

Personnel - General

Administrative Rules and Procedures

4027 Sexual Harassment

Investigation and Resolution of Complaints regarding Sexual Harassment.

INTRODUCTION

The Chabot-Las Positas Community College District recognizes that all members of the college community have the right to study and work in a climate of mutual respect and trust. The District is committed to creating and maintaining an atmosphere which respects the dignity of its students, faculty, staff and visitors. In keeping with this policy, the Chabot-Las Positas Community College District Governing Board does hereby adopt the following procedures in accordance with Title 5 of the California Administrative Code Sections 59320-59342 *et seq.*

DEFINITIONS

1. Sexual Harassment means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:
 - a. Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
 - b. Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
 - c. 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.
 - d. 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 educational institution.
(Education Code Section 212.5)

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Sexual harassment may include, but is not limited to:

- (1) sending suggestive or obscene letters, notes, invitations, making derogatory comments, slurs, jokes, epithets, assaults, touching, impeding or blocking movement, leering, gesturing, displaying sexually suggestive objects, pictures or cartoons;
 - (2) continuing to express sexual interest after being informed that the interest is unwelcome;
 - (3) when sexual advances are rejected or in retaliation for allegations of sexual harassment, implying or withholding support for an appointment, promotion, or change of assignment; suggesting a poor performance report will be prepared; or suggesting probation will be failed; within the educational environment, implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared or suggesting a recommendation or college application will be denied;
 - (4) engaging in coercive sexual behavior to control, influence, or affect the career, salary and/or work environment of another employee; within the educational environment, engaging in coercive sexual behavior to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student;
 - (5) engaging in offering favors of educational or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassification etc., in exchange for sexual favors.
2. Complainant: One who alleges that he or she has personally suffered unlawful discrimination, or one who has learned of such unlawful discrimination in his or her official capacity [Title 5, Section 59328(a)].
 3. Informal Complaint: A verbal allegation from a complainant as defined above to the attention of the designated Sexual Harassment Officer.

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4. Formal Complaint: A written allegation from the complainant as defined above filed with the designated Sexual Harassment Officer.
5. Designated Sexual Harassment Officer: The College or District Administrator responsible for ensuring District/College compliance.
6. Respondent: A person against whom a complaint of sexual harassment has been made.

COMPLAINT PROCEDURES

Any student, employee, applicant for employment, or visitor who believes he or she has been subjected to sexual harassment should immediately inform the designated Sexual Harassment Officer.

Any employee who receives information, either verbally or in written form, that sexual harassment has allegedly occurred shall immediately notify the designated Sexual Harassment Officer. Unless otherwise designated, the designated Sexual Harassment Officer will be responsible to investigate all complaints in accordance with the following policies:

Informal Complaint

An individual who alleges that he or she may have been subjected to sexual harassment and would like assistance in determining whether or not he or she has been or is a victim of sexual harassment, should contact the appropriate designated Sexual Harassment Officer to discuss his or her concerns. The complainant will be advised that he/she may also file a complaint or charge with the U.S. Equal Employment Opportunity Commission; the U.S. Department of Education, Office of Civil Rights; the California Department of Fair Employment and Housing; and the Office of the Chancellor, California Community Colleges.

The following informal procedure has been established to resolve charges of sexual

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harassment within thirty (30) days of the District's/College's receipt of the complaint. If the complaint is not resolved in thirty (30) days, the complainant shall be notified that he or she may file a formal complaint pursuant to the procedures for filing a formal complaint. A formal complaint may also be filed at any time during the informal process.

1. The designated Sexual Harassment Officer shall meet with the complainant to:
 - a. understand the nature of the concern.
 - b. give to the complainant a copy of the policy and procedure concerning unlawful sexual harassment and inform complainant of his or her rights;
 - c. assist the individual in any way advisable.
2. If a resolution is reached that does not include disciplinary action, the resolution shall be implemented and the informal process shall be concluded.
3. The designated Sexual Harassment Officer shall keep a written log of discussions and a record of the resolution. This information shall become part of the official investigation file if the complainant initiates a formal complaint. A letter summarizing the informal investigation and the resolution agreed upon shall be sent to the District Chancellor, or the appropriate College President, the complainant and the respondent, and kept as part of the record, if needed.

If informal resolution of the concern is possible, it is not necessary to pursue a formal complaint.

Formal Complaint

If the complaint is not resolved at the informal stage, the complainant may file with

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the designated Sexual Harassment Officer a written statement of the problem and his/her proposed remedy on the form prescribed by the State Chancellor's Office. This form shall be provided to the complainant by the designated Sexual Harassment Officer. The formal complaint shall be filed as soon as possible after it is determined that no informal resolution can be achieved, and not later than one year from the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination or sexual harassment [Title 5, Section 59328].

1. All written complaints shall be signed and dated by the complainant, and shall contain at minimum the name(s) of the individual(s) involved, the date(s) on the event(s) at issue, and a detailed description of the action(s) alleged to constitute the sexual harassment. Names, addresses and phone numbers of witnesses or potential witnesses should also be included.
2. Within five (5) days after receipt of a signed complaint, the appropriate designated Sexual Harassment Officer will review the complaint to determine whether it describes the kind of sexual harassment which is prohibited under these procedures, and whether the complaint sufficiently describes facts of the alleged misconduct.

If the complaint does not describe the kind of prohibited conduct the District/College investigates under this procedure, the complainant will be notified and referred to the appropriate process.

If the complaint does not sufficiently describe the facts giving rise to the complaint so that a determination can be made regarding the alleged misconduct, the complaint will be returned and the complainant will be asked to submit an amended complaint which provides enough factual detail to allow the above determination to be made.

The complainant will receive an additional three (3) days to submit an amended complaint.

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3. The formal investigative process shall begin immediately upon receipt of the written complaint, or amended complaint. The designated Sexual Harassment Officer shall notify the District Chancellor or the College President that the investigation is about to commence and shall meet with the complainant to review the complaint and describe the scope and nature of the investigation.

The designated Sexual Harassment Officer shall also meet with the respondent to present a copy of the complaint and this policy, to review his or her rights, and to review the scope and nature of the investigation. At this stage the District Chancellor may decide to utilize the services of an outside investigator to conduct the investigation.

4. Prior to completing a full and thorough investigation, the designated Sexual Harassment Officer shall meet again with the complainant and the respondent separately to give an overview of the steps taken during the investigation, and to ask complainant and respondent for the names of additional people, if necessary, to be interviewed to obtain additional information. If an outside investigator is used, these names shall be given to him/her for further follow-up.
5. The results of the investigation shall be set forth in a written report and submitted to the College President (or the District Chancellor or designee, as appropriate) within sixty (60) days of the commencement of the investigation, and shall include:
 - a. a description of the circumstances giving rise to the complaint;
 - b. a summary of the information provided by each witness, including the complainant, any witnesses identified in the complaint, and other witnesses identified by the respondent or within the course of the investigation;
 - c. an analysis of any relevant data or other evidence collected during the course of the investigation;

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- d. any other relevant and factual information deemed appropriate by the designated Sexual Harassment Officer.
6. Within ten (10) working days, the College President (or the District Chancellor, if appropriate) shall review the report of the investigation and shall determine whether or not sexual harassment occurred with respect to each allegation in the complaint. These findings shall be based solely and exclusively on the evidence and the written record in the case.

The findings shall be submitted to the District Chancellor for review and recommendation of disciplinary action if appropriate. Disciplinary action shall be related to the severity of the incident and/or the degree to which repeated incidents have occurred. Such disciplinary actions for employees may include, but are not limited to, verbal warnings, letters of reprimand, suspension without pay, and dismissal. Disciplinary actions for students may range from counseling to suspension and/or expulsion.

7. The entire investigation shall be completed within ninety (90) days. The following shall be forwarded by the President or District Chancellor (for District employees) to the complainant and the respondent:
 - a. a summary of the investigative report required pursuant to Title 5, Section 59334;
 - b. a written notice setting forth:
 - i. the findings as to whether sexual harassment did or did not occur with respect to each allegation in the complaint;
 - ii. the proposed resolution of the complaint;

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- iii. the complainant's right to appeal to the District Governing Board and the State Chancellor pursuant to Title 5, Section 59338;
- iv. the respondent's right to file a written response to the findings;
- v. a description of actions taken, if any, to prevent similar problems from occurring in the future.

APPEAL RIGHTS

District Chancellor

If the complainant is not satisfied with the results of the decision, the complainant may appeal the determination to the District Chancellor by submitting objections within ten (10) days of the receipt of the determination. The District Chancellor shall respond within thirty (30) days of receiving the complainant's appeal. If the District Chancellor does not act within thirty (30) days, the determination of the President shall be deemed approved.

District Governing Board

If the complainant is not satisfied with the decision of the District Chancellor, the complainant may appeal the determination by submitting objections to the District Governing Board within ten (10) days of the decision of the Chancellor. Within thirty (30) days of receiving the complainant's appeal, a copy of the final decision rendered by the District Governing Board shall be forwarded to the complainant and to the respondent. If the Board does not act within thirty (30) days, the determination of the District Chancellor shall be deemed approved and shall become the final District decision in the matter.

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State Chancellor's Office

The complainant shall have the right to file a written appeal to the State Chancellor within thirty (30) days after the District Governing Board issues a decision or permits the administrative decision to become final.

Office of Civil Rights

Any individual may also file a complaint of unlawful discrimination at any time during or after use of the District/College sexual harassment complaint process with the U.S. Department of Education, Office of Civil Rights, Old Federal Building, 50 United Nation Plaza, Room 239, San Francisco, CA 94102; (415) 556-7000.

FINAL REPORT TO STATE CHANCELLOR'S OFFICE

Within one hundred fifty (150) days of receiving a complaint, the District/College will forward to the State Chancellor of the original complaint, the report required regarding the investigation which shall describe the nature and extent of the investigation conducted by the District, a copy of the notice sent to the complainant, a copy of the final District decision rendered by the Governing Board, or a statement indicating the date upon which the administrative determination became final, and notices of appeal rights.

GENERAL PROVISIONS

1. Any questions regarding this policy should be directed the designated Sexual Harassment Officer whose name is listed in the College catalog and the Schedule of Classes.
2. Any person who is dissatisfied with the manner in which any of the designated Sexual Harassment Officers conduct a sexual harassment investigation, or is dissatisfied with the manner in which questions regarding these procedures are resolved should contact the appropriate College President or the District Chancellor to seek resolution of such issues.

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3. Although these procedures anticipate that the designated Sexual Harassment Officer is responsible for investigating all complaints of sexual harassment, nothing in this policy is intended to prohibit either the College President or the District Chancellor from appointing a different administrator or an outside investigator as investigator where appropriate. Where it is determined that an administrator other than the designated Sexual Harassment Officer will investigate a sexual harassment complaint, the appointed administrator shall do so in accordance with this policy.
4. The District/Colleges recognize that confidentiality is important to all parties involved in an investigation of sexual harassment. To the extent practical, the District/Colleges will make every effort to ensure the confidentiality of the complainant, respondent and witnesses. Employees and/or students interviewed in accordance with these policies will be directed to maintain such confidentiality.
5. The District/Colleges will not tolerate retaliation against any student or employee for initiation, pursuit or assistance with a complaint of sexual harassment. Any individual who retaliates against any employee and/or student in violation of this policy shall be subject to disciplinary action.
6. Any individual who is determined to have falsely initiated, or participated in, a sexual harassment claim may be subject to disciplinary action.

DISSEMINATION OF POLICY

All employees and students shall be provided with a copy of this complaint procedure, and it will be posted in prominent places throughout the District/Colleges. Each new employee shall receive a copy of this complaint procedure.

A copy of this complaint procedure will also be available in the Offices of the President, Vice President of Academic Services, Vice President of Student Services, designated Sexual Harassment Officer, and the District Personnel Office.