

California Community College Student Affairs Association (CCCSAA)

Review of Amended Regulations
for Processing Complaints of
Unlawful Discrimination Under
Title 5

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Fermin Villegas
Deputy Counsel
California Community Colleges
Chancellor's Office



Unlawful Discrimination Regulations

- Title 5, Sections 59300 et seq.
- Amendments to the Title 5 regulations adopted by Board of Governors in January 2020
- Due to COVID-19 pandemic, Department of Finance delayed certification until summer 2020
- Filed with Secretary of State on August 19, 2020, so amendments came into force on September 18, 2020

Unlawful Discrimination Regulations

- Recent amendments constitute a significant overhaul of the process for handling complaints alleging unlawful discrimination under Title 5.
- Amendments also clarify that complaints that fall under the purview of the new Federal Title IX regulations must be investigated consistent with those regulations.
- Sets out a procedure for handling complaints of student sexual misconduct that may not meet the Title IX criteria.

Significant Changes to Unlawful Discrimination Regulations

- Complaint Intake stage
 - Complaints must be filed **exclusively** with local district
 - Complaints may now be written **OR verbal**
 - Complaints may, but are no longer required to be filed on form prescribed by Chancellor's Office.
 - Districts **need not** forward copies of complaints to Chancellor's Office or provide notice of initiation of investigation.

Significant Changes to Unlawful Discrimination Regulations

- Investigation Stage
 - Districts **must make specific findings** regarding each factual allegation in the complaint based on the preponderance of the evidence standard.
 - If complaints fall within the purview of Title IX, then the investigation must comply with the new (Federal) Title IX regulations (eff. August 14, 2020).
 - In complaints involving allegations of sexual misconduct, respondents must be notified of their right to appeal any disciplinary sanction imposed to the governing board.
 - Timeline for appealing the Administrative Determination to the district's governing board is **extended from 15 to 30 days**.

Significant Changes to Unlawful Discrimination Regulations

- Appeals to Chancellor's Office
 - Appeals to Chancellor's Office limited to the following issues:
 - Whether there was a procedural error;
 - Whether new evidence that was unavailable during the investigation despite the complainant's due diligence would substantially impact the outcome of the investigation;
 - Whether correct legal standards were applied; and
 - Whether the district's determination was an abuse of discretion.
 - Once notified that appeal has been filed with Chancellor's Office, districts must provide all relevant, non-privileged documents.

Significant Changes to Unlawful Discrimination Regulations

- Miscellaneous Provisions
 - Districts **may grant themselves one extension of up to 45 days** of the 90-day deadline for completing the investigation with notice to the complainant (no notice to the Chancellor) if the extension is necessary for the following reasons:
 - Need to interview a party or witness who has been unavailable;
 - Need to review or analyze additional evidence, new allegations, or new complaints related to the matter; or
 - To prepare and finalize an administrative determination.
 - Districts may request additional extensions from the Chancellor if necessary, with notice to complainant who may object.

Significant Changes to Unlawful Discrimination Regulations

- Miscellaneous Provisions
 - Districts must retain records of all discrimination complaints for a period of ***at least 5 years.***
 - Districts must provide the Chancellor an ***annual report*** with the following information:
 - The number of employment and non-employment-based discrimination complaints and informal charges received in the previous academic year;
 - The number of complaints and informal charges resolved in the previous academic year;
 - The number of complaints sustained in whole or in part in the previous academic year;
 - Any other information requested by the Chancellor.

Questions?

Fermin Villegas
Deputy Counsel
Office of General Counsel
California Community Colleges Chancellor's Office
legalaffairs@cccco.edu