

**Procedures to Resolve Complaints Regarding Harassment and
Discrimination**

AP 4640

Introduction and Scope

Members of a college community—students, faculty, staff and visitors—must be able

to study and work in an atmosphere of mutual respect and trust. The Foothill-De Anza Community College District is actively committed to creating and maintaining an environment which respects the dignity of individuals and groups.

The goal of the Foothill-De Anza Community College District is to have a process that is sensitive to both the needs of students, staff and individuals who interact with the college

community, and the rights of those against whom allegations have been made.

**Resolving Employee-to-Employee, Student-to-Employee or Student-to-District
Complaints**

If the complaint is filed by an employee of the District against another employee, or a student against an employee or program of the District, such complaints shall be

other legally protected status, 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, or be unlawfully denied full and equal access to or the benefits of, 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 comprehensive District policy for Harassment and Discrimination is contained in District Board Policy 4640.

II. Employee and Student Notification, Training and Education

The District provides training and/or information to employees and students on the District's harassment and discrimination policy and procedures. Faculty, administrators and classified staff receive a copy of the District's written policy on harassment and discrimination at the beginning of each academic year.

Each new District employee is required to sign a form acknowledging receipt of the policy and procedures. The District shall offer training to all staff annually. Because of their special responsibilities under the law, District administrators and supervisors are required to participate in mandatory training within 6 months of employment and thereafter once every two years. Such training shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of harassment, discrimination and retaliation.

District employees involved in any aspect of investigating or resolving a complaint of harassment or discrimination receive training in the handling of such complaints in advance of their service in such capacity.

A training program or informational service is available to all students at least once annually. The student training or informational service includes an explanation of the

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 the District harassment and discrimination policy.

IV. Academic Freedom

The Foothill-De Anza Community College District Board of Trustees reaffirms its commitment to academic freedom, and recognizes that academic freedom does not allow harassment or any other form of unlawful discrimination. The lecture, content, and discourse that are an integral part of the course content and discourse (including rhetorical strategies) shall in no event constitute harassment or discrimination. It is recognized that an essential function of education is a probing of opinions and an exploration of ideas that may unsettle some students. The Foothill-De Anza Community

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4. **Complaint:** A written and signed statement meeting the requirements of Section 59328 of Title 5, California Code of Regulation which alleges unlawful harassment or discrimination.

5. **Complainant(s):** An individual or group of individuals who believes that he/she has

been the victim of harassment or discrimination.

6. **Days:** Calendar days, unless otherwise specified.

7. **Determination Panel:** The Determination Panel, composed of the Vice Chancellor of Human Resources, and the two college Presidents or persons appointed by any of them as designees, is responsible for determining the findings of a formal investigation and recommending appropriate action when the complaint is

Employee-to-Employee, Student-to-Employee or Student-to-Program/Activity/College. Every effort is made to incorporate broad representation on the Determination Panel.

When the complaint is Student-to-Student the appropriate student Due Process Procedures at the college will be invoked to identify the person(s) responsible for

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“Mental disability” does not include sexual behavior disorders, compulsive gambling, ~~depression, manic, or neurotic substance use disorder~~ resulting from the

current unlawful use of controlled substances or other drugs.

11. Physical Disability: Includes, but is not limited to, all of the following:

a. 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; and b) limits a major life activity.

b. Any other health impairment not described in paragraph (a) that requires specialized

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Sexual harassment consists 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.

“Quid pro quo” harassment occurs when submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decision affecting the individual.

“Hostile environment” harassment occurs when the conduct is sufficiently pervasive or severe such that 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. Subjective perception alone is insufficient evidence for a claim to be valid; an objective appraisal must be considered as well. The conduct shall be evaluated from the objective viewpoint of

a reasonable person facing the same conditions.

Examples include but are not limited to:

- Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. Examples of sexual harassment which appear in a written form include,

duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.

- Awarding educational or employment benefits, such as grades or duties or shifts, recommendation, reclassification, etc., to any student or employee with whom the decision-maker has a sexual relationship and denying such benefits to other students or employees.

16. **Sexual Orientation:** Heterosexuality, homosexuality, or bisexuality.

17. **Unlawful Harassment:** Comes in many forms and may include but is not limited to the conduct described below:

Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race, gender, sexual orientation, or other status protected by law. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status or sexual orientation; unwelcome flirting, whistling, or propositions, demands for sexual favors, verbal abuse, threats or intimidation.

Physical: Inappropriate or offensive touching, assault, or physical interference with free movement. This may include but is not limited to kissing, patting, lingering or intimate touches, grabbing, pinching, unnecessarily brushing against or blocking another person, or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's race, gender, sexual orientation or other status protected



by law. It may also include leering or staring.

Visual or Written: The display or circulation of visual or written material that degrades an individual or groups based on race, gender, sexual orientation or other status

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18. **Student:** A currently enrolled student, a person who has filed an application for admission to the college, or a former student.
19. **Working Days:** The days that the District Office is open for customary business.

VI. Responsible District Officer

The Vice Chancellor of Human Resources and Equal Opportunity is the District Officer responsible for the administration and implementation of these policies and procedures. The Vice Chancellor may be contacted at (650) 949-6210, Foothill-De Anza Community College District, 12345 El Monte Road, Los Altos Hills, CA 94022

VII. Complaint Procedures

In accordance with Board policy prohibiting unlawful harassment and discrimination the purpose of these procedures is to provide both an informal and a formal process for the

B. Informal Complaint Procedure

1. The purpose of this procedure is to provide a fair and equitable process for the resolution of complaints.

[REDACTED]

[REDACTED]

[REDACTED]

that they have been harassed or discriminated against to resolve the issue through a

[REDACTED]

[REDACTED]

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4. If the parties agree to a proposed resolution that does not include disciplinary action, the resolution shall be implemented and the informal process shall be concluded. At any time during the informal process, the complainant may initiate

and Discrimination Complaint form or an approved form obtained from the California State Chancellor's Office.

5. 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 Section 59334 of Title 5, California Code of Regulations, and will be completed unless the matter is informally resolved and the

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c. In any complaint not involving employment (i.e., student vs. employee), the

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; and

d. In any complaint involving employment (i.e., employee vs. employee), the complaint is filed within 180 days (six months) of the date of the alleged unlawful harassment or 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

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Complainants and witnesses must 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 investigation 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.

B. Notice to the State Chancellor's Office

Once a formal complaint is properly filed as described above, a copy of the complaint

shall be immediately forwarded to the State Chancellor's office.

C. Notice to the Complainant

Once a formal complaint is properly filed as described above, the District Officer

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- e. Advise the respondent that s/he has the right to have a representative present during the investigation.
- f. Advise the respondent that any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.

opportunity within the constraints of the investigation

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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:

Contact the complainant and respondent separately to give an overview of the

- steps taken during the investigation and to request additional information.
- Ask the complainant and respondent for the names of any other persons the investigator should attempt to speak with or if there is any thing else he/she would like for the investigator to review before finalizing the report.
- Prepare a written report setting forth the results of the investigation. The report shall include the following:
 - a. A description of the circumstances giving rise to the complaint;

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- To the respondent:
 - a. A copy or summary of the investigative report.

In any case involving employment discrimination, within 90 days of receiving a complaint, the District shall complete its investigation and forward:

- To the State Chancellor:
 - a. A copy of the investigative report; and
 - b. A copy of the written notice to the Complainant as set forth below.
- To the Complainant:
 - a. A copy or summary of the report; and
 - b. Written notice setting forth all the following to the complainant:
 1. The decision of the Determination Panel as to whether there is probably cause to believe discrimination occurred with respect to each allegation in the complaint;
 2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
 3. The proposed resolution of the complaint; and

4. The complainant's right to appeal to the District Board of Trustees and to file a complaint with the Department of Fair Employment and Housing.

- To the Respondent:
 - a. A copy or summary of the investigation report;

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VIII. G. 1. Appeal of Administrative Determination

Complainants may appeal the results of the District's administrative determination.

When the administrative determination and process of the investigative report are

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 and timelines as defined by that agency.

Complainants must submit all appeals in writing.

C. Final Notification to the State Chancellor

In any case *not* involving employment discrimination, within 150 days of receiving a complaint, the District will forward the following to the State Chancellor of the California Community Colleges in Sacramento:

- A copy of the final District decision rendered by the Board of Trustees, 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 that was sent by the District to the complainant;
- A copy of the complainant's appeal of the District's determination;
- Any other information that the State Chancellor may require.

OR

- Notify the State Chancellor that the complainant has not filed an appeal with the Board of Trustees and that the District has closed its file.

D. Extension of Timeline

If for reasons beyond its control, the District is unable to comply with the 150-day deadline specified above for submission of materials to the complainant and the State Chancellor's Office, the District will file a written request that the 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 59340 and will set forth the reasons for the request and the date by which the District expects to be able



XV. Right to Privacy

inalienable right under Article I, Section 1 of the California Constitution. Disciplinary actions taken against employees are generally considered confidential. Where an