I. Introduction & Scope

These are the written procedures for prevention of discrimination, discriminatory harassment and sexual harassment; and for filing, processing and investigating complaints of unlawful discrimination and discriminatory harassment, and sexual harassment at Cabrillo Community College District. These policies and procedures incorporate the legal principles contained in nondiscrimination provisions of the California Code of Regulations, Title 5, sections 59300 et seq. as well as California and Federal law and regulations identified below, and any other state and federal substantive and procedural requirements.

A copy of District Policy and this Procedure on unlawful discrimination and harassment will be displayed in a prominent location in the main administrative building or other area where notices regarding the institution’s rules, regulations, procedures, and standards of conduct are posted.

A. Unlawful Discrimination and Harassment Policy

   It is the policy of the Cabrillo Community College District to provide an environment free of unlawful discrimination or discriminatory harassment, including sexual harassment.

    1. Unlawful discrimination and harassment are prohibited.
       Discrimination or harassment toward any person in the District’s programs, activities and work environment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, pregnancy or pregnancy disability, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, or because he or she is perceived to have one or more of the foregoing characteristics is prohibited.

    2. Sexual harassment is prohibited.
       The policy of the Cabrillo Community College District includes providing an education and employment environment free from unwelcome sexual advances, requests for sexual favors, sexual favoritism, or other verbal or physical conduct or communications constituting sexual harassment.

    3. District will comply with the Rehabilitation Act.
       The policy of Cabrillo Community College District is to comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973 in the development, procurement, maintenance, or use of electronic or information technology and respond to and resolve unlawful discrimination complaints regarding accessibility. Such complaints will be treated as complaints of discrimination on the basis of disability.

    4. Retaliation for making complaints under this Procedure or for cooperating with an investigation is prohibited.
Retaliation against any individual who makes a complaint of discrimination or harassment or who participates in an investigation of discrimination or harassment is also prohibited whether or not the allegations are eventually found to be true. If the District determines that retaliation has occurred, it will take all reasonable steps to stop such conduct.

Employees, students, or other persons acting on behalf of the District who engage in unlawful discrimination harassment, or retaliation as defined by this policy, or by state or federal law, may be subject to discipline, up to and including, but not limited to, discharge, expulsion, or termination of contract.


B. Academic Freedom
The Cabrillo Community College District governing board reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow any form of unlawful discrimination, discriminatory harassment or sexual harassment. It is recognized that an essential function of education is probing of opinions and an exploration of ideas that may cause some students discomfort. It is further recognized that academic freedom ensures the faculty’s right to teach and the student’s right to learn. Finally, nothing in this procedure shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

II. Definitions
Definitions applicable to nondiscrimination and harassment policies are as follows:

A. “Appeal” means a request by a complainant made in writing to the Cabrillo Community College District governing board, pursuant to Title 5, section 59338 and/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, harassment and/or retaliation.

B. “Association with a person or group with these actual or perceived characteristics” includes advocacy for or identification with people who have one or more characteristics of a protected category listed under “Unlawful Discrimination and Harassment Policy” and Title 5, section 59300, participation in a group associated with persons having such characteristics, or use of a facility associated with use by such persons.

C. “Complaint” means a written and signed statement meeting the requirements of Title 5, section 59328, that alleges unlawful discrimination, harassment and/or retaliation in violation of the nondiscrimination regulations adopted by the Board of Governors of the California Community Colleges, as set forth at Title 5 C.C.R. sections 59300 et seq.

D. “Days” means calendar days.
E. “District” means the Cabrillo 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 any other organization associated with the District or its college(s) that receives state funding or financial assistance through the District.

F. “Gender” means sex and includes a person’s gender identity and gender related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

G. “Sexual Harassment” includes but is not limited to: behavior that is in the classroom, workplace, or any other college or non-college setting, that is continuous, frequent, repetitive, and part of an overall pattern, rather than one event. However, a single, severe event can constitute hostile environment sexual harassment, especially if it involves physical contact. Perpetration of such behavior can be from instructors, supervisors, subordinates, consultants, vendors or peers. The intentions of the accused are irrelevant in determining whether her/his behavior constitutes sexual harassment; it is the effect of the behavior upon the recipient that creates a hostile environment. Such conduct has the purpose or effect of unreasonably interfering with an individual’s performance or creating an intimidating, hostile or offensive work or educational environment.

Behaviors that may contribute to a sexually harassing or hostile environment as judged by a reasonable person of the same gender as the complainant, which are inappropriate or have no educational-relevance, include, but are not limited to, the following:

1. verbal, non-verbal and physical sexual behaviors;
2. sexual advances that are repeated and unwanted even when they are verbal and not coercive;
3. sexual jokes, innuendoes;
4. remarks about a person’s body;
5. turning discussions inappropriately to sexual topics;
6. making offensive sounds, such as whistling or catcalls;
7. looking a person up and down or staring in a sexually suggestive manner;
8. invading someone’s personal space or blocking his or her path;
9. distribution of sexually explicit visuals such as pinups, or digital images;
10. suggestions of sexual intimacy;
11. repeated requests for dates or private meetings in inappropriate or intimate locations;
12. unwanted letters or gifts; or
13. touching, hugging, massaging, or other unwelcome physical contact.

H. “Mental Disability” includes, but is not limited to, all of the following:

1. Having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:
   (A) “Limits” shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
   (B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.
   (C) “Major life activities” shall be broadly construed and shall include physical, mental, and social activities and working.
2. Any other mental or psychological disorder or condition not described in paragraph (1) that requires specialized supportive services.

3. Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the District.

4. Being regarded or treated by the District as having, or having had, any mental condition that makes achievement of a major life activity difficult.

5. Being regarded or treated by the District as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

“Mental disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

I. Physical Disability includes, but is not limited to, all of the following:

1. 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.
   (B) Limits a major life activity. For purposes of this section:
      (i) Limits shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
      (ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.
      (iii) “Major life activities” shall be broadly construed and include physical, mental, and social activities and working.

2. Any other health impairment not described in paragraph (1) that requires specialized supportive services.

3. Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the District.

4. Being regarded or treated by the District as having, or having had, any physical condition that makes achievement of a major life activity difficult.

5. Being regarded or treated by the District as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

6. “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

J. “Responsible District Officer” means 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 for coordinating their investigation.
K. “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is not limited to, a person’s gender, as defined in section 422.56 of the Penal Code. Discrimination on the basis of sex or gender also includes sexual harassment.

L. “Sexual harassment” is unlawful discrimination in the form 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, and includes but is not limited to:

1. Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. (Examples of sexual harassment that appear in a written form include, but are not limited to: suggestive or obscene letters, notes, invitations. Examples of possible visual sexual harassment include, but are not limited to: leering, gestures, display of sexually aggressive objects or pictures, cartoons, or posters.)
2. Continuing to express sexual interest after being informed that the interest is unwelcome.
3. Making reprisals, threats of reprisal, or implied threats of reprisal following a rebuff of harassing behavior. The following are examples of conduct in an academic environment that might be found to be sexual harassment: threatening to withhold, or actually withholding, grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied.
4. Engaging in explicit or implicit coercive sexual behavior within the work environment which is used to control, influence, or affect the employee’s career, salary, and/or work environment.
5. Engaging in explicit or implicit coercive sexual behavior within the educational environment that is used to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student.
6. Offering favors or educational or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.
7. Awarding educational or employment benefits, such as grades or duties or shifts, recommendations, reclassifications, etc., to any student or employee with whom the decision maker has a sexual relationship and denying such benefits to other students or employees.

M. “Sexual orientation” means heterosexuality, homosexuality, or bisexuality.

N. “Unlawful discrimination” means discrimination based on a category protected under title 5, section 59300, including harassment and retaliation.

III. Responsible District Officer

A. The Cabrillo Community College District has identified the Director of Human Resources or designee to the State Chancellor’s Office and to the public as the single District officer responsible for receiving all unlawful discrimination complaints pursuant to title 5, section 59328, and for coordinating their investigation. Informal charges of unlawful discrimination or harassment, including sexual harassment, should be brought to the attention of the responsible District officer, who shall oversee the informal resolution process pursuant to section 59327. 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 will be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint. Administrators, faculty members, other District employees, and students shall direct all complaints of unlawful discrimination or harassment to the responsible District officer.
B. Notice, Training, and Education for Students and Employees

1. The Cabrillo Community College District’s responsible District officer shall make arrangements for or provide training to employees and students on the District’s unlawful discrimination and harassment policy and procedures. Faculty members, members of the administrative staff, and members of the support staff will be provided with a copy of the District’s written policy on unlawful discrimination and harassment at the beginning of the first quarter or semester of the college year after the policy is adopted.

2. All District employees will receive this training and a copy of the unlawful discrimination and harassment policies and procedures during the first year of their employment. Because of their special responsibilities under the law, supervisors will undergo mandatory training within six months of assuming a supervisory position and annually thereafter. In years in which a substantive policy or procedural change has occurred, all District employees will attend a training update and/or receive a copy of the revised policies and procedures.

A training program or informational services will be made available to all students at least once annually. The student training or informational services will include an explanation of the policy, how it works, and how to file a complaint. In addition, a copy of the District’s written policy on unlawful discrimination and harassment, as it pertains to students, will be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester or summer session, as applicable.

IV. Informal/Formal Complaint Procedure

A. Informal Complaint Procedure

When a person brings charges of unlawful discrimination to the attention of the District’s responsible officer, that officer will:

1. Undertake efforts to informally resolve the charges;
2. Advise the complainant that he or she need not participate in informal resolution;
3. Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for doing so;
4. Assure the complainant that he or she will not be required to confront, or work out problems with, the person accused of unlawful discrimination;
5. Advise the complainant that he or she may file a non-employment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR); where such a complaint is within that agency’s jurisdiction;
6. If the complaint is employment-related, the complainant should also be advised that he or she may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where such a complaint is within that agency’s jurisdiction.

Efforts at informal resolution need not include any 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. 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, section 59334, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. Even if the complainant does dismiss the complaint, the responsible District officer may require the
investigation to continue if he or she determines that the allegations are serious enough to warrant an investigation. Any efforts at informal resolution 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 also files with the Department of Fair Employment and Housing or with the U. S. Equal Employment Opportunity Commission, 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 Department of Fair Employment and Housing or the U. S. Equal Employment Opportunity Commission.

The District will allow for representation where required by law and may allow for representation for the accused and complainant in other circumstances on a case-by-case basis.

B. Filing of Formal Written Complaint
If a complainant decides 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 State Chancellor’s office, or must provide the same information in writing as that requested on the Chancellor’s form sufficient to allow the District to commence an investigation of the merits of the complaint. Forms are available from the District and also at the State Chancellor’s website, as follows:


The completed form must be filed with the District representative or mailed directly to the State Chancellor’s Office of the California Community Colleges.

Once a complaint is filed, the individual(s) accused of engaging in prohibited discriminatory conduct should be advised of that filing and the general nature of the complaint. This should occur as soon as possible and in a manner that is appropriate under the circumstances. The District will also advise the accused that an assessment of the accuracy of the allegations has not yet been made, that the complaint will be investigated, that the accused will be provided an opportunity to present his/her side of the matter, and that any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.

C. Threshold Requirements Prior to Investigation of a Formal Written Complaint
When a formal written complaint is filed, it will be reviewed to determine if the complaint meets the following requirements:
1. The complaint must be filed on a form prescribed by the State Chancellor’s Office, or must provide the same information in writing as that requested on the Chancellor’s form sufficient to allow the district to commence an investigation of the merits of the complaint.
2. The complaint must allege unlawful discrimination prohibited under title 5, section 59300
3. The complaint must be filed by one who alleges that he or she has personally suffered unlawful discrimination or harassment, or by one who has learned of such unlawful discrimination or harassment in his or her official capacity as a faculty member or administrator, or by one who alleges that he or she witnessed unlawful discrimination or harassment.
4. In any complaint not involving employment, the complaint must be filed within one year of the date of the alleged unlawful discrimination or harassment 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 or harassment.

5. In any complaint alleging discrimination or harassment in employment, the complaint shall be filed within 180 days of the date the alleged unlawful 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 first obtained knowledge of the facts of the alleged violation after the expiration of 180 days.

D. Notice to State Chancellor or District
A copy of all formal complaints filed in accordance with the Title 5 regulations will be forwarded to the State Chancellor’s Office immediately upon receipt, regardless of whether the complaint is brought by a student or by an employee. Similarly, when the State Chancellor’s Office receives a complaint, a copy will be forwarded to the District.

E. Defective Complaint
If a complaint is found to be defective, it will be immediately returned to the complainant with a complete explanation of why an investigation will not be initiated under California Code of Regulations, Title 5, section 59300 et seq. The notice will inform the complainant that the complaint does not meet the requirements of section 59328, and shall specify in what requirement the complaint is defective. A copy of the notice to the complainant will also be sent to the State Chancellor’s Office.

F. Confidentiality of the Process
Investigative processes can best be conducted within a confidential climate. Therefore, the District does not reveal information about such matters except as necessary to fulfill its legal obligations. Potential complainants are sometimes reluctant to pursue a complaint if their names will be revealed. The inability to reveal the name of a complainant or facts that are likely to reveal the identity of the complainant can severely limit the ability of the District to respond. Complainants must also recognize that persons who are accused of wrongdoing have a right to present their side of the matter, and this right may be jeopardized if the District is prohibited from revealing the name of the complainant or facts that are likely to disclose the identity of the complainant.

If a complainant insists that his or her name not be revealed, the responsible officer should take all reasonable steps to investigate and respond to the complaint consistent with the complainant’s request as long as doing so does not jeopardize the rights of other students and employees. It is also important that complainants and witnesses 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 investigative 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.

Where an investigation reveals the need for disciplinary action, the complainant may wish to have information about what disciplinary actions the District took. However, the privacy rights of the persons involved often prevent the District from providing such information. In student disciplinary actions for sexual assault/physical abuse charges, Education Code section 76234 provides that the victim shall be informed of the disciplinary action, but that the victim must keep the information confidential. Disciplinary actions taken against employees are generally considered confidential.
G. Administrative Determination

1. In any case not involving employment discrimination, within ninety days of receiving an unlawful discrimination or harassment complaint filed under title 5, sections 59300 et seq., the responsible District officer will complete the investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all the following to both the complainant and the State Chancellor:

   (a) the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
   (b) a description of actions taken, if any, to prevent similar problems from occurring in the future;
   (c) the proposed resolution of the complaint; and
   (d) the complainant’s right to appeal to the District governing board and the State Chancellor.

2. In any case involving employment discrimination or harassment, within 90 days of receiving an unlawful discrimination or harassment complaint filed under title 5, sections 59300 et seq., the responsible District officer will complete the investigation and forward a copy or summary of the report to the complainant, and written notice setting forth all the following to the complainant:

   (a) the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination or harassment occurred with respect to each allegation in the complaint;
   (b) a description of actions taken, if any, to prevent similar problems from occurring in the future;
   (c) the proposed resolution of the complaint; and
   (d) the complainant’s right to appeal to the District’s governing board and to file a complaint with the Department of Fair Employment and Housing.

3. The District will keep these documents on file for a period of at least three years after closing the case, and make them available to the State Chancellor upon request.

4. The Cabrillo Community College District recognizes the importance of and is, therefore, committed to completing investigations and resolving complaints as quickly as possible, consistent with the requirements for a thorough investigation.

V. Complainant’s Appeal Rights

Complainants have appeal rights that they may exercise if they are not satisfied with the results of the District’s administrative determination. At the time the administrative determination and summary is mailed to the complainant, the responsible District officer or his/her designee shall notify the complainant of his or her appeal rights as follows:

A. First level of appeal: The complainant has the right to file an appeal to the District’s governing board within 15 days from the date of the administrative determination. The District’s governing board will review the original complaint, the investigative report, the administrative determination, and the appeal.

   The District’s governing board will issue a final District decision in the matter within 45 days after receiving the appeal. Alternatively, the District’s governing board may elect to take no action within 45
days, in which case the original decision in the administrative determination will be deemed to be affirmed and shall become the final District decision in the matter. A copy of the final decision rendered by the District’s governing board will be forwarded to the complainant and to the State Chancellor's Office.

B. Second level of appeal: The complainant has the right to file an appeal with the California Community College Chancellor’s Office in any case not involving employment-related discrimination or harassment within 30 days from the date that the governing board issues the final District decision or permits the administrative determination to become final by taking no action within 45 days. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board, and a statement under penalty of perjury that no response was received from the governing board within 45 days from that date. In any case involving employment discrimination or harassment, the complainant has the right to file a complaint with the Department of Fair Employment and Housing (DFEH) where the case is within the jurisdiction of that agency.

Complainants must submit all appeals in writing.

VI. Provision of Information to State Chancellor
In any case not involving employment discrimination, within 150 days of receiving a complaint, the responsible District officer will either:

forward the following to the State Chancellor:
   A. A copy of the final District decision rendered by the governing board 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 the District sent the complainant; and any other information the State Chancellor may require; OR
   B. Notify the State Chancellor that the complainant has not filed an appeal with the District governing board and that the District has closed its file.

The District will keep these documents on file for a period of at least three years after closing the case, and in any case involving employment discrimination, make them available to the State Chancellor upon request.

VII. Extensions
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. Where an extension is deemed necessary by the District, it must be requested from the State Chancellor regardless of whether or not the case involves employment discrimination. The request will be submitted no later than 10 days prior to the expiration of the deadlines established by title 5 in sections 59336 and/or 59340 and will set forth the reasons for the request and the date by which the District expects to be able to submit the required materials.

A copy of the request for an extension will be sent to the complainant, who will be advised that he or she may file written objections with the State Chancellor within five days of receipt.
The State Chancellor may grant the request unless delay would be prejudicial to the investigation. If an extension of the 90-day deadline is granted by the State Chancellor, the 150-day deadline is automatically extended by an equal amount.

VIII. Record Retention
Unlawful discrimination records that are part of an employee’s employment records may be classified as Class-1 Permanent records and retained indefinitely or microfilmed in accordance with title 5, California Code of Regulations, section 59022. Unlawful discrimination records of a student that are deemed worthy of preservation but not classified as Class-1 Permanent may be classified as Class-2 Optional records or as Class-3 Disposable records. Class-2 Optional records shall be retained until reclassified as Class-3 Disposable records. Class-3 Disposable records shall be retained for a period of three years after being classified as Class-3 Disposable records.

IX. Retaliation
It is unlawful for anyone to retaliate against someone who files an unlawful discrimination or harassment complaint, who refers a matter for investigation or complaint, who 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 this unlawful discrimination or harassment policy.

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