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Policy Area: Chapter 3 General Institution
References: Legally Required

AP 3420 Equal Employment Opportunity

The District shall make a continuous good faith effort to comply with the requirements of the Equal Employment Opportunity Plan.

Employment Procedures

Job Analysis and Validation: The Vice Chancellor of Human Resources shall assure that a proper job analysis is performed for every job filled by the District to determine and validate the knowledge, skills, abilities, and characteristics an employee must possess to perform the job satisfactorily.

A statement of bona fide essential functions and minimum qualifications shall be developed for all positions.

Job Description: Every job description shall provide a general statement of job duties and responsibilities.

Job specifications shall include functions and tasks; knowledge; skills; ability; and job related personal characteristics, including but not limited to sensitivity to and understanding of the diverse academic, socioeconomic, cultural, linguistic, disability, and ethnic backgrounds of community college students.

Recruitment: Recruitment must be conducted actively within and outside of the District work force.

Open recruitment is mandated for all new full-time and part-time positions, except under limited circumstances involving interim hires.

Recruitment must utilize outreach strategies designed to ensure that all qualified individuals are provided the opportunity to seek employment with the District.

Recruitment for administrative and faculty positions (full and part-time) may include advertisement in appropriate professional journals, job registries and newspapers of general circulation; distribution of job announcements to the EEO Registry, K-12 districts, two and four year colleges, and graduate schools where appropriate candidates might be enrolled; recruitment at conferences, fairs, and professional meetings; notices to institutions and professional organizations.

Recruitment for classified positions shall include notice to all District personnel; notice to Employment Development Department; and advertising in area newspapers of general circulation.

Applicant Pools: The application for employment shall afford each applicant an opportunity to identify himself/herself voluntarily as to gender, ethnicity and, if applicable, his/her disability. This information shall be maintained in confidence and shall be used only for research, validation, monitoring, evaluation of the effectiveness of the Plan, or as authorized by law.

After the application deadline has passed, the initial applicant pool shall be recorded and reviewed by the

Chief Human Resources Officer or designee. All initial applications shall be screened to determine which candidates satisfy job specifications set forth in the job announcement. The group of candidates who meet the job specifications shall constitute the “qualified applicant pool.”

Once the qualified applicant pool is formed, the pool must again be analyzed. If the Chief Human Resources Officer or designee finds that the composition of the qualified applicant pool may have been influenced by factors which are not job related, the District *shall* immediately, and before the selection process continues, consult with legal counsel to determine what, if any, corrective action is required by law.

Screening and Selection: Screening, selecting and interviewing candidates for all positions shall include thorough and fair procedures that are sensitive to issues of diversity. Procedures to be used must address or include that:

- Hiring procedures will be provided to the State Chancellor’s Office on request.
- All tests conform to generally applicable legal standards for uniformity.
- A reasonable number of candidates are identified for interview.
- Screening and selection committees are developed that are representative of the District community and campus; include administrators, faculty, and classified staff members; include a diverse membership when possible; do not include applicants or persons who have written letters of recommendation.
- Every screening and selection committee includes an individual trained to monitor conformance with EEO requirements. The Vice Chancellor of Human Resources assures that the screening and selection process conforms to accepted principles and practices, including preparation of job related questions in advance; maintains records of screening checklists and rating scales, which shall be signed and kept on file; maintains notes for all interviews and record relevant factual reasons stating why a candidate was not hired or was not invited to interview; and monitors the hiring process for adverse impact.
- Selection shall be based solely on the stated job criteria.
- For faculty and administrative positions, candidates shall be required to demonstrate sensitivity to diversity in ways relevant to the specific position.

If the District determines that a particular monitored group is significantly underrepresented with respect to one or more job categories, the District shall take the following additional steps:

- review its recruitment procedures;
- consult with counsel to determine whether there are other, additional measures that may be undertaken that are required or permitted by law;
- consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account and implement any such techniques that are feasible;

If significant underrepresentation persists:

review each locally-established job qualification to determine if it is job related and

- consistent with business necessity;
- discontinue the use of any non job-related local qualification; and
- continue using job-related local qualifications only if no alternative standard is reasonably available; and

- consider the implementation of additional measures designed to promote diversity.

Delegation of Authority

- The designation of a single person as the “EEO Officer” charged with overseeing the day-to-day implementation of the EEO Plan and programs.
- Processes and responsibilities when the EEO Officer is named in a complaint or implicated by the allegations in a complaint.

Complaint Procedure

The District must identify to the public and to the State Chancellor’s Office an individual described in Title 5 as the “responsible District officer,” responsible for receiving complaints. Informal charges of unlawful discrimination should be brought to the attention of the responsible District officer. The responsible District officer shall oversee the informal resolution process. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract. An outside investigator must be used when the responsible District officer is named in the complaint or implicated by the allegations in the complaint.

When a person brings charges of unlawful discrimination the officer must:

- Undertake efforts to resolve the charge informally;
- Advise the complainant that he/she need not participate in an informal resolution of the complaint;
- Notify the complainant of the procedures for filing a formal complaint;
- Notify the complainant that he/she may file a complaint with the Office of Civil Rights of the U.S. Department of Education.
- If the complainant, a student or an employee, files a formal complaint, the responsible District officer must also forward a copy of the complaint to the State Chancellor’s Office.

A formal complaint not involving employment, must be processed if it is filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation.

A formal complaint alleging discrimination in employment must be filed within 180 days of the date of the alleged unlawful discrimination, unless the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the initial 180 days.

The complaint must be filed by someone who alleges that he/she has personally suffered unlawful discrimination, or by someone who has learned about unlawful discrimination in his/her official capacity.

When a proper complaint is received, the District will begin an impartial fact-finding investigation, and notify the complainant and the State Chancellor’s Office that it is doing so.

When the investigation is done, the results must be set forth in a written report. The written report must include a description of the circumstances giving rise to the complaint, a summary of the testimony of each witness, an analysis of any relevant data or other evidence collected during the investigation, a specific finding as to whether discrimination did or did not occur with respect to each allegation in the complaint, and any other appropriate information.

In any case that does not involve employment discrimination, the District must provide the State Chancellor’s Office with a copy of the investigative report within ninety days from the date the District received the

complaint. The District must also provide the complainant with a copy or summary of the investigative report within ninety days from the date the District received the complaint. The State Chancellor's Office and the complainant must also be provided with a written notice setting forth the determination of the Vice Chancellor of Human Resources as to whether discrimination did or did not occur with respect to each allegation in the complaint; a description of action taken, if any, to prevent similar problems from occurring in the future; the proposed resolution of the complaint; and notice of the complainant's right to appeal to the District's Governing Board and the State Chancellor's Office.

In any case that involves employment discrimination, the District must provide the complainant with a copy or summary of the report, and with written notice setting forth the determination of the Vice Chancellor of Human Resources as to whether discrimination did or did not occur with respect to each allegation in the complaint; a description of action taken, if any, to prevent similar problems from occurring in the future; the proposed resolution of the complaint; and the complainant's right to appeal to the District's Governing Board and to file a complaint with the Department of Fair Employment and Housing.

If the complainant is not satisfied with the results of the administrative determination, the complainant must be given the opportunity to submit a written appeal to the governing board within fifteen days from the date of the notice of the administrative determination. The Board must review the original complaint, the investigative report, the administrative determination, and the appeal and must issue a final District decision within forty-five days of receiving the appeal.

In any case not involving employment discrimination, a copy of the final District decision must be promptly forwarded to the complainant and the State Chancellor's Office. The complainant must be notified of his/her right to appeal. In any case involving employment discrimination, a copy of the final District decision must be promptly forwarded to the complainant. The complainant must be notified of his/her right to file a complaint with the Department of Fair Employment and Housing.

Where the Board does not act within forty-five days the administrative determination must be deemed approved and must become the final District decision. The District shall promptly notify the complainant and in cases not involving employment discrimination, the State Chancellor's Office, that the Board took no action and the administrative determination becomes the final District decision. In cases not involving employment discrimination, the complainant must be informed of his/her right to appeal the District's decision to the State Chancellor's Office. In cases involving employment discrimination, the complainant shall be notified of his/her right to file a complaint with the Department of Fair Employment and Housing.

In cases not involving employment discrimination, the complainant must be given the right to file a written appeal with the State Chancellor's Office within 30 days after the Board issues the final District decision, permits the administrative decision to become final or from the date that notice of the District's final decision was provided to the complainant pursuant to Section 59338(b) or (d), whichever is later.

The District should retain and make available the original complaint, and copies of the final decision or a statement indicating the date on which the administrative determination became final, the notice given to complainant, the complainant's appeal of the District's administrative determination, the investigative report and any other information the State Chancellor's Office may require.

Job Announcements

All job announcements shall contain a statement in substantially the following form: The District is an equal opportunity employer. The policy of the District is to encourage applications from ethnic and racial minorities, women, persons with disabilities, and Vietnam-era veterans. No person shall be denied employment because of ethnicity or race, color, sex or gender, gender identity, age, religion, marital status, disability, sexual

orientation, national origin, medical conditions, status as a Vietnam-era veteran, ancestry, or political or organizational affiliation.

Dissemination and Revision of the Plan

All managers and supervisors shall be given copies of the plan as revised from time to time and any guidelines for implementing the plan. Copies of the plan shall be provided to the Academic Senate and the exclusive representatives of any units of employees.

Statements of nondiscrimination shall be posted at locations where applications for employment are distributed.

Such plans shall be reviewed at least every three years and, if necessary, revised, and submitted to the State Chancellor's Office within 90 days of the effective date of the revision or amendment(s). If the State Chancellor's Office determines that the District's policies are not in compliance with Title 5 Sections 59300 et seq., the State Chancellor's Office may require the District to modify its policies.

Accountability and Corrective Action

- The District shall certify annually to the State Chancellor that they have timely:
- Recorded, reviewed and reported the data required regarding qualified applicant pools;
- Reviewed and updated, as needed, the Strategies Component of the District's EEO Plan; and
- Investigated and appropriately responded to formal harassment or discrimination complaints filed pursuant to subchapter 5 (commencing with Section 59300) of chapter 10 of this division.

References:

~~Education Code Sections 87100~~ [20 U.S.C. Section 1681](#) et seq.;
~~Title 5 Education Code Sections 53000~~ [87100](#) et seq. ~~and Title 5 Sections 59300~~ [53000](#) et seq.
 and [Sections 59300 et seq.](#); ACCJC Accreditation Standard III.A. ~~11~~ [12](#)

Attachments:

[SBCCD - Overview for Legal Update 31 Final Version.docx](#)

Approval Signatures

Step Description	Approver	Date
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Comment by Nikac, Stacey: Administrator

2/2/2018, 3:29PM EST

HR should review the recommended language and content per Legal Update #31:

NOTE: This procedure is legally required. Local practice may be inserted here that conforms to the 2013 revisions of Title 5 Sections 53000 et seq. or reference the current District Equal Employment Opportunity (EEO) Plan.

Due to the dynamic and untested nature of this area of law, this procedure identifies points in the hiring process where consultation with legal counsel may be prudent.

The EEO Plan should be a District-wide, written plan that implements the District's EEO Program, includes the definitions contained in Title 5 Section 53001 and addresses the following:

• Submission of plans and revisions to the California Community Colleges Chancellor's Office for review as required. • The designation of the District employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this Procedure; • The procedure for filing complaints and the person with whom such complaints are to be filed; • A process for notifying all District employees of the provisions of the plan and the policy statement required; • A process for ensuring that District employees who participate on screening or selection committees receive, prior to their participation, training on the requirements of the applicable Title 5 regulations and of state and federal nondiscrimination laws, the educational benefits of workforce diversity, the elimination of bias in hiring decisions, and best practices in serving on a screening or selection committee; • A process for providing annual written notice to appropriate community-based and professional organizations concerning the District's plan and the need for assistance from such organizations in identifying qualified applicants for openings within the District; • A process for gathering information and periodic, longitudinal analysis of the district's employees and applicants, broken down by number of persons from "monitored groups", as defined by Title 5 Section 53001(i), who are employed in the District's work force and those who have applied for employment in each of the job categories listed below. • To the extent data regarding potential job applicants is provided by the Chancellor of the California Community Colleges, an analysis of the degree to which monitored groups are underrepresented in comparison to their representation in the field or job category in numbers of persons from such groups whom the California Community Colleges Chancellor's Office determines to be available and qualified to perform the work required for each such job category and whether or not the underrepresentation is significant; • The steps the District will take to promote diversity in its work force; • Methods for addressing any discrimination that is detected in the District's hiring practices, and; • The Plan shall be a public record.

The District shall make a continuous good faith effort to comply with the requirements of the Plan.

NOTE: Local practice that complies with Title 5 Section 53004 and Title 5 Section 53006 should be inserted here and must include or address:

Annual Evaluation

• The District shall annually collect the demographic data of its employees and applicants for employment in order to evaluate progress in implementing the EEO Plan and to provide data needed for required analyses. • An annual report to the California Community Colleges Chancellor's Office of this demographic data. The report shall identify each employee as belonging to one of the following seven job categories:

- o executive/administrative/managerial
- o faculty and other instructional staff

- o professional non-faculty

- o secretarial/clerical

- o technical and paraprofessional

- o skilled crafts; and

- o service and maintenance.

• The opportunity for each employee to identify his/her gender, ethnicity and, if applicable, disability. This opportunity must allow for a person to designate multiple ethnic groups with which he/she identifies. However, the person may only be counted in one group for reporting purposes. • Districts shall review the annually collected demographic data to determine if significant underrepresentation of a monitored group may be the result of non-job-related factors in the employment process. For the purposes of this subdivision, the phases of the employment process include but are not limited to recruitment, hiring, retention, and promotion. The information to be reviewed shall include, but need not be limited to: • longitudinal analysis of data regarding job applicants to identify whether over multiple job searches, a monitored group is disproportionately failing to move from the initial applicant pool, to the qualified applicant pool; and analysis of data regarding potential job applicants, to the extent provided by the Chancellor of the California Community Colleges, which may indicate significant underrepresentation of a monitored group.

NOTE: Local practice that complies with Title 5 Section 53005 should be inserted here and should include:

EEO Advisory Committee

• That the District shall establish an EEO Advisory Committee; and • That the advisory committee shall include a diverse membership whenever possible. • The advisory committee shall receive training in all of the following: applicable Title 5 regulations and of state and federal nondiscrimination laws; the educational benefits of workforce diversity, the identification and elimination of bias in hiring decisions; and the role of the advisory committee in carrying out of the District's EEO Plan.

NOTE: The following is suggested as good practice/optional:

The responsibilities of the Committee shall include but not be limited to the following:

• review and advise on recruitment efforts; job announcements, interview protocols, retention efforts and other aspects of the hiring, retention, and promotion processes that impact the District's ability to attract and retain a diverse faculty and staff; • advise on implementing the District's obligation to hire faculty and administrators with a demonstrated sensitivity to, and understanding of, the diverse academic, socioeconomic, cultural, disability and ethnic backgrounds of community college students; • promote communication with community groups and organizations for people with disabilities; • promote hiring of faculty who have, themselves, graduated from a community college; • develop communications among departments to foster understandings of the Plan; • to advise the [CEO] regarding special training or staff development needs; • review the Plan and monitor its progress; • recommend changes needed in the Plan; and • review and approve the annual written report to the [CEO], the Board of Trustees, and the California Community Colleges Chancellor's Office.

Employment Procedures

Job Analysis and Validation: The [designate position] shall assure that a proper job analysis is performed for every job filled by the District to determine and validate the knowledge, skills, abilities and characteristics an employee must possess to perform the job satisfactorily.

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satisfy job specifications set forth in the job announcement. The group of candidates who meet the job specifications shall constitute the “qualified applicant pool.”

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NOTE: Procedures to be used must address or include that:

- Hiring procedures will be provided to the California Community Colleges Chancellor’s Office on request.
- All tests conform to generally applicable legal standards for uniformity.
- A reasonable number of candidates are identified for interview.
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- Every screening and selection committee includes an individual trained to monitor conformance with EEO requirements. The [designate position] assures that the screening and selection process conforms to accepted principles and practices, including preparation of job related questions in advance; maintains records of screening checklists and rating scales, which shall be signed and kept on file; maintains notes for all interviews and record relevant factual reasons stating why a candidate was not hired or was not invited to interview; and monitors the hiring process for adverse impact.
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If the District determines that a particular monitored group is significantly underrepresented with respect to one or more job categories, the District shall take the following additional steps:

- review its recruitment procedures;
- consult with counsel to determine whether there are other, additional measures that may be undertaken that are required or permitted by law;
- consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account and implement any such techniques that are feasible;
- If significant underrepresentation persists:
- review each locally-established job qualification to determine if it is job related and
- consistent with business necessity;
- discontinue the use of any non-job-related local qualification; and
- continue using job-related local qualifications only if no alternative standard is reasonably available; and
- consider the implementation of additional measures designed to promote diversity.

NOTE: Insert local practice regarding the delegation of authority for implementing the District’s EEO Plan, which must comply with Title 5 Section 53020, as amended. These procedures must include or address:

Delegation of Authority

- The designation of a single person as the “EEO Officer” charged with overseeing the day-to-day implementation of the EEO Plan and programs.
- Processes and responsibilities when the EEO Officer is named in a complaint or implicated by the allegations in a complaint.

NOTE: Insert local practice regarding internal complaints of discrimination. The following elements are required by Title 5 Section 59320.

Complaint Procedure

The District must identify to the public and to the California Community Colleges Chancellor’s Office an individual described in Title 5 as the “responsible District officer,” responsible for receiving complaints. Informal charges of unlawful discrimination should be brought to the attention of the responsible District officer. The responsible District officer shall oversee the informal resolution process. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract. An outside investigator must be used

when the responsible District officer is named in the complaint or implicated by the allegations in the complaint.

When a person brings charges of unlawful discrimination the officer must:

- Undertake efforts to resolve the charge informally;
- Advise the complainant that he/she need not participate in an informal resolution of the complaint;
- Notify the complainant of the procedures for filing a formal complaint;
- Notify the complainant that he/she may file a complaint with the Office of Civil Rights of the U.S. Department of Education.
- If the complainant, a student or an employee, files a formal complaint, the responsible District officer must also forward a copy of the complaint to the California Community Colleges Chancellor's Office.

A formal complaint not involving employment, must be processed if it is filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation.

A formal complaint alleging discrimination in employment must be filed within 180 days of the date of the alleged unlawful discrimination, unless the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the initial 180 days.

The complaint must be filed by someone who alleges that he/she has personally suffered unlawful discrimination, or by someone who has learned about unlawful discrimination in his/her official capacity.

When a proper complaint is received, the District will begin an impartial fact-finding investigation, and notify the complainant and the California Community Colleges Chancellor's Office that it is doing so.

When the investigation is done, the results must be set forth in a written report. The written report must include a description of the circumstances giving rise to the complaint, a summary of the testimony of each witness, an analysis of any relevant data or other evidence collected during the investigation, a specific finding as to whether discrimination did or did not occur with respect to each allegation in the complaint, and any other appropriate information.

In any case that does not involve employment discrimination, the District must provide the California Community Colleges Chancellor's Office with a copy of the investigative report within 90 days from the date the District received the complaint. The District must also provide the complainant with a copy or summary of the investigative report within 90 days from the date the District received the complaint. The California Community Colleges Chancellor's Office and the complainant must also be provided with a written notice setting forth the determination of the [designate position] as to whether discrimination did or did not occur with respect to each allegation in the complaint; a description of action taken, if any, to prevent similar problems from occurring in the future; the proposed resolution of the complaint; and notice of the complainant's right to appeal to the District's Governing Board and the California Community Colleges Chancellor's Office.

In any case that involves employment discrimination, the District must provide the complainant with a copy or summary of the report, and with written notice setting forth the determination of the [designate position] as to whether discrimination did or did not occur with respect to each allegation in the complaint; a description of action taken, if any, to prevent similar problems from occurring in the future; the proposed resolution of the complaint; and the complainant's right to appeal to the District's Governing Board and to file a complaint with the Department of Fair Employment and Housing (DFEH).

If the complainant is not satisfied with the results of the administrative determination, the complainant must be given the opportunity to submit a written appeal to the governing board within 15 days from the date of the notice of the administrative determination. The Board must review the original complaint, the investigative report, the administrative determination, and the appeal and must issue a final District decision within 45 days of receiving the appeal.

In any case not involving employment discrimination, a copy of the final District decision must be promptly forwarded to the complainant and the California Community Colleges Chancellor's Office. The complainant must be notified of his/her right to appeal. In any case involving employment discrimination, a copy of the final District decision must be promptly forwarded to the complainant. The complainant must be notified of his/her to right to file

a complaint with the DFEH.

Where the Board does not act within 45 days the administrative determination must be deemed approved and must become the final District decision. The District shall promptly notify the complainant and in cases not involving employment discrimination, the California Community Colleges Chancellor's Office, that the Board took no action and the administrative determination becomes the final District decision. In cases not involving employment discrimination, the complainant must be informed of his/her right to appeal the District's decision to the California Community Colleges Chancellor's Office. In cases involving employment discrimination, the complainant shall be notified of his/her right to file a complaint with the DFEH.

In cases not involving employment discrimination, the complainant must be given the right to file a written appeal with the California Community Colleges Chancellor's Office within 30 days after the Board issues the final District decision, permits the administrative decision to become final or from the date that notice of the District's final decision was provided to the complainant pursuant to Section 59338(b) or (d), whichever is later.

The District should retain and make available the original complaint, and copies of the final decision or a statement indicating the date on which the administrative determination became final, the notice given to complainant, the complainant's appeal of the District's administrative determination, the investigative report and any other information the California Community Colleges Chancellor's Office may require.

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All job announcements shall contain a statement in substantially the following form: The District is an equal opportunity employer. The policy of the District is to encourage applications from ethnic and racial minorities, women, persons with disabilities, and Vietnam-era veterans. No person shall be denied employment because of ethnicity or race, color, sex or gender, gender identity, age, religion, marital status, disability, sexual orientation, national origin, medical conditions, status as a Vietnam-era veteran, ancestry, or political or organizational affiliation.

NOTE: The following is suggested as good practice/optional:

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All managers and supervisors shall be given copies of the plan as revised from time to time and any guidelines for implementing the plan. Copies of the plan shall be provided to the Academic Senate and the exclusive representatives of any units of employees.

Statements of nondiscrimination shall be posted at locations where applications for employment are distributed.

Such plans shall be reviewed at least every three years and, if necessary, revised and submitted to the California Community Colleges Chancellor's Office within 90 days of the effective date of the revision or amendment(s). If the California Community Colleges Chancellor's Office determines that the District's policies are not in compliance with Title 5 Sections 59300 et seq., the California Community Colleges Chancellor's Office may require the District to modify its policies.

Accountability and Corrective Action

The District shall certify annually to the Chancellor of the California Community Colleges that they have timely:

- Recorded, reviewed and reported the data required regarding qualified applicant pools;
- Reviewed and updated, as needed, the Strategies Component of the district's EEO Plan; and
- Investigated and appropriately responded to formal harassment or discrimination complaints filed pursuant to subchapter 5 (commencing with Section 59300) of chapter 10 of this division.

Draft saved by Nikac, Stacey: Administrator

2/2/2018, 3:31PM EST

Edited by Nikac, Stacey: Administrator

2/2/2018, 3:31PM EST

HR to review legal update #31. See comments.