

San Francisco Community College District

Policies and Procedures

For

Handling Complaints of Unlawful Discrimination and Harassment

Under

Title 5, California Code of Regulations, Sections 59300, et seq.

Title IX, Education Amendments of 1972, 20 U.S.C. Sections 1681, et seq.

(Revised 7/19)

Title 5/EEO/ADA/Title IX Compliance Office
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Policy and Procedures For Handling Complaints
of Unlawful Discrimination and Harassment Under
Title 5, Sections 59300 et seq. and
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20 U.S.C . Section 1681 et seq.
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Introduction and Scope

The foregoing is the written policy and procedures for filing and processing complaints of unlawful discrimination and harassment at the San Francisco Community College District. The policy and procedures incorporate the legal principles contained in nondiscrimination provisions of the Title 5, California Code of Regulations ("Title 5"), section 59300 et seq., Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. section 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106 et seq., as well as other state and federal substantive and procedural requirements. The policy and procedures herein states that the District has jurisdiction to receive and investigate complaints filed under either Title 5 or Title IX.

Copies of written policies on unlawful discrimination and sexual harassment, as well as complaint forms, will be displayed in the Title 5/EEO/ADA Compliance Office and Title IX Compliance Office webpages:

http://www.ccsf.edu/Offices/Title_5-EEO-ADA_Compliance/

http://www.ccsf.edu/Offices/Title_IX/

Copies will be available on request from Title 5/EEO/ADA/Title IX Compliance Office and printed in full in the College Catalog, the SFCCD Policy Manual, and referenced in class schedules.

The policy on unlawful discrimination was originally adopted by the San Francisco Community College District Governing Board on December 19, 2002, in accordance with the procedures of the Board of Trustees. The updated policy on unlawful discrimination and the policy on sexual harassment were both adopted by the Special Trustee on November 21, 2013.

Authority: 20 U.S.C. Section 1681 et seq.; Ed Code, §§ 66270, 66271.1, 66281.5; Gov. Code, §§ 11135-11139.8; Title 5, Cal. Code Regs., § 59326. Reference: Title 5, Cal. Code Regs., §§ 59300 et seq.; 34 C.F.R. § 106.8(b).

Unlawful Discrimination and Harassment Policy

The policy of the San Francisco Community College District is 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 on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, marital status, sex, gender, gender identity, gender expression, nonbinary status, sexual orientation, physical disability, mental disability, medical condition or genetic information, military and veteran status, 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, in 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.

Nor shall any persons be denied full and equal access to, the benefits of, or be subjected to discrimination on the basis of domestic partner status,* AIDS/HIV status,* or status as a lesbian, gay bisexual, transgender or questioning* person in any District program or activity.

**Note: These categories are not subject to the jurisdiction of the State Chancellor.*

The policy of the San Francisco Community College District is to provide an educational and employment environment free from unwelcome sexual advances, requests for sexual favors, sexual favoritism or other verbal or physical conduct or communications constituting sexual harassment. Sexual harassment in any situation is unacceptable, and is in violation of state and federal laws and regulations. Where evidence of sexual harassment is found, appropriate corrective action shall be taken.

The policy of the San Francisco 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 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, whether on campus or at an off-campus District-sponsored event, may be subject to discipline, up to and including discharge, expulsion, or termination of contract.

In so providing, the San Francisco Community College District hereby implements the provisions of California Government Code sections 11135 through 11139.8; California Education Code section 200 et seq.; 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); Section 703, Title VII of the Civil Rights Act of 1964, (42 U.S.C. §2000e), as interpreted by 29 C.F.R. § 1604.11; 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); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12100 et seq.), as amended by the ADA Amendments Act of 2008, (P.L. 110-325); and the Age Discrimination Act (42 U.S.C. § 6101).¹

Authority: Title 5, Cal. Code Regs., § 59300 *et seq.*, Ed. Code §§ 66250 et seq., 66271.1, 66700, and 70901; Gov. Code § 11138. Reference: Ed Code §§ 66250 et seq., and 72011; Gov. Code, §§ 11135-11139.8; Penal Code §§ 422.6 and 422.55; 20 U.S.C. § 1681; 29 U.S.C. §§ 794 and 794d; 42 U.S.C. §§ 6101, 12100 et seq., 2000d and 2000e; 29 C.F.R. §1604.11; 34 C.F.R. §106.9; 36 C.F.R. § 1194.

Responsible District Officer

The San Francisco Community College District has identified Dr. Leilani Battiste, Title 5/EEO/ADA Compliance Officer & Title IX Coordinator, to the State Chancellor's Office, the U.S. Department of Education, Office for Civil Rights and to the public as the single District officer responsible for exercising the District's jurisdiction over and receiving all unlawful discrimination complaints filed by a complainant or on behalf of a complainant, pursuant to Title 5, section 59328 and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (through its implementing regulation at 34 C.F.R. section 106.8(a)), and for coordinating their investigation. Informal charges of unlawful discrimination should be brought to the attention of the responsible District officer, who shall oversee the informal resolution process pursuant to Title 5, section 59327. The actual investigation of complaints may be assigned to

¹ If the Federal statutes cited above would result in broader protection of the civil rights of individuals than that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of Title 5, § 59300 et seq., as cited in this Policy.

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, and at any other times deemed appropriate by the responsible District officer.²

Administrators, faculty members, other District employees, students and members of the public shall direct all complaints of unlawful discrimination to the responsible District officer; for complaints pertaining to sexual harassment, sexual assault or other sexual misconduct, complaints may also be directed to any other Title IX Coordinator, see http://www.ccsf.edu/Offices/Title_IX/TitleIX-Coordinators.pdf or any responsible employee (Administration, Deans, Department Chairs, Faculty, Staff, etc.), who will inform the District officer. For complaints pertaining to sexual assault and other misconduct, complaints may also be filed with local law enforcement agencies.

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

Definitions

Definitions applicable to the nondiscrimination policies and procedures are as follows:

- “Appeal” means a request by a complainant made in writing to the San Francisco Community College District governing board pursuant to Title 5, section 59338 and/or to the State Chancellor’s Office pursuant to Title 5, section 59339, or to the Chancellor or his/her designee for complaints filed under Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. section 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, to review the administrative determination of the District regarding a complaint of discrimination.
- “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.
- “Complaint” means a written and signed statement meeting the requirements of Title 5, section 59328 that alleges unlawful discrimination in violation of the nondiscrimination regulations, adopted by the Board of Governors of the California Community Colleges, as set forth at Title 5, section 59300 et seq., and under or Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. section 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106.
- “Consent” means, as defined by California Education Code 67386 (a) (1), “affirmative consent,” which means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they *have* the

² The U.S. Department of Education, 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 unlawful discrimination complaints satisfies OCR’s instruction on this subject.

affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them should never by itself be assumed to be an indicator of consent.

- “Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a romantic or intimate relationship will be determined based on the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.
 - “Days” means calendar days.
 - “Disability” means, with respect to an individual:
 - A physical or mental impairment that substantially limits one or more major life activities of such individual;
 - A record of such an impairment; or
 - Being regarded as having such an impairment.
 - Rules of construction regarding the definition of disability (ADA Amendments Act of 2008):
 - The definition of “disability” shall be construed in accordance with the following:
 - a) The definition of disability shall be construed in favor of broad coverage of individuals to the maximum extent permitted by the Americans with Disabilities Act, as amended.
 - b) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.
 - c) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
 - d) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
 1. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as:
 - a. medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
 - b. the use of assistive technology;
 - c. reasonable accommodations or auxiliary aids or services; or
 - d. learned behavioral or adaptive neurological modifications.
 - e. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.
- “Discrimination on the basis of sex” means sexual harassment or discrimination on the basis of gender, e.g., sexual harassment, sexual assault, sexual violence and/or sexual misconduct.
- “District” means the San Francisco 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 other organization associated with the District or its college(s) that receives state funding or financial assistance through the District.

- “Domestic violence” includes felony or misdemeanor crimes of violence committed by:
 1. a current or former spouse of the victim;
 2. by a person with whom the victim shares a child in common;
 3. by a person who is cohabitating with or has cohabitated with the victim as a spouse;
 4. by a person similarly situated to a spouse of the victim under California law; or
 5. by any other person against an adult or youth victim who is protected from that person’s acts under California law.
- “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.
- “Gender-based harassment” means unwelcome conduct based on a student’s actual or perceived gender, gender identity, gender expression, including harassing conduct (verbal, nonverbal, physical aggression, intimidation or hostility) based on an individual’s gender, gender identity, gender expression, transgender status, gender transition, or nonconformity with sex stereotypes.
- “Harassment” means unwelcome conduct that is sufficiently pervasive, persistent, or severe that a reasonable person with the same characteristics as the victim of conduct would be adversely affected to a degree that interferes with his or her ability to participate in or to realize the intended benefits of an institutional activity, employment, or resource.
- “Hostility based on sex or sex-stereotyping includes conduct such as refusing to use a person’s preferred name or pronouns when the District uses preferred names for gender-conforming persons, or when the refusal is motivated by animus toward people who do not conform to sex stereotypes.
- “Hostile environment harassment” in either education or employment, means that the complainant was subjected to unwelcome conduct of a sexual or discriminatory nature based on other protected categories, which is subjectively and objectively offensive so as to alter the educational or employment environment, and create an abusive educational or employment environment.
- “Major life activities” include functions such as caring for one’s self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. “Major life activities” also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.
- “Mental impairment” means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- “Physical impairment” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine.

- “Record of such an impairment” means has a history of or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- Regarded as having an impairment” means (1) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (3) has none of the impairments as defined above but is treated by a recipient as having such an impairment. “Regarded as having an impairment” shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.
- “Religion” means “religious creed,” “religious observance,” “religious belief,” and “creed,” and includes all aspects of religious belief, observance, and practice, including religious dress and grooming practices. “Religious dress practice” shall be construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of the observance by an individual of his or her religious creed. “Religious grooming practice” shall be construed broadly to include all forms of head, facial, and body hair that are part of the observance by an individual of his or her religious creed.
- “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 or Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. Section 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, and for coordinating their investigation.
- “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 assault” and “sexual violence” includes but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.
- “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 invitations. Examples of possible 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 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; 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.
- (8) Sexual violence and/or other sexual misconduct.
 - "Sexual misconduct" refers to a range of sexually-related conduct including sexual assault (which includes rape and any kind of nonconsensual sexual contact), sexual harassment, intimate partner violence (dating violence), domestic violence, stalking, voyeurism, and any other conduct of a sexual nature that is nonconsensual, or has the purpose or effect of threatening, intimidating, or coercing a person, such as intimidation or bullying.
 - "Sexual orientation" means heterosexually, homosexuality, or bisexuality.
 - "Sexual violence" means physical sexual acts perpetrated against a person's will or where a person incapable of giving consent (e.g., due to age, use of alcohol/drugs, lack of capacity due to intellectual or other disability). A number of acts fall into the category of "sexual violence," including rape, sexual assault, sexual battery, sexual abuse and sexual coercion.
 - "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for *their* safety or the safety of others, or to suffer substantial emotional distress.
 - "Unlawful discrimination" means discrimination based on a category protected under Title 5, section 59300 and/or or Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. section 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, including sexual harassment and retaliation.

Authority: Gov. Code, § 12926; Title 5, Cal Code Regs., § 59311; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, U.S. Dept. of Education, Office for Civil Rights ("OCR"), January 19, 2001, as supplemented by OCR's *Questions and Answers on Title IX and Sexual Violence*, U.S. Office of Education, Office for Civil Rights, April 29, 2014.

Notice of Training and Education for Students and Employees

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

All District employees will receive these trainings and copies of the unlawful discrimination and harassment policies and procedures 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 every other year thereafter. In years in which a substantive policy or procedural position change has occurred, all District employees will attend a training update and/or receive a copy of the revised policies and procedures.

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, how it works, and how to file a complaint. In addition, copies of the District's written policies on unlawful discrimination and sexual harassment, as they pertain 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: Educ. Code, § 66281.5; Title 5, Cal. Code Regs., §§ 59324 and 59326. Reference: Title 5, Cal. Code Regs., §§ 59300 et seq.; 34 C.F.R. § 106.8(b).

Informal/Formal Complaint Procedure³

When a person or someone on behalf of a person subject to unlawful discrimination (or the respondent accused of subjecting another to unlawful discrimination), brings charges of unlawful discrimination or harassment, or charges of sexual harassment pursuant to Title IX (34 C.F.R. section 106.8(a)), to the attention of the District's responsible officer via an informal complaint process, that officer or designee will treat the complaint confidentially, and, pursuant to AP 2.30:

- (1) Undertake efforts to informally resolve the charges;⁴

³ The purpose of the informal resolution process is to allow all individual who believes they have been unlawfully discriminated against or sexually harassed to resolve the issue through an alternative 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. In an informal process, the district officer shall advise the complaint of their rights and responsibilities under both the formal and informal processes. If the complainant declares his or her preference for the informal process, the responsible district officer shall present the complainant with a document that describes the informal/formal process, and a letter containing the basics of complainant's allegations of unlawful discrimination. The letter will clearly indicate that the complainant opted for the informal resolution process. The informal resolution process will not be made a predicate to the process and investigation of a formal complaint. If a formal complaint is filed, an investigation must be completed within the time required unless it is voluntarily rescinded by a complainant as a result of a successful informal resolution.

⁴ In cases involving sexual assault filed pursuant to Title IX (20 U.S.C. § 1681 et seq.), the informal resolution process can be requested by either the complainant or the respondent. However, the OCR has advised that mediation could be an appropriate informal resolution. However, because the District is responsible for maintaining a safe and discrimination-free educational environment, this option will only be utilized upon the agreement of all parties. In addition, serious allegations may need to be investigated even if the complaining party

- (2) Advise the complainant or the respondent that they need not participate in informal resolution;
- (3) Notify the person bringing the charges of unlawful discrimination of their right to file a formal complaint and explain the procedures for doing so;
- (4) Assure the complainant and/or the respondent that they will not be required to confront or work out problems with the person accused of unlawful discrimination;
- (5) Advise the complainant that they may file a non-employment-based complaint with the U.S. Department of Education, Office for Civil Rights (“OCR”) where such a complaint is within that agency’s jurisdiction.
- (6) If the complaint is employment-related, the complainant will be advised that he or she may file a complaint with the U.S. Equal Employment Opportunity Commission (“EEOC”) and/or the California Department of Fair Employment and Housing (“DFEH”) where such a complaint is within the jurisdiction of those agencies.
- (7) Where appropriate, refer a complainant filing a complaint alleging sexual harassment and/or sexual violence to sources of counseling, advocacy and support, both within the District (i.e., Student Health Center, Dean of Student Affairs & Wellness, Counseling Department, etc.) and outside of the District (e.g., San Francisco Women Against Rape, San Francisco Counseling Center, Women’s Shelters, etc.)

Efforts at informal resolution may not need to include any investigation unless the responsible District officer or designee determines that an investigation is warranted by the seriousness of the charges. **Please note that selecting an informal resolution does not extend the time limitations for filing a formal complaint.** 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, 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.

For complaints filed pursuant to Title IX, 20 U.S.C. §1681 et seq., (34 C.F.R. section 106.8), a complainant or respondent has the right to end the informal process at any time, and begin the formal complaint procedure. A complainant also has the right to file a criminal complaint simultaneously with the filing of a Title IX complaint. The District will commence the informal and/or formal complaint procedure upon the filing of a valid complaint, and will not wait for other criminal investigation or criminal proceedings to begin. Allegations of unlawful discrimination made by parties who have not personally suffered unlawful discrimination, and are not complainants under the description set forth Title IX, section 1682 et seq., may be conducted via the informal complaint process. As with the formal complaint process, notification to both parties of the outcome of the informal complaint and any right to appeal.

considers the matter resolved through informal resolution. In all cases involving sexual harassment and/or sexual assault filed under either Title 5 or Title IX, the District will take immediate action to (1) protect the complainant, (2) eliminate a hostile environment, (3) prevent its recurrence and (4) address the effects of a hostile environment, and where applicable, (5) provide information regarding sources of counseling, advocacy and support.

In employment related cases, if the complainant files with the California Department of Fair Employment and Housing or with the U.S. Equal Employment Opportunity Commission, 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 California Department of Fair Employment and Housing, or the U.S. Equal Employment Opportunity Commission.

The District will provide 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: Title 5, Cal. Code Regs., §§ 59327, 59328, 59334, 59336, and 59339, 34 C.F.R. § 106.8(b); *NLRB v. Weingarten, Inc.* (1975) 420 U.S. 251; see also, *Dear Colleague Letter on Sexual Harassment*, U.S. Office of Education, Office for Civil Rights, April 4, 2011, and *Questions and Answers on Title IX and Sexual Violence*, U.S. Office of Education, Office for Civil Rights, April 29, 2014.

Filing of Formal Written Complaint

If a complainant decides to file a formal written unlawful discrimination complaint against the District, they must file the complaint on the District's Formal Complaint form which is prescribed by the State Chancellor.⁵ These approved forms are available from the District on either the Title 5/EEO/ADA Compliance Office webpage, and/or the Title IX Compliance Office webpage. The State Chancellor's form may be obtained from the State Chancellor's website, as follows:

http://extranet.cccco.edu/Portals/1/Legal/Resources/Discrim_Cplnt_2008_16fmt.pdf

Please note that the State Chancellor's form is limited to protected categories within the jurisdiction of the Office of the State Chancellor. The completed form must be filed with the District representative or mailed directly to the State Chancellor's Office of the California Community Colleges.

If a complaint of unlawful discrimination presented in another written format, such as a letter, the District may request that the complainant complete a complaint form. If there is a delay in obtaining a completed form, or the complainant refuses to transfer the information or otherwise complete the form but wishes to pursue the formal complaint process, the District may attach the letter to the form and open a formal investigation. While a complaint filed in an improper form is still procedurally defective under Title 5 or Title IX standards, the merits of the complaint itself may be valid and must be addressed.

⁵ The OCR also advises that Title IX does not require educational institutions to utilize separate grievance procedures for sex discrimination complaints (which include sexual harassment and sexual assault), in order to resolve such complaints. As such, to ensure consistent practices and standards in handling complaints as well as coordination of record keeping, these policies and procedures for handling of complaints of unlawful discrimination and harassment will also be utilized for complaints filed under Title IX. However, complaints filed under Title IX will not utilize the State Chancellor grievance processes, (e.g., allowed further process by the State Chancellor's Office.)

Once a complaint is filed, it will be treated confidentially. However, complainants should be advised that the individual(s) accused of engaging in prohibited discriminatory conduct will be advised of that filing and the general nature of the complaint. This should 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.

For complaints filed pursuant to Title IX, 20 U.S.C. §1681 et seq., (at 34 C.F.R. section 106.8), a complainant also has the right to file a criminal complaint simultaneously with the filing of a Title IX complaint. The District will commence the formal complaint procedure upon the filing of a valid complaint, and will not wait for other criminal investigation or criminal proceedings to begin. Allegations of unlawful discrimination made by parties who have not personally suffered unlawful discrimination, and are not complainants under the description set forth Title IX, section 1681 et seq., may be conducted via the informal complaint process.

Authority: Title 5, Cal. Code Regs., §§ 59311 and 59328; Title IX of the Education Amendments of 1972 20 U.S.C. § 1681, and implementing regulations at 34. C.F.R. § 106, et seq.

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:

- The complaint must be filed on the District's Formal Complaint Form (which has been prescribed by the State Chancellor's Office) or on the State Chancellor's form, and must be filed with the District Title 5/EEO/ADA Compliance Officer/Title IX Coordinator or with the State Chancellor.
- If the complaint is not filed on this form, every effort should be made to have the complaint filed on this form and to obtain complainant's signature. However, where a complainant has indicated that he or she wishes to pursue the formal complaint process, a complaint should not be rejected solely based on the failure to file the complaint on this form.
- The complaint must allege unlawful discrimination and/or harassment as prohibited under Title 5, section 59300, allege sexual harassment under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., or allege a violation of District Policy.
- The complaint must be filed by one who alleges that they have personally suffered unlawful discrimination, harassment or sexual harassment, filed by someone on behalf of another who has suffered unlawful discrimination, harassment or sexual harassment, or filed by one who has learned of such unlawful discrimination, harassment or sexual harassment 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, harassment or sexual harassment, 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 and/or harassment 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.

In the event of the filing of either a formal or informal complaint under Title 5 or Title IX, the District will take steps to prevent the recurrence of any unlawful discrimination (including sexual harassment and/or sexual assault), and to take a number of interim measures to remedy the discriminatory effects on the complainant and others, where appropriate. Interim measure will be determined on a case by case basis as needed, and may include but are not limited to: transfer of the complainant to another class section (if a student), transfer to another work site (if an employee), suspension or other discipline of the accused, etc.

Additional information about this initial review of complaints can be found in the Guidelines for Processing Formal Title 5 Unlawful Discrimination Complaints prepared by the State Chancellor's Office.⁶

Authority: Title 5, Cal. Code Regs., § 59328; Title IX of the Education Amendments of 1972 20 U.S.C. § 1681, and implementing regulations at 34. C.F.R., Part 106, et seq.

Defective Complaint

If a complaint is found to be defective it will be immediately returned to the complainant with a complete explanation of why an investigation will not be initiated under Title 5, California Code of Regulations, section 59300 et seq., or under Title IX, 20 U.S.C. §1681, et seq. The notice will inform the complainant that the complaint does not meet the requirements of law, and shall specify in what requirement the complaint is defective. A copy of the notice to the complainant will also be sent to the State Chancellor's Office.⁷

Authority: Title 5, Cal. Code Regs., §§ 59328, 59332; Title IX of the Education Amendments of 1972 20 U.S.C. § 1681, and implementing regulations at 34. C.F.R., Part 106, et seq.

Notice to State Chancellor or District

A copy of all formal complaints filed in accordance with the Title 5 regulations (unlawful discrimination and/or harassment) will be forwarded to the State Chancellor's Office immediately upon receipt, regardless of whether the complaint is brought by a student or by an employee. Similarly, when the State Chancellor's Office receives a complaint, a copy will be forwarded to the District.

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

⁶ The Guidelines for Processing Formal Title 5 Unlawful Discrimination Complaints is a procedural aid for processing formal unlawful discrimination complaints.

⁷ Sexual harassment complaints filed pursuant to Title IX (20 U.S.C. §1681 et seq.), or the notice of defective complaint thereof, will not be forwarded to the State Chancellor's Office.

Confidentiality of the Process

Investigative processes are best when they are conducted within a confidential climate. The District has an obligation to provide adequate, reliable and impartial investigations of complaints. This includes providing the opportunity for both the complainant and the person(s) accused of wrongdoing to present witnesses and other evidence. Therefore, the District does 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, including the presentation of witnesses and other evidence 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.⁸

If a complainant insists that their name not be revealed, the responsible officer or designee will 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.⁹

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 and/or sexual harassment 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 be asked to sign a confidentiality acknowledgment statement.

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

⁸ In addition to the general confidential nature of complaints of discrimination, a complainant reporting incidents of sexual violence can request to keep his or her identity confidential. The OCR recognizes that there are situations in which educational institutions must override a request for confidentiality in order to meet its Title IX obligations. In such situations, the information will be maintained in a secure manner, and will only be shared with those individuals who are responsible for handling the institution's response to incidents of sexual violence. However, complainants should also be aware that in certain circumstances, honoring a request for confidentiality (e.g., a complainant requests that the institution not investigate or seek action against the perpetrator), may limit the institution's ability to respond fully to the incident, to implement interim measures, or to fulfill its obligations under Title IX to other students. Furthermore, where action is taken against the perpetrator, the perpetrator may have rights under the Family Education Rights and Privacy Act ("FERPA") to inspect records pertaining to him or her. In any event, requests for confidentiality will be considered on a case-by-case basis.

⁹ See Footnote 10, *supra*.

informed of the disciplinary action, but that the victim must keep the information confidential. Disciplinary actions taken against students and employees are generally considered confidential.¹⁰

Authority: Cal. Const. Art I, § 1; Civil Code § 47; Ed. Code, §§ 76234 and 87740; *Silberg v. Andersen* (1990) 50 Cal. 3d. 205; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, U.S. Office of Education, Office for Civil Rights, January 19, 2001, as supplemented by OCR's *Dear Colleague Letter on Sexual Harassment*, April 4, 2011; see also, *Questions and Answers on Title IX and Sexual Violence*, U.S. Office of Education, Office for Civil Rights, April 29, 2014.

Conducting Investigations

In order to reach an Administrative Determination following the investigation of a Title 5 or Title IX discrimination complaint, the District shall conduct investigations that will be adequate, reliable, impartial and prompt. The investigation will include an opportunity for both parties to present witness and other evidence. All credible evidence presented during the investigation (e.g., witness testimony, documents, etc.) will be considered. The "preponderance of the evidence" standard (*i.e.*, more likely than not that unlawful discrimination occurred) shall be applied in reaching a conclusion as to whether unlawful discrimination in fact, occurred and whether a hostile environment was created.

Once an Administrative Determination is reached, Title 5/Title IX investigators will forward the Administrative Determination to the appropriate office for further handling, if necessary. With Title IX complaints, the investigative report will be made available to both parties prior to any disciplinary proceeding if such report is considered by the reviewing officer(s). The District will also endeavor to coordinate with any other going District or criminal investigations where appropriate.

Remedies for complainants who have been subject to unlawful discrimination will be reviewed on a case-by-case basis, and will be administered according to a number of factors, (*e.g.*, the allegations of the complaint – *i.e.*, severity or pervasiveness of the allegations, the age of the complainant, any specific needs of the complainant, any continuing effects on the complainant, etc.) The District will endeavor to take any and all measures to cease further harassment, and remediate the discriminatory effects of a hostile work or education environment that may include, but are not limited to, stopping the source of the harassment, change of work location, change of class schedules and/or campus location, referral to counseling and other resources, etc.

For persons accused of wrongdoing, an administrative finding of a violation of the District's policy, federal and/or state law could result in discipline up to and including termination in the case of employees, and up to and including suspension or expulsion in the case of students. Complainants are also advised that a number of District and external resources, including resources from the Student Health Center, are available for both employees and students to provide counseling, advocacy and support.

¹⁰ Complainants must trust the District to take appropriate action and must understand that the District is generally not at liberty to discuss personnel or student matters, particularly disciplinary matters. In some disciplinary cases, the complainant may be required to testify at a hearing, and would therefore be aware of the proposed disciplinary action.

Authority: *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, U.S. Office of Education, Office for Civil Rights, January 19, 2001.¹¹

Administrative Determination/Timeline of Investigations

In any case not involving employment discrimination, within 90 days of receiving an unlawful discrimination complaint filed under Title 5, sections 59300 et seq., or within a reasonable time (approximately 90 days), for a sexual harassment complaint and appeal (if applicable) filed pursuant to Title IX, 20 U.S.C. section 1681, 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 summary¹² of the report to the complainant, and written notice setting forth all the following to both the complainant and the State Chancellor:¹³

- (a) The determination of the Chancellor or his/her designee as to whether there is a preponderance of the evidence to believe discrimination occurred with respect to each allegation in the complaint, as well as whether a hostile environment was created;
- (b) A description of actions taken, if any, to prevent similar problems from occurring in the future;¹⁴
- (c) The proposed resolution of the complaint; and
- (d) The complainant's right to appeal to the District governing board and the State Chancellor.

For complaints filed pursuant to Title IX, 20 U.S.C. §1681 et seq., (at 34 C.F.R., Part 106.8(a)), both parties (complainant and respondent) will be notified as to the outcome of the complaint and of each party's right to appeal the decision to the Chancellor and/or his/her designee.

In any case involving employment discrimination, within 90 days of receiving an unlawful discrimination complaint filed under Title 5, sections 59300, et seq., or within a reasonable time under Title IX, 20

¹¹ It should be noted that the guidance contained in both the OCR's Dear Colleague Letter on Sexual Harassment, April 4, 2011 and the Questions and Answers on Title IX and Sexual Violence, U.S. Office of Education, Office for Civil Rights, April 29, 2014, was rescinded by the OCR on September 22, 2017.

¹² It is within the District's discretion to choose not to include the entire investigative report, however, a summary of an investigation report should, at the very least, include all of the following: (a) a description of the circumstances giving rise to the complaint; (b) a specific finding as to whether there is a preponderance of the evidence to believe that discrimination occurred with respect to each allegation in the complaint; (c) a summary and analysis of the relevant evidence (document, data, or witness testimony) on which the determination rests; and (d) any other information deemed appropriate by the District.

¹³ A copy of an administrative determination of a sexual harassment complaint filed under Title IX, 20 U.S.C. §1681 et seq., will not be forwarded to the State Chancellor's Office, but will be provided to both parties.

¹⁴ If it is determined that there is probable cause based on the preponderance of the evidence standard to believe that discrimination, harassment and/or sexual harassment under Title IX 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.

U.S.C. section 1681, et seq.,¹⁵ the responsible District officer will complete the investigation and forward a copy or summary of the report to the complainant, and written notice setting forth all the following to the complainant:

- (a) The determination of the Chancellor or their designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
- (b) A description of actions taken, if any, to prevent similar problems from occurring in the future (see footnote 9);
- (c) The proposed resolution of the complaint; and
- (d) 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.

Authority: Title 5, Cal. Code Regs., § 59336; Title IX of the Education Amendments of 1972 20 U.S.C. § 1681, and implementing regulations at 34. C.F.R., Part 106, et seq.

Appeal Rights

Complainants and respondents¹⁶ 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 is mailed to the complainant, the responsible District officer or their designee shall notify the complainant of their appeal rights as follows:

- First level of appeal: The complainant¹⁷ has the right to file an appeal of the District's administrative determination to the District's Board of Trustees within 15 days from the date of the notice pursuant to section 59336 for Title 5 complaints, that sets forth the administrative determination and the complainant's appeal rights. The Board of Trustees/Chancellor or their designee will review the original complaint, the investigative report, the administrative determination, and the appeal. Written appeals must be addressed as follows: SFCCD Board of Trustees/Chancellor, San Francisco Community College District, 50 Frida Kahlo Way, E-200, San Francisco, CA 94112.
- The District's Board of Trustees/Chancellor and/or their designee will issue a final District decision in the matter promptly, within 45 days after receiving the appeal. Alternatively, for appeals filed pursuant to Title 5, 59338, the District's Board of Trustees may elect to take no action within 45 days, in which case the original decision in the administrative determination

¹⁵ On September 22, 2017, the OCR rescinded guidance under the OCR's Dear Colleague Letter on Sexual Harassment, April 4, 2011 and the Questions and Answers on Title IX and Sexual Violence, U.S. Office of Education, Office for Civil Rights, April 29, 2014, which included a 60-day time frame in which to conclude investigations of sexual harassment and/or sexual assault filed under Title IX (20 U.S.C. § 1681 et seq.), and replaced it with a "reasonable" time frame for institutions to complete investigations.

¹⁶ For sexual harassment complaints filed pursuant to Title IX (20 U.S.C. § 1681 et seq.), both the complainant and respondent have appeal rights to the Chancellor or his/her designee.

¹⁷ *Id.*

will be deemed to be affirmed and shall become the final District decision in the matter. In any case not involving employment discrimination, a copy of the final decision rendered by the District's Board of Trustees/Chancellor and/or his/her designee, will be forwarded to the complainant and to the State Chancellor's Office.¹⁸ In any case involving employment discrimination, the District shall promptly forward to the complainant and to the State Chancellor a copy of the final decision rendered by the Board of Trustees that includes complainant's right to file a complaint with the California Department of Fair Employment and Housing where the case is within the jurisdiction of that agency.

- 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 or from the date of the notice provided, whichever is later.¹⁹ 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 the date.²⁰ In any case involving employment discrimination, the complainant has the right to file a complaint with the California Department of Fair Employment and Housing (DFEH) where the case is within the jurisdiction of that agency.
- For Title IX complaints, either the complainant or respondent may file a written appeal to the SFCCD Chancellor or their designee.

Parties must submit all appeals in writing.

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

Provision of Information to State Chancellor

In any case not involving employment discrimination (except sexual harassment complaints filed pursuant to Title IX, 20 U.S.C. §1681 et seq.), within 150 days of receiving a complaint, the responsible District officer will either:

Forward the following to the State Chancellor:

¹⁸ Sexual harassment complaints filed pursuant to Title IX (20 U.S.C. §1681 et seq.) will not be forwarded to the State Chancellor's Office under these procedures.

¹⁹ Sexual harassment complaints filed pursuant to Title IX (20 U.S.C. §1681 et seq.) are not appealable to the State Chancellor's Office; however, either a complainant or respondent may file a complaint with OCR.

²⁰ The California 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 generally will not accept appeals in employment discrimination cases.

- 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;
- A copy of the notice of appeal rights the District sent the complainant;
- A copy of the complainant's appeal of the District's administrative determination;
- Any other information the State Chancellor may require; or
- Notify the State Chancellor that the complainant has not filed an appeal with the District's governing board and that the District has closed its file.

In any event, the District will notify the complainant in any case not involving employment discrimination of their right to file a complaint with the U.S. Department of Education, Office for Civil Rights. The District will keep documents on file for a period of at least three years after closing the case, and in any case involving employment discrimination, the District will make them available to the State Chancellor upon request.

Authority: Title 5, Cal. Code Regs., §§ 59338 and 59340; Title IX of the Education Amendments of 1972 20 U.S.C. § 1681, and implementing regulations at 34. C.F.R., Part 106, et seq.

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. Where an extension is deemed necessary by the District, it must be requested from the State Chancellor regardless of whether or not the case involves employment discrimination. The request will be submitted no later than 10 days prior to the expiration of the deadlines established by Title 5 in section 59336, 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.²¹

A copy of the request for an extension will be sent to the complainant, who will be advised that they may file written objections with the State Chancellor within 5 days of receipt.

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

For complaints filed pursuant to Title IX, a request for extension to conclude the investigation beyond "a reasonable time" will be granted upon agreement of both parties.

Authority: Title 5, Cal. Code Regs., § 59342; Title IX of the Education Amendments of 1972 20 U.S.C. § 1681, and implementing regulations at 34. C.F.R., Part 106, et seq.; *Q&A on Sexual Misconduct*, U.S. Dept. of Education, Office for Civil Rights, September 22, 2017.

²¹ Sexual harassment complaints filed pursuant to Title IX (20 U.S.C. §1681 et seq.) are not subject to the extension policies under Title 5, section 59336; however, such complaints will be completed in a reasonably prompt time frame from the date of receipt of the complaint.

Retaliation

It is unlawful for anyone to retaliate against someone who files an unlawful discrimination or harassment complaint, 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. Any act of retaliation should be reported to the Title 5/EEO/ADA & Title IX Compliance Office.

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