



Unlawful Discrimination Complaint Procedure

Governing Board Approved: December 10, 2002

Introduction and Scope

These are the written procedures for filing and processing complaints of unlawful discrimination in the Palomar Community College District. These procedures incorporate the legal principles contained in nondiscrimination provisions of the California Code of Regulations, Title 5, sections 59300 et seq. as well as other state and federal substantive and procedural requirements.

A copy of the written policy and procedures on unlawful discrimination are available in the Office of Human Resource Services.

These policies and procedures were adopted by the Palomar College Community College District Governing Board on December 10, 2002, in accordance with the procedures of the Board.

Authority: 20 U.S.C. § 1681 et seq.; Ed. Code, §§ 66270, 66271.1, 66281.5; Gov. Code, § 11135-11139.5; Cal. Code Regs., tit. 5, § 59326. Reference: Cal. Code Regs., tit. 5, § 59300 et seq.; 34 C.F.R. § 106.8(b).

Definitions

Definitions applicable to nondiscrimination policies are as follows:

- “Appeal” means a request by a complainant made in writing to the Palomar 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.
- “Complaint” means a written and signed statement meeting the requirements of Title 5, section 59328 that alleges unlawful discrimination in violation of the nondiscrimination regulations adopted by the Board of Governors of the California Community Colleges, as set forth at Title 5, section 59300 et seq.
- “Days” means calendar days.
- “Mental disability includes, but is not limited to, all of the following:
 - (1) Having any mental or psychological disorder or condition, such as mental retardation, 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.
 - “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 includes 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.
 - “District” means the Palomar 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 educational centers that receives state funding or financial assistance through the District.
 - “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 coordinating their investigation.
 - “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 possible sexual harassment that appear in a written form include, but are not limited to: suggestive or obscene letters, notes, invitations. Examples of possible verbal 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 unwelcomed.
 - (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: implying 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.
- "Unlawful discrimination" means any complaint of unlawful discrimination based on a category protected under Title 5, section 59300, including sexual harassment and retaliation.

Authority: Gov. Code, § 12926; Cal Code Regs., tit. 5, § 59311; Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, Office for Civil Rights, January 19, 2001.

Students and Employees Notice

The Palomar Community College District's responsible officer shall make available to employees and students the District's unlawful discrimination policy and procedures. Faculty members, members of the administrative staff, and members of the classified service will be provided with a copy of the District's written policy on unlawful discrimination at the beginning of the first semester of the college year after the policy is adopted. All District employees will receive a copy of the unlawful discrimination policies and procedures during the first year of their employment. In years in which a substantive policy or procedural change has occurred all District employees will receive a copy of the revised policies and/or procedures. A copy of the District's written policy on unlawful discrimination will be available to students in the Student Affairs Office.

Authority: Ed. Code, § 66281.5; Cal. Code Regs., tit. 5, §§ 59324 and 59326. Reference: Cal. Code Regs., tit. 5, § 59300 et seq.; 34 C.F.R. § 106.8(b).

Retaliation

It is unlawful for anyone to retaliate against someone who files an unlawful discrimination 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 policy.

Authority: 20 U.S.C. § 1681 et seq.; 34 C.F.R. § 106; Cal. Code Regs., tit. 5, § 59300 et seq.; Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, Office for Civil Rights, January 19, 2001.

Responsible District Officer

The Palomar Community College District has identified the Assistant Superintendent/Vice President, Human Resource Services, to the State Chancellor's Office and to the public as the single District officer responsible for receiving all unlawful discrimination complaints filed pursuant to Title 5, section 59328, and for coordinating their

investigation. 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.

Authority: Cal. Code Regs., tit. 5, § 59324; 34 C.F.R. § 106.8.

Procedure

Informal/Formal 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 nonemployment-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 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. 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 files with the Department of Fair Employment and Housing, 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.

The District will make every effort to complete investigations and resolve complaints as quickly as possible. In discrimination complaints containing issues of academic freedom, the District must consult with a faculty member appointed by the Academic Senate with respect to contemporary practices and standards for course content and delivery. The District will provide 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.

Authority: Cal. Code Regs., tit. 5, §§ 59327, 59328, 59334, 59336, and 59339; NLRB v. Weingarten, Inc. (1975) 420 U.S. 251.

Filing of Formal Written Complaint

If a complainant decides to file a formal written unlawful discrimination complaint against the District, he or she must file the complaint on a form prescribed by the State Chancellor. These approved forms are available from the District and also at the State Chancellor's website, as follows:

<http://extranet.cccco.edu/Divisions/Legal/Discrimination.aspx>

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 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.

Authority: Cal. Code Regs., tit. 5, §§ 59311 and 59328.

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:

- The complaint must be filed on a form prescribed by the State Chancellor's Office.
- The complaint must allege unlawful discrimination prohibited under Title 5, section 59300.
- The complaint must be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member, staff member, or administrator.
- In any complaint not involving employment, the complaint must 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 specific incident or incidents of alleged unlawful discrimination.
- In any complaint alleging discrimination 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.

If the complaint is defective it will be immediately returned to the complainant with a complete explanation of why an investigation could not be initiated under Title 5, California Code of Regulations, section 59300 et seq. Additional information about this initial review of complaints can be found in the Guidelines for Processing Formal Title 5 Unlawful Discrimination Complaints prepared by the State Chancellor's Office.

Authority: Cal. Code Regs., tit. 5, § 59328.

Notice to State Chancellor or District

A copy of all complaints filed in accordance with the Title 5 regulations will be forwarded to the State Chancellor's Office immediately upon receipt. Similarly, when the State Chancellor's Office receives a complaint a copy will be forwarded to the District.

Authority: Cal. Code Regs., tit. 5, § 59330.

Confidentiality of the Process

Investigative processes can best be conducted within a confidential climate, and the District does not reveal information about such matters except as necessary to fulfill its legal obligations. However, 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 or 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. Complainants, witnesses, and those accused of discrimination will all be asked to sign a confidentiality acknowledgement statement.

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.

Authority: Cal. Const. Art. I, § 1; Civil Code § 47; Ed. Code, §§ 76234 and 87740; Silberg v. Anderson (1990) 50 Cal.3d. 205; Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, Office for Civil Rights, January 19, 2001.

Administrative Determination

Within 90 days of receiving an unlawful discrimination 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.

The Palomar 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.

Authority: Cal. Code Regs., tit. 5, § 59336.

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:

- 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.

- 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 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.

Complainants must submit all appeals in writing.

Authority: Cal. Code Regs., tit. 5, §§ 59338 and 59339.

Forward to State Chancellor

Within 150 days of receiving a complaint, the responsible District officer will forward the following to the State Chancellor:

- 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.
- Any other information the State Chancellor may require.

Authority: Cal. Code Regs., tit. 5, §§ 59338 and 59340.

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. 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 may file written objections with the State Chancellor within 5 days of receipt.

The State Chancellor may grant the request unless delay would be prejudicial to the complainant. 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.

Authority: Cal. Code Regs., tit. 5, § 59342.

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, to be retained for a period of three years.

Authority: Cal. Code Regs., tit. 5, § 59020.