

## Item #, Attachment 1: Text of the Proposed Regulatory Action

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Board of Governors of the California Community Colleges  
Proposed Revisions to Title 5 Regulations

### Section 59300 of article 1 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

#### **§ 59300. Purpose.**

The purpose of this subchapter is to implement provisions of state and federal law which together prohibit discrimination or retaliation ~~the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code § 66250 et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101), to the end that no person in the State of California shall, in whole or in part, against persons or groups, or those associated with them on the basis of an actual or perceived characteristic related to ethnic group identification, national origin, immigration status, religion, age, sex, or gender, gender identification, gender expression, military and veteran status, marital status, medical condition, race, color, ancestry, sexual orientation, or physical or mental disability, or any other characteristic protected under applicable federal or state law, 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, be unlawfully~~ These laws require that protected persons and groups shall neither be denied full and equal access to the benefits of, nor be unlawfully subjected to discrimination under any program or activity that is administered by, funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges, based upon an actual or perceived characteristic listed in this section.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; Sections 11135-11139.5, Government Code; Sections 422.6 and 422.55, Penal Code; Title 20, United States Code, Section 1681; Title 29, United States Code, Section 794; and Title 42, United States Code, Sections 2000d, 6101 and 12100, et seq., California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code § 66250 et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101)

**Section 59311 of article 2 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:**

**§ 59311. Definitions.**

For purposes of this subchapter, the following definitions shall apply:

(a) “Appeal” means a request by a complainant made in writing to a community college district governing board pursuant to section 59338 and/or to the Chancellor's Office pursuant to section 59339 to review the administrative determination of a community college district regarding a complaint of discrimination.

(b) “Complaint” means a written ~~or verbal and signed~~ statement meeting the requirements of section 59328 that alleges unlawful discrimination in violation of this subchapter.

(c) “Days” means calendar days.

~~(d) Except for purposes of section 59306, “disability” means any mental or physical disability as defined in Government Code section 12926.~~

~~(e) “Discrimination on the basis of sex” means sexual harassment or discrimination on the basis of gender.~~

~~(f) “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.~~

~~(g) “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.~~

~~(h) “Sexual orientation” means heterosexuality, homosexuality, or bisexuality.~~

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; Sections 11135 and 12926, Government Code; and Sections 422.6 and 422.55, Penal Code.

**Section 59320 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:**

**§ 59320. District Responsibilities.**

~~Each eCommunity college districts has primary must responsibility to ensure that its their programs and activities are available to all persons without unlawful discrimination regard to their actual or perceived ethnic group identification, national origin, religion, age, sex or gender, race, color, ancestry, sexual orientation, or physical or mental disability, or to their association with a person or group with one or more of these actual or perceived characteristics. Therefore, each eCommunity college districts shall investigate complaints of unlawful discrimination in their its programs ~~or and~~ activities, and seek to resolve those complaints in accordance with the provisions of this subchapter.~~

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; Sections 11135 and 12926, Government Code; and Sections 422.6 and 422.55, Penal Code.

**Section 59327 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:**

**§ 59327. Informal Resolution.**

(a) ~~Whenever any person brings~~ When charges of unlawful discrimination are brought to the attention of the a responsible district officer, ~~the district may~~ designated pursuant to section 59324, that officer shall: undertake efforts to informally resolve the charges with the complainant's consent. The district must advise complainants that they need not participate in informal resolution.

~~(1) undertake efforts to informally resolve the charges;~~

~~(2) advise the complainant that he or she need not participate in informal resolution;~~

~~(3) notify the person bringing the charges of his or her right to file a complaint, as defined in section 59311, and of the procedure for filing such a complaint pursuant to section 59328;~~

~~(4) advise the complainant that he or she may file his or her nonemployment based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction; and~~

~~(5) advise the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies.~~

(b) ~~Efforts at informal resolution pursuant to subdivision (a)(1) may, but need not include any investigation, unless~~ The responsible district officer determines that ~~when an investigation is warranted, by the seriousness of the charges.~~

(c) ~~Efforts at informal resolution may continue after the filing of a formal written or verbal complaint is made, but after a complaint is filed an investigation is required to be conducted pursuant to section 59334 and~~ The investigation must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint, or the complainant files with the DFEH and the Chancellor elects not to require further investigation pursuant to section 59328(f)(2).

~~(d) Any efforts at informal resolution after the filing of a written or verbal complaint is made shall not exceed~~ the be completed within ninety (90) days ~~period for rendering the administrative determination pursuant to section 59336.~~

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

**Section 59328 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:**

**§ 59328. Formal Investigation Upon Filing of Written Complaint. Complaints of Unlawful Discrimination**

An investigation of alleged unlawful discrimination prohibited by this subchapter will be initiated by filing a complaint that meets the following requirements:

(a) ~~The~~ Complaints of unlawful discrimination may be written or verbal, and shall be made ~~filed by one student, an employee, a parent of a minor, or an individual with legal authority on behalf of a student or employee, who alleges that the student or employee or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administrator.~~

(b) Any complaints to a responsible employee under California law or Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681-1688, shall be filed with the responsible district officer or designee.

~~(c) The~~ Written ~~complaints shall be filed with the Chancellor of the California Community Colleges or with the~~ responsible district officer designated pursuant to section 59324 by the appropriate community college district.

~~(d) The complainant shall be in~~ may be requested, but shall not be required, to submit the complaint on a form prescribed by the Chancellor or the community college district.

(e) Verbal complaints shall be lodged with the responsible district officer or designee. The responsible district officer shall reduce the verbal complaint in writing. The district shall take appropriate steps to ensure the writing accurately reflects the facts alleged by the complainant.

~~(f) In any complaint not involving employment, the complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.~~

(1) the complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination;

(2) districts shall advise student complainants that they may file their nonemployment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction.

~~(g) In any complaint alleging discrimination in employment, the complaint shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period should be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.~~

(1) the complaint shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period should be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days;

(2) advise complainants that they may file the complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies.

~~(f) In any complaint alleging discrimination in employment, the district shall:~~

~~(1) advise the complainant that he or she may file the complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies; and~~

~~(2) forward a copy of any filing by the complainant with the DFEH or the EEOC to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of this subchapter.~~

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

### **Section 59330 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is repealed to read:**

#### **~~§ 59330. Notice to Chancellor.~~**

~~Immediately upon receiving a complaint filed in accordance with section 59328, regardless of whether the complaint is brought by a student or by an employee, the district shall forward a copy of the complaint to the Chancellor.~~

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

### **Section 59334 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:**

#### **§ 59334. District Investigation.**

(a) Upon receiving a complaint that is properly ~~made~~filed in accordance with section 59328, the district ~~will~~shall notify the complainant that the district ~~will~~ commence an impartial fact-finding investigation of the allegations contained in the ~~that~~ complaint and notify the complainant and Chancellor that it is doing so.

(b) The results of the investigation shall be set forth in a written report that shall include at least all of the following:

(a) a description of the circumstances giving rise to the complaint;

(b) a summary of the testimony provided by each witness, including the complainant and any available ~~viable~~ witnesses identified by the complainant in the complaint;

(e3) an analysis of any relevant data or other evidence collected during the course of the investigation;

(d4) a specific finding as to whether ~~there is probable cause to believe that discrimination occurred with respect to each~~ factual allegation in the complaint occurred based on the preponderance of the evidence standard; and

(e5) any other information deemed appropriate by the district.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

### **Section 59336 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:**

#### **§ 59336. Administrative Determination.**

(a) In any case not involving employment discrimination, within ninety (90) days of receiving a complaint, the district shall complete its investigation and forward a ~~copy of the investigative report required pursuant to section 59334 to the Chancellor, a copy or summary of the report to the complainant, and written notice to the complainant~~ setting forth all of the following ~~to both the complainant and the Chancellor~~:

(1) ~~the determination of~~ The chief executive officer's or his/her/their designee's determination as to whether ~~there is probable cause to believe~~ discrimination occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard;

(2) In the event a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar problems ~~acts of unlawful discrimination~~ from occurring in the future;

(3) the proposed resolution of the complaint; ~~and~~

(4) the complainant's right to appeal to the district governing board and the Chancellor pursuant to sections 59338 and 59339; and

(5) in matters involving student sexual misconduct, the respondent's right to appeal to the district governing board.

(b) In any case involving employment discrimination, within 90 days of receiving a complaint, the district shall complete its investigation and forward a copy or summary of the report ~~to the complainant, and written notice to the complainant~~ setting forth all the following ~~to the complainant~~:

(1) ~~the determination of~~ The chief executive officer's or his/her/their designee's determination as to whether ~~there is probable cause to believe~~ discrimination occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard;

(2) if a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar problems from occurring in the future;



(3) the proposed resolution of the complaint; and

(4) the complainant's right to appeal to the district governing board and to file a complaint with Department of Fair Employment and Housing.

(c) In any case involving discrimination, when a district provides the complainant with any information pursuant to this subdivision, the district shall also provide to the respondent the following:

(1) The chief executive officer's or their designee's determination as to whether discrimination occurred with respect to each allegation in the complaint based on the preponderance of the evidence standard;

(2) The proposed resolution of the complaint, including any disciplinary action against the respondent; and

(3) In matters involving misconduct governed by section 59337, subdivision (b), the respondent's right to appeal to the local governing board.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

### **Section 59337 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is added to read:**

#### **§ 59337. Title IX and Student Discipline Procedures.**

(a) In cases of student sexual misconduct subject to Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681–1688, districts must comply with the federal Department of Education's Title IX regulations, 34 C.F.R. Part 106.

(b) In cases of student sexual misconduct that does not meet the procedural requirements of Title IX, when an accused student is subject to severe disciplinary sanctions and the credibility of witnesses is central to the investigative findings, district student discipline procedures must provide the following:

(1) An opportunity for the accused student to cross-examine witnesses, including the complainant;

(2) An opportunity for the accused student to cross-examine witnesses indirectly at a live hearing, either in person or by videoconference;

(3) A live hearing conducted by a neutral decision-maker other than the investigator.

(c) For purposes of this section, "indirect" cross-examination shall be conducted as follows:

(1) Any question to the witness shall be asked by a neutral party appointed by the district for the sole purpose of asking questions. The neutral party shall not be the accused student, the accused student's representative, or a member of the hearing panel; and

(2) The accused student may submit written questions before and during the cross-examination, including any follow-up questions. The neutral party asking questions shall

not exclude any questions unless there is an objection to the question by the hearing panel.

(d) Nothing in this section shall prohibit a district from providing a live hearing or neutral decision-maker for other student discipline proceedings, including for other forms of discrimination.

**Section 59338 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:**

**§ 59338. Final District Decision; Appeals to Local Governing Board.**

(a) If the complainant is not satisfied with the results of the administrative determination rendered pursuant to section 59336, the complainant or respondent in student sexual misconduct cases, may submit a written appeal to the district governing board within ~~fifteen (15)~~ thirty (30) days from the date of the notice ~~pursuant to~~ required by section 59336 ~~that sets forth the administrative determination and the complainant's appeal rights.~~ The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision ~~in the matter~~ within forty-five (45) days after receiving the appeal.

(1) If the governing board does not act within forty-five (45) days the administrative determination shall be deemed approved on the forty-sixth day and shall become the final district decision.

(2) The district shall promptly notify the complainant that the board took no action and the administrative determination is deemed approved.

(b) In any case not involving employment discrimination, the district shall promptly forward to the complainant, ~~and to the Chancellor~~ a copy of the final district decision rendered by the governing board, ~~if any, that includes~~ and notice of complainant's right to appeal the district's decision to the Chancellor pursuant to section 59339.

(c) In any case involving employment discrimination, the district shall promptly forward to the complainant a copy of the final district decision rendered by the 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.

~~(d) If the governing board does not act within forty five (45) days the administrative determination shall be deemed approved and shall become the final district decision in the matter.~~

~~(1) The district shall promptly notify the complainant and, in any case not involving employment discrimination, the Chancellor, that the board took no action and the administrative determination is deemed approved pursuant to this section.~~

~~(2) In any case not involving employment discrimination, the complainant shall also be notified of his or her right to appeal the district's decision to the Chancellor pursuant to section 59339.~~



~~(3) In any case involving employment discrimination, the complainant shall also be notified of his or her right to file a complaint with the Department of Fair Employment and Housing (DFEH), where the case is within the jurisdiction of that agency.~~

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

**Section 59339 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:**

**§ 59339. Appeal to the Chancellor.**

(a) In any case not involving employment discrimination, the complainant ~~may~~shall have the right to file a written appeal with the Chancellor within thirty (30) days from the date ~~of that the governing board issues the district's notice of final district decision, or permits the administrative determination to become final pursuant to section 59338, or from the date of the notice provided pursuant to section 59338(b) or (d), whichever is later.~~ Such appeals shall be processed pursuant to the provisions of article 4 (commencing with section 59350) of this subchapter. The appeal must ~~be accompanied by a copy of the include copies of the complaint, the decision of the governing board, and the notice of final decision or evidence showing the date on which the complainant filed an appeal with the governing board and a statement under penalty of perjury that no response was received from the governing board within forty five (45) days from that date.~~

(b) In any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing (DFEH) ~~where the complaint is within the jurisdiction of that agency.~~

(c) For any appeal under subdivision (a), the district shall provide all relevant, non-privileged documents upon request of the Chancellor.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

**Section 59340 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:**

**§ 59340. ~~Provision~~Disclosures to the Chancellor.**

(a) ~~Within 150 days of receiving a complaint which does not involve employment discrimination, the district will either:~~Upon request of the Chancellor, a district shall provide copies of all documents related to a discrimination complaint, including the following:

- (1) the complaint forward the following to the Chancellor;
- (2) any investigative report, unless subject to the attorney-client privilege;

~~(A3) 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 pursuant to section 59338(a) or (d);~~

~~(B4) A copy of the notice to the complainant required by pursuant to section 59338(a) or (d);~~

~~(C5) A copy of the complainant's appeal of the district's administrative determination pursuant to section 59338(a); and~~

~~(D6) Such any other non-privileged documents or information as the Chancellor requests may require.~~

(b) Districts shall provide to the Chancellor an annual report with the following information:

(1) the numbers of employment and non-employment discrimination complaints and informal charges received in the previous academic year,

(2) the number of complaints and informal charges resolved in the previous academic year,

(3) the number of complaints and the nature of allegations substantiated and unsubstantiated in the previous academic year,

(4) any other information requested by the Chancellor.

~~(2) Notify the Chancellor that the complainant has not filed an appeal with the district governing board and that the district has closed its file.~~

~~(b) Districts shall retain all records arising from informal discrimination charges and formal discrimination complaints for a period of For a period of at least five three-years after closing a case, including a case involving employment discrimination, the district shall retain and make available to the Chancellor upon request the original complaint, the documents referenced in sections 59336 and 59338, and the documents identified in subdivision (a) of this section.~~

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

## **Section 59342 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:**

### **§ 59342. Extensions; Failure to Comply.**

~~(a) If a district, for reasons beyond its control, is unable to comply with the 90-day or 150-day deadline pursuant to specified in sections 59327 and 59336 or 59340, the district may file a written request that the Chancellor grant an extension the time to respond by up to 45 additional days. An extension may be taken only once without permission from the Chancellor's Office, and must be necessary for one of the following reasons: of the deadline. Where an extension is deemed necessary by the district, it must be requested from the Chancellor regardless of whether or not the case involves employment~~

discrimination. The request shall be submitted no later than ten (10) days prior to the expiration of the deadline established pursuant to sections 59336 or 59340 and shall set forth the reasons for the request and the date by which the district expects to be able to submit the required materials.

(1) a need to interview a party or witness who has been unavailable;

(2) a need to review or analyze additional evidence, new allegations, or new complaints related to the matter; or

(3) to prepare and finalize an administrative determination.

(b) Districts shall send a written notice to the complainant indicating the necessity of an extension, the justification for the extension, and the number of days the deadline will be extended.

(c) Notice of an extension shall be sent to the complainant no later than 10 days prior to the initial time to respond pursuant to section 59336.

(bd) Districts may request additional extensions from the Chancellor after the initial 45-day extension. A copy of the extension request for an extension shall be sent to the complainant, who shall be notified that he or she The complainant may file a written objections with the Chancellor within five (5) days of receipt.

(ce) The Chancellor may grant the extension for good cause, request unless delay would be unduly prejudicial to the complainant or investigation. If the Chancellor grants an extension of the 90-day deadline, the 150-day deadline is automatically extended by an equal amount.

(df) If a district fails to comply with the requirements of this section or sections 59336 or 59340 by the required deadline, including any extension granted pursuant to this section, the Chancellor may proceed to review the case as provided in article 4 (commencing with section 59350) of this subchapter based on the original complaint and any other relevant information then available.

Note: Authority cited: Sections 66271.7, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

## **Section 59350 of article 4 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:**

### **§ 59350. Chancellor's Review for Reasonable Cause.**

(a) The Chancellor shall review the materials submitted by the district pursuant to sections 59336 and 59340, together with the complainant's appeal, and determine whether there is reasonable cause to believe the district has violated the requirements of this subchapter. The Chancellor's review on appeal is limited to the following issues:

(1) whether there was a procedural error in violation of this subchapter;

(2) whether there was a defect in the investigation;

(3) whether new evidence not available during the investigation would substantially impact the outcome of the investigation;

(4) whether correct legal standards were applied; and

(5) whether the district's determination was an abuse of discretion.

(b) Failure by the complainant to file an appeal pursuant to section 59339 shall not preclude the Chancellor from finding reasonable cause to believe the district has violated the requirements of this subchapter. The Chancellor shall issue a determination within 90 (ninety) days of receiving the appeal and appellate file from the appropriate district. The Chancellor shall send the determination to both the complainant and the district.

(c) If the Chancellor finds there is no reasonable cause to believe a violation has occurred, the Chancellor shall immediately notify both the complainant and the district.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

### **Section 59352 of article 4 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:**

#### **§ 59352. Investigation Remand.**

(a) If the Chancellor finds there is reasonable cause to believe that a violation has occurred, ~~the~~ The Chancellor may shall investigate to determine whether there is probable cause to believe a violation has occurred. remand any matter to the originating district for any of the following reasons:

(1) to cure defects in the investigation or in procedural compliance;

(2) to consider new evidence not available during the investigation that would substantially impact the outcome of the investigation; or

(3) to modify or reverse a decision of the local governing board based upon misapplication of an applicable legal standard or an abuse of discretion.

(b) If a matter is remanded to the district, the district shall take necessary action and issue a decision after remand within sixty (60) days.

(c) In any case not involving employment discrimination, the complainant may appeal the district's amended determination to the Chancellor within thirty (30) days pursuant to section 59339.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

**Section 59356 of article 4 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is repealed:**

**~~§ 59356. Formal Resolution.~~**

~~Within 120 days of initiating the investigation, the Chancellor shall take one of the following actions:~~

~~(a) Notify the district and the complainant that there is probable cause to believe the district has violated the provisions of this subchapter. The Chancellor shall allow the district to acquiesce in this finding prior to filing an accusation against the district.~~

~~(b) Notify the district and the complainant that there is no probable cause to believe the district has violated the provisions of this subchapter.~~

~~Note: Authority cited: Sections 66271.7, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.~~