



California Community Colleges

Unlawful Discrimination Complaint Procedures and Proposed Amendments

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Agenda

1. Purpose
2. Discrimination Complaint Process Overview
3. Specific Requirements Under Current Regulations
 - a. Complaint Intake
 - b. Review for Sufficiency
 - c. Investigation Process
 - d. Extensions
 - e. Administrative Determination
 - f. Appeals
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Unlawful Discrimination Complaint Process Overview

Complaint Process Overview

- General District Responsibilities
- Initial Intake
 - Review for Sufficiency
 - Informal Resolution
- Formal Complaint Investigation
- Administrative Determination
- Appeal to district governing board
- Appeal to the Chancellor's Office

District Responsibilities

- Complaints of Unlawful Discrimination governed by Sections 59300 *et seq.* of Title 5 of the California Code of Regulations
- Key sections:
 - Section 59320 – District Responsibility
 - Requires a district to investigate complaints of unlawful discrimination in their programs and activities...
 - Section 59324 – Responsible District Officer
 - Each district must identify a single person responsible for receiving complaints and for coordinating their investigation. Investigation of complaints must be assigned to “a neutral investigator.”
 - “Neutral Investigator” means an outside investigator or an internal investigator who is not in the chain of command of the respondent, not substantially implicated by the allegations in the complaint, and who is otherwise impartial. (Sec. 59311(d))

Initial Intake

- Key sections (cont.):
 - Section 59327 – Informal Resolution
 - Allows districts, through the responsible district officer, to attempt to resolve complaints through an informal process if the complainant consents.
 - Informal resolution should be completed within 90 days.
 - Importantly, the unlawful discrimination complaint timelines are *tolled* while the informal resolution process proceeds.
 - If informal resolution fails, districts must promptly engage or restart formal process.

Initial Intake

- Key sections (cont.):
 - Section 59328 – Complaints of Unlawful Discrimination:
 - May be written or verbal and must be lodged with the district (no longer filed with Chancellor’s Office)
 - Made by student, employee, parent of minor, or an individual with legal authority to act on behalf of student or employee
 - Allege facts that, if true, would constitute a violation of state or federal laws prohibiting unlawful discrimination
 - Filed within one year (student) or 180 days (employment) of the alleged discrimination.
 - Advise may file with Office of Civil Rights (OCR) at US Dept. of Education (student) or with the EEOC or California Department of Civil Rights (employment)

Initial Intake

- Key sections (cont.):
 - Section 59332 – Defective Complaint
 - If a complaint does not meet the requirements of Section 59328, district must notify complainant within 14 days that the complaint is defective and will be dismissed unless cured.
 - District must explain how the complaint is defective so the complainant can cure.
 - If defect is based on failure to state sufficient facts to support claim of unlawful discrimination, district shall offer opportunity for intake interview to proffer additional facts, scheduled as soon as reasonably convenient.
 - If after intake interview, district still maintains complaint is defective, district shall provide decision in writing within 14 days of intake interview and notify complainant the decision is appealable to the Chancellor's Office.

Formal Complaint Investigation

- Section 59334 – District Investigation
 - Once complaint is deemed to be sufficient to state a claim, an impartial fact-finding investigation of the allegations must begin.
 - Results of investigation set forth in written report including
 - Description of circumstances giving rise to complaint
 - Summary of testimony provided by each witness with information relevant to the allegations, including the complaint,
 - Explanation of why an identified witness was not interviewed;
 - Analysis of relevant data or other evidence collected;
 - Specific findings as to whether each factual allegation occurred based on the preponderance of the evidence standard.

Requests for Extensions of Time

- Section 59342 – Extension; Failure to Comply (“Automatic Extension,” Sec. 59342(a))
 - If district is unable to comply with the 90-day deadline to complete investigation and issue administrative determination, may extend time to respond by up to 45 additional days:
 - May be taken once without permission of Chancellor’s Office, if necessary
 - Reasons for extension
 - Need to interview a party or witness who has been unavailable;
 - Need to review or analyze additional evidence, new allegations, or new complaints related to the matter; or
 - To prepare and finalize the administrative determination.
 - Must notify complainant and respondent who is aware of investigation explaining need for extension
 - Sent at least 10 days prior to initial deadline

Requests for Extensions of Time

- Section 59342(d) – Extension; Failure to Comply (“Request to Chancellor’s Office”)
 - If district still needs additional time after the “automatic extension” may request more time from Chancellor’s Office
 - Available for same reasons as the automatic extension
 - Must notify complainant and respondent who is aware of investigation explaining need for extension and of their right to object to the extension.
 - Chancellor’s Office may grant extension “for good cause, unless delay would be unduly prejudicial to the complainant or investigation.”

Requests for Extensions of Time

- Standards for Granting Extensions
 - For finding of “Good Cause:”
 - Must provide *specific facts* supporting the need for additional time
 - Presume districts act in good faith (unless evidence to the contrary)
 - The length of the requested extension must be reasonable under the circumstances
 - Generally, the longer the extension, the more compelling the facts must be
 - For finding “Undue Prejudice” to complainant or investigation.
 - Potential loss of witness testimony due to retirement, graduation, etc.
 - Complainant will suffer some other legal detriment due to additional delay (statute of limitations problems, etc.)
 - Generally, if no objection is filed, we presume no prejudice to the complainant
 - Balancing complainant’s interest in timely resolution vs. district’s interest in thorough investigation.
 - Districts can always ask for additional extensions *if circumstances warrant*.

Administrative Determination

- Section 59336 – Administrative Determination
 - Within 90 days of receiving complaint, district shall complete its investigation and forward a copy or summary of the report and written notice to the complainant setting forth the following
 - The determination as to whether unlawful discrimination occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard;
 - If substantiated, a description of actions taken, to prevent similar acts of unlawful discrimination from occurring in the future;
 - The proposed resolution of the complaint;
 - The complainant’s right to appeal to the district governing board and in employment-based cases, to the California Department of Civil Rights or EEOC.

Appeals

- Section 59338 – Final District Decision; Appeals to Local Governing Board
 - In all cases (student & employment), first level appeal is to the district's governing board.
 - Appeals to be filed within 30 days of receipt of Administrative Determination
 - Governing Board to issue final district decision within 45 days of receiving appeal (must review the original complaint, investigative report, the administrative determination, and the appeal and issue a final district decision)
 - Student appeals: notice of right to file appeal with Chancellor's Office
 - Employment appeals: notice of right to file complaint with Civil Rights Department (NO appeal to Chancellor's Office)

Appeals

- Section 59339 – Appeal to the Chancellor
 - Appeals must be filed with the Chancellor’s Office within 30 days of the date of the district’s Notice of Final Decision (the decision of the governing board)
 - Appeals may also be filed within 30 days of the date of the district’s notice of dismissal of a defective complaint under Section 59332
 - Grounds for Appeal:
 - Procedural Error
 - Defect in the Investigation
 - Newly discovered evidence despite complainant’s due diligence that would substantially impact outcome of investigation
 - Were correct legal standards applied
 - Whether district’s determination was abuse of discretion

Proposed Amendments



Proposed Changes

- Proposed Regulatory Changes in the Near Future
 - Any changes necessitated by the final Title IX rules (this may drive the timing of the other changes)
 - Section 59324 regarding the district investigator. Making more explicit the requirement that investigator not have potential conflicts of interest.
 - Section 59311 to specifically define the training an investigator should have. (Currently, “properly trained” perhaps “trauma informed,” etc.?)
 - Section 59338 regarding appeals to local governing boards. Considering a requirement that Boards give meaningful review rather than mere paper review process it currently appears to be.
 - Section 59342 rewriting the entire section to further clarify the requirements and standards for automatic extensions and extensions from the Chancellor’s Office.



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Thank you!

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