

Parameters and Guidelines Drafted by:
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CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES

Title 5, California Code of Regulations Sections:
59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338,
59340, and 59342, 59351, 59352, 29354, 59356, 59358, 59360, and 59362

DISCRIMINATION COMPLAINT PROCEDURES

CSM 02-TC-46

(Fiscal year 2001-02 only)

I. SUMMARY OF THE MANDATE

Per Statement of Decision

II. ELIGIBLE CLAIMANTS

Community college districts only.

III. PERIOD OF REIMBURSEMENT

Per Commission boilerplate language.

Reimbursement begins July 1, 2001. These parameters and guidelines are effective Fiscal Year 2001-02, only.

IV. REIMBURSABLE ACTIVITIES

The preamble per Commission boilerplate language.

A. Scope of Mandate

Title 5, CCR Section 59320

3. The district shall investigate complaints of unlawful discrimination (i.e., discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation) in district programs or activities and seek to resolve those complaints in accordance with the provisions of Title 5, CCR, Sections 59300 through 59362. This does not include complaints of gender discrimination, including complaints of sexual harassment on the basis of

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sexual orientation, by employees and students, and complaints of non-employment discrimination on the basis of disability. (Title 5, CCR, § 59320 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

B. Reimbursable Activities

1. District Policies and Procedures

Title 5, CCR Section 59322

- 4: a. Establish, and adopt written policies consistent with the regulations addressing district discrimination complaint procedures for complaints of discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation (Title 5, CCR, §§ 59320-59342).

This does not include complaint procedures for: (1) employees and students alleging gender discrimination (including sexual harassment) and disability discrimination; (2) employees and students alleging sexual harassment on the basis of sexual orientation; and (3) for individuals alleging non-employment discrimination on the basis of disability. (Title 5, CCR, § 59322 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

- 5: b. Submit district policies, which address community college district discrimination complaint and enforcement procedures (adopted pursuant to Title 5, CCR, § 59322) to the Chancellor for review and approval within 90 days of the effective date of adopting or amending the policies. (Title 5, CCR, § 59322 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

2. Responsible District Officer

Title 5, CCR Section 59324

- 6: Identify to the Chancellor and to the public a single person as the district officer responsible for receiving discrimination complaints based on ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation (filed pursuant to Title 5, CCR, § 59328) and coordinating their investigation and overseeing the informal resolution process pursuant to Section 59327. This does not include the identification of the district officer responsible for receiving complaints of discrimination on the basis of gender to students, employees, student applicants, and applicants for employment. This also does not include the identification of the district officer responsible for receiving

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- complaints of discrimination on the basis of disability to participants, beneficiaries, applicants, and employees of the district's programs or activities, and unions or professional organizations holding collective bargaining or professional agreements with the community college district. In addition, this does not include the identification of the district officer for receiving complaints of non-employment discrimination on the basis of disability to the Chancellor and the public. (Title 5, CCR, § 59324 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
- ~~7-~~ Use other staff or outside persons or organizations under contract with the district whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint. (Title 5, CCR, § 59324 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
3. Notice to Students and Employees
Title 5, CCR Section 59326
- 8: Notify students and employees of the provisions of California Code of Regulations, title 5, sections 59300 through 59362 et seq., which address the two levels of discrimination complaint procedures for community college districts (~~beginning at the community college district level and ending at the state level~~). (Title 5, CCR, § 59326 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
4. Informal Complaint Resolution
Title 5, CCR Section 59327
- ~~9-~~ a. The district officer or his or her designee shall undertake efforts to informally resolve the charges whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Title 5, CCR, § 59327, subdivision (a)(1) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
- ~~14-~~ b. Include investigation in efforts at informal resolution if the responsible district officer determines that an investigation is warranted by the seriousness of the charges. (Title 5, CCR, § 59327, subdivision (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
- ~~10-~~ c. The district officer or his or her designee shall advise the complainant that he or she need not participate in informal resolution whenever any

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person brings charges of unlawful discrimination to the attention of the district officer. (Title 5, CCR, § 59327, subdivision (a)(2) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

~~11:~~ d. As part of the informal resolution process, the district officer or his or her designee shall notify the person bringing the charges of the right to file a formal complaint, as defined by California Code of Regulations, title 5, section 59311, and the procedure for filing a formal complaint pursuant to California Code of Regulations, title 5, section 59328 whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Title 5, CCR, § 59327, subdivision (a)(3) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

~~12:~~ e. As part of the informal resolution process, the district officer or his or her designee shall advise the complainant that he or she may file his or her non-employment 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 whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Title 5, CCR, § 59327, subdivision (a)(4) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

~~13:~~ f. As part of the informal resolution process, the district officer or his or her designee shall advise the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies. (Title 5, CCR, § 59327, subdivision (a)(5) (Register 2002, No. 13), beginning April 19, 2002.)

5. Formal Complaint Process

a. District Response

Title 5, CCR Sections 59328, 59330, 59332

~~19:~~ (1) Forward a copy of the formal complaint to the Chancellor immediately upon receiving a formal complaint filed in accordance with California Code of Regulations, title 5, section 59328. (Title 5, CCR, § 59330 (Register 2001, No. 6; and Register 2002, No. 13.), beginning July 1, 2001.)

~~20:~~ (2) Immediately notify the complainant and the Chancellor that his or

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her formal complaint does not meet the requirements of California Code of Regulations, title 5, section 59328, and specify in what way the complaint is defective, if the district receives a complaint that does not meet the requirements of section 59328. (Title 5, CCR, § 59332 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

~~17.~~ (3) As part of the formal complaint process, advise any complainant alleging discrimination in employment that he or she may file his or her complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or Department of Fair Employment and Housing where the complaint is within the jurisdiction of those agencies. (Title 5, CCR, § 59328, subdivision (f)(1) (Register 2002, No. 13), beginning April 19, 2002.)

~~18.~~ (4) As part of the formal complaint process, for any complaint alleging discrimination in employment, forward a copy of any filing by the complainant with the Department of Fair Employment and Housing to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of the discrimination complaint procedure regulations (Title 5, CCR, § 53000 et seq.). (Title 5, CCR, § 59328, subdivision (f)(2) (Register 2002, No. 13), beginning April 19, 2002.)

b. District Investigation
Title 5, CCR Sections 59327 and 59334

~~21.~~ (1) Notify the complainant and the Chancellor that the district has commenced an investigation of a properly filed formal complaint. (Title 5, CCR, § 59334 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

~~22.~~ (2) Set forth the results of the investigation conducted in the formal complaint process in a written report that includes at least all of the following:

~~a.~~ (A) A description of the circumstances giving rise to the complaint. (Title 5, CCR, § 59334, subdivision (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

~~b.~~ (B) *A summary of the testimony provided by each witness,*

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including the complainant and any witnesses identified by the complainant in the complaint. (Title 5, CCR, § 59334, subdivision (b) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)

- e. (B) A summary of the testimony provided by each viable witness, including the complainant and any witnesses identified by the complainant in the complaint. (Title 5, CCR, § 59334, subdivision (b) (Register 2002, No. 13), beginning April 19, 2002.)
 - d. (C) An analysis of any relevant data or other evidence collected during the course of the investigation. (Title 5, CCR, § 59334, subdivision (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
 - e. (D) *A specific finding as to whether the discrimination occurred with respect to each allegation in the complaint. (Title 5, CCR, § 59334, subdivision (d) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)*
 - f. (D) A specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint. (Title 5, CCR, § 59334, subdivision (d) (Register 2002, No. 13), beginning April 19, 2002.)
 - g. (E) Any other information deemed appropriate by the district. (Title 5, CCR, § 59334, subdivision (e) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
15. (3) *After a formal complaint is filed the formal investigation conducted pursuant to California Code of Regulations, title 5, section 59334 must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint. (Title 5, CCR, § 59327, subdivision (c) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)*
16. (3) After a complaint is filed the formal investigation conducted pursuant to California Code of Regulations, title 5, section 59334 must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint or the complainant

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files with the Department of Fair Employment and Housing and the Chancellor elects not to require further investigation pursuant to California Code of Regulations, title 5, section 59328, subdivision (f)(2). (Title 5, CCR, § 59327, subdivision (c) (Register 2002, No. 13), beginning April 19, 2002.)

- c. Administrative Determination
Title 5, CCR Section 59336
- ~~23.~~ Complete the district investigation conducted during the formal complaint process and forward a copy of the investigative report required pursuant to California Code of Regulations, title 5, section 59334 to the Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:
- a. (1) *The determination of the chief executive officer or his/her designee as to whether discrimination did or did not occur with respect to each allegation in the complaint. (Title 5, CCR, § 59336, subdivision (a) (Register 20 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)*
 - ~~b.~~ (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. (Title 5, CCR, § 59336, subdivision (a) (Register 2002, No. 13), beginning April 19, 2002.)
 - c. (2) A description of the actions taken, if any, to prevent similar problems from occurring in the future. (Title 5, CCR, § 59336, sub. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
 - d. (3) The proposed resolution of the complaint. (Title 5, CCR, § 59336, subdivision (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
 - e. (4) The complainant's right to appeal to the district governing board and the Chancellor pursuant to California Code of Regulations, title 5, sections 59338 and 59339. (Title 5, CCR, § 59336, subdivision (d) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

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- d. Formal Complaint-District Decision
Title 5, CCR Section 59338
 - (1) Upon appeal by the complainant of the administrative determination rendered pursuant to section 59336, the governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty-five (45) days after receiving the appeal. (Title 5, CCR, § 59338, subdivision (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
- 24. (2) Forward to the complainant and the Chancellor a copy of the final district decision rendered by the governing board that includes a complainant's right to appeal the district's decision to the Chancellor pursuant to California Code of Regulations, title 5, section 59339. Administrative determinations are made final by the district issuing a decision or by taking no action 45 days after an appeal to the district governing board by complainant not satisfied by the administrative determination (Title 5, CCR, § 59338, subdivision (a) and (c). (Title 5, CCR, § 59338 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
- e. Providing Information to the Chancellor
Title 5, CCR Sections 59340 and 59342
- 25. (1) Forward the following to the Chancellor within 150 days of receiving a formal complaint:
 - a. (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 pursuant to California Code of Regulations, title 5, section 59338, subdivision (a). (Title 5, CCR, § 59340, subdivision (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
 - b. (B) A copy of the notice to the complainant required pursuant to California Code of Regulations, title 5, section 59338, subdivision (a). (Title 5, CCR, § 59340, subdivision (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

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- b. Participate in the Chancellor's investigation to determine whether there is probable cause to believe a violation has occurred. (Title 5, CCR § 59352 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
- c. Work with the Chancellor to informally resolve the alleged violation. (Title 5, CCR § 59354 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
- d. Upon the Chancellor's determination that there is probable cause to believe a violation has occurred, determine whether the district shall acquiesce to the findings. (Title 5, CCR § 59356 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
- e. Participate in the Chancellor's hearing process pursuant to the Government Code, Chapter 5 of Part 1, Division 3, Title 2 (commencing with section 11500). (Title 5, CCR § 59358 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
- f. Comply with the conditions specified by the Chancellor pursuant to the Chancellor's hearing decision, or respond to any legal action filed by the Chancellor, or file a writ pursuant to Code of Civil Procedure Code Section 1094.5. (Title 5, CCR § 59360 and 59362 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

V. CLAIM PREPARATION AND SUBMISSION

The preamble per Commission boilerplate language.

A. Direct cost Reporting

Per Commission boilerplate (e.g., the Mandate Reimbursement Process 2 parameters and guidelines adopted May 26, 2011)

B. Indirect Cost Reporting

Community colleges have the option of using:

1. A federally approved rate, utilizing the cost accounting principles from the OMB Circular A-21.
2. The rate calculated using the Controller's Form FAM 29-C.

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3. A 7% indirect cost rate.

VI. RECORD RETENTION

Per Commission boilerplate language.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Per Commission boilerplate language. The Statement of Decision does not identify any specific offsetting state or federal funds for this program.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Per Commission boilerplate language.

IX. REMEDIES BEFORE THE COMMISSION

Per Commission boilerplate language.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

Per Commission boilerplate language.