

Proposed Regulatory Changes: Unlawful Discrimination (45-day text).

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BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES PROPOSED AMENDMENTS TO TITLE 5 REGULATIONS, UNLAWFUL DISCRIMINATION

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 statement meeting the requirements of section 59328 that alleges unlawful discrimination in violation of this subchapter.
- (c) “Days” means calendar days ~~unless otherwise specified.~~
- (d) “Neutral investigator” means an outside investigator or an internal investigator who is not in the chain of command of the respondent, not substantially implicated by the allegations in the complaint, and who is otherwise impartial. Neutral investigators shall be properly trained to conduct such investigations.
- ~~(e)~~ (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.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code. Reference: Sections 66250, 66251, 66252, 66270 and 72011, Education Code; Sections 11135 and 12926, Government Code; and Sections 422.6 and 422.55, Penal Code.

Section 59324 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:

§ 59324. Responsible District Officer.

Each community college district 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 for coordinating their investigation. 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 ~~actual~~ investigation of complaints ~~may~~ must be assigned to ~~other staff or to outside persons or organizations under contract with the district~~ a neutral investigator. ~~Such procedures shall be used whenever the officer designated to receive complaints is named in the complaint, or is implicated by the allegations in the complaint.~~

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 Section 11135, Government 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) When charges of unlawful discrimination are brought to the attention of a responsible district officer, the district may 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.

(b) Efforts at informal resolution pursuant to subdivision (a) may, but need not include an investigation. The responsible district officer determines when an investigation is warranted.

(c) Efforts at informal resolution may continue after a written or verbal complaint is made. The investigation must be completed unless the matter is informally resolved and the complainant dismisses the complaint. The district may proceed with an investigation notwithstanding an informal resolution.

(d) Any efforts at informal resolution after a written or verbal complaint is made shall be completed within ninety (90) days.

(e) The timelines under section 59336, subdivision (a) or (b) shall be tolled while the parties are engaged in good faith efforts at informal resolution.

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.

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. Complaints of Unlawful Discrimination.

(a) Complaints of unlawful discrimination may be written or verbal, and may be made by a 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 has suffered unlawful~~

discrimination. A complaint must allege facts that, if true, would constitute a violation of state or federal laws prohibiting unlawful discrimination.

(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) Written complaints shall be provided to the responsible district officer or designee pursuant to section 59324.

(d) The complainant 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:

(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:

(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.

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.

Section 59329 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is repealed.

~~§ 59329. Complaints Filed with Chancellor.~~

~~Upon receiving a complaint filed pursuant to section 59328, the Chancellor will immediately forward a copy of the complaint to the appropriate community college district responsible officer who shall respond pursuant to section 59332 or initiate the investigation required by section 59334.~~

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 59332 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:

§ 59332. Defective Complaint.

(a) When a district receives a complaint which it finds that does not meet the requirements of section 59328, the district shall immediately notify the complainant in writing and the Chancellor within 14 days that the complaint does not meet the requirements of contain allegations of unlawful discrimination that are sufficient under section 59328 to trigger an unlawful discrimination investigation and shall specify in what requirement the complaint is defective. The district shall specify why the complaint is defective.

(b) If the defect is based on the complainant's failure to state sufficient facts to support a claim of unlawful discrimination, the district shall offer the complainant an opportunity to proffer additional facts to support their claims through an intake interview, which shall be scheduled as soon as reasonably convenient for the parties.

(c) If, after the intake interview, the district determines that a complainant has still not stated sufficient facts to support a claim of unlawful discrimination, the district shall provide the complainant with a written determination explaining the basis for dismissing the complaint within 14 days of the intake interview. The district must also notify the complainant of their right to appeal this determination directly to the Chancellor's Office 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 59333 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:

§ 59333. Office for Civil Rights.

(a) Whenever a complaint is filed with the Chancellor pursuant to section 59329 and whenever the Chancellor renders a decision pursuant to article 4 (commencing with section 59350) of this subchapter, the Chancellor shall notify the complainant that he or she may file a complaint regarding the same matter with the Office For Civil Rights of the U.S. Department of Education (OCR) where the complaint is within the jurisdiction of that agency.

- (b) In such cases, OCR will normally accept compliance with these regulations as satisfying the due process requirements of federal law.
- (c) OCR shall have no jurisdiction to rule on any finding regarding violation of state law.

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 in accordance with section 59328, the district shall notify the complainant that the district will commence an impartial fact-finding investigation of the allegations contained in the complaint.
- (b) The results of the investigation shall be set forth in a written report that shall include the following:
 - (1) a description of the circumstances giving rise to the complaint;
 - (2) a summary of the testimony provided by each witness, with information relevant to the allegations, including the complainant ~~and any available witnesses identified by the complainant in the complaint~~;
 - (3) an explanation of why an identified potential witness was not interviewed;
 - ~~(4)(3)~~ an analysis of any relevant data or other evidence collected during the course of the investigation;
 - ~~(5)(4)~~ a specific finding as to whether each factual allegation in the complaint occurred based on the preponderance of the evidence standard; and
 - ~~(6)(5)~~ any other information deemed appropriate by the district.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code. Reference: Sections 66250, 66251, 66252, 66270, 67386 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 or summary of the report and written notice to the complainant setting forth all of 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) In the event a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar acts of unlawful discrimination from occurring in the future;
 - (3) the proposed resolution of the complaint;
 - (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 ninety (90) days of receiving a complaint, the district shall complete its investigation and forward a copy or summary of the report, and written notice to the complainant setting forth all 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) if a discrimination allegation is substantiated, a description of actions taken, if any, to prevent similar 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.
- (d) Notwithstanding subdivisions (a) and (b), in matters involving an academic employee placed on involuntary paid administrative leave, the district shall complete its investigation within 90 working days of the administrative leave commencing, unless the period of paid administrative leave is extended by agreement of the employee and employer for a period not exceeding 30 additional calendar days. The extension of time provisions of section 59342 shall not apply to investigations involving an academic employee placed on involuntary paid administrative leave.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code. Reference: Sections 66250, 66251, 66252, 66270, 72011, and 87623 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 file a written appeal with the Chancellor within thirty (30) days from the date of the district's notice of final decision. Such appeals shall be processed pursuant to the provisions of article 4 (commencing with section 59350) of this subchapter. The appeal must include copies of the complaint, the decision of the governing board, and the notice of final decision.

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

(c) In any complaint dismissed pursuant to section 59332, a complainant may file a written appeal with the Chancellor within thirty (30) days from the date of the notice of dismissal.

~~(d)~~ For any appeal under subdivision (a) or (c), 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. Reference: Sections 66250, 66251, 66252, 66270 and 72011, Education Code; and Sections 11135 and 11136, Government Code.