

**Coast Community College District
ADMINISTRATIVE PROCEDURE**

Chapter 3
General Institution

**AP 3435 Unlawful Discrimination, Harassment, and Retaliation
Complaints and Investigations**

References:

Education Code Section 66281.5;
Government Code Section 12950.1;
Title 5 Sections 59320 et seq.;
34 Code of Federal Regulations Section 106.8(b)

The District is committed to providing an academic and business environment free from unlawful discrimination, harassment, and retaliation. This Procedure outlines the process for receiving and investigating unlawful discrimination, harassment, and retaliation complaints made by employees, students, and third parties. Complaints and investigations pertaining to Title IX issues are not covered by this Procedure, but rather are covered separately under BP 5910 and AP 5910 Sexual Misconduct. This Procedure is subject to the provisions of applicable collective bargaining agreements.

Providing a Timely Complaint: Because failure to report unlawful discrimination, harassment, and retaliation impedes the District's ability to stop the behavior, the District encourages any person, including third parties, employees, and students, who believe that unlawful discrimination, harassment, or retaliation, may have occurred, regardless of whether they personally experienced such harm, to file a complaint. The District encourages the filing of such complaints within 30 calendar days of the alleged incident.

The complaint shall be made with the District's Vice Chancellor of Human Resources, who is the individual designated to receive such complaints, as the Responsible District Officer. The complaint may be in a form prescribed by the State Chancellor or otherwise provided orally or in writing to the Responsible District Officer or College Human Resources Director.

In any complaint not involving employment, the complaint shall 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. The District shall advise student complainants that they may file their non employment-based complaint with the Office for Civil Rights of the U.S. Department of Education ("OCR") where such a complaint is within OCR's jurisdiction.

In any complaint alleging unlawful discrimination in employment, the complaint shall be filed within 180 calendar days of the date the alleged unlawful discrimination occurred, except that this period should be extended by no more than 90 calendar days following the expiration of the 180 calendar days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 calendar days. The District shall advise the complainant that they may file a 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 jurisdiction of those agencies.

All employees who learn of potentially unlawful discrimination, harassment, or retaliation in their official capacity as a faculty member or supervisor have a mandatory duty to report such incidents to the Responsible District Officer.

The District will investigate complaints involving acts that occur off campus if they are related to or impact an academic or work activity.

Oversight of Complaint Procedure: The Vice Chancellor of Human Resources is the "Responsible District Officer" charged with receiving complaints of unlawful discrimination, harassment, or retaliation, and coordinating their investigation.

The actual investigation of complaints may be assigned by the Vice Chancellor of Human Resources to other staff or to outside persons or organizations under contract with the District. This shall occur whenever the Vice Chancellor of Human Resources is named in the complaint or implicated by the allegations in the complaint.

Who May File a Complaint: Any student, employee, or third party who believes that unlawful discrimination, harassment, or retaliation may have occurred, regardless of whether they personally experienced such harm, or by one who has learned of such unlawful discrimination in his/her official capacity as a faculty member or supervisor in violation of applicable Board Policies and Administrative Procedures.

Where to File a Complaint: Any student, employee, or third party who believes that discrimination, harassment, or retaliation may have occurred in violation of applicable Board Policies and Administrative Procedures, regardless of whether they personally experienced such harm, is to make a complaint orally or in writing to the Vice Chancellor of Human Resources, District Human Resources, or at any college Human Resources office, or to the Vice Chancellor of Educational Services and Technology or College Vice Presidents of Student Services for student complaints.

Any District employee who receives an unlawful discrimination, harassment, or retaliation complaint shall notify the Vice Chancellor of Human Resources promptly.

Intake and Processing of the Complaint: Upon receiving a complaint alleging unlawful discrimination, harassment, or retaliation, the Vice Chancellor of Human Resources may undertake efforts to informally resolve the complaint with the

complainant's consent, including but not limited to mediation; rearrangement of work/academic schedules; obtaining apologies; providing informal counseling and/or training, etc. Complaints and investigations pertaining to Title IX issues are covered separately under BP 5901 and AP 5910.

- The District shall advise the complainant that they need not participate in an informal resolution of the complaint, as described above, and that they have the right to end the informal resolution process at any time. In addition, the District should ensure that complainants are aware of any available resources, such as counseling, health, and mental health services. As circumstances warrant, the District may take interim steps to protect a complainant from coming into contact with respondents. The Vice Chancellor of Human Resources should notify the complainant of their options to avoid contact with the respondent and to allow students who are complainants to change academic situations as appropriate. For instance, the District may prohibit the respondent from having any contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and respondent, the District shall minimize the burden on the complainant. For example, it may not be appropriate to remove complainants from classes while allowing respondents to remain. The Vice Chancellor of Human Resources may authorize the investigation of the complaint, and supervise or conduct a thorough, prompt, and impartial investigation of the complaint, as set forth herein. Where complainants opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and will utilize the investigation process outlined below as appropriate. The investigation will include interviews with the complainant, the respondent, and any other persons who may have relevant knowledge concerning the complaint. The Vice Chancellor of Human Resources shall review the factual information gathered through the investigation to determine whether the alleged conduct constitutes unlawful discrimination, harassment, or retaliation, 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.
 - in any case not involving employment discrimination, within 90 calendar days of receiving a complaint (unless this time frame is extended by the State Chancellor's Office), the District shall complete its investigation and forward a copy or summary of the report to the complainant, and written notice setting forth all of the following: the determination of the Responsible District Officer, or their designee's determination as to whether unlawful discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard;
 - in the event an unlawful discrimination allegation was substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future;

- the proposed resolution of the complaint; and
- the complainant's right to appeal to the Board and/or the State Chancellor's Office pursuant to Title 5 Sections 59338 and 59339

In any case involving employment discrimination, within 90 calendar days of receiving a complaint (unless this time frame is extended by the District or by the State Chancellor's Office), the District shall complete its investigation and forward a copy or summary of the report and written notice to the complainant setting forth all the following:

- the determination of the Responsible District Officer, or their designee's determination as to whether unlawful discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard; in the event an unlawful discrimination allegation was substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future;
- the proposed resolution of the complaint; and
- the complainant's right to appeal to the Board and to file a complaint with DFEH and/or EEOC. in any case involving a finding of unlawful discrimination, when the District provides the complainant with any information, the District shall also provide to the respondent the following:
 - the determination of the Responsible District Officer, or their designee's determination, as to whether unlawful discrimination, harassment, or retaliation occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard; and
 - the proposed resolution of the complaint, including any disciplinary action against the respondent.

Investigation of the Complaint: The District shall promptly investigate complaints of discrimination, harassment, and/or retaliation in accordance with Title 5 Section 59328, and, if applicable, collective bargaining agreements. No claim of workplace or academic discrimination, harassment, and/or retaliation shall remain unexamined. This may include complaints involving activities that occur off campus that are in connection with 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.

The District cannot guarantee confidentiality, but 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. When determining whether to release confidential information, the District may weigh the request for confidentiality against the following factors: the nature of the alleged unlawful discrimination, harassment, and/or retaliation; whether there have been other unlawful discrimination, harassment, or retaliation complaints about the same individual; and the parties' legal rights to receive

information about the allegations. The District will inform the complainant and the respondent if it cannot maintain confidentiality.

Investigation Steps: The District will provide an impartial and thorough investigation in response to unlawful discrimination, harassment, or retaliation complaints which are timely filed. Employees designated to serve as investigators under this Procedure shall have adequate training on what constitutes unlawful discrimination, harassment, and sexual harassment, including sexual violence and Title 5 regulations. The investigator shall not have any conflicts of interest and must be able to investigate the allegations impartially.

Investigators will use the following steps: interviewing the complainant(s); interviewing the respondent(s); identifying and interviewing witnesses and relevant evidence identified by each party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District's anti retaliation policy; considering whether any involved person should be removed from the District/College pending completion of the investigation; and reaching a conclusion as to the allegations. When the District evaluates the complaint, it shall do so using the preponderance of the evidence standard.

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 calendar days of the District receiving the complaint. If the District is unable to comply with the 90-days, the District may extend the time to respond by up to 45 additional calendar days. Notice of extension shall be sent to the complainant and respondent no later than 10 days prior to the initial time to respond pursuant to Title 5. The District may also request additional extensions from the State Chancellor's Office after the initial 45-day extension.

Employee Cooperation: All employees are expected to cooperate with a District investigation into allegations of unlawful discrimination, harassment, or retaliation. 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 unlawful discrimination, harassment, or retaliation is, or may be occurring, with or without the cooperation of those who may be suffering such harm and regardless of whether a complaint is filed.

Discipline and Corrective Action: If unlawful discrimination, harassment, or retaliation occurred in violation of applicable Board Policies and Administrative Procedures, the District may take disciplinary or corrective action against the respondent or any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense(s). When applicable, disciplinary action will be taken in compliance with applicable provisions of collective bargaining agreements and/or law. Remedies for the complainant might include, but are not limited to:

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and respondent do not attend the same classes or work in the same work area;
- preventing offending third parties from entering campus;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;
- arranging for a student-complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the unlawful discrimination, harassment, and/or retaliation and the misconduct that may have resulted in the complainant being disciplined.

If discipline is imposed, the precise 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 unlawful discrimination, harassment, and/or retaliation when the sanction directly relates to the complainant; for example, the District may inform the complainant that the respondent must have no contact with the complainant.

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

Complainants and witnesses shall be advised on how to report any subsequent complaints.

The District may pursue other steps to limit the effects of any unlawful discrimination, harassment, or retaliation and prevent its recurrence, as appropriate.

Appeals

If the complainant is not satisfied with the results of the administrative determination, the complainant may, within 30 calendar days of the date of the administrative determination, submit a written appeal to the Board pursuant to Title 5 Section 59336. The Board shall review the original complaint, the investigative report, the administrative determination, and the appeal. The deadline for the Board to issue a final District decision in the matter is within 45 calendar days after receiving the appeal. If the Board does not act within 45 calendar days, the administrative determination shall be deemed approved and shall become the final decision of the District in the matter.

In any case not involving employment discrimination, the District shall promptly forward to the complainant, and to the respondent, a copy of the final District decision rendered by the Board, or a notification that the Board took no action and notice of the complainant's right to appeal the District decision to the State Chancellor's Office within 30 calendar days from the date of the notice to the complainant. Appeals pertaining to Title IX issues are covered separately under BP 5910 and AP 5910 Sexual Misconduct.

The State Chancellor's review on appeal is limited to the following issues:

- (1) whether there was a procedural error in violation of Title 5;
- (2) whether there was a defect in the investigation;
- (3) whether new evidence unavailable during the investigation, despite the complainant's due diligence, would substantially impact the outcome of the investigation;
- (4) whether correct legal standards were applied; and
- (5) whether the District's determination was an abuse of discretion.

The State Chancellor shall issue a determination within 90 calendar days of receiving the appeal and appellate file from the District. The State Chancellor may remand any matter to the District for any of the following reasons:

- (1) to cure defects in the investigation or in procedural compliance
- (2) to consider new evidence not available during the investigation, despite the complainant's due diligence, would substantially impact the outcome of the investigation; or
- (3) to modify or reverse a decision of the Board based upon misapplication of an applicable legal standard or an abuse of discretion.

In any case involving employment discrimination, the District shall promptly forward to the complainant a copy of the final District decision rendered by the Board, or a notification that the Board took no action, that includes the complainant's right to file a complaint with the DFEH, where the case is within the jurisdiction of DFEH.

Dissemination of Board Policies and Administrative Procedures

The Board Policy and related Administrative Procedure regarding prohibition of unlawful discrimination, harassment, and retaliation shall be provided to all students, faculty, staff, and managers and will be posted on District's website.

When hired, employees are required to sign that they have received the Board Policies and Administrative Procedures related to unlawful discrimination, harassment, and retaliation and the signed acknowledgment of receipt is placed in the employee's personnel file. In addition, the Board Policies and Administrative Procedures related to unlawful discrimination, harassment, and retaliation are to be incorporated into the District's course catalogs and orientation materials for new students.

Ratified December 2, 2013

Ratified December 12, 2018

Ratified November 18, 2020