

ADMINISTRATIVE REGULATION 4000.5

SOUTH ORANGE COUNTY
COMMUNITY COLLEGE DISTRICT

HUMAN RESOURCES

HARASSMENT AND DISCRIMINATION PREVENTION AND COMPLAINT PROCEDURES

I. GENERAL

As provided in Board Policy 4000.5 (Harassment and Discrimination Prevention and Complaints), the District is committed to providing an academic and work environment that respects the dignity of all individuals and groups. This procedure defines sexual harassment as well as other forms of harassment and sets forth a procedure for the investigation and resolution of complaints by or against any staff or faculty member or student within the District.

This policy protects students and employees in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, a District vehicle, or at a class or training program sponsored by the District at another location.

II. DEFINITIONS

A. General Harassment

1. Harassment based on race, religious creed, color, national origin, ancestry, physical disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person; or the perception that a person has one or more of these characteristics.
2. Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment. For example, repeated derisive comments about a person's competency to do the job, when based on that person's gender, could constitute gender-based harassment.

B. Forms of Prohibited Harassment

Forms of prohibited harassment may include, but are not limited to, the following:

1. Verbal:

Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race, gender, sexual orientation, or other protected status. 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 or propositions; demands for sexual favors; verbal abuse, threats or intimidation; or sexist, patronizing or ridiculing statements that convey derogatory attitudes based on gender, race, nationality, sexual orientation or other protected status.

2. 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, leering, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's gender, race, national origin, sexual orientation or other protected status. Physical sexual harassment includes acts of sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability.

3. Visual or Written:

The display or circulation of visual or written material that degrades an individual or group based on gender, race, nationality, sexual orientation or other protected status. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics or electronic media transmissions.

4. Environmental:

A hostile academic or work environment exists where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, race nationality, sexual orientation or other protected status; or gratuitous comments regarding gender, race, sexual orientation, or other protected statuses that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from:

- an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment;
- an unwarranted focus on, or stereotyping of particular racial or ethnic groups, sexual orientation, gender, or other protected statuses;

An environment may be hostile toward anyone who merely witnesses unlawful harassment in his or her immediate surroundings, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work activities.

C. Sexual Harassment:

In addition to the above forms of harassment, sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature when:

- Submission to the conduct is made a term or condition of an individual's employment, academic status, or progress;
- Submission to or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual;
- 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; or
- 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 and/or the Colleges.

1. Sexual Harassment: This definition encompasses two kinds of sexual harassment:

- a. Quid Pro Quo: Quid pro quo sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.
- b. Hostile Environment: Hostile environment sexual harassment occurs when unwelcome conduct based on a person's gender is sufficiently severe or pervasive so as to alter the conditions of an individual's academic or work

performance, or create an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it is severe, i.e. a sexual assault.

2. Sexual Harassing Conduct:

Sexual harassing conduct can occur between people of the same or different gender. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the victim would perceive the conduct as harassment based on sex. Harassment includes, but is not limited to, the following conduct.

- a. Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's protected status, including but not limited to, sex, sexual orientation, or other protected status. 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 or propositions; demands for sexual favors; verbal abuse, threats or intimidation; or sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular gender.
- b. 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, leering, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures.
- c. Visual or Written: The display or circulation of offensive sexually oriented or other discriminatory visual or written material. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions.
- d. Environmental: An academic or work environment that is permeated with racially or sexually oriented talk, innuendo, insults or abuse not relevant to the subject matter of the class or job activities. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment. An environment may be hostile if unwelcome sexual behavior or other harassing behavior based on a protected status is directed specifically at an individual or if the individual merely witnesses unlawful harassment in his or her immediate surroundings.

The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work activities.

Academic Freedom

The policy will be implemented in a manner that recognizes principles of free speech and academic freedom.

III. COMPLAINT PROCEDURES

A. Communicating that the Conduct is Unwelcome:

The District encourages faculty, students and staff to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste and/or inappropriate.

B. Filing a Timely Complaint:

Since failure to report harassment and discrimination impedes the District's ability to stop the behavior, the District strongly encourages anyone who believes they are being harassed or discriminated against, to file a complaint. The District also strongly encourages the filing of such complaints within 30 days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the District's ability to investigate and remediate. All supervisors and managers have a mandatory duty to report incidents of harassment and discrimination or the existence of a hostile, offensive or intimidating work environment, and acts of retaliation. The District will investigate complaints involving acts that occur off campus if they are related to an academic or work activity. A complaint is related to an academic or work activity if it involves any District program, whether those programs take place in the District's facilities, a District vehicle, or at a class or training program sponsored by the District at another location.

C. Oversight of Complaint Procedure:

The Vice Chancellor, Human Resources is the "responsible District officer" charged with receiving complaints of discrimination or harassment, and coordinating their investigation. The actual investigation of complaints may be assigned by the Vice Chancellor, Human Resources to other staff or to outside persons or organizations under contract with the district. This shall occur whenever the Vice Chancellor, Human Resources is named in the complaint or implicated by the allegations in the complaint.

D. Who May File a Complaint:

Any student, employee, or third party who believes he/she has been discriminated against or harassed by a student, employee or third party in violation of these policy and procedures.

E. Where to File a Complaint:

A student, employee, or third party who believes he or she has been discriminated against or harassed in violation of these policy and procedures may make a complaint orally or in writing, within one year of the date of the alleged harassment or the date on which the complainant knew or should have known of the facts underlying the complaint. Any District employee who receives a complaint for employment harassment or discrimination shall notify the Vice Chancellor, Human Resources immediately.

If a complainant decides to file a formal written unlawful discrimination or harassment complaint against the District, he/she must file the complaint on a form prescribed by the California Community Colleges Chancellor's Office. These approved forms are available from the Vice Chancellor, Human Resources and at the following URL:
www.cccco.edu/divisions/legal/discrimination/discrimination.htm

The completed form must be filed with any of the following:

- The Vice Chancellor, Human Resources, if the complainant is an employee;
- The Vice President, Student Services, if the complainant is a student;
- The California Community Colleges Chancellor's Office

Employee complainants shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH).

Complaints filed with the EEOC and/or the DFEH should be forwarded to the California Community Colleges Chancellor's Office.

F. Intake and Processing of the Complaint:

Upon receiving notification of a harassment or discrimination complaint, the Vice Chancellor, Human Resources shall:

- Advise complainant that he/she may file a complaint with the Office of Civil Rights of the U.S. Department of Education and employee complainants may file a complaint with the California Department of Fair Employment and Housing or with the federal Equal Employment Housing or with the federal Equal Employment Opportunity Commission. All Complainants should be advised that they have a

right to file a complaint with local law enforcement. The district must investigate even if the complainant files a complaint with local law enforcement. In addition, the district should ensure that complainants are aware of any available resources, such as counseling, health, and mental health services. The Vice Chancellor, Human Resources shall also notify the Chancellor of California Community Colleges of the complaint.

- Undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling and/or training, etc.;
- Advise the complainant that he or she need not participate in an informal resolution of the complaint, as described below, and that he or she has the right to end the informal resolution process at any time. Mediation is not appropriate for resolving incidents involving sexual violence.
- The Informal Resolution Process of Harassment Complaint:

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. Selecting an informal resolution does not extend the time limitations for filing a formal complaint. The informal resolution process is intended to allow an individual who believes he or she has been harassed to resolve the issue through an informal or mediation process rather than the formal complaint process. A complainant may wish to select the informal process when there is a simple misunderstanding or the complainant does not wish to file a formal complaint. Examples of informal complaint resolutions include clarification of a misunderstanding or an apology from the respondent and his or her assurance that he or she will cease the offending behavior.

If the complainant declares his or her preference for the informal process, the designated officer will present the complainant with a document that contains the basics of complainant's allegations of harassment and will include a copy of this pamphlet describing the formal and informal complaint procedures available to the complainant. The complainant will date and sign the informal complaint document which will clearly indicate that the complainant opted for the informal resolution process.

The informal resolution process is not a prerequisite to the formal complaint process and investigation. If the complainant properly files a formal complaint, the District must process the complaint and investigation within the time required unless the complainant voluntarily withdraws the complaint as a result of a successful informal resolution.

Similarly, efforts at informal resolution may continue after the filing of a formal written complaint, but after a formal complaint is filed an investigation is required to be conducted pursuant to Title 5, California Code of Regulations, section 59334, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint.

Efforts to informally resolve a complaint after the filing of a written complaint will not exceed the 90-day period for rendering the administrative determination pursuant to Title 5, section 59336.

In employment-related cases, if the complainant files a charge with the Department of Fair Employment and Housing (DFEH), 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 DFEH.

The District is committed to maintaining a safe and harassment free educational environment and may determine that serious allegations may need to be investigated even if the complaining party considers the matter resolved. The District may also determine that the complaint will no longer be held informally, and instead should proceed to the formal complaint procedure stage. The District will provide the complainant with written notice of this determination via United States mail.

- Inform the complainant if they do not desire to utilize the informal complaint resolution process or the process has not been successful, to follow the formal resolution process as follows:

To file a formal written unlawful discrimination or harassment complaint against the District, he or she must file the complaint on a form prescribed by the California Community College Chancellor's Office. These approved forms are available from the Vice Chancellor, Human Resources and at the following:

URL: www.cccco.edu/divisions/legal/discrimination/discrimination.htm

The completed form must be filed with any of the following:

- the Vice Chancellor, Human Resources;
- identify others, including the Chief Student Services Officer, Chief Human Resources Officer and Chief Executive Officer;
and/or
- the Chancellor of the California Community Colleges.

Employee complainants shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH).

Complaints filed with the EEOC and/or the DFEH should be forwarded to the Chancellor's Office.

- Consider if interim protective actions are needed. In taking interim actions, the District will respect the rights of individual involved. The District reserves the right to implement an individualized response for the accused or alleged harasser (student or employee) pursuant to its policies, and, if in its sole judgment, it finds interim actions are warranted. The District will consider factors such as the seriousness of the alleged offense, and/or the potential for serious disruption or danger to other members of its community in determining whether interim action is needed. An interim action may include separating the complainant from the accused. For instance, the District may prohibit the accused individual from having any contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and accused individual, the District shall minimize the burden on the complainant. For example, it is not appropriate to remove complainants from classes or housing while allowing the accused individuals to remain.
- Authorize the investigation of the complaint, and supervise and/or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. Where complainants opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. In the case of a formal complaint, the investigation will include interviews with the complainant, the accused, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.
- Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, or other unlawful discriminatory conduct, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.
- Set forth the results of the investigation in a written report. The written report shall include a description of the circumstances giving rise to the complaint, a summary of the testimony of each witness, an analysis of any relevant data or other evidence collected during the investigation, a specific finding as to whether there is probable cause to believe that discrimination did or did not occur with respect to each allegation in the complaint, a description of actions the District will take to prevent similar conduct, the proposed resolution of the complaint, the complainant's right to appeal to the District's governing board, and, if the complainant is a student, the right to appeal to the State Chancellor. If the complainant is an employee, the report shall include the right to file an administrative complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing. The report may contain any other appropriate information.

- Provide the complainant and accused with a copy or summary of the investigative report within ninety days from the date the District received the complaint. The complainant and accused shall also be provided with a written notice setting forth the determination of the Vice Chancellor, Human Resources as to whether harassment or other discriminatory conduct did or did not occur with respect to each allegation in the complaint; a description of action taken, if any, to prevent similar problems from occurring in the future; the proposed resolution of the complaint; and notice of the parties' rights to appeal to the District's Board of Trustees and the state Chancellor's Office. The results of the investigation and the determination as to whether harassment or other discriminatory conduct occurred shall also be reported to the accused, and the appropriate academic or administrative official(s). Reports to the complainant shall be prepared so as not to violate any applicable privacy rights of the individual who has been accused.

G. Investigation of the Complaint:

The District shall promptly investigate every complaint of harassment or discrimination. No claim of workplace or academic harassment or discrimination shall remain unexamined. This includes complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, on a District vehicle, or at a class or training program sponsored by the District at another location. As set forth above, where the complainant opts for an informal resolution, the Vice Chancellor, Human Resources may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the accused individual's rights to receive information about the allegations if the information is maintained by the District as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.15. The District will inform the complainant if it cannot maintain confidentiality.

1. Investigation Steps:

The District will fairly and objectively investigate harassment and discrimination complaints. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the District's grievance procedures operate. The investigator may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially. Investigators will use the

following steps: interviewing the complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses and evidence identified by each party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion. When the District evaluates the complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that discrimination or harassment has occurred.

2. Timeline for Completion:

The District will undertake its investigation promptly and swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report within 90 days of the District receiving the complaint.

3. Cooperation Encouraged:

All employees are expected to cooperate with a District investigation into allegations of harassment or discrimination. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the District of its obligation to investigate. The District will conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed.

H. Discipline and Corrective Action:

If harassment, discrimination and/or retaliation occurred in violation of the policy or 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. However, the District may disclose information about the sanction imposed on an individual who was found to have engaged in harassment when the sanction directly relates to the complainant; for example, the District may inform the complainant that the harasser must stay away from the complainant.

Disciplinary actions against faculty, staff and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.

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 will ensure that complainants and witnesses know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred. 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.

If the District cannot take disciplinary action against the accused individual because the complainant refuses to participate in the investigation, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

IV. APPEALS

If the District imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the procedure for appealing a disciplinary decision.

If the complainant is not satisfied with the results of the administrative determination, he or she may, within fifteen days, submit a written appeal to the Board of Trustees. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within 45 days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the complainant and to the state Chancellor's Office. The complainant shall also be notified of his or her right to appeal this decision.

If the Board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final decision of the District in the matter.

The complainant shall have the right to file a written appeal with the state Chancellor's Office within thirty days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to the provision of Section 59350 of Title 5 of the California Code of Regulations.

In any case involving employment discrimination, including workplace harassment, the complainant 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. 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.

Within 150 days of receiving a formal complaint, the District shall forward to the state Chancellor's Office the original complaint, the investigative report, a copy of the written notice to the complainant setting forth the results of the investigation, a copy of the final administrative decision rendered by the Board or indicating the date upon which the decision became final, and a copy of the notification to the complainant of his or her appeal rights. If, due to circumstances beyond its control, the District is unable to comply with the 150-day deadline for submission of materials, it may file a written request for an extension of time no later than ten days prior to the expiration of the deadline.

V. DISSEMINATION OF POLICY AND PROCEDURES

District Policy and Procedures related to harassment will include information that specifically addresses sexual violence. District Policy and Procedures will be provided to all students, faculty members, members of the administrative staff and members of the support staff, and will be posted on campus and on the District website.

When hired, employees are required to sign that they have received the policy and procedures, and the signed acknowledgment of receipt is placed in each employee's personnel file. In addition, these policies and procedures are incorporated into the District's course catalogs and orientation materials for new students.

VI. TRAINING

The District shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees every two years. All new supervisory employees must be provided with the training and education within six months of their assumption of a supervisory position and then once every two years.

The training and education required by this procedure shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

Training for academic staff should emphasize environmental harassment in the classroom.

Educational resources will be made available to all students at least once annually. Educational resources shall include an explanation of discrimination, the policy, how it works, and how to file a complaint. The policy and other relevant information will be posted on the District's web page.

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Participants in training programs will be required to sign a statement that they have either understood the policies and procedures, their responsibilities, and their own and the district's potential liability, or that they did not understand the policy and desire further training.