

## COMPONENT 10: ANALYSIS OF DISTRICT WORKFORCE AND APPLICANT POOLS

The District Compliance Officer will survey the District's workforce composition and shall monitor applicants for employment on an ongoing basis to evaluate the District's progress in implementing the Plan, to provide data needed for the reports required by the Plan, and to determine whether any monitored group is significantly underrepresented within the District workforce. Monitored groups are those groups in Title 5 section 53004(a) identified by ethnicity, gender, and disability status for whom monitoring and reporting is required. Monitored groups are:

- American Indian/Alaskan Native
- Asian
- Biracial/Multiracial
- Black/African American
- Hispanic/Latino
- White
- Pacific Islander
- Men
- Women
- Persons with disabilities

For the purposes of data collection and reporting, all applicants and employees will be afforded the opportunity to voluntarily identify their gender, ethnic group identification and, if applicable, their disability status. This information will be kept confidential and will not be visible to screening and selection committee members or hiring authorities during the recruitment process. The District will annually report the results of the survey of employees to the Office of the Chancellor. At least every three years, the Plan will be reviewed and revised, if necessary, based on an analysis of gender, ethnicity, and disability composition of the then-existing workforce and applicant pool for each of the following job categories:

1. Executive/Administrative/Managerial
2. Faculty and other Instructional Staff
3. Professional (Non-Faculty)
4. Secretarial/Clerical
5. Technical/Paraprofessional
6. Skilled Crafts
7. Service/Maintenance.

## ACADEMIC FREEDOM

The District reaffirms its commitment to academic freedom, but recognizes that academic freedom does not permit unlawful discrimination, harassment, or retaliation. To the extent that these policies and procedures are in conflict with the District's policy on academic freedom, the harassment policies and procedures shall prevail. Nothing in District policies and procedures shall be interpreted to prohibit bona fide academic requirements for a specific District program, course or activity.

It is recognized that an essential function of education is a probing of opinions and an exploration of information and ideas that may cause some students discomfort. It is further recognized that academic freedom insures the faculty's right to teach and the students' right to learn. If a faculty member wishes to use sexually explicit materials in the classroom, the District strongly recommends that faculty member work with the District Compliance Officer as well as academic discipline colleagues to assure that sexual harassment regulations are not violated.

When investigating unlawful discrimination or harassment complaints containing issues related to course material, the designated investigator will consult with a group of one to three (1-3) faculty members in that subject area appointed by the Academic Senate with respect to contemporary practices and standards for course content and delivery.

## INFORMAL/FORMAL COMPLAINT PROCEDURE

When a person brings charges of unlawful discrimination to the attention of the District Compliance Officer, that officer will:

- (1) Undertake efforts to informally resolve the charges<sup>4</sup>;

<sup>4</sup> The purpose of the informal resolution process is to allow an individual who believes she/he has been unlawfully discriminated against or 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.

- (2) Advise the complainant that he or she need not participate in informal resolution;
- (3) Inform the person bringing the charges of his or her right to file a formal complaint and explain the procedure for doing so;
- (4) Assure the complainant that he or she will not be required to confront, or work out problems with, the person accused of unlawful discrimination;
- (5) Advise the complainant that he or she may file a non-employment-related complaint with the U.S. Department of Education Office for Civil Rights (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 those agencies' jurisdictions.

Efforts at informal resolution need not include any investigation unless the District Compliance 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 in writing. Even if the complainant does dismiss the complaint, the District Compliance Officer may require the investigation to continue if he or she determines that the allegations are serious enough to warrant an investigation. Any efforts at informal resolution after the filing of a written complaint will not exceed the 90-day period for rendering the administrative determination pursuant to Title 5, section 59336.

In employment-related cases, if the complainant 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 allow for representation where required by law and may allow representation for the accused and complainant in other circumstances on a case-by-case basis.

### FILING A FORMAL WRITTEN COMPLAINT

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

<http://rccd.edu/administration/humanresources/DEC/Pages/Complaint.aspx>  
<http://extranet.cccco.edu/Divisions/Legal/Discrimination.aspx>

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

The District Compliance Officer shall immediately forward to the Legal Affairs Division of the State Chancellor's Office every formal written complaint.

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

Upon determining the pending investigation will require interviews of faculty and/or staff, the District Compliance Officer will immediately contact the district Chancellor and/or Provost/Vice Chancellor Educational Services. Immediately, one of those individuals will notify CTA or CSEA as appropriate, as well as the College President.

#### 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 or harassment prohibited under Title 5, section 59300 or District policy.

The complaint must be filed by one who alleges that he or she has personally suffered unlawful discrimination or harassment or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty 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 harassment or within one year of the date on which the complainant knew or should have

known of the facts underlying the specific incident or incidents of alleged unlawful discrimination

In any complaint alleging discrimination in employment, the complaint shall be filed within one hundred-eighty (180) calendar days of the date the alleged unlawful discrimination or harassment occurred, except that this period will be extended by no more than ninety (90) calendar days following the expiration of that hundred-eighty (180) calendar days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of hundred-eighty (180) calendar days.

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<sup>5</sup>.

### DEFECTIVE COMPLAINT

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

### NOTICE TO STATE CHANCELLOR OR DISTRICT

The District Compliance Officer shall immediately forward to the Legal Affairs Division of the State Chancellor's Office every formal written complaint. Similarly, when the State Chancellor's Office receives a complaint a copy will be forwarded to the District.

### CONFIDENTIALITY OF THE PROCESS

Investigative processes can best be conducted within a confidential climate. Therefore, the District does not reveal information about such matters except as necessary to fulfill its legal obligations and to assure proper administration of the complaint process.

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

<sup>5</sup> The Guidelines for Processing Formal Title 5 Unlawful Discrimination Complaints is a procedural aid for processing formal unlawful discrimination complaints.

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 District Compliance 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<sup>6</sup>.

## ADMINISTRATIVE DETERMINATION

In any case not involving employment-related discrimination or harassment, within ninety (90) calendar days of receiving a complaint filed under Title 5, sections 59300 et seq., the District Compliance Officer will forward a copy of the investigative report to the State Chancellor, a summary<sup>7</sup> copy of the investigation report

<sup>6</sup> 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.

<sup>7</sup> The summary investigation report shall include all of the following:

- (a) a description of the circumstances giving rise to the complaint;
- (b) a specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint;
- (c) a summary and analysis of the relevant evidence (documents, data, or witness testimony) on which the determination rests; and
- (d) any other information deemed appropriate by the district.

to the complainant and accused, and written notice setting forth all the following to both the complainant and the State Chancellor:

- (a) the determination of the College President 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<sup>8</sup>;
- (c) the proposed resolution of the complaint; and
- (d) notification of the complainant's right to appeal to the District Board and the State Chancellor.

In any case involving employment discrimination or harassment, within ninety (90) calendar days of receiving a complaint filed under Title 5, sections 59300, et seq., the District Compliance Officer will forward a summary of the investigative report to the complainant and accused, and written notice setting forth all the following to the complainant:

- (a) the determination of the College President 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<sup>9</sup>;
- (c) the proposed resolution of the complaint; and
- (d) the complainant's right to appeal to the District Board of Trustees and to file a complaint with the Department of Fair Employment and Housing.

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

Riverside 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.

<sup>8</sup> 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.

<sup>9</sup> *Ibid.*

## 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 investigation summary are mailed to the complainant, the District Compliance Officer shall notify the complainant in writing of his or her appeal rights as follows:

First level of appeal: The complainant shall be promptly notified in writing that he or she has the right to file an appeal to the District's Board of Trustees within fifteen (15) calendar days from the date of the administrative determination. The District Board of Trustees will review the original complaint, the investigative report, the administrative determination, and the appeal.

The District's Board of Trustees will issue a final District decision in the matter within forty-five (45) calendar days after receiving the appeal. Alternatively, the District's Board of Trustees may elect to take no action within forty-five (45) calendar 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 Board of Trustees will be forwarded to the complainant and, in cases not involving employment discrimination, to the State Chancellor's Office.

Second level of appeal: In cases not involving employment-related discrimination, the complainant shall be promptly notified in writing that he or she has the right to file an appeal with the State Chancellor's Office within thirty (30) calendar days from the date that the District Board of Trustees issues the final District decision or permits the administrative determination to become final by taking no action within forty-five (45) calendar days<sup>10</sup>. The appeal must be accompanied by a copy of the decision of the Board of Trustees or evidence showing the date on which the complainant filed an appeal with the Board of Trustees, and a statement under penalty of perjury that no response was received from the District Board of Trustees within forty-five (45) calendar days from that date.

Complainants must submit all appeals in writing.

In an employment-related case, there is no second level of appeal under Title 5, Section 59300, et seq. The District will advise the complainant that he or she may file a complaint with the Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission.

<sup>10</sup> The Department of Fair Employment and Housing (DFEH) has final jurisdiction over employment-related cases. Therefore, the State Chancellor's Office has agreed to accept DFEH decisions and does not accept appeals in employment discrimination cases. Title 5, section 59339 has been amended to reflect this arrangement.



## PROVISION OF INFORMATION TO STATE CHANCELLOR

In any case not involving employment discrimination, within one hundred-fifty (150) calendar days of receiving a complaint, District Compliance Officer will forward the following to the State Chancellor:

A copy of the final District decision rendered by the District Board of Trustees or a statement indicating the date on which the administrative determination became final as a result of taking no action on the appeal within forty-five (45) calendar 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, and in any case involving employment discrimination; make them available to the State Chancellor upon request.

## EXTENSIONS

If for reasons beyond its control, the District is unable to comply with the ninety (90) calendar day deadline specified for submission of materials to the complainant and the State Chancellor's Office, the District Compliance Officer will file a written request that the State Chancellor grant an extension of the deadline. In cases not involving employment discrimination, the District Compliance Officer will also request an extension if the District is unable to meet the one hundred-fifty (150) calendar day deadlines specified above for submission of materials to the complainant and the State Chancellor's Office.

The Director's request will be submitted no later than ten (10) calendar 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 shall be notified that he or she may file written objections with the State Chancellor within five (5) calendar days of receipt.

The State Chancellor may grant the request unless delay would be prejudicial to the investigation. In cases involving employment discrimination, the District may assume that the extension has been granted unless the State Chancellor's Office notifies it within fifteen (15) calendar days from the date of the request that the request has been denied. If an extension of the ninety (90) calendar day deadline is granted by the State

Chancellor the one hundred-fifty (150) calendar day deadline is automatically extended by an equal amount.

## RECORD RETENTION

Unlawful discrimination records will be retained with the District Compliance Officer. 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.

Records related to a student discrimination complaint will be deemed worthy of preservation if, at the end of three years after the case is closed, a complaint on similar grounds has been filed against the same employee. In such cases, the records shall continue to be classified as Class 2 records and retained at least until complaints against that particular employee have been resolved.

All such records will be made available to the State Chancellor's Office upon request.

## EXTERNAL REPORTING OPTION

Any non employee who believes that he or she has been unlawfully discriminated against or harassed may file a complaint with California State Community College Chancellor's Office. The State Chancellor's Office web site is:  
[http://www.cccco.edu/our\\_agency/legal/discrimination/tabid/294/default.aspx](http://www.cccco.edu/our_agency/legal/discrimination/tabid/294/default.aspx)

Another external agency that will accept discrimination and/or harassment complaints from non employees is the United States Department of Education Office for Civil Rights ("OCR"). The phone number for OCR is located in the phone book under government agencies.

Charges filed with the OCR are investigated by the OCR.

In the event a complaint is filed with the OCR, and OCR finds that the complaint has merit, the OCR will attempt to negotiate a settlement between the parties. If not settled, OCR may issue a determination on the merits of the case.

Any employee who believes that he or she has been unlawfully discriminated against or harassed by coworkers, supervisors, students or customers, visitors, vendors or others may file a complaint with the California Department of Fair Employment & Housing ("DFEH") or the Fair Employment & Housing Commission ("FEHC"). The phone number for DFEH is located in the phone book under government agencies.

Where a case is not settled and the DFEH finds a violation to exist, it can prosecute the charging party's case before the FEHC. Legal remedies available through DFEH and FEHC for a successful claim by an applicant, employee, or former employee include possible reinstatement to the former job; award of a job applied for; back pay; front pay; attorney's fees; and under appropriate circumstances, actual damages and/or administrative fines.

In the alternative, DFEH may grant the employee permission to withdraw the case and pursue a private lawsuit seeing similar remedies.

#### NOTICE, TRAINING, AND EDUCATION FOR STUDENTS AND EMPLOYEES

The Riverside Community College District's District Compliance Officer shall make available training to employees and students on the District's unlawful discrimination and harassment policies and procedures. Faculty members, members of the administrative staff, and members of the support staff will be provided with a copy of the District's written policy on unlawful discrimination and harassment at the beginning of the first semester of the college year after the policy is adopted.

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

A training program or informational services will be made available to all students at least once annually. The student training or informational services will include an explanation of the policies, how they work, and how to file a complaint. In addition, a copy of the District's written policies on unlawful discrimination and harassment, as they pertain 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.

Office of Primary Responsibility: Director, Diversity, Equity and Compliance

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