

3
4 Policy and Procedures for
5 Handling Complaints of Unlawful Discrimination
6 Under Title 5 Sections 59300 et seq.
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9 **Introduction and Scope**
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11 These are the written policies and procedures for filing and processing complaints of unlawful
12 discrimination at *San Bernardino Community College District*. These policies and procedures incorporate
13 the legal principles contained in nondiscrimination provisions of the California Code of Regulations, title 5,
14 sections 59300 et seq. as well as other state and federal substantive and procedural requirements.
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16 A copy of these written policies on unlawful discrimination will be displayed in a prominent location in the
17 *Office of Human Resources, San Bernardino Valley College President's Office, Crafton Hills College*
18 *President's Office main administrative building or other area where notices regarding the institution's*
19 *rules, regulations, procedures, and standards of conduct are posted.*
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21
22 *Authority: 20 U.S.C. § 1681 et seq.; Ed. Code, §§ 66270, 66271.1, 66281.5; Gov. Code, §§ 11135-11139.5; Cal.*
23 *Code Regs., tit. 5, § 59326. Reference: Cal. Code Regs., tit. 5, §§ 59300 et seq.; 34 C.F.R. § 106.8(b).*
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26 **Unlawful Discrimination Policy**
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28 The policy of the *San Bernardino Community College District* is to provide an educational and
29 employment environment in which no person shall be unlawfully denied full and equal access to, the
30 benefits of, or be unlawfully subjected to discrimination, in whole or in part, on the basis of ethnic group
31 identification, national origin, religion, age, sex or gender, race, color, ancestry, sexual orientation, or
32 physical or mental disability, or on the basis of these perceived characteristics or based on association
33 with a person or group with one or more of these actual or perceived characteristics, in any program or
34 activity that is administered by, funded directly by, or that receives any financial assistance from the State
35 Chancellor or Board of Governors of the California Community Colleges.
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37 The policy of the *San Bernardino Community College District* is to provide an educational and
38 employment environment free from unwelcome sexual advances, requests for sexual favors, sexual
39 favoritism, or other verbal or physical conduct or communications constituting sexual harassment.
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41 The policy of *San Bernardino Community College District* is to comply with the accessibility requirements
42 of Section 508 of the Rehabilitation Act of 1973 in the development, procurement, maintenance, or use of
43 electronic or information technology and respond to and resolve unlawful discrimination complaints
44 regarding accessibility. Such complaints will be treated as complaints of discrimination on the basis of
45 disability.
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47 Employees, students, or other persons acting on behalf of the *District* who engage in unlawful
48 discrimination as defined in this policy or by state or federal law may be subject to discipline, up to and
49 including discharge, expulsion, or termination of contract.
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51 In so providing, the *San Bernardino Community College District* hereby implements the provisions of
52 California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed.
53 Code, § 66250 et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), title IX of the
54 Education Amendments of 1972 (20 U.S.C. § 1681), section 504 of the Rehabilitation Act of 1973 (29

55 U.S.C. § 794), section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), the Americans with
56 Disabilities Act of 1990 (42 U.S.C. §§ 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101).

57
58 *Authority: Cal. Code Regs., tit. 5, § 59300; Ed. Code §§ 66250 et seq., 66271.1, 66700, and 70901; Gov. Code §*
59 *11138. Reference: Ed. Code §§ 66250 et seq. and 72011; Gov. Code, §§ 11135-11139.5; Penal Code §§ 422.6*
60 *and 422.55; 20 U.S.C. § 1681; 29 U.S.C. §§ 794 and 794d; 42 U.S.C. §§ 6101, 12100 et seq. and 2000d; 36 C.F.R. §*
61 *1194.*

62 63 64 **Retaliation**

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

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

74 75 76 **Responsible District Officer**

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78 The San Bernardino Community College District has identified the Vice Chancellor of Human Resources
79 & Employee Relations to the State Chancellor's Office and to the public as the single *District* officer
80 responsible for receiving all unlawful discrimination complaints filed pursuant to title 5, section 59328, and
81 for coordinating their investigation. Informal charges of unlawful discrimination should be brought to the
82 attention of the responsible district officer, who shall oversee the informal resolution process pursuant to
83 section 59327. The actual investigation of complaints may be assigned to other staff or to outside
84 persons or organizations under contract with the *District*. Such delegation procedures will be used
85 whenever the officer designated to receive complaints is named in the complaint or is implicated by the
86 allegations in the complaint.

87
88 Administrators, faculty members, other *District* employees, and students shall direct all complaints of
89 unlawful discrimination to the responsible *District* officer.

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

92 93 94 **Informal/Formal Complaint Procedure**

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

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

112
113 Efforts at informal resolution need not include any investigation unless the responsible *District* officer
114 determines that an investigation is warranted by the seriousness of the charges. Selecting an informal
115 resolution does not extend the time limitations for filing a formal complaint. Efforts at informal resolution
116 may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is
117 required to be conducted pursuant to title 5, section 59334, and will be completed unless the matter is
118 informally resolved and the complainant dismisses the complaint. *Even if the complainant does dismiss*
119 *the complaint, the responsible district officer may require the investigation to continue if he or she*
120 *determines that the allegations are serious enough to warrant an investigation.* Any efforts at informal
121 resolution after the filing of a written complaint will not exceed the 90-day period for rendering the
122 administrative determination pursuant to title 5, section 59336.

123
124 In employment-related cases, if the complainant also files with the Department of Fair Employment and
125 Housing or with the U.S. Equal Employment Opportunity Commission, a copy of that filing will be sent to
126 the State Chancellor's Office requesting a determination of whether a further investigation under title 5 is
127 required. Unless the State Chancellor's Office determines that a separate investigation is required, the
128 District will discontinue its investigation under title 5 and the matter will be resolved through the
129 Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission.

130
131 The *District* will allow for representation where required by law and may allow for representation for the
132 accused and complainant in other circumstances on a case by case basis.

133
134 *Authority: Cal. Code Regs., tit. 5, §§ 59327, 59328, 59334, 59336, and 59339; NLRB v. Weingarten, Inc. (1975) 420*
135 *U.S. 251.*

136 137 138 **Filing of Formal Written Complaint**

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

143
144 <http://www.cccco.edu/SystemOffice/Divisions/Legal/Discrimination/tabid/294/Default.aspx>

145
146 The completed form must be filed with the *District* representative or mailed directly to the State
147 Chancellor's Office of the California Community Colleges.

148
149 Once a complaint is filed, the individual(s) accused of engaging in prohibited discriminatory conduct
150 should be advised of that filing and the general nature of the complaint. This should occur as soon as
151 possible and in a manner that is appropriate under the circumstances. The *District* will also advise the
152 accused that an assessment of the accuracy of the allegations has not yet been made, that the complaint
153 will be investigated, that the accused will be provided an opportunity to present his/her side of the matter,
154 and that any conduct that could be viewed as retaliatory against the complainant or any witnesses must
155 be avoided.

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157 *Authority: Cal. Code Regs., tit. 5, §§ 59311 and 59328.*

158 159 160 **Threshold Requirements Prior to Investigation of a** 161 **Formal Written Complaint**

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

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 - The complaint must be filed on a form prescribed by the State Chancellor's Office.
 - The complaint must allege unlawful discrimination prohibited under title 5, section 59300.
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- 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 a faculty member or administrator.
 - 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 specific incident or incidents of alleged unlawful discrimination
 - 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 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.

180 *Authority: Cal. Code Regs., tit. 5, § 59328.*

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183 **Defective Complaint**

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

190 *Authority: Cal. Code Regs., tit. 5, §§ 59328, 59332.*

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194 **Notice to State Chancellor or District**

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196 A copy of all formal complaints filed in accordance with the title 5 regulations will be forwarded to the
197 State Chancellor's Office immediately upon receipt, regardless of whether the complaint is brought by a
198 student or by an employee. Similarly, when the State Chancellor's Office receives a complaint a copy will
199 be forwarded to the *District*.

200 *Authority: Cal. Code Regs., tit. 5, § 59330.*

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204 **Administrative Determination**

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206 In any case not involving employment discrimination, within 90 days of receiving an unlawful
207 discrimination complaint filed under title 5, sections 59300 et seq., the responsible *District* officer will
208 complete the investigation and forward a copy of the investigative report to the State Chancellor, a copy
209 or summary of the report to the complainant, and written notice setting forth all the following to both the
210 complainant and the State Chancellor:

- 211
- 212 (a) the determination of the chief executive officer or his/her designee as to whether there is
213 probable cause to believe discrimination occurred with respect to each allegation in the
214 complaint;
- 215 (b) a description of actions taken, if any, to prevent similar problems from occurring in the future;
- 216 (c) the proposed resolution of the complaint; and
- 217 (d) the complainant's right to appeal to the *District* governing board and the State Chancellor.
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219 In any case involving employment discrimination, within 90 days of receiving an unlawful discrimination
220 complaint filed under title 5, sections 59300, et seq., the responsible *District* officer will complete the
221 investigation and forward a copy or summary of the report to the complainant, and written notice setting
222 forth all the following to the complainant:

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- 224 (a) the determination of the chief executive officer or his/her designee as to whether there is
225 probable cause to believe discrimination occurred with respect to each allegation in the
226 complaint;
227 (b) a description of actions taken, if any, to prevent similar problems from occurring in the future;
228 (c) the proposed resolution of the complaint; and
229 (d) the complainant's right to appeal to the District governing board and to file a complaint with
230 the Department of Fair Employment and Housing.
231

232 The *District* will keep these documents on file for a period of at least three years after closing the case,
233 and make them available to the State Chancellor upon request.
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235 The *San Bernardino Community College District* recognizes the importance of and is therefore committed
236 to completing investigations and resolving complaints as quickly as possible, consistent with the
237 requirements for a thorough investigation.
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239 *Authority: Cal. Code Regs., tit. 5, § 59336.*
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241 **Complainant's Appeal Rights**

242 Complainants have appeal rights that they may exercise if they are not satisfied with the results of the
243 *District's* administrative determination. At the time the administrative determination and summary is
244 mailed to the complainant, the responsible *District* officer or his/her designee shall notify the complainant
245 of his or her appeal rights as follows:
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- 249 • First level of appeal: The complainant has the right to file an appeal to the *District's* governing
250 board within 15 days from the date of the administrative determination. The *District's*
251 governing board will review the original complaint, the investigative report, the administrative
252 determination, and the appeal.
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- 254 • The *District's* governing board will issue a final *District* decision in the matter within 45 days
255 after receiving the appeal. Alternatively, the *District's* governing board may elect to take no
256 action within 45 days, in which case the original decision in the administrative determination
257 will be deemed to be affirmed and shall become the final *District* decision in the matter. A
258 copy of the final decision rendered by the *District's* governing board will be forwarded to the
259 complainant and to the State Chancellor's Office.
- 260 • Second level of appeal: The complainant has the right to file an appeal with the California
261 Community College Chancellor's Office in any case not involving employment-related
262 discrimination within 30 days from the date that the governing board issues the final *District*
263 decision or permits the administrative determination to become final by taking no action within
264 45 days. The appeal must be accompanied by a copy of the decision of the governing board
265 or evidence showing the date on which the complainant filed an appeal with the governing
266 board, and a statement under penalty of perjury that no response was received from the
267 governing board within 45 days from that date. In any case involving employment
268 discrimination, the complainant has the right to file a complaint with the Department of Fair
269 Employment and Housing (DFEH) where the case is within the jurisdiction of that agency.

270 Complainants must submit all appeals in writing.
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272 *Authority: Cal. Code Regs., tit. 5, §§ 59338 and 59339.*
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275 **Provision of Information to State Chancellor**

276 In any case not involving employment discrimination, within 150 days of receiving a complaint, the
277 responsible *District* officer will either:
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280 Forward the following to the State Chancellor:

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- 282 • A copy of the final *District* decision rendered by the governing board or a statement indicating
 - 283 the date on which the administrative determination became final as a result of taking no
 - 284 action on the appeal within 45 days.
 - 285 • A copy of the notice of appeal rights the *District* sent the complainant.
 - 286 • Any other information the State Chancellor may require; or
- 287

288 Notify the State Chancellor that the complainant has not filed an appeal with the district governing board

289 and that the *District* has closed its file.

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291 The *District* will keep these documents on file for a period of at least three years after closing the case,

292 and in any case involving employment discrimination, make them available to the State Chancellor upon

293 request.

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295 *Authority: Cal. Code Regs., tit. 5, §§ 59338 and 59340.*

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297 **Extensions**

300 If for reasons beyond its control, the *District* is unable to comply with the 90-day or 150-day deadlines

301 specified above for submission of materials to the complainant and the State Chancellor's Office, the

302 responsible *District* officer will file a written request that the State Chancellor grant an extension of the

303 deadline. Where an extension is deemed necessary by the *District*, it must be requested from the State

304 Chancellor regardless of whether or not the case involves employment discrimination. The request will

305 be submitted no later than 10 days prior to the expiration of the deadlines established by title 5 in sections

306 59336 and/or 59340 and will set forth the reasons for the request and the date by which the *District*

307 expects to be able to submit the required materials.

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309 A copy of the request for an extension will be sent to the complainant, who will be advised that he or she

310 may file written objections with the State Chancellor within 5 days of receipt.

311

312 The State Chancellor may grant the request unless delay would be prejudicial to the investigation. If an

313 extension of the 90-day deadline is granted by the State Chancellor the 150-day deadline is automatically

314 extended by an equal amount.

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316 *Authority: Cal. Code Regs., tit. 5, § 59342.*

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318 **Definitions**

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321 Definitions applicable to nondiscrimination policies are as follows:

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- 323 • "Appeal" means a request by a complainant made in writing to the *San Bernardino*
- 324 *Community College District* governing board pursuant to title 5, section 59338, and/or to the
- 325 State Chancellor's Office pursuant to title 5, section 59339, to review the administrative
- 326 determination of the *District* regarding a complaint of discrimination.
- 327 • "Association with a person or group with these actual or perceived characteristics" includes
- 328 advocacy for or identification with people who have one or more characteristics of a protected
- 329 category listed under "Unlawful Discrimination Policy" and title 5, section 59300, participation
- 330 in a group associated with persons having such characteristics, or use of a facility associated
- 331 with use by such persons.
- 332 • "Complaint" means a written and signed statement meeting the requirements of title 5,
- 333 section 59328 that alleges unlawful discrimination in violation of the nondiscrimination
- 334 regulations adopted by the Board of Governors of the California Community Colleges, as set
- 335 forth at title 5, sections 59300 et seq.

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- "Days" means calendar days.
- "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.
- "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.
- "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:
 - (i) "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.
 - (ii) 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.
 - (iii) "Major life activities" shall be broadly construed and 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, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).
 - (6) "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.

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- “District” means the *San Bernardino 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 the District Personnel Commission and any other organization associated with the District or its college(s) that receives state funding or financial assistance through the District.
- “Responsible District Officer” means the 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. *The Responsible District Officer for San Bernardino Community College District is the Vice Chancellor of Human Resources and Employee Relations.*
- “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.
- “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 possible sexual harassment that appear in a written form include, but are not limited to: suggestive or obscene letters, notes, and/or invitations. Examples of possible visual 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 unwelcomed.
 - (3) Making reprisals, threats of reprisal, or implied threats of reprisal following a rebuff of harassing behavior. The following are examples of conduct in an academic environment that might be found to be sexual harassment: threatening to withhold, 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.
- “Sexual orientation” means heterosexuality, homosexuality, or bisexuality.
- “Unlawful discrimination” means discrimination based on a category protected under title 5, section 59300, including retaliation and sexual harassment.

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

Confidentiality of the Process

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

449
450 Potential complainants are sometimes reluctant to pursue a complaint if their names will be revealed.
451 The inability to reveal the name of a complainant or facts that are likely to reveal the identity of the
452 complainant can severely limit the ability of the *District* to respond. Complainants must also recognize
453 that persons who are accused of wrongdoing have a right to present their side of the matter, and this right
454 may be jeopardized if the *District* is prohibited from revealing the name of the complainant or facts that
455 are likely to disclose the identity of the complainant.

456
457 If a complainant insists that his or her name not be revealed, the responsible officer should take all
458 reasonable steps to investigate and respond to the complaint consistent with the complainant's request
459 as long as doing so does not jeopardize the rights of other students or employees.

460
461 It is also important that complainants and witnesses understand the possibility that they may be charged
462 with allegations of defamation if they circulate the charges outside of the *District's* process. In general,
463 persons who are participating in a *District* investigative or disciplinary process that is related to a charge
464 of discrimination are protected from tort claims such as defamation. However, persons who make
465 allegations outside of these processes or who discuss their claims with persons outside of the process
466 may expose themselves to tort charges. Complainants, witnesses, and those accused of discrimination
467 will all be asked to sign a confidentiality acknowledgement statement.

468
469 Where an investigation reveals the need for disciplinary action, the complainant may wish to have
470 information about what disciplinary actions the *District* took. However, the privacy rights of the persons
471 involved often prevent the *District* from providing such information. In student disciplinary actions for
472 sexual assault/physical abuse charges, Education Code section 76234 provides that the victim shall be
473 informed of the disciplinary action, but that the victim must keep the information confidential. Disciplinary
474 actions taken against employees are generally considered confidential.

475
476 *Authority: Cal. Const. Art. I, § 1; Civil Code § 47; Ed. Code, §§ 76234 and 87740; Silberg v. Anderson (1990) 50*
477 *Cal.3d. 205; Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students,*
478 *or Third Parties, Title IX, Office for Civil Rights, January 19, 2001.*

480 481 **Notice, Training, and Education for Students and Employees**

482
483 The *San Bernardino Community College District's* responsible officer shall make arrangements for or
484 provide training to employees and students on the *District's* unlawful discrimination policy and
485 procedures. Faculty members, members of the administrative staff, and members of the support staff will
486 be provided with a copy of the *District's* written policy on unlawful discrimination at the beginning of the
487 first quarter or semester of the college year after the policy is adopted.

488
489 All District employees will receive this training and a copy of the unlawful discrimination policies and
490 procedures during the first year of their employment. Because of their special responsibilities under the
491 law, supervisors will undergo mandatory training within six months of assuming a supervisory position and
492 annually thereafter. In years in which a substantive policy or procedural change has occurred all *District*
493 employees will attend a training update and/or receive a copy of the revised policies and procedures.

494
495 A training program or informational services will be made available to all students at least once annually.
496 The student training or informational services will include an explanation of the policy, how it works, and
497 how to file a complaint. In addition, a copy of the *District's* written policy on unlawful discrimination, as it
498 pertains to students, will be provided as part of any orientation program conducted for new students at the
499 beginning of each quarter, semester, or summer session, as applicable.

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501 *Authority: Ed. Code, § 66281.5; Cal. Code Regs., tit. 5, §§ 59324 and 59326. Reference: Cal. Code Regs., tit. 5, §§*
502 *59300 et seq.; 34 C.F.R. § 106.8(b).*

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Academic Freedom

The *San Bernardino Community College District* governing Board reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow any 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 insures 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 unlawful discrimination complaints containing issues of academic freedom *San Bernardino 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., tit. 5, § 59302.

Record 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. Class-2 Optional records shall be retained until reclassified as Class-3 Disposable Records. Class-3 Disposable Records shall be retained for a period of three years after being classified as Class-3 Disposable records.

Records related to a student discrimination complaint will be deemed worthy of preservation if, at the end of three years after the case is closed, a complaint on similar grounds has been filed against the same employee. In such cases, the records shall continue to be classified as Class 2 records and shall not be reclassified as Class-3 Disposable Records until complaints against that particular employee have been resolved.

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