decision to become final.

7. Within one hundred and fifty (150) days after receiving a written formal complaint which does not involve employment discrimination, the District will forward to the State Chancellor's Office the results of the investigation as described in this Procedure or notify the State Chancellor's Office that the Complainant has not filed an appeal with the Board of Trustees and that the District has closed its file.

~~8. For complaints filed by students, if the Complainant is not satisfied with the Board's decision, he/she may file an appeal with the State Chancellor's Office as prescribed in the Education Code. Students may also file a complaint with Office for Civil Rights of the U.S. Department of Education (OCR) during any step in the unlawful discrimination investigative process.~~

8) 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, including the reasons for the request and the date by which the District expects to be able to submit the required materials. Where an extension is deemed necessary by the District, it must be request from the State Chancellor regardless of whether or not the case involves employment discrimination. The request will be submitted no later than ten (10) days prior to the expiration of the relevant deadlines established above.

A copy of the request for an extension will be sent to the Complainant, who will be advised that he/she may file written objections with the State Chancellor within five (5) days of receipt.

10.9) For complaints filed by employees, the employee may file a complaint with the Department of Fair Employment and Housing or the Equal Opportunity Commission during any step in the unlawful discrimination complaint investigative process.