



Mt. San Jacinto Community College District

Policy and Procedures for Handling Complaints of Unlawful Discrimination Under Title 5 Sections 59300 et seq.

February 2014



BP 3410	Approved by Board: August 13, 2006	Page 1 of 2
	Revisions: 9/13/07; 3/11/10; 2/13/14	

BP 3410 Unlawful Discrimination

Reference:

Education Code Sections 66250, et seq., 72010 et seq.; Government Code, §§ 11135-11139.5, 12926.1 and 12940 et seq.; Penal Code §§ 422.6 and 422.55; 20 U.S.C. T§ 1681; 29 U.S.C. §§ 794 and 794d; 42 U.S.C. §§ 6101, 12100 et seq. and 2000d; 36 C.F.R. § 1194

The policy of the Mt. San Jacinto Community College District is to provide an educational and employment environment including but not limited to access to its services, classes, and programs in which no person shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination on the basis of ethnic group identification, national origin, religion, age, sex, gender, gender identification, gender expression, race, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, or because he or 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 in any program or activity that is administered by, funded directly by, or that receives any financial assistance from the State Chancellor or Board of Governors of the California Community Colleges. Discrimination on the basis of sex or gender also includes sexual harassment.

The District is committed to equal opportunity in educational programs, employment, and all access to institutional programs and activities.

The policy of Mt. San Jacinto 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.

Employees, students or other persons acting on behalf of the District who engage in unlawful discrimination or harassment as defined in [Administrative Procedure 3410](#) or by state or federal law may be subject to discipline, up to and including discharge, expulsion or termination of contract.

The Superintendent/President shall establish administrative procedures that ensure all members of the college 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.

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, sex, gender identification, gender expression, race, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, or because he or she is perceived to have one or more of the foregoing characteristics, or because of his or her association with a person or group with one or more of these actual or perceived characteristics.

In so providing, the Mt. San Jacinto Community College District hereby implements the provisions of the California Government Code Sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code, §66250 et seq.), Education Code §212.5, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. §1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the American with Disabilities Act of 1990 (42 U.S.C. §12100 et seq.) and the Age Discrimination Act (42 U.S.C. §6101).

Authority: California Code of Regulations; Title 5, § 59300, Ed. Code §§ 66250 et seq. 66271.1, 66700, and 70901; Gov. Code § 11138.

See Administrative Procedure 3410



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	Revisions: 6/15/10; 9/27/11; 10/15/12; 10/8/13	

AP 3410 Unlawful Discrimination

Reference:

Title 5, Sections 59300, et seq.

These are the written policies and procedures for filing and processing complaints of unlawful discrimination and sexual harassment at Mt. San Jacinto Community College District. [See Board Policies 3410 and 3430](#). 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 other state and federal substantive and procedural requirements.

A copy of the district’s unlawful discrimination policy will be displayed in a prominent location in the main administrative building or other areas where notices regarding the institution’s rules, regulations, procedures, and standards of conduct are posted.

The unlawful discrimination policy was adopted by the Mt. San Jacinto Community College District Governing Board on March 11, 2010, 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).

Unlawful Discrimination Policy

The policy of the Mt. San Jacinto Community College District is to provide an educational and employment environment in which no person is unlawfully denied full and equal access to the educational and/or employment environment based on unlawful discrimination or harassment. The District’s prohibitions on unlawful discrimination and sexual harassment are set out in Board Policies 3410 and 3430

Responsible District Officer

The Mt. San Jacinto Community College District has identified the Vice President of Human Resources 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. Informal charges of unlawful discrimination 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.¹

Administrators, faculty members, other District employees, and students shall direct all complaints of unlawful discrimination to the responsible District officer.

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

Students and Employees Notice, Training, and Education

The Mt. San Jacinto Community College District's responsible officer shall make arrangements for or provide training to employees and students on the District's unlawful discrimination 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 at the beginning of the semester of the college year after the policy is adopted.

All District employees will receive this training and/or a copy of the unlawful discrimination policies and procedures during the first year of their employment. Because of their special responsibilities under the law, supervisors will undergo mandatory sexual harassment training at least every two years. All new supervisory employees shall be provided with sexual harassment training within six months of assuming a supervisory position. 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 should 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, as it pertains to students, will be provided as part of any orientation program conducted for new students at the beginning of each semester, or summer session, as applicable.

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); Gov't Code § 12950.1.

¹ The Office for Civil Rights (OCR) advises educational institutions to give one official responsibility for oversight and coordination of all sexual harassment complaints to insure consistent practices and standards in handling complaints as well as coordination of record keeping. This will help ensure that the educational institution can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them. The State Chancellor's Office advises that having the responsible district officer, identified pursuant to Title 5, section 59324, coordinate both sexual harassment and other unlawful discrimination complaints satisfies OCR's instruction on this subject.

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.

Informal/Formal Complaint Procedure²

Whenever any person brings charges of unlawful discrimination to the attention of the District's responsible officer, that officer shall:

- (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) 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.
- (5) 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 the jurisdiction of those agencies.

² The purpose of the informal resolution process is to allow an individual who believes she/he has been unlawfully discriminated against or sexually harassed to resolve the issue through a mediation process rather than the formal complaint process. Typically, the informal process will be invoked when there is a simple misunderstanding or the complainant does not wish to file a formal complaint. Resolution of an informal complaint may require nothing more than a clarification of the misunderstanding or an apology from the respondent and an assurance that the offending behavior will cease. However, the district is responsible for maintaining a safe and discrimination free educational environment and serious allegations may need to be investigated even if the complaining party considers the matter resolved. In an informal process the district officer shall advise the complainant of his or her rights and responsibilities under both the formal and informal processes. If the complainant declares his or her preference for the informal process, the responsible district officer shall present the complainant with a document that describes the informal/formal process that contains the basics of complainant's allegations of unlawful discrimination. This document will clearly indicate that the complainant opted for the informal resolution process and should be signed and dated by the complainant. The informal resolution process will not be made a predicate to the process and investigation of a formal complaint. If a formal complaint is filed, an investigation must be completed within the time required unless it is voluntarily rescinded by a complainant as a result of a successful informal resolution.

Efforts at informal resolution need not include any investigation unless the District's responsible 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 must be completed unless the matter is informally resolved and the complainant dismisses the complaint or the complainant files with the DFEH and the Chancellor elects not to require further investigation pursuant to Title 5, section 59328(f)(2). 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.

Allegations of unlawful discrimination made by parties who have not personally suffered unlawful discrimination, and thus are not complainants under the description set out in Title 5, section 59328(a), are not covered by Title 5. However, the District may process and investigate such allegations under the above informal or formal complaint process (as required by federal regulations governing OCR). When such a complaint is processed under the formal process, the complainant's appeal rights shall be up to and including the first-level appeal to the Governing Board. All complainants shall be advised of their right to file complaints with the OCR (for non-employment matters) and with EEOC or DFEH (for employment matters).

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 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's Human Resources Office and also at the State Chancellor's website, as follows:

(above link valid as of enactment of this Administrative Procedure)

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

If a complaint of unlawful discrimination is presented in another written format, such as a letter, the District may request that the complainant complete the form. If there is a delay in obtaining a completed form, or the complainant refuses to transfer the information or otherwise complete the form but wishes to pursue the formal complaint process, the District may attach the letter to the form and open a formal investigation. While a complaint filed in an improper form is still procedurally defective under Title 5 standards, the merits of the complaint itself may still be valid and must be addressed. The timelines set out by Title 5 and this procedure for filing complaints (title 5, sections 59328(d) and (e) shall be calculated based on the initial complaint—regardless of the form in which it is filed.

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. The accused individual(s) do not have a right to a copy of the actual complaint.

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:

- a. The complaint shall 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 or administrator. The exception to this general rule is addressed in the "Informal/Formal Complaint Procedure" section above.
- b. The complaint shall be filed with the Chancellor of the California Community Colleges or with the District's designated officer.
- c. The complaint shall be in a form prescribed by the Chancellor's Office. If the complaint is not filed on this form, every effort should be made to have the complaint filed on this form and to obtain complainant's signature. However, where a complainant has indicated that he or she wishes to pursue the formal complaint process, a complaint should not be rejected solely based on the failure to file the complaint on this form.

- d. In any complaint not involving employment, the complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.
- e. 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 should be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.
- f. In any complaint alleging discrimination in employment, the district shall:
 - 1. Advise the complainant that he or she may file the complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies; and
 - 2. Forward a copy of any filing by the complainant with the DFEH to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of this subchapter.

Defective Complaint

When the District receives a complaint which it finds does not meet the requirements of Title 5 section 59328 the District shall immediately notify the complainant that the complaint does not meet the requirements of Title 5 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 Chancellors Office.

Authority: Cal. Code Regs., tit. 5, § 59328; and §59332.

Notice to State Chancellor or District

Immediately upon receiving a complaint filed in accordance with Title 5 section 59328, the District shall forward a copy of the complaint to the Chancellor.

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

Complaints Filed with the Chancellor

Upon receiving a complaint filed pursuant to Title 5 section 59328, the Chancellor will immediately forward a copy of the complaint to the District's designated responsible officer who shall respond pursuant to Title 5 section 59332 or initiate the investigation required pursuant to Title 5 section 59334. In any complaint alleging employment discrimination, the Chancellor shall notify the complainant that he or she has the right to file with the Department of Fair Employment and Housing (DFEH) or the U. S. Equal Opportunity Employment Commission where the complaint is within the jurisdiction of those agencies.

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.³

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.

District Investigation

Upon receiving a complaint that is properly filed in accordance with section 59328, the

³ Complainants must trust the District to take appropriate action and must understand that the District is generally not at liberty to discuss personnel or student matters, particularly disciplinary matters. In some disciplinary cases, the complainant may be required to testify at a hearing, and would therefore be aware of the proposed disciplinary action.

District will commence an impartial fact-finding investigation of that complaint and notify the complainant and Chancellor that it is doing so. The results of the investigation shall be set forth in a written report that shall include at least all of the following:

- a. a description of the circumstances giving rise to the complaint;
- b. a summary of the testimony provided by each witness, including the complainant and any viable witnesses identified by the complainant in the complaint;
- c. an analysis of any relevant data or other evidence collected during the course of the investigation;
- d. a specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint; and
- e. any other information deemed appropriate by the District.

During the course of the investigation, involved persons (including complainant(s), accused person(s), witness(es)) shall be interviewed and relevant documents collected and reviewed, as applicable. All interviewed persons shall be advised of the prohibition against retaliation.

Authority: Cal. Code Regs., tit. 5, § 59334.

Discipline and Corrective Action

If unlawful harassment, discrimination and/or retaliation occurred in violation of Board Policies 3410 and 3430 and this procedure, the District shall take disciplinary action against the accused and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense. If discipline is imposed, the nature of the discipline will not be communicated to the complainant.

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

The District shall also take reasonable steps to protect the complainant from further harassment, and/or discrimination, and to protect the complainant and witnesses from retaliation as a result of communicating the complaint and/or assisting in the investigation. The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the extent possible without impeding the District's ability to investigate and respond effectively to the complaint.

See Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, Office for Civil Rights, January 19, 2001 at p. 16.

Administrative Determination

In any case NOT involving employment discrimination, within ninety (90) days of receiving an unlawful discrimination complaint filed under Title 5, sections 59300 et seq., the responsible District officer shall complete the investigation and forward a copy of the investigative report (see District Investigation section above (Title 5 section 59334) 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;⁴
- c) the proposed resolution of the complaint; and
- d) the complainant's right to appeal to the District governing board and the State Chancellor pursuant to Title 5 sections 59338 and 59339.

In any case involving employment discrimination, within ninety (90) days of an unlawful discrimination complaint filed under Title 5, sections 59300 et seq., the responsible District officer shall complete the investigation and forward a copy or summary of the investigation report (see District Investigation section above (Title 5 section 59334) 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 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 to file a complaint with Department of Fair Employment and Housing.

The Mt. San Jacinto 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:

- I. **First-Level Appeal: Final District Decision; Appeals to the Local Governing Board**

⁴ If it is determined that discrimination did occur, possible remedies to prevent similar problems from occurring in the future include all the standard District disciplinary actions for students and employees, ranging from undocumented reprimand to termination or expulsion. If formal disciplinary action is inappropriate, other possible remedies include training in the pertinent area(s) of unlawful discrimination, apology, and restricting or forbidding contact between the perpetrator and victim.

- a. If the complainant is not satisfied with the results of the administrative determination rendered pursuant to Title 5 section 59336, the complainant may submit a written appeal to the District's governing board within fifteen (15) days from the date of the administrative determination. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final District decision in the matter within forty-five (45) days after receiving the appeal.
 - b. A copy of the final District decision rendered by the governing board that includes complainant's right to appeal the District's decision to the Chancellor pursuant to Title 5 section 59339 shall be forwarded to complainant and the Chancellor.
 - c. If the governing board does not act within forty-five (45) days, the administrative determination shall be deemed approved and shall become the final District decision in the matter. The District shall notify the complainant and the Chancellor that the board took no action and the administrative determination is deemed approved pursuant to Title 5 section 59338. The complainant shall also be notified of his or her right to appeal the District's decision to the Chancellor pursuant to Title 5 section 59339.
- II. Second-Level Appeal: Appeal to Chancellor
- a. In any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days from the date that the governing board issues the final District decision or permits the administrative determination to become final pursuant to Title 5 section 59338. Such appeals shall be processed pursuant to the provisions of Title 5 section 59350 et seq.⁵ 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 forty-five (45) days from that date.
 - b. In any case involving employment discrimination, the complainant may, at any time, before or after the final District decision is rendered, file a complaint with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency.

Complainants must submit all appeals in writing.

The Title 5 process, which is set out in this Administrative Procedure, provides no corresponding appeal rights to any other parties aside from the complainants.

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

⁵ The Department of Fair Employment and Housing (DFEH) has final jurisdiction over employment-related cases. In addition, title 5, section 59339 (b) does not provide appeal rights to the State Chancellor in employment-related discrimination cases.

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 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; or

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, including cases involving employment discrimination, make them available to the State Chancellor upon request.

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 shall 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 shall be sent to the complainant, who shall be notified that he or she 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 investigation. If an extension of the 90-day deadline is granted by the State Chancellor of the 90-day deadline or the 150-day deadline is automatically extended by an equal amount.

If the District fails to comply with the requirements of Title 5 sections 59336 or 59340 by the required deadline, including any extensions granted pursuant to the above-mentioned procedures, the Chancellor may proceed to review the case as provided in Title 5 section 59350 et seq. based on the original complaint and any other relevant information then available.

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

Definitions

Definitions applicable to nondiscrimination policies are as follows:

- "Appeal" means a request by a complainant made in writing to the Mt. San Jacinto 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.
- "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 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.
- "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.
- "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.
- "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 special education or related 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.⁶

- "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 special education or related 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.⁷
- "District" means the Mt. San Jacinto 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

⁶ If the Americans with Disabilities Act of 1990 definitions would result in broader protection of the civil rights of individuals with a mental or physical disability, or would include any medical condition not included within these definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of the definitions in Government Code section 12926 and should be included in district policy. (Gov. Code, § 12926(l).)

⁷ *Ibid.*

college(s) that receives state funding or financial assistance through the District. This also includes any person acting as an agent of 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.
- “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but it 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.
- “Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:
 - (a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
 - (b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
 - (c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.
 - (d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the District.
- Examples of sexual harassment include but are not limited to the following:
 - 1) Making unsolicited or unwelcome 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, and e-mails. Examples of possible verbal sexual harassment include, but are not limited to: leering, gestures, display of sexually aggressive objects or pictures, cartoons, or posters. Examples of possible physical sexual harassment include, but are not limited to inappropriate or offensive touching or interfering with free movement such as kissing, grabbing, or blocking another person
 - 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: 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, etc., to any student or employee with whom the decision maker has a sexual relationship and denying such benefits to other students or employees.
- “Sexual orientation” means heterosexuality, homosexuality, or bisexuality.
 - “Unlawful discrimination” means any complaint of unlawful discrimination based on a category protected under Title 5, section 59300, including retaliation and sexual harassment.

Authority: Gov. Code, § 12926; Education Code, § 212.5; 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.

Academic Freedom

The Mt. San Jacinto Community College District Governing Board reaffirms its commitment to academic freedom. The District recognizes that its discrimination policy is intended to protect students and employees from unlawful discrimination, not to regulate the content of speech, however, academic freedom does not allow any form of unlawful discrimination. It is recognized that an essential function of education is a probing of opinions and an exploration of ideas that may cause some students discomfort. Therefore, in order to establish a claim, the discrimination must be sufficiently severe, persistent, or pervasive to disrupt or sufficiently threaten to disrupt a student’s ability to participate in or benefit from the education program or to create a hostile or abusive educational environment. It is further recognized that academic freedom insures the faculty’s right to teach and the student’s right to learn. Finally, nothing in these policies and procedures shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

When investigating unlawful discrimination complaints containing issues of academic freedom Mt. San Jacinto Community College District will consult with a faculty member appointed by the Academic Senate with respect to contemporary practices and standards for course content and delivery.

Reference: Cohen v. San Bernardino Valley College (1995) 883 F.Supp. 1407, 1412-1414, *affd.* in part and *revd.* in part on other grounds, (1996) 92 F.3d 968; Cal. Code Regs., tit. 5, § 59302. U.S. Department of Education, Office for Civil Rights, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with

Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101).

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. An employee in such a relationship should remove himself or herself from decisions affecting the other person in the relationship. Decisions affecting the other person include grading, evaluating, supervising, or otherwise influencing that person's education, employment, or participation in any other District activity. 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 may seek to transfer any involved employee(s) to eliminate or attenuate the supervisory authority of one over the other, or of a teacher 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. As in any case of sexual harassment, if conduct is determined to be unwelcome, then the District may pursue discipline and/or other corrective actions.

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.



Appendix A Unlawful Discrimination Complaint Form

Name: _____
Last *First*

Address: _____
Street or P.O. Box *City* *State* *Zip*

Phone: Day (____) _____ Evening (____) _____

I Am a: Student Employee Other: _____

I Wish To Complain Against: _____

District: _____ **College:** _____

Date of Most Recent Incident of Alleged Discrimination: _____
*(Non-employment complaints must be filed within one year of the date of the alleged unlawful discrimination.
Employment complaints must be filed within six months of the date of the alleged unlawful discrimination.)*

I Allege Discrimination Based on the Following Category Protected under Title 5 (you must select at least one):

<input type="checkbox"/> Age	<input type="checkbox"/> Ethnic Group Identification	<input type="checkbox"/> Physical Disability	<input type="checkbox"/> Retaliation**
<input type="checkbox"/> Ancestry	<input type="checkbox"/> Mental Disability	<input type="checkbox"/> Race	<input type="checkbox"/> Sex/Gender (includes Harassment)
<input type="checkbox"/> Color	<input type="checkbox"/> National Origin	<input type="checkbox"/> Religion	<input type="checkbox"/> Sexual Orientation
<input type="checkbox"/> Perceived to be in protected category or associated with those in protected category			

Clearly state your complaint. Describe each incident of alleged discrimination separately. For each incident provide the following information: 1) date(s) the discriminatory action occurred; 2) name of individual(s) who discriminated; 3) what happened; 4) witnesses (if any); and 5) why you believe the discrimination was because of your religion, age, race, sex or whatever basis you indicated above. **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. *(Attach additional pages as necessary.)*

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

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

Signature of Complainant *Date*

Send Original to:

Mt. San Jacinto College Attention: Human Resources 1499 N. State Street San Jacinto, California 95283-2399	or	Chancellor’s Office Attention: Legal Affairs Division 1102 Q Street Sacramento, California 95811
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