

**AP 3410      Discrimination/Sexual Harassment Complaint Procedures**

Reference Educational Code Sections: *Education Code Sections 66250 et. seq., 72010 et. seq., and 87100 et. seq.; Title 5 Sections 53000 et seq. and 59300 et. Seq.; Penal Code Section 422.55; Government Code Sections 12926.1 and 12940 et.seq.*

Based on ethnic group identification, race, color, language, accent, immigration status, ancestry, national origin, age, sex, gender, gender identity, religion, sexual orientation, marital status, medical condition, veteran status, physical or mental disability, or on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics.

**I.      Introduction and Scope**

The purpose of these procedures is to provide a fair and prompt process for the resolution and investigation of internal complaints of discrimination. The goal of the San Jose/Evergreen Community College District is to have a process that is sensitive to the needs of students, employees, and individuals who interact with the college community, as well as the rights of those against whom allegations have been made.

It is the policy of the San Jose /Evergreen Community College District to provide an educational and employment environment in which no person shall be denied, in whole or in part, full and equal access to, the benefits of, or be subjected to discrimination in any program or activity of the District. The District is committed to prohibit and prevent discrimination, harassment, and retaliation. The District has zero tolerance for any conduct that violates this policy. Zero tolerance means that in all instances where discrimination is found corrective action will be taken in accordance with state law and the District's collective bargaining agreements and policies. Conduct need not arise to the level of a violation of law in order to violate the District's policy on Non-discrimination.

Discrimination, as defined herein, includes sexual harassment as well as any harassment that occurs on the basis of any of the protected categories listed below.

Any person, who believes that they have been discriminated against, in whole or in part, on the basis of ethnic group identification, race, color, language, accent, immigration status, ancestry, national origin, age, sex or gender, gender identity, religion, sexual orientation, marital status, medical condition, veteran status, physical or mental disability, or on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics shall have the right to file a complaint. Complaints may also be filed by anyone who has learned of such discrimination in his or her official capacity as a classified employee, faculty member or administrator. The procedures outlined below govern the process for complaints filed against employees of the District, or any other person acting on behalf of the District. If the complaint is against a student that is not employed by the District, such complaints shall be handled through the Vice President of Student Affairs and student disciplinary procedures.

The State of California Department of Fair Employment and Housing prohibits discrimination on the basis of marital status and medical condition. In addition, San Jose/Evergreen Community College District has identified other forms of discrimination not recognized by the State Chancellor's Office and the State of California to include accent, immigration status, language, and veteran status. These discrimination/sexual harassment complaint procedures will be followed to resolve these forms of discrimination with the exception of notification to the State Chancellor's Office and the appeal process to the State Chancellor's Office. If dissatisfied with the administrative determination, the complainant will be notified of his/her right to file a complaint with appropriate administrative agencies for the forms of discrimination prohibited under state and federal law.

## **II. Discrimination Complaint Procedures**

### **A. How to File A Complaint**

The district encourages its employees and students to contact the appropriate Campus Coordinator prior to filing a formal complaint or to obtain assistance in determining whether or not an individual has been or is a victim of discrimination. The designated Campus Coordinator at each college is the Vice President of Student Affairs. At EVC the Vice President of Student Affairs can be contacted at (408) 274-7900 extension 6749, at SJCC the Vice President of Student Affairs can be contacted at (408) 298-2181 extension 3190. For the District Office contact the Vice Chancellor of Human Resources at (408) 270-6404.

Informal complaints should be filed with the complaining party's supervisor or to the supervisor of the person being complained against. Assistance can be obtained through the designated Campus Coordinator.

For formal complaints, completed and signed Discrimination Complaint forms are to be mailed or taken to the Human Resources Office to the attention of the Vice Chancellor of Human Resources, San Jose/Evergreen Community College District, 4750 San Felipe Road, San Jose, CA 95135. A formal complaint must be filed with the Vice Chancellor of Human Resources unless the Vice Chancellor is the subject of the complaint, in which case the complaint must be filed with the Chancellor.

A copy of these procedures and complaint form are available in the District Human Resources Office, in each College's Office of the Vice President for Academic Affairs, and in each College's Office of the Vice President of Student Affairs. The Discrimination Complaint Procedures and the Discrimination Complaint Forms are also available online and can be accessed at <http://www.sjeccd.org/HTML/District/HR/PandP.htm> via the District's Web site.

### **B. Informal Complaint Procedure (Step One)**

The purpose of the informal complaint procedure is to allow individuals who believe that they have been discriminated against to resolve the issue through a mediation focused process rather than a more formal procedure. The informal procedure allows for a quicker resolution than the formal procedure and allows for more flexibility and creativity in the

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resolution of complaints. The District and all constituency groups encourage individuals to take advantage of the informal complaint procedure before proceeding with a formal complaint. Individuals, however, do have the right to forgo the informal complaint procedure and go directly to a formal complaint.

1. Any person alleging to have personally suffered discrimination in violation of the District policy, state or federal law, or has learned of such discrimination in his or her official capacity as a classified employee, faculty member or administrator of the District, may make a verbal or written complaint to his/her supervisor or to the supervisor of the person being complained against. If the supervisor is implicated by the complaint or otherwise unable to be objective, the complaint may be lodged with that person's supervisor or an appropriate administrator at a higher level.
2. Complaints filed through the informal procedure will be resolved within thirty (30) calendar days. The 30 day deadline may be extended by mutual agreement of the parties or if extenuating circumstances exist.
3. Upon receipt of an informal complaint the appropriate administrator will do the following:
  - a) Meet with the concerned individual to understand the nature of the complaint.
  - b) Meet with the concerned individual to make an initial assessment of the complaint and determine whether it is a discrimination complaint covered by these procedures and the District policy on Nondiscrimination.
  - c) The administrator shall, as soon as possible, inform the Vice Chancellor of Human Resources in writing that an informal complaint has been made and shall provide a summary of the complaint.
  - d) The administrator shall confer with the Vice Chancellor of Human Resources and when necessary request the Director's assistance.
  - e) If, the administrator determines that the complaint is not properly a discrimination complaint the administrator will refer the concerned individual to the appropriate process or department.
4. If the administrator determines that the complaint may involve discrimination the administrator shall inform the concerned individual as follows:
  - a) The concerned individual will be given a copy of these procedures and the administrator will explain the informal and formal procedures.
  - b) That he or she need not participate in any mediated or other type of resolution under the informal procedures of the District's administrative procedures.
  - c) Notify the concerned individual of his or her right to file a formal complaint.
  - d) That he or she may also file a non-employment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR), and that employment-based complaints may be filed with the California Department of Fair Employment and Housing (DFEH), or the U.S. Equal Employment Opportunity Commission (EEOC).

- e) That the District Officer ultimately responsible for the processing and handling of discrimination complaints is the Vice Chancellor of Human Resources, who is located in the District Office.
5. The administrator shall notify the respondent of the complaint within ten (10) working days. The ten (10) working days shall be extended if the respondent is unavailable or cannot be contacted.
6. The administrator will undertake immediate efforts to resolve the complaint that are reasonable, fair and thorough. Whenever possible, administrators should attempt to resolve complaints using any of the various forms of alternative dispute resolution that are available and appropriate for the circumstances. Resolution of the complaint may require fact finding by the supervisor and when interviewing witnesses should maintain as much confidentiality as possible. Any resolution that is reached, whether by an agreement between the parties or a decision of the administrator, will be properly documented in writing by the administrator and clearly communicated to the parties. The parties will sign any resolution reached by agreement of the parties and each shall receive a copy of the written resolution. In instances where the parties cannot reach an agreement and the administrator is required to make a decision, each party will receive the administrator's written decision on the complaint. The administrator shall provide a copy of the resolution of the complaint to the Vice Chancellor of Human Resources. This information shall become part of the official investigation file if the concerned individual proceeds to a formal complaint. Resolutions of informal complaints shall not be part of the personnel file unless it is included as a disciplinary action, subject to the conditions of the collective bargaining agreements. The investigation file shall be maintained by the Vice Chancellor of Human Resources.

### **C. Formal Complaint Procedure (Step Two)**

The following formal procedures have been established to reach an administrative determination of formal complaints of discrimination within ninety (90) calendar days:

1. If the complainant is not satisfied with the resolution in the informal complaint procedure, or if the complainant decides to forgo the informal process, he/she may file a formal complaint by filing a written complaint on the District's discrimination complaint form. The complaint must be filed with the Vice Chancellor of Human Resources in the Human Resources Office at the District Office. If the Vice Chancellor of Human Resources is the subject of the complaint, the complaint must be filed with the Chancellor.
2. Any person wishing to have their formal complaint processed under these procedures shall file their complaint within the deadlines prescribed below:
  - a. In any complaint not involving employment, the complaint shall be filed within one year of the date of the alleged discrimination, or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of discrimination.
  - b. In any complaint alleging discrimination in employment, the complaint shall be filed within 180 calendar days of the date the alleged discrimination occurred. This period should be extended by no more than 90 calendar days if the complainant first

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- obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.
- c. In any complaint alleging discrimination or harassment in employment beyond the timeline in subsection “b” above, but no longer than one year, the District will nonetheless conduct an internal investigation as appropriate to address and/or remedy the allegations but is under no obligation to comply with the specific procedures required by the California Code of Regulations, title 5, section 59300 et seq.
3. Complainants shall be advised that they may also file their non-employment-based complaints with OCR and their employment-based complaints with DFEH and/or EEOC. The District shall forward a copy of any filing by the complainant with DFEH or the EEOC to the State Chancellor's Office for a determination of whether the issues presented require an independent investigation.
  4. On the complaint form the complainant must specifically state in writing why they believe the resolution in the informal process was not appropriate. If the complainant did not make use of the informal process he/she must state in writing on the complaint form why he/she believes the informal procedures would not resolve their complaint.
  5. On the complaint form the complainant shall describe in detail the conduct that is alleged to amount to discrimination. All written complaints should be signed and dated by the complainant, and shall contain, to the best of the complainant's ability at least the name(s) of the individual(s) involved, the date(s) of the event(s) at issue, and a detailed description of the actions constituting the alleged harassment or discrimination. Names, addresses and phone numbers of witnesses or potential witnesses should also be included.
  6. The Vice Chancellor of Human Resources or his/her designee shall immediately send a copy of all formal complaints filed in accordance with section 59328 of the Title 5 regulations, regardless of whether the complaint is brought by a student or by an employee, to the Chancellor of the California Community College System.
  7. If the complaint does not describe the kind of prohibited conduct the District investigates under these procedures or is in some other way defective the complaint will be immediately returned to the complainant. The Vice Chancellor of Human Resources 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 complainant will also be sent to the State Chancellor's Office. The complainant shall have seven (7) working days to file an amended complaint.
  8. The Vice Chancellor of Human Resources may appoint the appropriate administrator to conduct an impartial fact-finding investigation. This administrator will preferably be someone in the levels of supervision above the immediate supervising administrator of either the complainant or the individual complained against (respondent). When appropriate the Vice Chancellor of Human Resources may conduct the impartial fact-finding investigation or appoint an independent third party to do so.
  9. Within ten (10) working days of receiving the complaint, the Vice Chancellor of Human Resources shall also notify the respondent that a complaint has been received and shall provide the respondent a copy of the complaint. The ten (10) working days shall be

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extended if the respondent is unavailable or cannot be contacted. The respondent shall also receive a copy of these procedures. The respondent will be advised that an assessment of the accuracy of the allegations has not yet been made, that the complaint will be investigated, that the respondent will be provided with an opportunity to present his/her side of the matter, and that any retaliation against the complainant or any witness is prohibited. The respondent shall be informed of his/her right to have a representative present during the interview. The respondent will also be asked not to make contact or to discuss the issue with the complainant. Employees are to cooperate with lawful investigations.

- a. Initially, the investigator shall, unless circumstances make it unfeasible to do so, meet separately with the complainant and respondent to review the scope and nature of the complaint; request names of witnesses or documents that may assist in the investigation. Prior to completing the investigation, the investigator shall summarize for each party the information gathered in the course of the investigation so that they may respond to any adverse information.
10. The investigator will review all credible factual information presented and incorporate such information into an investigative report. Confidentiality will be maintained to the extent possible. 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, respondent and any viable witnesses identified by the complainant or respondent.
    - c) An analysis of any relevant data or other evidence collected during the course of the investigation.
    - d) Any other information deemed appropriate.
  11. The investigative report will be forwarded to the Chief Executive Officer of the campus, or his/her designee, who will be responsible for determining whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint. The Chief Executive Officer's findings and recommendations, if any, or those of his/her designee, shall take into consideration the severity of the conduct, the pertinent background, and other relevant District policies. If the allegations are sustained in any respect, recommendations for corrective action to be taken may include training, or any other measure, including disciplinary action, deemed appropriate by the administration. If disciplinary action is recommended, appropriate contractual and statutory processes will be invoked.
  12. In any case involving employment discrimination, within ninety (90) calendar days of receiving a complaint the District shall complete its investigation, and the Vice Chancellor of Human Resources shall forward to the complainant and respondent the following:
    - a. A copy or summary of the investigative report.
    - b. A written notice setting forth:

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- (1) The determination of the Chief Executive Officer or his/her designee as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint.
  - (2) A description of actions taken, if any, to remedy any discrimination that was believed to have occurred, and to prevent similar problems from occurring in the future.
  - (3) The proposed resolution of the complaint.
  - (4) 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.
  - (5) The respondent's right to file with the Vice Chancellor of Human Resources a written response to the Chief Executive Officer's determination. Respondent's written response and the results of the appropriate administrative review shall be included in the investigation file.
13. In any case not involving employment discrimination, within 90 calendar days of receiving a complaint the District shall complete its investigation, and the Vice Chancellor of Human Resources shall forward to the complainant, respondent, and the State Chancellor's Office:
- a. A copy or summary of the investigative report.
  - b. A written notice setting forth:
    - (1) The determination of the Chief Executive Officer or his/her designee as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint.
    - (2) A description of actions taken, if any, to remedy any discrimination that was believed to have occurred, and to prevent similar problems from occurring in the future.
    - (3) The proposed resolution of the complaint.
    - (4) The complainant's right to appeal to the District Board of Trustees and the State Chancellor's Office.
    - (5) The respondent's right to file with the Vice Chancellor of Human Resources a written response to the Chief Executive Officer's determination. Respondent's written response and the results of the appropriate administrative review shall be included in the investigation file.
14. When the Chief Executive Officer finds that disciplinary action should be imposed, the complainant will receive a summarized copy that will exclude the details of the discipline imposed. Personnel matters, in particular discipline actions taken against employees, are considered confidential; therefore the District is prohibited, unless otherwise mandated by law, from releasing such details. (Exception, see Education Code, § 76234).

**D. Appeal Rights**

1. First level of appeal:

In any case involving employment discrimination, if the complainant is not satisfied with the results of the formal level administrative determination, the complainant may appeal by submitting written objections, to the District Board of Trustees, through the District Chancellor, within fifteen (15) calendar days from the date of the notice pursuant to section

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59336 that sets forth the administrative determination and the complainant's appeal rights. The District's governing board will issue a final District decision in the matter within 45 calendar days after receiving the appeal. The Vice Chancellor of Human Resources shall promptly forward to the complainant a copy of the final decision rendered by the District's governing board that includes the complainant's right to file a complaint with the Department of Fair Employment and Housing (DFEH), where the case is within the jurisdiction of that agency. Alternatively, if the governing board does not act within 45 calendar days, 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 per the District's governing board's inaction on the appeal, and a copy of the notice informing complainant of his/her right to file a complaint with the DFEH, where the case is within the jurisdiction of that agency, will be forwarded to the complainant and respondent.

In any case not involving employment discrimination, if the complainant is not satisfied with the results of the formal level administrative determination, the complainant may appeal by submitting written objections, to the District Board of Trustees, through the District Chancellor within fifteen (15) calendar days from the date of the notice pursuant to section 59336 that sets forth the administrative determination and the complainant's appeal rights. The District's governing board will issue a final District decision in the matter within 45 calendar days after receiving the appeal. The Vice Chancellor of Human Resources shall promptly forward to the complainant, respondent, and to the State Chancellor's Office a copy of the final decision rendered by the District's governing board that includes complainant's right to appeal the decision of the Board of Trustees to the State Chancellor's Office. Alternatively, if the governing board does not act within 45 calendar days, 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's inaction on the appeal, and a copy of the notice informing complainant of his/her right to appeal to the State Chancellor's Office will be forwarded to the complainant, respondent and to the State Chancellor's Office.

2. Second level of appeal: If the complainant is not satisfied with the District Board of Trustees' decision, the complainant shall have the right to file a written appeal with the State Chancellor's Office in any case not involving employment discrimination. The State Chancellor's Office will also only accept appeals that are based on the protected categories enumerated in section 59300 of Title 5. Appeals to the State Chancellor's Office must be filed within thirty (30) calendar days after the Board of Trustees has issued the final District decision or allowed the administrative determination to become final by taking no action, or from the date of the notice provided pursuant to section 59338(b) or (d) , whichever is later. The appeal must be in writing and 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.

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 where the complaint is within the jurisdiction of that agency.

**E. Forward Provision of Information to State Chancellor**

Within 150 days of receiving a complaint, which does not involve employment discrimination, the District will either:

1. Forward the following to the State Chancellor's Office:
  - A. 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 the governing board's decision to take no action on the appeal within 45 days.
  - B. A copy of the notice of appeal rights the District sent the complainant.
  - C. A copy of the complainant's appeal of the District's administrative determination; and
  - D. Such other information as the State Chancellor may require; or
2. Notify the State Chancellor that the complainant has not filed an appeal with the District Board of Trustees and the District has closed the file.

For a period of at least three years after closing a case, including a case involving employment discrimination, the Responsible Officer shall retain and make available to the State Chancellor upon request the original complaint, the documents referenced in sections 59336 and 59338, and the documents identified in the preceding sections, 1 and 2.

**F. Extensions**

If for reasons beyond its control, the District is unable to comply with the 90-day or 150-day deadlines specified above the Responsible Officer will file a written request that the State Chancellor grant an extension of the deadlines established by Title 5 in sections 59336 and/or 59340. Where an extension is deemed necessary by the District, it must be requested from the State Chancellor regardless of whether or not the case involves employment discrimination. The request for an extension shall be submitted no later than 10 days before the expiration of the established deadline 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 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. If the State Chancellor grants an extension of the 90-day deadline, the 150-day deadline is automatically extended by an equal amount.

### **III. Where to File Discrimination Complaints**

#### **A. Where to File District Administrative Discrimination Complaints**

Individuals seeking general information about the District's discrimination complaint procedures or wishing assistance on where to file their complaint may contact the campus coordinator who is the Vice President for Student Affairs on the college campuses and the Vice Chancellor of Human Resources at the District Office. Their contact information is as follows:

- The Evergreen Valley College Vice President of Student Affairs can be contacted at (408) 274-7900 extension 6749
- The San Jose City College Vice President of Student Affairs can be contacted at (408) 298-2181 extension 3190.
- The Vice Chancellor of Human Resources at the District Office can be contacted at (408) 270-6404.

**Informal complaints** pursuant to these procedures may be filed with any of the following individuals:

- The administrator who supervises the person being complained against.
- The administrator who supervises the person filing the complaint.
- Or any other appropriate administrator at a level higher than the supervising administrator of either party.

**Formal complaints** pursuant to these procedures must be filed with:

- The Vice Chancellor of Human Resources, Human Resources, located in the San Jose/Evergreen Community College District Office. The phone number for the Vice Chancellor of Human Resources is (408) 270-6404. The mailing address is 4750 San Felipe Road, San Jose, CA 95135. The Discrimination Complaint Form can be accessed online at the <http://www.sjeccd.org/HTML/District/HR/PandPdownloads/discproform07-08> via the District's Web site.

#### **A. Governmental Agency Complaints**

An individual may also file a complaint of discrimination directly with an outside governmental agency in lieu of, during, or after use of, the District's discrimination complaint process. Governmental agencies that accept discrimination complaints include:

U.S. Equal Employment Opportunity Commission, 96 N. Third Street, Suite 250, San Jose, CA 95112, **(Telephone) 1-800-669-4000 (TTY) 1-800-669-6820.**

The Department of Fair Employment and Housing, 2570 North First Street, Suite 480, San Jose, CA 95112 **(Telephone) 1-408-325-0339, Toll free 1-800-884-1684, (TTY) 1-800-700-2320.**

The Office of Civil Rights of the U.S. Department of Education, 50 Beale Street, Suite 7200, San Francisco, CA 94105, **(Telephone) 1-415-486-5555. (TTD) 1-877-521-2172.**

#### **IV. General Provisions**

##### **B. Availability and Posting of Procedures**

These written procedures on discrimination will be posted on the District and Campus website at <http://www.sjeccd.org/hr/policiesprocedures.html> and made available in the Chancellor's Office, the Presidents' Offices, the Office of Human Resources, the Offices of Diversity, the Offices of Student Life, the Campus libraries, the Disabled Student's Programs, Campus and District mailrooms, and each Dean's office. A summary of these procedures will be posted in areas easily accessible to students, employees, and visitors including but not limited to the locations listed above. A summary of these procedures will be posted in English and any other languages spoken by a substantial number of students, employees, or visitors of the District.

##### **C. Students and Employees Notice, Training, and Education**

The San Jose/Evergreen Community College District shall provide training to employees and students on the District's discrimination policies and procedures. Members of the faculty, classified staff and administrative staff, will be provided with a copy of the District's written policies and procedures on discrimination at the beginning of the first semester of the academic year after the policies and procedures are adopted.

All new District employees will receive training on the District's discrimination policies and procedures. New employees are required to complete this training and receive a copy of the discrimination policies and procedures 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 mandatory training every two years. In years in which a substantive policy or procedural change has occurred training will be made available for all employees; and 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 should include an explanation of the policies and procedures and how to file a complaint. In addition, a copy of the District's written policies and procedures on discrimination, as they pertain to students, will be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

##### **D. Retaliation**

The district will not tolerate retaliation against any individual for initiation, pursuit, defense or assistance with a lawful complaint of discrimination. The term "retaliation" includes any negative action taken against an individual by anyone because of the individual's filing of a complaint, making a charge of, or otherwise opposing, any discriminatory or harassing conduct. Any individual who engages in retaliation against any District employee or student in violation of this policy may be subject to disciplinary or corrective action, up to and

including termination for employees and expulsion for students. It is unlawful for anyone to retaliate against someone who files a 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 non-discrimination policy.

#### **E. Responsible District Officer**

The San Jose/Evergreen Community College District will identify to the State Chancellor's Office and to the public the responsible district officer who will be responsible for coordination of all discrimination complaints filed pursuant to Title 5, § 59328, and who is responsible for maintaining communications with the State Chancellor's Office on these matters. 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 responsible district officer is the Vice Chancellor of Human Resources located in the District Office.

#### **F. Confidentiality of the Process**

Investigative processes can best be conducted in a confidential manner, and the District shall not reveal information about such matters except as necessary to fulfill its legal obligations. Both the respondent and the complainant have privacy rights that will be respected to the extent possible in conducting the investigation.

Complainants, witnesses, and respondents will all be asked to sign a confidentiality acknowledgement statement where they agree not to circulate the allegations involved in the complaint outside of the District's process.

#### **G. Academic Freedom**

Institutions of higher learning exist for the common good and not to further the interest of either the individual instructor or the institution as a whole. The common good depends on the uninhibited search for truth and its open expression, and to this end both faculty and students must hold the right of full freedom of inquiry and expression.

Academic freedom is equally essential to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom is fundamental to the protection of the rights of the instructor in teaching and to the student in learning.

Academic freedom cannot be separated from academic and professional responsibility. Instructors have the right to study and investigate, to interpret their findings, and express conclusions. Instructors may present views that are controversial and may evaluate opinions held by others, while respecting the right of free expression.

Academic freedom does not include use of discriminatory, discourteous, offensive, abusive conduct or language toward students, supervisors, other employees, or the public while in performance of District employment.

## **H. Representation**

Union representation will be allowed for respondent and/or complainant, where required by law and in other circumstances on a case-by-case basis. Where not required by law either party may request that they be accompanied by a representative during interviews. Such requests shall be granted on a case-by-case basis.

## **V. Definitions**

Definitions applicable to nondiscrimination policies are as follows:

- "Appeal" means a request by a complainant made in writing to the Sample 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 the District's Nondiscrimination policy, participation in a group associated with persons having such characteristics, or use of a facility associated with use by such persons.
- "Days" means calendar days.
- "Discrimination" means unfavorable or unfair treatment, or preferential treatment of a person or class of persons, or treatment that has an adverse impact on persons or a class of persons, on the basis of a person's membership, or perceived membership, in a legally protected category. Discrimination includes harassment and retaliation that occurs on the basis of these legally protected categories. Discrimination can be a violation of the District Board policy on Nondiscrimination or can amount to a violation of state or federal law in the area of unlawful discrimination.
- "District" means the San Jose/Evergreen Community College District or any District program or activity.
- "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.
- "Harassment" is a form of discrimination. A person must show that (1) he/she was subjected to verbal, written or physical conduct (including, but not limited to jokes, demeaning comments, derogatory remarks, slurs, name-calling, gestures, physical contact, bullying, stalking, threatening, or display or offensive materials) of a harassing nature because of a legally protected category; (2) the conduct was subjectively and objectively unwelcome; and (3) the conduct was sufficiently severe or pervasive to alter the conditions of the victim's working or learning environment so as to create an abusive working or learning environment. There are two types of harassment "quid pro quo"

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and “hostile work environment”.

- “Hostile work/learning environment” is a form of harassment. A work or learning environment is hostile if it is both objectively offensive and subjectively offensive such that it interferes with a person’s ability to do his/her work or interferes with their ability to learn. The harassment must be severe or pervasive and must be based on a legally protected category. Important factors to be considered are the frequency, severity and the level of interference with work or learning performance. Hostile work environment can be created by supervisors, colleagues and in some instances other third parties.
- “Legally protected categories”, under SJECCD Policy, includes ethnic group identification, race, color, language, accent, immigration status, ancestry, national origin, age, sex or gender, religion, sexual orientation, gender identity, marital status, medical condition, veteran status, and physical or mental disability.
- “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 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).

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"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.<sup>4</sup>

- "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 include 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.<sup>5</sup>

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<sup>4</sup> 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).)

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- “Quid Pro Quo” is a type of harassment. Quid Pro Quo means “this for that”. In the context of sexual harassment, quid pro quo occurs when submission to sexual conduct is explicitly or implicitly made a condition of a job, a job benefit, or the absence of a job detriment. The accused harasser must be in a position to affect the accuser’s employment. This form of harassment most often includes sexual propositions.
- “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.
- “Retaliation” occurs when an individual can prove (1) he/she engaged in a protected activity; (2) the employee or student was subjected to an adverse employment or educational action and (3) there was a causal connection between the two.
- “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is 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.
- “Sex Discrimination” means sexual harassment or discrimination on the basis of gender.
- “Sexual harassment” is 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, or invitations. Examples of possible visual 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 unwelcome.
  - (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.

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<sup>5</sup> Ibid.

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- (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, reclassifications, 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.
  - "Zero Tolerance" means that in all instances where there is a finding that discrimination has occurred, corrective action or discipline will be taken in accordance with state law and the District's collective bargaining agreements and District Policies.

Board Approval: 7/8/08

Revised 12/08; Approved by District Council 3/19/09