



**Procedures  
For  
Complaints of  
Unlawful Discrimination,  
Including  
Sexual Harassment**

**Filed Under  
Title 5, Sections 59300, et. seq.**

**May 2008**

Based on State Chancellor's Model Plan



**Monterey Peninsula Community College District  
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## **I. Introduction & Scope**

These are the written policies and procedures for filing and processing complaints of unlawful discrimination, including sexual harassment, at Monterey Peninsula Community College District (MPC). These policies and procedures incorporate the legal principles contained in unlawful discrimination provisions of the California Code of Regulations, Title 5, Sections 59300 et seq. as well as other state and federal substantive and procedural requirements.

A copy of these written policies on unlawful discrimination, including sexual harassment, shall be displayed in a prominent location in the main administrative building and other areas where notices regarding MPC's rules, regulations, procedures, and standards of conduct are posted.

The Monterey Peninsula Community College District Governing Board on May 27, 2008, adopted these *Procedures for Complaints of Unlawful Discrimination, Including Sexual Harassment*, 2008, in accordance with the procedures of the Board.

Authority: Cal. Code Regs., Title 5, § 59326; Ed. Code, § 66281.5; 20 U.S.C. § 1681 et. seq. Reference: Cal. Code Regs., Title 5, § 59300 et seq.; 34 C.F.R. § 106.8(b).

## **II. Notice, Training and Education for Students and Employees**

The Monterey Peninsula Community College District's responsible officer shall make arrangements for or provide training to employees and students on the District's unlawful discrimination policies and procedures. Faculty members, members of the administrative staff, and all members of the support staff will be provided with a copy of the District's written policy on unlawful discrimination, including sexual harassment, at the beginning of the first semester of the college year after the policy is adopted.

District employees hired after adoption of these procedures will receive training and a copy of the policies and procedures regarding unlawful discrimination, including sexual harassment, during the first year of their employment. Because of their special responsibilities under the law, supervisors will undergo mandatory training within six months of assuming a supervisory position and bi-annually thereafter.

A training program or informational services will be made available to all students at least once annually. The student training or informational services will include an explanation of the policy in existence, how it works, and how to file a complaint. In addition, a copy of the District's written policy on unlawful discrimination, as it pertains to students, will be provided as part of any orientation program conducted for new students at the beginning of each semester or summer session, as applicable.

Authority: Ed. Code, § 66281.5; Cal. Code Regs., Title 5, §§ 59324 and 59326; Reference: Cal. Code Regs., Title 5, § 59300 et seq.; 34 C.F.R. § 106.8(b).

### **III. Policy on Unlawful Discrimination, Including Sexual Harassment**

Per Board Policy 5100, it is the policy of the Monterey Peninsula Community College District to provide an educational and employment environment in which no person shall be unlawfully denied full and equal access to, the benefits of, or be unlawfully subjected to discrimination, in whole or in part, on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability, or on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics. This policy applies to any program or activity that is administered by, funded directly by, or that receives any financial assistance from the State Chancellor or Board of Governors of the California Community Colleges.

Per Board Policy 5105, it is the policy of the Monterey Peninsula Community College District to provide an educational and employment environment free from unwelcome sexual advances, requests for sexual favors, sexual favoritism, and other verbal or physical conduct or communications constituting sexual harassment.

The policy of Monterey Peninsula Community College District is to comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973 in the development, procurement, maintenance, or use of electronic or information technology and to respond to and resolve unlawful discrimination complaints regarding accessibility. Such complaints will be treated as complaints of discrimination on the basis of disability.

Employees, students, or other persons acting on behalf of the District who engage in unlawful discrimination as defined in this policy or by state or federal law may be subject to discipline up to and including discharge, expulsion, or termination of contract. Applicable due process procedures will be followed regarding disciplinary procedures.

In so providing, the Monterey Peninsula Community College District hereby implements 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), Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101).

Authority: Cal. Code Regs., Title 5, § 59300; Gov. Code, §§ 11135-11139.5; Ed. Code, § 66250 et seq.; 42 U.S.C. § 2000d; 20 U.S.C. § 1681; 29 U.S.C. § 794; 42 U.S.C. § 12100 et seq.; 42 U.S.C. § 6101; 29 U.S.C. § 794d; 36 C.F.R. § 1194.

### **IV. Retaliation**

It is unlawful for anyone to retaliate against someone who files a complaint of unlawful discrimination, including sexual harassment; who refers a matter for investigation or complaint; who participates in an investigation of a complaint; who represents or serves as an advocate for an alleged victim or alleged offender; or who otherwise furthers the principles of this unlawful discrimination policy.

Authority: 20 U.S.C. § 1681 et seq.; 34 C.F.R. § 106; Cal. Code Regs., Title 5, § 59300 et seq.; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, Office of Civil Rights, January 19, 2001.

### **V. Academic Freedom**

The Monterey Peninsula Community College District Board of Trustees reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow any form of unlawful discrimination, including sexual harassment. The lecture, content, and discourse that are an intrinsic part of the course content shall in no event constitute sexual harassment or other form of unlawful discrimination. It is recognized that an essential function of education is a probing of opinions and an exploration of ideas that may cause some students discomfort. It is further recognized that academic freedom ensures the faculty's right to teach and the student's right to learn. Finally, nothing in these policies and procedures shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

When investigating complaints of unlawful discrimination, including sexual harassment, containing issues of academic freedom, Monterey Peninsula Community College District will consult with a faculty member appointed by the Academic Senate with respect to contemporary practices and standards for course content and delivery.

Reference: *Cohen v. San Bernardino Valley College* (1995) 883 F. Supp. 1407, 1412-1414 affd. in part and revd. in part on other grounds, (1996) 92 F.3d 968; Cal. Code Regs., Title 5, § 59302.

## VI. Definitions

Definitions applicable to nondiscrimination policies are as follows:

- A. "Appeal" means a request by a complainant made in writing to a community college District governing board pursuant to Title 5, 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. "Association with a person or group with these actual or perceived characteristics" includes advocacy for or identification with people who have one or more characteristics of a protected category listed under "Unlawful Discrimination Policy" and Title 5, Section 59300, participation in a group associated with persons having such characteristics, or use of a facility associated with use by such persons.
- C. "Complaint" means a written and signed statement meeting the requirements of Title 5, Section 59328, which alleges unlawful discrimination in violation of this subchapter.
- D. "Days" means calendar days.
- E. "Discrimination on the basis of sex" means sexual harassment or discrimination on the basis of gender.
- F. "Gender" 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. "Mental disability" includes, but is not limited to, all of the following:
  1. Having any mental or psychological disorder or condition - such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities - that limits a major life activity. For purposes of this Section:
    - a. "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
    - b. A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.
    - c. "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.
  2. Any other mental or psychological disorder or condition not described in paragraph 1 that requires specialized supportive services.
  3. Having a record or history of a mental or psychological disorder or condition described in paragraph 1 or 2, which is known to the District.
  4. Being regarded or treated by the District as having, or having had, any mental condition that makes achievement of a major life activity difficult.
  5. Being regarded or treated by the District as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph 1 or 2."Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.
- H. "Physical disability" includes, but is not limited to, all of the following:
  1. Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:
    - a. Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine.
    - b. Limits a major life activity. For purposes of this Section:
      - (1) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

- (2) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.
  - (3) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.
2. Any other health impairment not described in paragraph 1 that requires specialized supportive services.
  3. Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph 1 or 2, which is known to the District.
  4. Being regarded or treated by the District as having, or having had, any physical condition that makes achievement of a major life activity difficult.
  5. Being regarded or treated by the District as having, or having had, a disease, disorder, condition, cosmetic disfigurement, or anatomical loss or health impairment that has no present disabling effect, but that may become a physical disability as described in paragraph 1 or 2.
- "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.
- I. "District" means the Monterey Peninsula Community College District or any District program or activity that is funded directly by the state or receives financial assistance from the state. This includes any organization associated with the District that receives state funding or financial assistance through the District.
  - J. "Responsible District Officer" means the District officer identified by the District to the State Chancellor's Office as the person responsible for receiving complaints filed pursuant to Title 5, Section 59328, and coordinating their investigation.
  - K. "Sexual harassment" is unlawful discrimination in the form of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the workplace or in the educational setting, and includes but is not limited to:
    1. Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. (Examples of sexual harassment in written form include, but are not limited to: suggestive or obscene letters, notes, and invitations. Examples of verbal sexual harassment include, but are not limited to: leering, gestures, display of sexually aggressive objects or pictures, cartoons, or posters.)
    2. Continuing to express sexual interest after being informed that the interest is unwelcome.
    3. Making reprisals, threats of reprisal, or implied threats of reprisal following a rebuff of harassing behavior. The following are examples of this type of sexual harassment within the work place: implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied.
    4. Engaging in explicit or implicit coercive sexual behavior within the work environment which is used to control, influence, or affect the employee's career, salary, and/or work environment.
    5. Engaging in explicit or implicit coercive sexual behavior within the educational environment that is used to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student.
    6. Offering favors or educational or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.
    7. Awarding educational or employment benefits, such as grades or duties or shifts, recommendations, reclassifications, etc., to any student or employee with whom the decision-maker has a sexual relationship and denying such benefits to other students or employees.
  - L. "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.
  - M. "Unlawful discrimination" means discrimination based on a category protected under Title 5, Section 59300, including sexual harassment and retaliation.

Authority: Gov. Code, §12926; Cal. Code Regs., Title 5, §§ 59300, 59311; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, Office of Civil Rights, January 19, 2001.

## **VII. Responsible District Officer**

The Monterey Peninsula Community College District has identified Susan Kitagawa, Associate Dean of Human Resources, to the State Chancellor's Office and to the public as the single District officer responsible for receiving complaints of unlawful discrimination filed pursuant to Section 59328 and for coordinating their investigation. The actual

investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the District. Such delegation procedures will be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.<sup>1</sup>

Authority: Cal. Code Regs., Title 5, § 59324; 34 C.F.R. § 106.8.

### **VIII. Filing A Complaint**

An individual who believes he/she has been discriminated against unlawfully or sexually harassed in any program or activity that is funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges may file a complaint with the District's responsible officer. (See Sections IX and X below.) At the earliest possible time, but within five days of the filing of a complaint, the individual or individuals that allegedly engaged in discriminatory conduct shall be advised of the charges against them.<sup>2</sup>

Authority: Cal. Code Regs., Title 5, § 59311.

### **IX. Informal/Formal Complaint Procedure**

When a person brings charges of unlawful discrimination to the attention of the District's responsible officer or designee, that officer will:

- (1) Undertake efforts to resolve the charges informally;
- (2) Advise the complainant that he or she need not participate in informal resolution;
- (3) Notify the complainant bringing the charges of his or her right to file a formal complaint and explain the procedure for filing a formal complaint;
- (4) Assure the complainant that he or she will not be required to confront or work out problems with the person accused of unlawful discrimination;
- (5) Advise the complainant that he or she may file a nonemployment-based complaint with the Office of Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction;
- (6) If the complaint is employment-related, the complainant should also be advised that he or she may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the Department of Fair Employment and Housing (DFEH) where such a complaint is within that agency's jurisdiction.

The purpose of the informal resolution process is to allow an individual who believes she/he has been discriminated against unlawfully or sexually harassed to resolve the issue through a mediation process rather than the formal complaint process. Typically, the informal process will be invoked when there is a simple misunderstanding or the complainant does not wish to file a formal complaint. Resolution of an informal complaint may require nothing more than a clarification of the misunderstanding or an apology from the respondent and an assurance that the offending behavior will cease. The District officer shall advise the complainant of his or her rights and responsibilities under both the formal and informal processes by providing a copy of the *Procedures for Complaints of Unlawful Discrimination, Including Sexual Harassment*. The informal resolution process will not be made a predicate to the process and investigation of a formal complaint. If a complaint is filed, an investigation must be completed within the time required unless a complainant, as a result of a successful informal resolution, voluntarily rescinds it.

Efforts at informal resolution need not include any investigation unless the responsible District officer determines that an investigation is warranted by the seriousness of the charges. Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant to Title 5

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<sup>1</sup> The federal Office for Civil Rights (OCR) advises educational institutions to give one official responsibility for oversight and coordination of all sexual harassment complaints to ensure consistent practices and standards in handling complaints as well as coordination of record keeping. This will help ensure that the educational institution can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them. The State Chancellor's Office advises that having the responsible District officer, named pursuant to Title 5, Section 59324, coordinate both sexual harassment and other complaints of unlawful discrimination satisfies OCR's instruction on this subject.

<sup>2</sup> This is important in order to allow the accused an opportunity to prepare for the investigation. This initial contact may also provide the responsible District officer with information that would facilitate an informal resolution.



Section 59334 and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. Even if the complainant does dismiss the complaint, the responsible District officer may require the investigation to continue if he or she determines that the allegations are serious enough to warrant an investigation. Any efforts at informal resolution after the filing of a written complaint will not exceed the 90-day period for rendering the administrative determination pursuant to Title 5, Section 59336.

In employment-related cases, if the complainant files with the Department of Fair Employment and Housing, a copy of that filing will be sent to the State Chancellor's Office requesting a determination of whether a further investigation under Title 5 is required. Unless the State Chancellor's Office determines that a separate investigation is required, the District will discontinue its investigation under Title 5 and the matter will be resolved through the Department of Fair Employment and Housing.

The District will allow for representation where required by law and may allow for representation for the accused and complainant in other circumstances on a case by case basis.

Authority: Cal. Code Regs., Title 5, §§ 59327, 59328, 59334, 59336, and 59339; *NLRB v. Weingarten, Inc.* (1975) 420 U.S. 251.

## **X. Filing of Formal Written Complaint**

If a complainant decides to file a formal written unlawful discrimination complaint against the District, he or she will file the complaint on a form prescribed by the State Chancellor. These approved forms are available from the District and also at the State Chancellor's website, as follows:

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

A copy of the approved form is attached in the Appendix. The completed form must be filed with the District representative or mailed directly to the State Chancellor's Office of the California Community Colleges.

Once a complaint is filed, the individual(s) accused of engaging in prohibited discriminatory conduct shall be advised of that filing and the general nature of the complaint. This shall occur as soon as possible and in a manner that is appropriate under the circumstances. The District will also advise the accused that an assessment of the accuracy of the allegations has not yet been made, that the complaint will be investigated, that the accused will be provided an opportunity to present his/her side of the matter, and that any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.

Authority: Cal. Code Regs., Title 5, §§ 59311 and 59328.

## **XI. Threshold Requirements Prior to Investigation of a Formal Written Complaint**

When a formal written complaint is filed, it will be reviewed to determine if the complaint meets the following requirements:

- (1) The complaint must allege unlawful discrimination prohibited under Title 5, Section 59300.
- (2) The complaint must be filed on a form prescribed by the State Chancellor's Office.
- (3) The complaint must be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as an employee of Monterey Peninsula Community College District.
- (4) In any complaint not involving employment, the complaint must 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.
- (5) In any complaint involving employment the complaint shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period will be extended by no more than 90 days following the expiration of that 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of 180 days.

If a complaint is found to be defective, it will be immediately returned to the complainant with a complete explanation of why an investigation could not be initiated under Title 5, California Code of Regulations, Section 59300 et seq. The notice will inform the complainant that the complaint does not meet the requirements of Title 5, Section 59328, and shall specify in what requirement the complaint is defective. A copy of the notice to the claimant will also be sent to the State Chancellor's Office.

Authority: Cal. Code Regs., Title 5, §§ 59328, 59332.

## **XII. Notice to State Chancellor or District**

Immediately upon receiving a complaint filed in accordance with the Title 5 regulations, the District will forward a copy of the complaint to the State Chancellor's Office. Similarly, when the State Chancellor's Office receives a complaint filed in accordance with the regulations, a copy will be forwarded to the District.

Authority: Cal. Code Regs., Title 5, § 59330.

## **XIII. Confidentiality of the Process and the Right to Privacy**

Investigative processes can best be conducted within a confidential climate. Therefore, the District will not reveal information about such matters except as necessary to fulfill its legal obligations.

Potential complainants are sometimes reluctant to pursue a complaint if their names will be revealed. The inability to reveal the name of a complainant or facts that are likely to reveal the identity of the complainant can severely limit the ability of the District to respond. Complainants must also recognize that persons who are accused of wrongdoing have a right to present their side of the matter, and this right may be jeopardized if the District is prohibited from revealing the name of the complainant or facts that are likely to disclose the identity of the complainant.

If a complainant insists that his or her name not be revealed, the responsible officer should take all reasonable steps to investigate and respond to the complaint consistent with the complainant's request as long as doing so does not jeopardize the rights of other students or employees.

It is also important that complainants and witnesses understand the possibility that they may be charged with allegations of defamation if they circulate the charges outside of the District's process. In general, persons who are participating in a District investigative or disciplinary process that is related to a charge of discrimination are protected from tort claims such as defamation. However, persons who make allegations outside of these processes or who discuss their claims with persons outside of the process may expose themselves to tort charges. Complainants, witnesses, and those accused of discrimination will each be asked to sign a confidentiality acknowledgement statement, stating that he/she has been advised of the confidentiality requirements. A copy of the statement is attached in the Appendix.

Where an investigation reveals the need for disciplinary action, the complainant may wish to have information about what disciplinary actions the District took. However, the privacy rights of the persons involved often prevent the District from providing such information. In student disciplinary actions for sexual assault/physical abuse charges, Education Code Section 76234 provides that the victim shall be informed of the disciplinary action, but that the victim must keep the information confidential. Disciplinary actions taken against employees are generally considered confidential.<sup>3</sup>

Authority: Cal. Const. Art. I, § 1; Civil Code § 47; Ed. Code §§76234 and 87740; *Silberg v. Anderson* (1990) 50 Cal.3d.205; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, Office of

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<sup>3</sup> In cases of severe discipline, such as suspension or termination, the complainant would in all likelihood be required to testify at a hearing on the subject, and would therefore be aware of the proposed discipline. In the less severe cases, however, it is incumbent on the District to advise the complainant of the seriousness of the privacy issue. The complainant should be able to trust the District to take appropriate action and understand that the District is not at liberty to discuss personnel matters. If a disclosure is made to the accuser, the District should require that the accuser keep the information confidential; otherwise, the District exposes itself to possible litigation.

#### **XIV. Administrative Determination**

In any case not involving employment discrimination, within ninety (90) days of receiving an unlawful discrimination, including sexual harassment, complaint filed under Title 5, Sections 59300 et seq., the District will complete its investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all the following to both the complainant and the State Chancellor:

- (1) the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
- (2) a description of actions taken, if any, to prevent similar problems from occurring in the future;<sup>3</sup>
- (3) the proposed resolution of the complaint; and
- (4) the complainant's right to appeal to the District governing board and the State Chancellor.

In any case involving employment discrimination, within ninety (90) days of receiving an unlawful discrimination or sexual harassment complaint filed under Title 5, Sections 59300 et seq., the responsible District officer will complete the investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all the following to the complainant:

- (1) the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
- (2) a description of actions taken, if any, to prevent similar problems from occurring in the future;<sup>4</sup>
- (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 the Department of Fair Employment and Housing.

The District will keep these documents on file for a period of at least three years after closing the case, and make them available to the State Chancellor upon request.

Monterey Peninsula College recognizes the importance of and is therefore committed to completing investigations and resolving complaints as quickly as possible, consistent with the requirements for a thorough investigation.

Authority: Cal. Code Regs., Title 5, § 59336.

#### **XV. Complainant's Appeal Rights**

Complainants have appeal rights that they may exercise if they are not satisfied with the results of the District's administrative determination. At the time the administrative determination and summary are mailed to the complainant, the District will notify the complainant of his or her appeal rights as follows:

- a) First level of appeal: The complainant has the right to file an appeal to the District's governing board within 15 days from the date of the administrative determination. The District's governing board will review the original complaint, the investigative report, the administrative determination, and the appeal.
- b) The District's governing board will issue a final District decision in the matter within 45 days after receiving the appeal. Or, the District's governing board may elect to take no action within 45 days, in which case the original decision in the administrative determination will be deemed to be affirmed and shall become the final District

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<sup>4</sup> If it is determined that discrimination did occur, possible remedies to prevent similar problems from occurring in the future include all the standard District disciplinary actions for students and employees, ranging from undocumented reprimand to termination or expulsion. If formal disciplinary action is inappropriate, other possible remedies include, training in the pertinent area(s) of unlawful discrimination, apology, and restricting or forbidding contact between the perpetrator and victim.

decision in the matter. A copy of the final decision rendered by the District's governing board will be forwarded to the complainant and to the State Chancellor's Office.

- c) Second level of appeal: The complainant has the right to file an appeal with the California Community College Chancellor's Office in any case not involving employment related discrimination within 30 days from the date that the governing board issues the final District decision or permits the administrative determination to become final by taking no action within 45 days.<sup>5</sup> The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board, and a statement under penalty of perjury that no response was received from the governing board within 45 days from that date.

Complainants must submit all appeals in writing.

Authority: Cal. Code Regs., Title 5, §§ 59338 and 59339.

## **XVI. Forward Documents to Chancellor**

In any case not involving employment discrimination, within 150 days of receiving a complaint, the District will forward the following to the Chancellor:

- a) A copy of the final District decision rendered by the governing board or a statement indicating the date on which the administrative determination became final as a result of taking no action on the appeal within 45 days.
- b) A copy of the notice of appeal rights the District sent the complainant.
- c) Any other information the Chancellor may require.

The District will keep these documents on file for a period of at least three years after closing the case, and in any case involving employment discrimination, make them available to the State Chancellor upon request.

Authority: Cal. Code Regs., Title 5, §§ 59338 and 59340.

## **XVII. Extensions**

If for reasons beyond its control, the District is unable to comply with the 90-day or 150-day deadlines specified above for submission of materials to the complainant and the State Chancellor's Office, the responsible District officer will file a written request that the State Chancellor grant an extension of the deadline. The request will be submitted no later than 10 days prior to the expiration of the deadlines established by Title 5 in Sections 59336 and/or 59340 and will set forth the reasons for the request and the date by which the District expects to be able to submit the required materials.

A copy of the request for an extension will be sent to the complainant who may file written objections with the State Chancellor within five (5) days of receipt.

The State Chancellor may grant the request unless delay would be prejudicial to the complainant. If the Chancellor grants an extension of the 90-day deadline, the 150-day deadline is automatically extended by an equal amount.

Authority: Cal. Code Regs., Title 5, § 59342.

## **XVII. Records Retention**

Unlawful discrimination records that are part of an employee's employment records may be classified as class-1 permanent records and retained indefinitely or microfilmed in accordance with Title 5, California Code of Regulations, Section 59022. Unlawful discrimination records of a student that are deemed worthy of preservation but not classified as class-1 permanent may be classified as class-2 optional records or as class-3 disposable records, to be retained for a period of three years.

Authority: Cal. Code Regs., Title 5, § 59020.

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<sup>5</sup> The Department of Fair Employment and Housing (DFEH) has final jurisdiction over employment-related cases. Therefore, the State Chancellor's Office has agreed to accept DFEH decisions and does not accept appeals in employment discrimination cases.

## **XIX. Appendix**

Forms available from Human Resources:

- Chancellor's Office Complaint Form
- Confidentiality Acknowledgement Statement



**CONFIDENTIALITY ACKNOWLEDGEMENT STATEMENT-  
DISCRIMINATION INVESTIGATIONS**

Investigations and discipline related to complaints of discrimination, including sexual harassment, are confidential. Complainants, witnesses and others contacted in the course of an investigation are subject to this requirement of confidentiality.

Complainants and witnesses participating in an investigation of discrimination may be charged with allegations of defamation if they circulate the charges outside of the Monterey Peninsula Community College District's process. In general, persons who are participating in a District investigative or disciplinary process that is related to a charge of discrimination are protected from tort claims such as defamation. However, persons who make allegations outside of these processes or who discuss claims with persons outside of the process may expose themselves to tort charges.

I have been advised of the confidentiality requirements for the complaint of discrimination currently under investigation.

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Form provided by:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date



## Unlawful Discrimination Complaint Form

**Name:** \_\_\_\_\_  
*Last* *First*

**Address:** \_\_\_\_\_  
*Street or P.O. Box* *City* *State* *Zip*

**Phone:** *Day* ( ) \_\_\_\_\_ *Evening* ( ) \_\_\_\_\_

**I Am A:**  Student  Employee  Other: \_\_\_\_\_

**I Wish To Complain Against:** \_\_\_\_\_

**District:** \_\_\_\_\_ **College:** \_\_\_\_\_

### **Date of Most Recent Incident of Alleged Discrimination:**

*(Nonemployment complaints must be filed within one year of the date of the alleged unlawful discrimination. Employment complaints must be filed within six months of the date of the alleged unlawful discrimination.)*

### **I Allege Discrimination Based on the Following Category Protected under Title 5 (you must select at least one):**

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Age                | <input type="checkbox"/> Ethnic Group Identification  | <input type="checkbox"/> Physical Disability |
| <input type="checkbox"/> Religion           | <input type="checkbox"/> Ancestry   | <input type="checkbox"/> Mental Disability   |
| <input type="checkbox"/> Race               | <input type="checkbox"/> Sex/Gender (includes Harassment)   |  |
| <input type="checkbox"/> Color              | <input type="checkbox"/> National Origin  | <input type="checkbox"/> Retaliation**       |
| <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Perceived to be in protected category or associated with those in protected category |  |

**Clearly state your complaint. Describe each incident of alleged discrimination separately. For each incident provide the following information: 1) date(s) the discriminatory action occurred; 2) name of individual(s) who discriminated; 3) what happened; 4) witnesses (if any); and 5) why you believe the discrimination was because of your religion, age, race, sex or whatever basis you indicated above.**

**\*\*If applicable, explain why you believe you were retaliated against for filing a complaint or asserting your right to be free from discrimination on any of the above grounds. (Attach additional pages as necessary.)**

What would you like the District to do as a result of your complaint -- what remedy are you seeking? \_\_\_\_\_

**I certify that this information is correct to the best of my knowledge.**

*Signature of Complainant*

*Date*

Send **Original** to the District, or: Chancellor's Office, California Community Colleges  
1102 Q Street  
Sacramento, California 95811-6549  
Attention: Legal Affairs Division

*(Revised 02/08)*