

NOTICE PUBLICATION/REGULATIONS SUBMISSION**PRINT**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2020-08-19-03P	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Board of Governors of the California Community Colleges			AGENCY FILE NUMBER (if any)

ENDORSED - FILED
in the office of the Secretary of State
of the State of California**AUG 19 2020**2020 AUG 19 A 10:19
OFFICE OF
ADMINISTRATIVE LAW**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**


1. SUBJECT OF NOTICE N/A	TITLE(S) N/A	FIRST SECTION AFFECTED N/A	2. REQUESTED PUBLICATION DATE N/A
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON N/A	TELEPHONE NUMBER N/A	FAX NUMBER (Optional) N/A
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Unlawful Discrimination Regulation	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 59337, 59352
	AMEND 59300, 59311, 59320, 59327, 59328, 59334, 59336, 59338, 59339, 59340, 59342, 59350
TITLE(S) 5	REPEAL 59330, 59352, 59356
3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
	<input type="checkbox"/> File & Print
	<input checked="" type="checkbox"/> Other (Specify) <u>Authority - Ed. Code section 70901.5</u>
	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
	<input checked="" type="checkbox"/> Print Only
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)	
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State
<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <u>30 days after filed w/Secretary of State</u>
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission
<input type="checkbox"/> Other (Specify)	<input type="checkbox"/> State Fire Marshal
7. CONTACT PERSON Tanya Bosch - Regulations Coordinator	TELEPHONE NUMBER (916) 445-4826
FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

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SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 8-18-2020
TYPED NAME AND TITLE OF SIGNATORY Marc A. LeForestier, General Counsel	

Final Text of Regulatory Action, Unlawful Discrimination,

Board of Governors of the California Community Colleges
Final Revisions to Title 5 Regulations Concerning Unlawful Discrimination

TITLE 5, SECTION 59300

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, or those associated with them, 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, ~~66251, 66252, 66270 et seq.~~ and 72011, Education Code; Sections ~~11135-, 11136, 11137, 11139 and 11139.5, 11139.8,~~ Government Code; Sections 422.6 and 422.55, Penal Code; Title 20, United State Code, Section 1681; Title 29, United States Code, Section 794; and Title 42, United States Code, Sections ~~2000d, 6101, 12101, 12112 and 12132, and 12100, et seq.~~

TITLE 5, SECTION 59311

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) "Unlawful discrimination" means unfair or unequal treatment of an individual (or group) based upon an actual or perceived characteristic related to ethnic group identification, national origin, immigration status, religion, age, sex, gender, gender identification, gender expression, military and veteran status, marital status, medical condition, race, color, ancestry, sexual orientation, physical or mental disability, or any other characteristic protected under applicable federal or state law.~~

~~(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, 66251, 66252, 66270 et seq. and 72011, Education Code; Sections 11135 and 12926, Government Code; and Sections 422.6 and 422.55, Penal Code.

TITLE 5, SECTION 59320

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 Responsibilityies.

~~Each eCommunity college districts has primary must responsibility to insure 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, ~~66251~~, 66252, 66270 et seq. and 72011, Education Code; Sections 11135 and 12926, Government Code; and Sections 422.6 and 422.55, Penal Code.

TITLE 5, SECTION 59327

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).~~ The district may proceed with an investigation notwithstanding an informal resolution.

(d) ~~Any efforts at informal resolution after the filing of a written or verbal complaint is made shall not exceed~~ be completed within ~~the~~ 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, 66251, 66252, 66270 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

TITLE 5, SECTION 59328

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 a 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 forwarded to the responsible district officer or designee.

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

(d) ~~The~~ complaintant 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 or designee shall record 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, 66251, 66252, 66270 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

TITLE 5, SECTION 59330

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:

~~§ 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.

TITLE 5, SECTION 59334

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;

- (b2) a summary of the testimony provided by each witness, including the complainant and any available ~~viable~~ witnesses identified by the complainant in the complaint;
- (c3) 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, 66251, 66252, 66270, et seq. 67386 and 72011, Education Code; and Sections 11135 and 11136, Government Code.

TITLE 5, SECTION 59336

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~~ unlawful 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 any disciplinary sanction imposed upon the respondent.
- (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~~ 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 to file a complaint with Department of Fair Employment and Housing.
- (c) In any case involving unlawful 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 unlawful 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 any disciplinary sanction imposed upon the respondent.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; ~~and Section 11138, Government Code.~~ Reference: Sections 66250, 66251, 66252, 66270 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

TITLE 5, SECTION 59337

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 are not subject to Title IX, when an accused student is subject to severe disciplinary sanctions, and the credibility of witnesses was central to the investigative findings, district student discipline procedures must provide the following:
 - (1) An opportunity for the accused student to cross-examine witnesses indirectly at a live hearing, either in person or by videoconference; and
 - (2) 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.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code. Reference: Sections 66271.6 and 66271.7, Education Code; Title 20, United States Code, Section 1681; Title 34, Code of Federal Regulations, Section 106.31.

TITLE 5, SECTION 59338

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 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. In student sexual misconduct cases subject to section 59337, subdivision (b), respondents who are not satisfied with the results of the administrative determination rendered pursuant to section 59336, subdivision (a), may submit a written appeal to the district governing board within thirty (30) days from the date of the notice required by section 59336. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision within forty-five (45) days after receiving the appeal.

(b) If the governing board does not act within forty-five (45) days, the administrative determination shall be deemed approved on the forty-sixth (46) day and shall become the final district decision. The district shall promptly notify the complainant and the respondent of the board's action, or if the board took no action that the administrative determination is deemed approved.

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

(d) 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.

(e) 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, ~~66251, 66252, 66270 et seq.~~ and 72011, Education Code; and Sections 11135 and 11136, Government Code.

TITLE 5, SECTION 59339

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, ~~66251, 66252, 66270 et seq.~~ and 72011, Education Code; and Sections 11135 and 11136, Government Code.

TITLE 5, SECTION 59340

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 of Information 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; or~~

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

(1) the number 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 of unlawful discrimination received in the previous academic year, and the number of those complaints that were sustained in whole or in part,

(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.~~

~~(bc) 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, 66251, 66252, 66270 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

TITLE 5, SECTION 59342

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 extend 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, and to a respondent who is aware of an investigation, 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, and to a respondent who is aware of an investigation, 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, and to a respondent who is aware of an investigation. who shall be notified that he or she The complainant and respondent may each file a written objections with the Chancellor within five (5) days of receipt.

(ee) 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, 66251, 66252, 66270 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

TITLE 5, SECTION 59350

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 unavailable during the investigation despite the complainant's due diligence 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 ninety (90) 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, 66251, 66252, 66270 et seq. and 72011, Education Code; and Sections 11135 and 11136, Government Code.

TITLE 5, SECTION 59352

Section 59352 of article 4 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is repealed and adopted to read:

§ 59352. Investigation.

~~If the Chancellor finds there is reasonable cause to believe a violation has occurred, the Chancellor shall investigate to determine whether there is probable cause to believe a violation has occurred.~~

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.

§ 59352. Remand.

~~(a) The Chancellor may 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 despite the complainant's due diligence 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. Reference: Sections 66250, 66251, 66252, 66270 and 72011, Education Code; and Sections 11135 and 11136, Government Code.

TITLE 5, SECTION 59356

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.~~