

GENERAL INSTITUTION

BP 3410 NONDISCRIMINATION

References:

Education Code Sections 66250 et seq., 72010 et seq., and 87100 et seq.;;
Penal Code Sections 422.55 et seq.;;
Government Code Sections 11135-11139.5, 12926.1, and 12940 et seq.;;
Title 5 Sections 53000 et seq. and 59300 et seq.;;
Accreditation Standard II.B.2.c

The District is committed to equal opportunity in educational programs, employment, and all access to institutional programs and activities. In addition, all students have the right to participate fully in the educational process, free from discrimination and harassment.

The District, and each individual who represents the District, shall provide equal access to its services, classes, and programs without regard to national origin, religion, age, gender, gender identity, gender expression, race, ethnicity, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, pregnancy, or because he/she is perceived to have one or more of the foregoing characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics.

No District funds shall ever be used for membership, or for any participation involving financial payment or contribution on behalf of the District or any individual employed by or associated with it, to any private organization whose membership practices are discriminatory on the basis of national origin, religion, age, gender, gender identity, gender expression, race, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, or because he/she is perceived to have one or more of the foregoing characteristics, or because of his/her association with a person or group with one or more of these actual or perceived characteristics.

All courses, including noncredit classes, shall be conducted without regard to the gender of the student enrolled in the classes. As defined in the Penal Code, "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. The District shall not prohibit any student from enrolling in any class or course on the basis of gender. Academic staff, including but not limited to counselors, instructors, and administrators shall not offer program guidance to students which differs on the basis of gender. Insofar as practicable, the District shall offer opportunities for participation in athletics equally to male and female students.

The District shall from time to time as necessary provide professional and staff development activities and training to promote understanding of diversity. The

Superintendent/President shall establish administrative procedures that ensure all members of the District community can present complaints regarding alleged violations of this policy and have their complaints heard in accordance with the Title 5 regulations and those of other agencies that administer state and federal laws regarding nondiscrimination.

Also see BP/AP 3420 titled Equal Employment Opportunity, BP/AP 3430 titled Prohibition of Harassment, AP 3435 titled Discrimination and Harassment Investigations and Training, and BP/AP 7120 titled Recruitment and Hiring.

GENERAL INSTITUTION

BP 3430 PROHIBITION OF HARASSMENT

References:

Education Code Sections 212.5, 44100, 66252, and 66281.5;
Government Code Section 12950.1;
Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000e

All forms of harassment are contrary to basic standards of conduct between individuals and are prohibited by state and federal law, as well as this policy, and will not be tolerated. The District is committed to providing an academic and work environment that respects the dignity of individuals and groups. The District shall be free of sexual harassment and all forms of sexual intimidation and exploitation including acts of sexual violence. It shall also be free of other unlawful harassment, including that which is based on any of the following statuses: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, or because he/she is perceived to have one or more of the foregoing characteristics.

The District seeks to foster an environment in which all employees and students feel free to report incidents of harassment without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against any individual for filing a complaint of harassment or for participating in a harassment investigation. Such conduct is illegal and constitutes a violation of this policy. All allegations of retaliation will be swiftly and thoroughly investigated. If the District determines that retaliation has occurred, it will take all reasonable steps within its power to stop such conduct. Individuals who engage in retaliatory conduct are subject to disciplinary action, up to and including termination or expulsion.

Academic Freedom

This policy works with BP 4030 titled Academic Freedom and is not intended to inhibit or interfere with freedom of expression and freedom of inquiry within the framework of responsibility. It is understood that staff members exercising their rights under Academic Freedom will accept responsibility for both the substance and the manner of their messages.

Any student or employee who believes that he/she has been harassed or retaliated against in violation of this policy should immediately report such incidents by following the procedures described in AP 3435 titled Discrimination and Harassment Investigations and Training. Supervisors are mandated to report all incidents of harassment and retaliation that come to their attention.

Date Adopted: 6/11/2013

(Replaces former Palomar College Policy 102)

This policy applies to all aspects of the academic environment, including but not limited to classroom conditions, grades, academic standing, employment opportunities, scholarships, recommendations, disciplinary actions, and participation in any community college activity. In addition, this policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities, and compensation.

To this end, the Superintendent/President shall ensure that the District undertakes education and training activities to counter discrimination and to prevent, minimize, and/or eliminate any hostile environment that impairs access to equal education opportunity or impacts the terms and conditions of employment.

The Superintendent/President shall establish procedures as defined by law that define harassment on campus. The Superintendent/President shall further establish procedures for employees, students, and other members of the campus community that provide for the investigation and resolution of complaints regarding harassment and discrimination and procedures for students to resolve complaints of harassment and discrimination. All participants are protected from retaliatory acts by the District, its employees, students, and agents. The Vice President, Human Resource Services is the responsible District officer charged with receiving complaints of harassment and coordinating the investigation.

This policy and related written procedures (including the procedure for making complaints) shall be widely published and publicized to administrators, faculty, staff, and students, particularly when they are new to the institution. They shall be available for students and employees in all administrative offices.

Employees who violate the policy and procedures may be subject to disciplinary action up to and including termination. Students who violate this policy and related procedures may be subject to disciplinary measures up to and including expulsion.

Also see BP 3410 titled Nondiscrimination, BP/AP 3420 titled Equal Employment Opportunity, AP 3435 titled Discrimination and Harassment Investigations and Training, BP 4030 titled Academic Freedom, and appropriate provisions of applicable collective bargaining agreements/employee handbooks

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AP 3430 PROHIBITION OF HARASSMENT

References:

- Education Code Sections 212.5, 44100, and 66281.5;
- Title 5 Sections 59320 et seq.;
- Title IX, Education Amendments of 1972;
- Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000e

The District is committed to providing an academic and work environment free of unlawful harassment. This procedure defines sexual harassment and other forms of harassment on campus, and in conjunction with associated administrative procedure AP 3435 titled Discrimination and Harassment Investigations and Training, sets forth a procedure for the investigation and resolution of complaints of harassment by or against any staff or faculty member or student within the District.

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

Academic Freedom

This policy works with BP 4030 titled Academic Freedom and is not intended to inhibit or interfere with freedom of expression and freedom of inquiry within the framework of responsibility. It is understood that all employees exercising their rights under Academic Freedom will accept responsibility for both the substance and the manner of their expression.

Definitions

- **General Harassment** -- Harassment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, sex, age, or sexual orientation of any person, or the perception that a person has one or more of these characteristics is illegal and violates District policy. Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment.
- **Sexual Harassment** -- In addition to the above, sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature when:
 - submission to the conduct is made a term or condition of an individual's employment, academic status, or progress

- submission to, or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual
- the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment
- 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 community college

This definition encompasses two kinds of sexual harassment:

- "Quid pro quo" sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct
- "Hostile environment" sexual harassment occurs when unwelcome conduct based on a person's gender is sufficiently severe or pervasive so as to alter the conditions of an individual's learning or work environment, unreasonably interfere with an individual's academic or work performance, or create an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it is severe, i.e. a sexual assault.
- Sexually harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the victim would perceive the conduct as harassment based on sex.

Consensual Relationships

Romantic or sexual relationships between supervisors and employees, or between administrators, faculty or staff members and students are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the administrator, faculty, or staff member must evaluate the student's or employee's work or make decisions affecting the employee or student. The relationship may create an appearance of impropriety and lead to charges of favoritism by other students or employees. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing. In the event that such relationships do occur, the District has the authority to transfer any involved employee to eliminate or attenuate the supervisory authority of one over the other, or of an instructor over a student. Such action by the

District is a proactive and preventive measure to avoid possible charges of harassment and does not constitute discipline against any affected employee.

Also see BP 3410 titled Nondiscrimination, BP 3420 titled Equal Employment Opportunity, BP 3430 titled Prohibition of Harassment, AP 3435 titled Discrimination and Harassment Investigations and Training, BP 4030 Academic Freedom, and relevant provisions of applicable collective bargaining agreements/employee handbooks.

Office of Primary Responsibility: Human Resource Services

GENERAL INSTITUTION

BP 3540 SEXUAL ASSAULTS ON CAMPUS

References:

- Education Code Sections 67385 and 67385.7;
- 20 US. Code Section 1092(f);
- 34 Code of Federal Regulations Section 668.46(b)(11)

Any sexual assault or physical abuse, including but not limited to rape as defined by California law, whether committed by an employee, student, or member of the public, that occurs on District property, is a violation of District policies and procedures and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. Students, faculty, and staff who may be victims of sexual and other assaults shall be treated with dignity and provided comprehensive assistance.

“Sexual assault” includes but is not limited to rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

The Superintendent/President shall establish administrative procedures that ensure that students, faculty, and staff who are victims of sexual and other assaults receive appropriate information, emergency treatment, and referral, and that educational information about preventing sexual violence is provided and publicized as required by law.

The procedures shall meet the criteria contained in Education Code Sections 67385 and 67385.7 as well as 34 Code of Federal Regulations Section 668.46.

Also see BP/AP 3430 titled Prohibition of Harassment and AP 3435 titled Discrimination and Harassment Investigations.

GENERAL INSTITUTION

AP 3540 SEXUAL ASSAULTS ON CAMPUS

References:

- Education Code Section 67385;
- 20 U.S. Code Section 1092(f);
- 34 Code of Federal Regulations Section 668.46(b)(11)

Any sexual assault or physical abuse, including, but not limited to, rape, domestic violence, dating violence, sexual assault, or stalking as defined by California law, whether committed by an employee, student, or member of the public, occurring, in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District’s facilities or at another location, or on an off-campus site or facility maintained by the District or on grounds or facilities maintained by a student organization is a violation of District policies and regulations and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. (Also see AP 5500 titled Standards of Student Conduct)

“Sexual assault” includes but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

“Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a romantic or intimate relationship will be determined based on the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

“Domestic violence” includes felony or misdemeanor crimes of violence committed by:

- a current or former spouse of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with or has cohabitated with the victim as a spouse;
- by a person similarly situated to a spouse of the victim under California law; or
- by any other person against an adult or youth victim who is protected from that person’s acts California law.

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or to suffer substantial emotional distress.

These written procedures and protocols are designed to ensure victims of domestic violence, dating violence, sexual assault, or stalking receive treatment and information. (For physical assaults/violence, also see AP 3500 titled Campus Safety, AP 3510 titled Workplace Violence Plan, and AP 3515 titled Reporting of Crimes).

All students, faculty members, or staff members who allege they are the victims of domestic violence, dating violence, sexual assault or stalking on District property shall be provided with information regarding options and assistance available to them. Information shall be available from the Palomar College Police Department, which shall maintain the identity and other information about alleged sexual assault victims as confidential unless and until the Palomar College Police Department is authorized to release such information.

The Palomar College Police Department shall provide all alleged victims of domestic violence, dating violence, sexual assault or stalking with the following, upon request:

- A copy of the District's policy and procedure regarding sexual assault
- A list of personnel on campus who should be notified and procedures for such notification, if the alleged victim consents. The Chief of Police or designee shall notify the following individuals, as applicable:
 - Superintendent/President
 - Vice President of Student Services
 - Vice President of Human Resources Services
 - Director of Student Affairs
 - Director, Communications, Marketing & Public Affairs
- Services include:
 - Facilitate transportation to a hospital, if necessary
 - Referral to a counseling center
 - Notification to appropriate police authorities, if desired
 - A list of other available campus resources or appropriate off-campus resources
- A description of available services and the persons on campus available to provide those services if requested. The departments responsible for providing or arranging them include:
 - Palomar College Police Department
 - Health Services
 - Office of Student Affairs
 - Counseling Department
 - Human Resource Services

- A description of each of the following procedures:
 - Criminal prosecution
 - Civil prosecution (i.e., lawsuit)
 - District disciplinary procedures, both student and employee
 - Modification of class schedules
 - Tutoring, if necessary

The District will investigate all complaints alleging sexual assault under the procedures for sexual harassment investigations described in AP 3435, regardless of whether a complaint is filed with local law enforcement. All alleged victims of domestic violence, dating violence, sexual assault or stalking on District property shall be kept informed, through the Palomar College Police Department of any ongoing investigation. Information shall include the status of any student or employee disciplinary proceedings or appeal. Alleged victims of domestic violence, dating violence, sexual assault, or stalking are required to maintain any such information in confidence, unless the alleged assailant has waived rights to confidentiality.

The District shall maintain the identity of any alleged victim or witness of domestic violence, dating violence, sexual assault, or stalking on District property, as defined above, in confidence unless the alleged victim or witness specifically waives that right to confidentiality. All inquiries from reporters or other media representatives about alleged sexual assaults on District property shall be referred to the District's Communications, Marketing, & Public Affairs Office, which shall work with the Palomar College Police Department to assure that all confidentiality rights are maintained.

Additionally, the Annual Security Report will include a statement regarding the District's programs to prevent sex offenses and procedures that should be followed after a sex offense occurs. The statement must include the following:

- A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses, domestic violence, dating violence, or stalking
- Procedures to follow if a domestic violence, dating violence, sex offense, or stalking occurs, including who should be contacted, the importance of preserving evidence to prove a criminal offense, and to whom the alleged offense should be reported
- Information on a student's right to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that campus personnel will assist the student in notifying these authorities, if the student so requests
- Information for students about existing on and off-campus counseling, mental health, or other student services for victims of sex offenses

- Notice to students that the campus will change a victim's academic situation after an alleged domestic violence, dating violence, sex offense, or stalking and of the options for those changes, if those changes are requested by the victim and are reasonably available
- Procedures for campus disciplinary action in cases of an alleged domestic violence, dating violence, sex offense, or stalking, including a clear statement that:
 - The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding and
 - Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding resulting from an alleged sex offense. Compliance with this paragraph does not violate the Family Educational Rights and Privacy Act. For the purposes of this paragraph, the outcome of a disciplinary proceeding means the final determination with respect to the alleged domestic violence, dating violence, sex offense, or stalking and any sanction that is imposed against the accused
- A description of the sanctions the campus may impose following a final determination by a campus disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses, domestic violence, dating violence, or stalking

Regarding Education and Prevention Information, the Palomar College Police Department shall:

- Provide, as part of the District's established on-campus orientation program, education, and prevention information about domestic violence, dating violence, sexual assault, or stalking. The information shall be developed in collaboration with District-based and community-based victim advocacy organizations.
- Post sexual violence prevention and education information on the campus internet website regarding domestic violence, dating violence, sexual assault and stalking.

Also see BP/AP 3430 titled Prohibition of Harassment and AP 3435 titled Discrimination and Harassment Investigations

Office of Primary Responsibility: Student Services



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.



Sexual Harassment Complaint Procedure

Original: March 10, 2000

Revised: July 3, 2014

A. Introduction

1. Applicability

This procedure applies to students, employees and applicants for employment who, either allege that they have personally suffered sexual harassment discrimination or retaliation, or to an individual who learned of the alleged conduct in his or her official capacity. Any oral or written complaint of sexual harassment discrimination or retaliation must be made to one of the individuals identified in paragraph B below within one year of the date of the alleged harassment or retaliation, or within one year of the date on which the Complainant knew or should have known of the facts underlying the alleged unlawful discrimination.

2. Definitions

Complainant: A student, employee or applicant for employment who believes that they have been personally sexually harassed, or an individual who learned of it in his or her official capacity.

Respondent: The individual who allegedly sexually harassed or took reprisals upon the Complainant, or an individual who participated in the complaint procedure.

Complaint: A written statement which contains as much detail as possible as to the circumstances surrounding the alleged harassment including date(s), time(s), description of incident(s), witnesses and the desired remedy.

Informal Complaint: An unwritten complaint, which the Complainant has verbally provided to a District supervisor or management employee and which contains the information described in the Complaint definition above.

Days: Days, as used in this procedure, mean days in which the District is open for business.

B. Reporting Unwelcome Conduct

Sexual harassment is unlawful only when it is conduct which is not solicited, welcome or voluntarily engaged in or participated in. Therefore, where possible or practicable, an individual who believes that such unwelcome conduct constitutes sexual harassment should clearly inform the perpetrator that such conduct is not wanted, not appropriate and should cease. Where it is not possible or practicable to do so, or if the harassment continues after clear notice to the alleged harasser that the conduct is unwelcome, employees, applicants and students should take the action set forth below.

Employees should immediately inform their supervisor or the Responsible Officer. If it is not practicable to inform the immediate supervisor, or that individual is the alleged harasser, employees shall promptly report any charges of discrimination to the next higher level supervisor or the Responsible Officer. Immediate supervisors who learn of such a complaint shall immediately report it to the Responsible Officer or President as appropriate. All charges shall be reported to the District Responsible Officer.

Students should immediately report any allegations of sexual harassment to the Director of Student Affairs, the Assistant Superintendent/Vice President of Student Services, or, if not available, to the Responsible Officer. Any such report shall be promptly reported to the Responsible Officer. Any District employee to whom an oral or written harassment complaint is reported shall immediately notify the Responsible Officer.

C. Informal Complaint Procedure

Upon the receipt of notice of the filing of a timely, within one (1) year of the date of the alleged harassment or retaliation, written or oral harassment complaint, the District Responsible Officer shall:

1. Clarify the specific nature of the allegations whether written or oral, and attempt to informally resolve the complaint.
2. Advise the individual that he or she need not participate in any informal efforts to resolve the complaint, and that he or she may file a complaint with the Office of Civil Rights of the U.S. Department of Education (OCR), or the Chancellor for California Community Colleges.
3. Take appropriate action to assist in preventing conduct by the alleged harasser or others which may constitute or appear to constitute reprisal for filing the complaint.
4. Within ten (10) days of the receipt of the complaint, provide a copy of this Policy to both the Respondent and the Complainant; provide to the Respondent written notice of the substance of the allegations of the complaint where oral, a copy of the complaint where written, and request that the Respondent provide a written response to the written complaint or to the summary of the allegations provided within ten (10) days. Failure or refusal of the individual making the complaint to provide requested information regarding the allegations, other facts or circumstances surrounding the charges, or necessary for the continued processing of the complaint, or to cooperate in the complaint procedure shall result in dismissal of the complaint without investigation or any further action.
5. Within ten (10) days of receipt of the statement of the Respondent, or if no statement is submitted within ten (10) days of the notice to the Respondent in paragraph 4 above, the Responsible Officer shall provide the Respondent the opportunity to discuss the allegations of the complaint and any possible resolution of them. If within the above ten (10) day period no statement is submitted, the Responsible Officer shall review what information is available to determine whether the allegations are sufficiently serious to warrant the initiation of a formal complaint.
6. If the matter is resolved, the Responsible Officer will put the agreed upon resolution in writing and shall meet individually with both parties who will review and sign an agreement which shall include the specific nature of the allegations and all of the terms of the resolution.
7. If the parties agree that there has been no sexual harassment and are satisfied with the resolution, the written agreement shall state these facts, and that the parties agree. The documents and the original of the agreement shall be retained by the Responsible Officer for a period of three (3) years, after which time the documents and the agreement will be shredded. The documents and the agreement will not be filed in the personnel files of either party.
8. If the parties agree that sexual harassment has occurred, but are satisfied with the resolution, then the agreement, specifically describing the conduct alleged, the resolution and the complaint shall be placed in a sealed envelope in the personnel file of the Respondent marked to the effect that it may be opened only at the direction of the President, or if otherwise required by law.
9. If the Complainant is not satisfied with the resolution of the complaint, or if the Responsible Officer determines that an informal resolution either cannot be reached or cannot be reached within thirty (30) days of the submission of the complaint at the informal level, the Responsible Officer will provide written notice of that determination to the parties and of the Complainant's right to file a formal complaint with the Responsible Officer under this Policy and/or with any federal or state enforcement agency such as the Office of Civil Rights, the Equal Employment Opportunity Commission, or the Department of Fair Employment and Housing.
10. Even if the Complainant is satisfied with the resolution of the complaint, or agrees that no sexual harassment or retaliation occurred, the Responsible Officer shall determine, subject to the approval of the President, whether the alleged conduct is of such a serious nature under all of the facts and circumstances that, if true, corrective action in addition to that agreed upon by the parties, if any, and/or disciplinary action would be appropriate. In such cases, the Responsible Officer will direct the formal investigation of the Complaint as provided in paragraph D below, provide a copy of the report of the investigation to the Respondent for review, comment and submission of any statement or evidence not previously provided within the time required to submit a statement in response to documents to be placed in the personnel file. The Responsible Officer shall submit such report and statement to the President for appropriate disposition.

D. Formal Complaint Procedure

1. Except as provided in paragraph C.10. above, the Complainant shall initiate the formal complaint procedure by filing a complaint in writing after completing the informal resolution process. A formal

complaint form is attached to this Procedure.

2. Upon receipt of the formal complaint, the Responsible Officer, or trained designee, shall investigate the complaint. Any designated investigator is required to notify the Responsible Officer immediately when it comes to his/her attention that such member is a witness to allegations, or for any other reason may not be able to fairly or impartially investigate the allegations.
3. The Responsible Officer or designee will examine the complaint, and will interview the Respondent and the Complainant, with their consent, and any other witnesses deemed necessary to make a determination as to whether the conduct alleged occurred as stated in the complaint, or if not, what conduct did occur. If sexual harassment did occur, the Responsible Officer will determine the nature and seriousness of the conduct in light of all of the surrounding facts and circumstances. The above determinations and the bases for such determinations shall be included in a written report drafted or submitted to the Responsible Officer for review within eighty (80) days of the filing of the formal written complaint. The Responsible Officer shall review the report for sufficiency and, if found to be sufficient, will review the report with the appropriate site manager and President for recommended action.
4. Within ninety (90) days of receiving the formal written complaint, the Responsible Officer shall provide the Complainant with:
 - a) A copy of the report of the District's investigation or a summary of the investigation;
 - b) A written notice of the administrative decision setting forth the determination of the President, or his or her designee, as to whether sexual harassment did or did not occur with respect to each allegation in the complaint; a description of action taken, if any, to prevent similar problems from occurring in the future; the proposed resolution of the complaint; notice of the Complainant's right to submit a written appeal to the District Governing Board within fifteen (15) days of receipt of the report; and to submit an appeal to the Chancellor of the California Community Colleges. The results of the investigation and the determination as to whether harassment occurred shall also be reported to the Respondent and to the Respondent's supervisor. The Responsible Officer shall be responsible for preparing and submitting the above notice.

E. Appeal to the Governing Board

If the Complainant timely files a written appeal to the Governing Board, the Board shall review the original complaint, the investigation report, the administrative decision, and the appeal. The Governing Board shall issue a final decision within forty-five (45) days after receiving the appeal, or the administrative decision will become final automatically upon the expiration of the forty-five (45) day period. The Complainant and the Respondent shall be notified in writing of the Governing Board's decision, or that the administrative decision has become final by operation of law.

F. Further Appeal

Within thirty (30) days after the Governing Board issues its final decision or the administrative decision otherwise becomes final, the Complainant shall have the right to file a written appeal with the Chancellor of Community Colleges. If the complaint involves allegations of employment related discrimination, the Complainant may, at any time, also file a complaint with the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission instead of, or in addition to, filing a petition for review with the Chancellor of Community Colleges within thirty (30) days after the Governing Board issues a final decision or permits the administrative decision to become final. Any complaint filed with the Chancellor of Community Colleges must be filed within one (1) year of the date of the alleged unlawful discrimination or within one (1) year of the date on which the Complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

G. Reports

The District Responsible Officer shall make any required reports to the Chancellor of California Community Colleges.



Unlawful Discrimination Complaint Form

1. Name: _____

2. Address: _____

3. Phone (Day): _____ Phone (Evening): _____

4. Email Address: _____

5. I am a: Student Employee Other: _____

6. I wish to complain against:

District: _____ College: _____

7. Date of most recent incident of alleged discrimination: _____

(Non-employment complaints must be filed within one (1) year of the alleged unlawful discrimination. Employment complaints must be filed within six (6) months of the date of the alleged unlawful discrimination.)

8. I allege discrimination based on the following category protected under Title 5 (you must select at least one):

- Age Ethnic Group Identification Physical Disability Retaliation** (see below)
- Ancestry Mental Disability Race Sex/Gender (includes Harassment)
- Color National Origin Religion Sexual Orientation

9. Clearly state your complaint (attach additional pages as necessary). Describe each incident of alleged discrimination separately. for each action provide the following information: 1) Date(s) on which the discriminatory action occurred; 2) name(s) of individual(s) who discriminated; 3) what happened; 4) witnesses (if any); and 5) why you believe the discrimination was because of your protected group status you indicated in section 8 above (such as your race, sex, age, or religion).

** If applicable, explain why you believe you were retaliated against for filing a complaint or asserting your right to be free from discrimination on any of the above grounds.

10. What would you like the District to do as a result of your complaint – what remedy are you seeking?

11. I certify that this information is to the best of my knowledge.

Signature of Complainant

Date

*Please submit this form to Human Resource Services, Room A-1 or mail to:
Palomar College, Human Resource Services, 1140 W. Mission Rd., San Marcos, CA 92069*