

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

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May 19, 2006

To: District Officers Responsible for Handling Unlawful Discrimination Complaints

From: Steve Bruckman
Executive Vice Chancellor and General Counsel

Subject: Changes to Nondiscrimination Regulations
Legal Advisory A 06-01

Synopsis: At its meeting of January 18, 2006, the Board of Governors of the California Community Colleges adopted an extensive set of changes to its title 5 regulations. Among these changes were a number of revisions to the regulations related to handling complaints of unlawful discrimination.¹

Summary of Major Changes To Nondiscrimination Regulations

A number of the nondiscrimination regulations (commencing with title 5, section 59300) were revised to reflect changes in controlling statutes. Changes which merit particular attention are:

Recent revisions to state nondiscrimination laws confirm that a person's actual or perceived status is protected, as is an association with those having actual or perceived characteristics. Section 59300 of the title 5 regulations was amended to include references to these additional forms of discrimination.

Section 59311 was amended to add definitions of "gender" and "sexual orientation." "Gender" is defined to include a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth. "Sexual orientation" is defined to mean heterosexuality, homosexuality, or bisexuality.

Section 59339 was amended to eliminate appeals to the System Office in cases involving employment discrimination. The Department of Fair Employment and Housing is the state agency charged with rendering binding decisions in employment discrimination cases. The former language of section 59339 was misleading to employment discrimination complainants who believed the System Office could afford them a remedy.

Section 59342 was amended to clarify that when a district requests an extension of time to complete its investigation, it must notify the complainant in writing that he or she has the right to object to an extension.

¹ The complete set of changes is available online at Agenda Item 11 in PDF or Word formats:
http://www.cccco.edu/executive/bog/agendas/agenda_0106.htm

Section 59360 was amended to increase the flexibility available to the System Office in shaping remedies where a district is found to have violated the nondiscrimination regulations. The regulation has long authorized the Chancellor to withhold all or part of a district's state aid. It has now been amended to expressly permit the Chancellor to impose conditions for receipt of future state funding, including eligibility for grants and contracts.

District Policies and Procedures

The revised regulations took effect April 14, 2006. Districts should review their policies and procedures to ensure consistency with the revised regulations.

By memo dated January 16, 2004, and further clarified in Legal Advisory 04-04,² we requested that districts refrain from directing those bringing employment discrimination complaints to file appeals with this office. Districts which have followed this advice will already be operating in accordance with the revisions to section 59339. However, we ask that you now amend your district policies and procedures as soon as possible to include this change, as well as any other changes that may be necessitated by the clarified language of the amended regulations. Please note that, as discussed in Legal Advisory 04-04, districts must continue to send copies of employment discrimination complaints to the System Office when they are first filed. Having a copy of the complaint is helpful to our staff when complainants call for information and it alerts us that an investigation is underway. However, it is not necessary to send us the materials required by sections 59336 or 59340 when investigation of the employment discrimination complaint has been completed.

We also encourage districts to review Legal Advisory 04-04 and the revisions to section 59339 to ensure that the actual handling of employment discrimination complaints is in accord with current requirements. To further assist you in this effort, we have revised the Model Policy on Handling Complaints of Unlawful discrimination and the new version is available on the System Office website.³

Filing Policies and Procedures with the System Office

We take this opportunity to remind districts that title 5, section 59322 requires that the most current version of the district's unlawful discrimination complaint policies and procedures be filed with this office. We have not received the policy and procedures from several districts, and even if you have previously sent policies to us, you will now need to forward your revised policies and procedures when they have been updated to reflect the changes in the regulations.

Separate Sexual Harassment Policies and Procedures

In the course of handling discrimination complaints we have become aware that several districts have separate sexual harassment policies and procedures that were not submitted to our office with their other nondiscrimination policies. In addition, some of these separate policies have either not been updated and are out of compliance with title 5, or are not cross-referenced in the

² <http://www.cccco.edu/divisions/legal/notices/notices.htm> – available in PDF and Microsoft Word formats.

³ <http://www.cccco.edu/divisions/legal/discrimination/discrimination.htm> – available in PDF and Microsoft Word formats.

district's main policy. For a discussion of some of the issues concerning separate sexual harassment policies and procedures, please see Legal Advisory 04-04.⁴

Revised Complaint Forms and Model Policy

The Chancellor's Complaint form has been revised to include changes to section 59300 re actual or perceived status. The new form is available on the following web page in PDF and Microsoft Word, and also in a large print version:

<http://www.cccco.edu/divisions/legal/discrimination/discrimination.htm>

Please update your own district's complaint forms accordingly.

As noted above, the Model Policy has been revised to include changes to title 5, sections 59300 et seq. (Past revisions were in 2002 and 2004.) Available at the link above in PDF and Microsoft Word.

Reminder: Responsible District Officer

Title 5, section 59324 requires that districts

"shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district."

Most districts have identified the responsible district officer to us, including contact information (title, telephone, fax number and e-mail address). If your district has not, or if you are not sure we have current information, please send it to freitano@cccco.edu and sjohnson@cccco.edu.

In addition to identifying a single responsible district officer to the System Office, it is important that districts also identify that same single person to the public, rather than several persons. A common division of labor is to have one person handle employee complaints and another person handle student complaints. This is allowed under the regulation. However, one person must be identified for the filing of **all** types of complaints and the coordination of investigations, regardless of who actually handles their investigation.

Revised Regulations

For your reference, we have attached a document containing the updated text of the nondiscrimination regulations.

Notification to System Office of Failure to Appeal

We request that districts notify us when a complainant fails to appeal to the local district board within the 15-day timeline, or when a district closes its case file due to the fact that the complainant has not appealed to the local district board. Although this notification is not required by title 5, it would greatly help us in our recordkeeping and will eliminate the need to

⁴ Please see footnote 2.

request this information from districts at a later and more inconvenient time, such as after your files have already been closed or archived.

This notification can be made by letter, or more informally by e-mail to Francesca Reitano or Suzanne Johnson at the e-mail addresses below, whichever you prefer.

Action/Date Requested: Advisory only. For technical assistance and questions you may wish to contact Francesca Reitano, Senior Legal Analyst at (916) 445-1997 (<mailto:freitano@cccco.edu>). Please continue to direct complainants or potential complainants to Suzanne Johnson, Legal Secretary at (916) 327-5493 (<mailto:sjohnson@cccco.edu>).

Contact: Francesca Reitano (916) 445-1997

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Attachment