

**Harassment and Discrimination****4640**

Members of a college community, including— students, faculty, staff and visitors,— must be able to study and work in an atmosphere of mutual respect and trust. Foothill-De Anza Community College District is actively committed to creating and maintaining an environment which respects the dignity of individuals and groups. The Board of Trustees supports an educational and employment environment where diverse cultures, abilities and needs are respected and where diversity offers opportunities for learning and for personal and professional fulfillment. The District is committed to providing an educational and employment environment free of unlawful harassment and discrimination. Faculty, staff and students must be assured that the District will take action to prevent misconduct.

Accordingly, the Board adopts the following:

It is the Policy of the Foothill-De Anza Community College District to provide an educational and employment environment free of unlawful harassment and discrimination. The Board shall not discriminate against any person in the provision of any program or service based on ethnic group identification, race, religious creed, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or gender, age, sexual orientation or gender identity, or any other legally protected 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. Anyone who engages in unlawful harassment or discrimination shall be subject to sanctions up to and including termination of employment or expulsion in accordance with applicable contractual, procedural and statutory requirements.

**Harassment**

Harassment based on ethnic group identification, race, religious creed religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or gender, age, sexual orientation, or gender identity of a person, or any other legally protected status, or harassment based on the perception that a person has one or more of these statuses or associates with a person or persons perceived as having one or more of these statuses constitutes unlawful harassment and violates District policy.

Unlawful harassment comes in many forms and may include but is not limited to the conduct described below:

**Verbal:** Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race, gender, sexual orientation, or other legally protected status. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status, or

sexual orientation; unwelcome flirting, whistling, or propositions; demands for sexual favors; verbal abuse, threats or intimidation.

**Physical:** Inappropriate or offensive touching, assault, or physical interference with free movement. This may include, but is not limited to kissing, patting, lingering or intimate touches, grabbing, pinching, unnecessarily brushing against or blocking another person, or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's race, gender, sexual orientation, or other legally protected status. It may also include leering and staring.

**Visual or Written:** The display or circulation of visual or written material that degrades an individual or groups based on race, gender, sexual orientation, or other legally protected status. This may include, but is not limited to, posters, cartoons, drawing, graffiti, reading materials, computer graphics, or electronic media transmissions.

**Environmental:** A hostile academic or work environment exists where it is permeated by innuendo or insults or abusive comments directed at an individual or group based on race, gender, sexual orientation, or other legally protected status. An environment may in some circumstances also be hostile toward anyone who merely witnesses unlawful harassment in his or her immediate surroundings, although the conduct is directed at others.

For an unlawful harassment or hostile environment claim to be valid, in general the conduct must be sufficiently severe or pervasive so as to alter the conditions of the employment or educational environment. Subjective perception alone is insufficient evidence for a claim to be valid; an objective appraisal must be considered as well. The conduct shall be evaluated from the objective viewpoint of a reasonable person facing the same conditions.

### **Sexual Harassment**

As noted throughout the preceding section of this Policy, sexual harassment may be verbal, visual, written, physical or environmental and, as such, is a form of unlawful harassment.

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature when submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment or academic status or progress.

“Quid pro quo” harassment occurs when submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

“Hostile environment” harassment occurs when the conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment.

### **Retaliation**

The District seeks to foster an environment in which all employees and students feel free to report incidents of harassment or discrimination without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against any individual for filing a complaint of harassment or discrimination or for participating in an investigation of such complaints. Such conduct is illegal and constitutes a violation of this Policy. All allegations of retaliation will be investigated. Any individual found to have violated this Policy will be subject to disciplinary sanctions, up to and including termination of employment or expulsion in accordance with applicable contractual, procedural and statutory requirements.

### **Academic Freedom**

While the Board recognizes that academic freedom does not allow harassment or any other form of unlawful discrimination, the Board reaffirms its commitment to academic freedom as established in Board Policy on Academic Freedom (4190). The lecture, content and discourse (including rhetorical strategies) that are an integral part of the course or which serve a legitimate pedagogical purpose shall in no event constitute harassment or other forms of unlawful discrimination. In cases involving questions of academic freedom, the District shall consult with the Academic Senates whenever possible or with other appropriate faculty representatives as needed, consistent with Administrative Procedures 4640.

### **Complaints**

Appropriate action shall be taken immediately against individuals determined to be in violation of this Policy. Any individual who believes that he or she has been a victim of harassment or discrimination or retaliation in violation of this Policy may file a complaint ~~within one year of the alleged unlawful harassment or discrimination or within one year of the date on which the complainant knew or should have known of the facts of the incident(s)~~ in accordance with California Code of Regulation, Title 5, Sections 59300 et seq. and District Procedures regarding investigation and resolution of complaints regarding harassment and discrimination.

The District has developed procedures to address complaints of discrimination, harassment and retaliation. Complaints filed by an employee of the District against another employee or student, or a student against an employee of the District, shall be referred and handled pursuant to the District’s “Administrative Procedures: Investigation and Resolution of Complaints Regarding Harassment and Discrimination.”

Complaints filed by a student against another student, or student against the criteria of a program, shall be referred and handled pursuant to the District's "Procedures to Resolve Student Complaints of Harassment and Discrimination."

Complaints filed by students or employees regarding harassment or discrimination by third parties who are not themselves students or employees in the District shall be investigated. Additionally, the District shall forward written notice to the responsible party with a request for an investigation of the incident(s) and a report of the findings to be sent to the District.

Copies of the District's Administrative Procedures: Investigation and Resolution of Complaints Regarding Harassment and Discrimination, Procedures to Resolve Student Complaints of Harassment and Discrimination, and the District's Unlawful Harassment and Discrimination Complaint forms are available in the District Human Resources Office, the District Chancellor's Office, the President's Office at each campus, the Office of the Vice President for Student Services (De Anza), and the Office of the Vice President of Student Development and Instruction (Foothill).

Approved 5/3/82

Amended 11/15/93; 5/1/95, 12/12/05, ??/??/08

Reference: Education Code §§ 212.5; 44100; 66281.5

Title IX, Education Amendments of 1972

Title 5, §§ 59320 et seq.

Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000E

Board Policy 4190

**FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT****Administrative Procedures: Investigation and Resolution of  
Complaints Regarding Harassment and Discrimination  
(Pursuant to California Code of Regulations, Title 5, Sections 59300 et seq.)****INTRODUCTION AND SCOPE**

Members of a college community - students, faculty, staff and visitors - must be able to study and work in an atmosphere of mutual respect and trust. Foothill-De Anza Community College District is actively committed to creating and maintaining an environment which respects the dignity of individuals and groups.

The goal of the Foothill-De Anza Community College District is to have a process that is sensitive to both the needs of students, staff and individuals who interact with the college community, and the rights of those against whom allegations have been made.

The policy of the Foothill-De Anza Community College District is to provide an educational and employment environment in which no person shall be unlawfully subjected to harassment or discrimination in whole or in part on the basis of ethnic group identification, race, ~~religious creed~~ religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or gender, age, sexual orientation, ~~gender identify~~ or any other legally protected 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, or be unlawfully denied full and equal access to or the benefits of, 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.

The procedures outlined below govern the process of complaints filed by an employee of the District against another employee, or a student against an employee of the District. If the complainant is a student and the respondent is also a student, such complaints shall be referred and handled pursuant to the District's *Procedures to Resolve Student-To-Student Complaints of Sexual Harassment and Discrimination*. Employees who believe they are being harassed by students should refer to the appropriate college regulations on disruptive students. Complaints by students or employees regarding harassment or discrimination by third parties who are not themselves students or employees in the District shall be forwarded to the responsible party with a written request for 1) an investigation of the incident(s) giving rise to the complaint, and 2) a report of the findings to be sent to the District.

**I. HARASSMENT POLICY**

The Foothill-De Anza Community College District provides a working and learning environment free of unlawful harassment and discrimination. The comprehensive District policy for Harassment and Discrimination is contained in District Board Policy 4640.

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**II. EMPLOYEE AND STUDENT NOTIFICATION, TRAINING AND EDUCATION**

The District provides training and/or information to employees and students on the District's harassment and discrimination policy and procedures. Faculty, administrators and classified staff receive a copy of the District's written policy on harassment and discrimination at the beginning of each academic year.

Each new District employee is required to sign a form acknowledging receipt of the policy and procedures. The District shall offer training to all staff annually. Because of their special responsibilities under the law, District administrators and supervisors are required to participate in mandatory training within 6 months of employment and thereafter once every two years. Such training shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of harassment, discrimination and retaliation.

District employees involved in any aspect of investigating or resolving a complaint of harassment or discrimination receive training in the handling of such complaints in advance of their service in such capacity.

A training program or informational service is available to all students at least once annually. The student training or informational service includes an explanation of the policy, how it works, and how to file a complaint. In addition, a copy of the District's written policy on harassment and discrimination as it pertains to students, is provided as part of any orientation program conducted for new students.

**III. RETALIATION**

It is unlawful for anyone to retaliate against someone who files a harassment or discrimination complaint, who refers a matter for investigation of a 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 the District harassment and discrimination policy.

**IV. ACADEMIC FREEDOM**

The Foothill-De Anza Community College District Board of Trustees reaffirms its commitment to academic freedom, and recognizes that academic freedom does not allow harassment or any other form of unlawful discrimination. The lecture, content, and discourse that are an integral part of the course content and discourse (including rhetorical strategies) shall in no event constitute harassment or discrimination. It is recognized that an essential function of education is a probing of opinions and an exploration of ideas that may unsettle some students. The Foothill-De Anza Community College District values the faculty's right to teach and the student's right to learn. Finally, nothing in these policies and procedures shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity. In cases involving questions of academic freedom the District shall consult with the Academic Senates

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whenever possible or with other appropriate faculty representatives as needed.

## V. DEFINITIONS

Definitions applicable to nondiscrimination policies are as follows:

1. **Appeal:** A request by a complainant made in writing to the District Board of Trustees pursuant to Section 59338 of the California Code of Regulations, Title 5, and/or for cases not involving employment discrimination, to the State Chancellor's Office pursuant to Section 59339 to review the administrative determination of the District regarding a complaint of harassment or discrimination.
2. **Campus Coordinator:** The designated campus administrator responsible for implementing the harassment and discrimination policy and procedures and for resolving informal complaints on each campus.
3. **Central Services Coordinator:** The designated Central Services administrator responsible for implementing the harassment and discrimination policy and procedures, and for resolving informal complaints at Central Services.
4. **Complaint:** A written and signed statement meeting the requirements of Section 59328 of Title 5, California Code of Regulation which alleges unlawful harassment or discrimination.
- 4.5. **Complainant(s):** An individual or group of individuals who believe that he/she/they have been victim of harassment or discrimination.
5. **Days:** Calendar days, unless otherwise specified.
6. **Determination Panel:** This group, composed of the Vice Chancellor of Human Resources, and the two college Presidents or persons appointed by any of them as designees, is responsible for determining the findings of a formal investigation and recommending appropriate action. Every effort is made to incorporate broad representation on the Determination Panel.
7. **District**
8. **District OfficerCoordinator:** The person responsible for coordinating the formal investigation of all harassment and discrimination complaints filed by or against a faculty, staff or administrative employee, and for overseeing informal resolution processes.
9. **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.
10. **Mental disability:** includes but is not limited to, all of the following:

- a. (1) Having any mental or psychological disorder or condition such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities that limits a major life activity.
- b. (2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires specialized supportive services.
- c. (3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2) which is known to the District.
- d. (4) Being regarded or treated by the District as having, or having had, any mental condition that makes achievement of a major life activity difficult.
- e. (5) Being regarded or treated by the District as having or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

“Mental disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

**10.11. Physical Disability:** includes, but is not limited to, all of the following:

- a. (1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following: a) affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; and b) limits a major life activity.
- b. (2) Any other health impairment not described in paragraph (1) that requires specialized supportive services.
- c. (3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2) which is known to the District.
- d. (4) Being regarded or treated by the District as having, or having had, any physical condition that makes achievement of a major life activity difficult.
- e. (5) Being regarded or treated by the District as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

**10.12. Representative:** A person selected by the complainant or the respondent to advise them in this process. A representative may be a union representative, colleague, legal counsel or another individual selected by the party.

~~11~~13. ~~12.~~ **Respondent(s):** An individual or group of individuals against whom a claim of harassment or discrimination is made.

~~12~~14. **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 above (see #9). Discrimination on the basis of sex or gender also includes sexual harassment.

~~13~~15. **Sexual harassment:** A form of sex discrimination that includes 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:

- Making unsolicited written, verbal, physical, and/or visual contacts with sexual overtones. (Examples of sexual harassment which appear in a written form include, but are not limited to: suggestive or obscene letters, notes, invitations. Examples of verbal sexual harassment include, but are not limited to: derogatory comments, slurs, jokes, or epithets. Examples of physical sexual harassment include, but are not limited to: assault, unwelcome touching, impeding or blocking movements. Examples of visual sexual harassment include, but are not limited to: leering, gestures, displays of sexually aggressive objects or pictures, cartoons, or posters).
- Continuing to express sexual interest after being informed that the interest is unwelcome.
- Making reprisals, threats of reprisal, or implied threats of reprisal following rebuff of harassing behavior. The following are examples of this type of sexual harassment within the learning place: implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied.
- Engaging in explicit or implicit coercive sexual behavior within the work environment which is used to control, influence, or affect an employee's career, salary, and/or work environment.
- Engaging in explicit or implicit coercive sexual behavior within the educational environment that is used to control, influence, or affect a student's educational opportunities, grades, and/or learning environment.
- 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.
- Awarding educational or employment benefits, such as grades or duties or shifts,

recommendation, reclassification, etc., to any student or employee with whom the decision-maker has a sexual relationship and denying such benefits to other students or employees.

**14. Sexual Orientation:** Heterosexuality, homosexuality, or bisexuality.

**15. Working Days:** The days that the District Office is open for customary business.

## VI. RESPONSIBLE DISTRICT OFFICER

The Vice Chancellor of Human Resources and Equal Opportunity is the District Officer responsible for the administration and implementation of these policies and procedures. The Vice Chancellor may be contacted at (650) 949-6210, Foothill-De Anza Community College District, 12345 El Monte Road, Los Altos Hills, CA 94022.

## VII. COMPLAINT PROCEDURES

In accordance with Board policy prohibiting unlawful harassment and discrimination the purpose of these procedures is to provide both an informal and a formal process for the filing and investigation of complaints, to prohibit retaliation against victims of discrimination, and to work toward its prevention.

An individual who believes that he/she has been unlawfully harassed or discriminated against in any program or activity that is funded directly by, or that receives any financial assistance from the State Chancellor or Board of Governors of the California Community Colleges, may file a complaint with a Campus or District Central Services Coordinator or with the Vice Chancellor of Human Resources and Equal Opportunity.

### A. How To File A Complaint

The District encourages its employees and students to contact the appropriate Campus Coordinator prior to filing a formal complaint or to obtain assistance in determining whether or not an individual has been or is a victim of harassment or discrimination. The designated Campus Coordinator for Foothill College is the Dean of Student Affairs and Activities, 12345 El Monte Road, Los Altos Hills, CA 94022, (650) 949-7241; the designated Campus Coordinator for De Anza College is the Dean of Student Development and EOPS, 21250 Stevens Creek Boulevard, Cupertino, CA 95014, (408) 864-8828; for Central Services, please call the Office of Human Resources and Equal Opportunity (650) 949-6210.

For formal complaints, completed and signed Unlawful Harassment and Discrimination Complaint forms are to be mailed or taken to the Human Resources Office, to the attention of the Vice Chancellor of Human Resources and Equal Opportunity, Foothill-De Anza Community College District, 12345 El Monte Road, Los Altos Hills, CA 94022.

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A copy of these procedures, and the District's Unlawful Discrimination Complaint forms, are available in the District Human Resources Office, the Office of the Dean of Student Development and EOPS (De Anza), the Office of the Dean of Student Affairs and Activities (Foothill), and the Office of the Vice President for Student Services (De Anza). Complaint procedures and forms are also available online and can be accessed via the District's Web site at <http://hr.fhda.edu/diversity/policies>.

### **B. Informal Complaint Procedure**

The purpose of the informal complaint procedure is to allow individuals who believe that they have been harassed or discriminated against to resolve the issue through a mediation process rather than a more formal procedure. If informal resolution of the concern is possible, it is not necessary to pursue a formal complaint.

- a.1. A person who alleges that he or she has personally suffered harassment or discrimination, or would like assistance in determining whether or not he or she has been or is a victim of harassment or discrimination, should be referred to the designated Campus or Central Services Coordinator at either campus or may contact the District Coordinator directly to discuss his or her concerns.
2. The Campus or District Central Services Coordinator shall meet with the concerned individual to:
  - a. Undertake efforts to informally resolve the complaint;
  - b. Give the complainant a copy of the District policy and procedure concerning such unlawful harassment and discrimination and inform the complainant of his or her rights under any relevant complaint procedure, policy or collective bargaining procedure.
  - c. Advise the complainant that he or she need not participate in informal resolution;
  - d. Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for doing so;
  - e. Assure the complainant that he or she will not be required to confront or work out problems with the person accused of unlawful discrimination;
  - f. Advise the complainant of legal protection against retaliation for filing a complaint of unlawful discrimination or harassment.
    - a. Advise the complainant that he/she may file a complaint with the following where the complaint is within the jurisdiction of these agencies:

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- a. If non-employment related, with the Office for Civil Rights/San Francisco, U.S. Department of Education, in accordance with procedures available via the website at [www.de.gov/ocr](http://www.de.gov/ocr),
  - b. If employment related, with: 1) the Department of Fair Employment and Housing (DFEH), in accordance with procedures available via the website at [www.dfeh.ca.gov](http://www.dfeh.ca.gov); and/or 2) the U.S. Equal Employment Opportunity Commission (EEOC), in accordance with procedures available via the website at [www.eeoc.gov](http://www.eeoc.gov). Advise the complainant that he or she may file a nonemployment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR), 50 United Nation Plaza, Room 239, San Francisco, CA 94102, where such a complaint is within that agency's jurisdiction, or if employment related with the Department of Fair Employment and Housing (DFEH), 30 Van Ness Avenue, Suite 300, San Francisco, CA 94102, and/or the U.S. Equal Employment Opportunity Commission (EEOC), 901 Market Street, Suite 500, San Francisco, CA 94103, where the complaint is within the jurisdiction of those agencies at the time of filing an informal complaint, or during or after use of the District harassment or discrimination formal complaint process.
3. The Campus or Central Services Coordinator shall advise each party (the complainant and respondent) shall be advised that each may be accompanied by a representative throughout the informal process.
4. If the parties agree to a proposed resolution that does not include disciplinary action, the resolution shall be implemented and the informal process shall be concluded. At any time during the informal process, the complainant may initiate a formal complaint by completing and signing the District's Unlawful Harassment and Discrimination Complaint form or an approved form obtained from the California State Chancellor's Office.
5. 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 Section 59334 of Title 5, California Code of Regulations, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. 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.

### **C. Formal Complaint Procedure**

A formal written complaint of unlawful harassment or discrimination should be filed on the District's Unlawful Harassment and Discrimination Complaint form. The District's complaint form can be obtained from the District Web site at <http://hr.fhda.edu/diversity/policies>. An approved complaint form can also be obtained from the State Chancellor's Web site as follows: <http://betasite.eeoco.edu/divisions/legal/Discrimination/discrimination.htm>. [www.cccco.edu](http://www.cccco.edu) and then click to System Office/Divisions/Legal Affairs.

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The completed form will be filed with the Vice Chancellor of Human Resources and Equal Opportunity or designee.

On the Complaint form, the complainant shall describe in detail the alleged harassment or discrimination and the action the complainant requests to resolve the matter. The complaint must be signed and dated and shall contain at least the name(s) of the individual(s) involved, the approximate date(s) of the event(s) at issue and a description of the actions constituting the alleged harassment or discrimination.

#### **D. Criteria for a Formal Complaint**

When a formal written complaint is filed, an investigation will be initiated if the complaint meets the following requirements:

- a. The complaint alleges unlawful harassment or discrimination prohibited under Section 59300 of Title 5, California Code of Regulations;
- b. The complaint is filed by someone who alleges that he or she has personally suffered unlawful harassment or discrimination, or by someone who has learned of such unlawful harassment or discrimination in his or her official capacity as a District employee;
- c. In any complaint not involving employment (i.e., student vs. employee), the complaint 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 of unlawful discrimination; and
- d. In any complaint involving employment (i.e., employee vs. employee), the complaint is filed within 180 days (six months) of the date of the alleged unlawful harassment or discrimination occurred, except that this period will be extended by no more than 90 days following the expiration of that 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of 180 days.

#### **E. Defective Complaints**

~~The District will notify the complainant and the Chancellor of a defective complaints will be returned to the complainant within three (3) working days of receipt by the District Officer (Vice Chancellor of Human Resources or her/his designee) that the complaint does not meet the criteria for a formal complaint with an complete explanation of why an investigation could not be initiated under Title 5, California Code of Regulations, Section 59300 et seq as to why the complaint is defective.~~

#### **G. Complaints Filed with DFEH or EEOC**

~~The District shall forward a copy of any filings by a complainant with the DFEH or the EEOC to the State Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under these procedures.~~

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## VIII. INVESTIGATION UPON FILING A FORMAL WRITTEN COMPLAINT

Once a complaint is put submitted in writing on the required form(s) and in accordance with the criteria prescribed above, and is signed by the complainant, the complaint is considered to be formal and the formal complaint procedures will be followed.

~~When a formal written complaint is filed, an investigation will be initiated if the complaint meets the following requirements:~~

- ~~□ The complaint alleges unlawful harassment or discrimination prohibited under Section 59300 of Title 5, California Code of Regulations.~~
- ~~□ The complaint is filed by someone who alleges that he or she has personally suffered unlawful harassment or discrimination, or by someone who has learned of such unlawful harassment or discrimination in his or her official capacity as a District employee.~~
- ~~□ The complaint is non-employment based (i.e., student vs. employee) and 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 of unlawful discrimination.~~
- ~~□ The complaint is employment based (i.e., employee vs. employee) and is filed within 180 days (six months) of the date of the alleged unlawful harassment or discrimination occurred, except that this period will be extended by no more than 90 days following the expiration of that 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of 180 days.~~

~~Defective complaints will be returned within three (3) working days of receipt by the Vice Chancellor of Human Resources or designee to the complainant with a complete explanation of why an investigation could not be initiated under Title 5, California Code of Regulations, Section 59300 et seq.~~

~~Within three (3) working days upon receipt of a complaint filed in accordance with the regulations, the Vice Chancellor of Human Resources and Equal Opportunity shall assign the actual investigation of complaints to other staff or to outside persons or organizations under contract with the District, and shall forward a copy of the complaint to the State Chancellor's Office. Similarly, when the State Chancellor's Office receives a complaint filed in accordance with the regulations, a copy will be forwarded to the District. The complainant shall be advised that he/she may file a non-employment based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR), 50 United Nation Plaza, Room 239, San Francisco, CA 94102, where such a complaint is within that agency's jurisdiction, or if employment related with the Department of Fair Employment and Housing (DFEH), 30 Van Ness Avenue, Suite 300, San Francisco, CA 94102, and/or the U.S. Equal Employment Opportunity Commission (EEOC), 901 Market Street, Suite 500, San Francisco, CA 94103, where the complaint is within the~~

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jurisdiction of these agencies. (MOVED)

#### A. Notice to the Complainant

Once a formal complaint is properly filed as described above, the District shall:

- b. Notify the complainant that the complaint has been received.
- c. Provide the complainant with a copy of the District policy and procedure concerning unlawful harassment and discrimination and inform the complainant of her/his rights under any relevant complaint procedure, policy or collective bargaining agreement.
- d. Advise the complainant of his/her right of legal protection against retaliation for filing a complaint of unlawful harassment or discrimination.
- e. Advise the complainant of both the limits and obligations of confidentiality and anonymity within the constraints of the investigative process.
- f. Advise the complainant that he/she may file a ~~non-employment based~~ complaint with the following where the complaint is within the jurisdiction of these agencies:
  - a. If non-employment related, with the Office for Civil Rights/San Francisco, ~~of the U.S. Department of Education (OCR), 50 United Nation Plaza, Room 239, San Francisco, CA 94102~~ in accordance with procedures available via the website at [www.de.gov/ocr](http://www.de.gov/ocr), ~~where such a complaint is within that agency's jurisdiction, or,~~
  - b. If employment-related, with: 1) the Department of Fair Employment and Housing (DFEH), ~~30 Van Ness Avenue, Suite 300, San Francisco, CA 94102~~, in accordance with procedures available via the website at [www.dfeh.ca.gov](http://www.dfeh.ca.gov); and/or 2) the U.S. Equal Employment Opportunity Commission (EEOC), ~~901 Market Street, Suite 500, San Francisco, CA 94103~~ in accordance with procedures available via the website at [www.eeoc.gov](http://www.eeoc.gov), ~~where the complaint is within the jurisdiction of those agencies.~~

Notice to the complainant shall occur as soon as possible and appropriate within the circumstances, normally within five (5) working days.

#### B. Notice to Respondent

Once a formal complaint is ~~properly filed in accordance with the regulations as described above~~, the District shall:

- a. Notify the respondent(s) that a complaint has been filed.
- b. Provide the respondent(s) with a ~~shall be advised of that filing and shall be forwarded~~ a copy of the complaint and a copy of the District policy and procedure concerning unlawful harassment and discrimination ~~these procedures~~.
- c. Advise the respondent that an assessment of the accuracy of the allegations has not yet been made.
- d. Advise the respondent that the complaint will be investigated ~~and that s/he will be provided~~ an opportunity to present her/his side of the matter and respond to each allegation.

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- e. Advise the respondent that s/he has the right to have a representative present during the investigation.
- f. Advise the respondent that any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.
- g. Advise the respondent of both the limits and obligations of confidentiality and anonymity within the constraints of the investigation.

Notice to the respondent shall occur as soon as possible and appropriate within the circumstances, normally within five (5) working days. ~~This shall occur as soon as possible and appropriate under the circumstances (normally within five (5) working days).~~ The respondent(s) shall also be advised that:

- a. An assessment of the accuracy of the allegations has not yet been made;
- b. The complaint will be investigated;
- c. He or she will be provided an opportunity to present his or her side of the matter;
- d. He or she has the right to have a representative present during the investigation; and,
- e. a. Any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided. (MOVED)

### **C. Investigation Process**

Within three (3) working days upon receipt of a complaint filed in accordance with the regulations, the Vice Chancellor of Human Resources and Equal Opportunity shall assign the actual investigation of complaints to other staff or to outside persons or organizations under contract with the District, and shall forward a copy of the complaint to the State Chancellor's Office. Similarly, when the State Chancellor's Office receives a complaint filed in accordance with the regulations, a copy will be forwarded to the District.

The investigator shall, within ten (10) working days of the complainant's referral to the formal process, give the complainant an opportunity to meet with the investigator to review the nature of the complaint and identify the scope and nature of the investigation. If the complainant fails to meet with the investigator within a reasonable time (usually 15 working days), the District will continue the investigation to the best of its abilities based on the written formal complaint.

Within ten (10) working days of meeting with the complainant, or 15 days as noted above, the investigator shall give the respondent an opportunity to meet with the investigator to receive the respondent's answer to the complaint and to review with the respondent the scope and nature of the investigation. If the respondent fails to meet with the investigator within a reasonable time, (usually 15 working days), the District will continue the investigation to the best of its abilities.

The investigator shall complete a full impartial fact-finding investigation. Parties may identify witnesses and may present documents in support of their positions. The parties may present written and oral evidence. The proceedings may be recorded on audio tape or such other method (such as stenographic record) as mutually agreed upon by the formal process investigator and the interviewee.

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The investigator will review all credible factual information presented and incorporate such information into the investigative report. Confidentiality will be maintained to the extent possible.

Once the investigation is complete, the investigator ~~will meet with~~ contact the complainant and respondent separately to give an overview of the steps taken during the investigation and to request additional information. Complainant and respondent will also be asked for the names of any others the investigator should speak with or if there is any thing else he/she would like for the investigator to review before finalizing the report.

The results of the investigation shall be set forth in a written report and presented to the District Officer who shall present the report to the Determination Panel. The report shall include the following:

- a. a description of the circumstances giving rise to the complaint;
- b. a summary of the information provided by each witness, including the complainant, the respondent and any witnesses identified by the complainant and respondent;.
- c. an analysis of any relevant data or other evidence collected during the course of the investigation; and
- d. any other information deemed appropriate.

~~After completion of the investigation, the investigator shall meet with the "Determination Panel" which shall be responsible for reviewing the investigative report, and making a specific finding as to whether there is probable cause to believe that harassment or discrimination occurred with respect to each allegation in the complaint, and recommending to the administration appropriate discipline, if any. The Panel's findings shall take into consideration the severity of the conduct, the pervasiveness of the conduct, the pertinent background, and other relevant District policies. (MOVED)~~

If disciplinary action is recommended, appropriate contractual and statutory processes shall be invoked. If the Determination Panel finds there is no evidence to sustain the allegations, the record shall be kept confidential except to the extent that disclosure may be required by law.

## XI. ADMINISTRATIVE DETERMINATION

### A. The Determination Panel

After completion of the investigation, ~~the investigator shall meet with~~ the "Determination Panel" which shall be responsible for reviewing the investigative report, and making a specific finding as to whether there is probable cause to believe that harassment or discrimination occurred with respect to each allegation in the complaint, and recommending to the administration appropriate

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discipline, if any. The Panel, at its discretion, may invite the investigator to meet with the Panel, to present information considered as part of the investigation report and to answer questions prior to making its determination.

The Panel's findings shall take into consideration the severity of the conduct, the pervasiveness of the conduct, the pertinent background, and other relevant District policies. Upon conclusion of its consideration of the information presented, the Panel shall prepare a report of its findings. The Panel's report, at a minimum, shall include the decision of the Panel as to whether there is probable cause to believe harassment or discrimination occurred with respect to each allegation in the complaint, and recommended actions to be taken, if any, to prevent similar problems from occurring in the future and to resolve the complaint.

#### **B. Notice to the Chancellor's Office, Complainant and Respondent**

In any case not involving employment discrimination, within ninety (90) days of receiving a complaint of unlawful harassment or discrimination filed under Title 5, Sections 59300 et seq., the District will complete its investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant and respondent, and written notice setting forth all the following to both the complainant and the Chancellor:

1. The decision of the Determination Panel as to whether there is probable cause to believe harassment or discrimination occurred with respect to each allegation in the complaint;
2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
3. The proposed resolution of the complaint; and
4. The complainant's right to appeal to the District Board of Trustees and to the State Chancellor of the California Community Colleges.

In any case involving employment discrimination, within 90 days of receiving a complaint, the District shall complete its investigation and forward a copy or summary of the report to the complainant, and written notice setting forth all the following to the complainant:

1. the decision of the Determination Panel as to whether there is probably cause to believe discrimination occurred with respect to each allegation in the complaint;
2. a description of actions taken, if any, to prevent similar problems from occurring in the future;
3. the proposed resolution of the complaint; and
4. the complainant's right to appeal to the District Board of Trustees and to file a complaint

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with the Department of Fair Employment and Housing.

## IX. CONFIDENTIALITY

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

~~The District shall inform the complainant of legal protection against retaliation for filing an unlawful harassment or discrimination complaint. (MOVED)~~ If the complainant requests that his or her name not be revealed, the District shall explain that the process of investigation and determination is considered by the District to be a confidential process, to the extent allowed by law, but that it cannot guarantee the anonymity of the complainant. 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, and the District may be required to reveal the complainant's name or 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 complainant's identity of the complainant as part of the investigative process.~~ The District shall further inform the complainant of its obligation to investigate a complaint once it is formally notified of the complaint.

Complainants and witnesses must 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 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.

Respondents have the obligation to preserve confidentiality but also the right to gather evidence from others who may have first-hand knowledge of circumstances and events related to the complaint.

In any case, complainant, witnesses and respondents shall not interfere with the District's obligation to conduct an investigation.

## X. RIGHT TO PRIVACY

If an employee is dismissed as a result of an unlawful harassment or discrimination charge, Education Code Section 87740 requires that confidentiality be maintained as to the dismissal and the reasons therefore. In addition, an individual's right to privacy is not only protected by the laws of the state, but is deemed an inalienable right under Article I, Section 1 of the California Constitution. In a disciplinary action for a sexual assault/physical abuse charge, Education Code Section 76234 provides that the victim shall be informed of the results of the disciplinary action,

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but further states that the victim shall keep that information confidential

## XI. ADMINISTRATIVE DETERMINATION (MOVED)

~~Within ninety (90) days of receiving a complaint of unlawful harassment or discrimination filed under Title 5, Sections 59300 et seq., the District will complete its investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant and respondent, and written notice setting forth all the following to both the complainant and the Chancellor:~~

- ~~1. The decision of the Determination Panel as to whether there is probable cause to believe harassment or discrimination occurred with respect to each allegation in the complaint;~~
- ~~2. A description of actions taken, if any, to prevent similar problems from occurring in the future;~~
- ~~3. The proposed resolution of the complaint; and~~
- ~~4. The complainant's right to appeal to the District Board of Trustees and to the State Chancellor of the California Community Colleges.~~

~~In any case involving employment discrimination, within 90 days of receiving a complaint, the District shall complete its investigation and forward a copy or summary of the report to the complainant, and written notice setting forth all the following to the complainant:~~

- ~~1. the decision of the Determination Panel as to whether there is probably cause to believe discrimination occurred with respect to each allegation in the complaint;~~
- ~~2. a description of actions taken, if any, to prevent similar problems from occurring in the future;~~
- ~~3. the proposed resolution of the complaint; and~~
- ~~4. the complainant's right to appeal to the District Board of Trustees and to file a complaint with the Department of Fair Employment and Housing.~~

## XII. COMPLAINANT RIGHTS TO APPEAL

Complainants may appeal the results of the District's administrative determination. When the administrative determination and a copy of the investigative report or summary is mailed to the complainant, the District will notify the complainant of his or her appeal rights as follows:

### A. First Level of Appeal:

The complainant has the right to file an appeal with the District's Board of Trustees within 15

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days from the date of notice of the administrative determination. Complainants must submit all appeals in writing.

The Board of Trustees will review the original complaint, the investigative report, the administrative determination, and the appeal. The Board of Trustees will either:

- (a) issue~~Issue~~ a final District decision in the matter within forty-five (45) days after receiving the appeal; or
- (b) elect~~Elect~~ to take no action within 45 days, in which case the original decision in the administrative determination will be deemed to be affirmed and shall become the final District decision in the matter.

In any case not involving employment discrimination, the District shall forward A to the complainant and the State Chancellor a copy of the final decision rendered by the District Board of Trustees, which shall include the complainant's right to appeal the Board's decision to the State Chancellor. will be forwarded to the complainant and to the State Chancellor's Office.

In any case involving employment discrimination, the District shall forward to the complainant a copy of the final decision rendered by the District Board of Trustees, which shall include the complainant's right to file a complaint with the Department of Fair Employment and Housing (DFEH).

#### B. Second Level of Appeal:

In any case not involving employment discrimination, t~~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 District Board of Trustees issues the final District decision or permits the administrative determination to become final by taking no action within 45 days, or date of notice of the Board's decision in either of these cases, whichever is later. The appeal must be accompanied by a copy of the decision of the Board or evidence showing the date on which the complainant filed an appeal with the Board, and a statement under penalty of perjury that no response was received from the Board within 45 days from that date.

In any case involving employment discrimination, the complainant may, at any time before or after the final District decision is rendered, file a complaint with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency. In addition, the complainant may file an appeal with the California Community College Chancellor's Office within 30 days from the date that the District Board of Trustees issues the final District decision or permits the administrative determination to become final by taking no action within 45 days. The appeal must be accompanied by a copy of the decision of the Board or evidence showing the date on which the complainant filed an appeal with the Board, and a

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~~statement under penalty of perjury that no response was received from the Board within 45 days from that date.~~

Complainants must submit all appeals in writing.

#### **C. Notice to the State Chancellor**

In any case not involving employment discrimination, within 150 days of receiving a complaint, the District will forward the following to the State Chancellor of the California Community Colleges in Sacramento:

- A copy of the final District decision rendered by the Board of Trustees, 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 that was sent by the District to the complainant.
- A copy of the complainant's appeal of the District's determination.
- Any other information that the State Chancellor may require.

OR

- Notify the State Chancellor that the complainant has not filed an appeal with the Board of Trustees and that the District has closed its file.

The District shall retain and make available to the State Chancellor upon request the original complaint and all documents reference in these complaint procedures for a period of at least three years after closing a case.

#### **XIII. RESPONDENT RIGHTS TO RESPOND**

Upon receipt of the administrative determination, the respondent shall also be notified that he or she may submit a written response within ten (10) days to the Vice Chancellor of Human Resources and Equal Opportunity. The written response shall be included in the investigation file and shall be included in the information provided to the Board should the complainant file an appeal.

If disciplinary action is taken by the Board, the respondent is entitled to the protections provided by the Education Code, the Government Code and the appropriate collective bargaining agreement.

#### **XIV. FORWARD TO THE STATE CHANCELLOR (MOVED)**

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~~In any case not involving employment discrimination, within 150 days of receiving a complaint, the District will forward the following to the State Chancellor of the California Community Colleges in Sacramento:~~

- ~~A copy of the final District decision rendered by the Board of Trustees, 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 that was sent by the District to the complainant.~~
- 
- ~~Any other information that the State Chancellor may require.~~

#### XV. 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 District will file a written request that the Chancellor grant an extension of the deadline. The request will be submitted no later than 10 days prior to the expiration of the deadlines established by Title 5 in Sections 59336 and/or 59340 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.

A copy of the request for an extension will be sent to the complainant who will be advised that he or she may file written objections with the Chancellor within five (5) days of receipt.

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

#### XVI. DISSEMINATION

The District will disseminate the information regarding District policies and appropriate procedures on unlawful harassment and discrimination to all employees and students and ~~announce its existence those policies and procedures~~ in prominent places throughout the District including, but not limited to, the college catalogue and schedule of classes, in appropriate employee and/or student publications, on official District and Union bulletin boards, and by direct communication to employees.

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## FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

**PROCEDURES TO RESOLVE  
STUDENT-TO-STUDENT COMPLAINTS OF  
HARASSMENT AND DISCRIMINATION**

Foothill-De Anza Community College District is actively committed to creating and maintaining an environment which respects the dignity of individuals and groups. The policy of the Foothill-De Anza Community College District is to provide an educational and employment environment in which no person shall be unlawfully subjected to discrimination on the basis of ethnic group identification, national origin, religious creed, religion, age, sex or gender, race, color, ancestry, sexual orientation, gender identity, marital status, medical condition, or physical or mental disability or any other legally protected 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, or be unlawfully denied full and equal access to or the benefits of, 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.

The procedures outlined below govern the process of complaints filed by a student against another student, or student against the criteria of a program. If the complainant is a student and the respondent is a college or district employee, or student employee, such complaints shall be referred and handled pursuant to the District's *Administrative Procedures: Investigation and Resolution of Complaints Regarding Harassment and Discrimination*. Complaints by students regarding harassment or discrimination by third parties who are not themselves students or employees in the District shall be investigated. Additionally the District shall forward written notice to the responsible party with a request for an investigation of the incident(s) and a report of the findings to be sent to the District.

## **I. HARASSMENT AND DISCRIMINATION POLICY**

The Foothill-De Anza Community College District provides an educational, and employment environment free of unlawful harassment and discrimination. The Board shall not discriminate against any person in the provision of any program or service based on ethnic group identification, race, religious creed, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or gender, age, sexual orientation or gender identity, or any other legally protected status. Anyone who engages in unlawful harassment or discrimination shall be subject to sanction up to and including termination of employment or expulsion in accordance with applicable contractual, procedural and statutory requirements. The comprehensive District policy for Harassment and Discrimination is contained in District Board Policy 4640.

## **II. STUDENT NOTIFICATION, TRAINING AND EDUCATION**

A training program or informational service is available to all students at least once annually. The student training or informational service includes an explanation of the policy, how it works, and how to file a complaint. In addition, a copy of the District's written policy on unlawful discrimination and harassment, as it pertains to students, is provided as part of any orientation program conducted for new students.

District employees involved in any aspect of investigating or resolving a complaint of harassment or discrimination receive training in the handling of such complaints in advance of their service in such capacity.

### III. RETALIATION

It is unlawful for anyone to retaliate against someone who files a harassment or discrimination 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 the District Harassment and Discrimination policy.

### IV. DEFINITIONS

Definitions applicable to nondiscrimination policies are as follows:

1. **Appeal:** A request by a complainant made in writing to the District Board of Trustees pursuant to Section 59338 of the California Code of Regulations, Title 5, and/or to the State Chancellor's Office pursuant to Section 59339 to review the administrative determination regarding a complaint of harassment or discrimination.
2. **Campus Coordinator:** The designated campus administrator responsible for implementing the harassment and discrimination policy and procedures on each campus.
3. **Complaint:** A written and signed statement meeting the requirements of Section 59328 of Title 5, California Code of Regulation which alleges unlawful harassment or discrimination.
4. **Complainant(s):** An individual or group of individuals who believe that he/she/they have been victims of harassment or discrimination.
5. **Days:** Calendar days, unless otherwise specified.
6. **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. **Discrimination on the basis of sex:** Sexual harassment or discrimination on the basis of gender.

7. **Representative:** A person selected by the complainant or the respondent to advise them in this process. A representative may be a District employee, student, legal counsel or another individual selected by the party.
8. **Respondent(s):** An individual or group of individuals against whom a claim of harassment or discrimination is made.
9. **Responsible person(s) at the involved college:** This group, composed of the Vice Chancellor of Human Resources and Equal Opportunity, and two college administrators appointed by the Vice Chancellor of Human Resources, is responsible for determining the findings of a formal investigation and recommending appropriate action. Every effort is made to incorporate broad representation among members of this group.
9. 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 above (see #6). Discrimination on the basis of sex or gender also includes sexual harassment.
10. **Sexual harassment:** As noted above below under "Unlawful Harassment", sexual harassment may be verbal, visual, written, physical or environmental and, as such, is a form of unlawful harassment.

Sexual harassment consists 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.

"Quid pro quo" harassment occurs when submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decision affecting the individual.

"Hostile environment" harassment occurs when the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment.

11. **Sexual Orientation:** means heterosexuality, homosexuality or bisexuality.
12. **Unlawful harassment** comes in many forms and may include but is not limited to the conduct described below:

**Verbal:** Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race, gender, sexual orientation, or other status protected by law. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status or sexual orientation; unwelcome flirting, whistling, or propositions, demands for sexual favors, verbal abuse, threats or intimidation.

Physical: Inappropriate or offensive touching, assault, or physical interference with free movement. This may include but is not limited to kissing, patting, lingering or intimate touches, grabbing, pinching, unnecessarily brushing against or blocking another person, or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's race, gender, sexual orientation or other status protected by law. It may also include leering or staring.

Visual or Written: The display or circulation of visual or written material that degrades an individual or groups based on race, gender, sexual orientation or other status protected by law. This may include but is not limited to posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions.

Environmental: A hostile academic or work environment exists where it is permeated by innuendo or insults or abusive comments directed at an individual or group based on race, gender, sexual orientation or other status protected by law. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in his or her immediate surroundings, although the conduct is directed at others.

For an unlawful harassment or hostile environment claim to be valid, in general the conduct must be sufficiently severe or pervasive so as to alter the conditions of the employment or educational environment. Subjective perception alone is insufficient evidence for a claim to be valid; an objective appraisal must be considered as well. The conduct shall be evaluated from the objective viewpoint of a reasonable person facing the same conditions.

13. **Student:** A currently enrolled student, a person who has filed an application for admission to the college, or a former student.
14. **Working Days:** The days that the District Office is open for customary business.

#### **V. RESPONSIBLE DISTRICT OFFICER**

The Vice Chancellor of Human Resources and Equal Opportunity is the District officer responsible for the administration and implementation of these policies and procedures. The Vice Chancellor may be contacted at (650) 949-6210, Foothill-De Anza Community College District, 12345 El Monte Road, Los Altos Hills, CA 94022.

#### **VI. COMPLAINT PROCEDURES**

In accordance with Board policy prohibiting unlawful discrimination and harassment, the purpose of these procedures is to provide both an informal and a formal process for the filing and investigation of student-to-student complaints, to prohibit retaliation against victims of discrimination, and to work toward its prevention.

**A. How To File A Complaint**

The District encourages its students to contact the appropriate Campus Coordinator prior to filing a complaint or to obtain assistance in determining whether or not an individual has been or is a victim of discrimination or sexual harassment. The designated Campus Coordinator for Foothill College is ~~Don Dorsey~~, the Dean of Student Affairs and Activities, 12345 El Monte Road, Los Altos Hills, CA 94022, (650) 949-7241; and the designated Campus Coordinator for De Anza College is ~~Trudy J. Walton~~, the Dean of Student Development and EOPS, 21250 Stevens Creek Blvd., Cupertino, CA 95014, (408) 864-8828. Formal complaints will be processed by ~~Jane Enright~~, the Vice Chancellor of Human Resources and Equal Opportunity, at the District Human Resources office.

A copy of these procedures, and the District's Student-To-Student Unlawful Discrimination Complaint forms, are available in the Office of the Dean of Student Development and EOPS (De Anza), the Office of the Vice President for Student Services (De Anza), the Office of the Dean of Student Affairs and Activities (Foothill), ~~the Office of the Vice President for Student Services (De Anza)~~, and the District Human Resources office. Complaint procedures and forms are also available online and can be accessed via the District's website at <http://hr.fhda.edu/diversity/policies>.

**B. Informal Complaint Procedure**

The purpose of the informal complaint procedure is to allow individuals who believe that they have been discriminated against to resolve the issue through a mediation process rather than a more formal procedure. If informal resolution of the concern is possible, it is not necessary to pursue a formal complaint.

1. A student who believes that he or she has personally suffered harassment or discrimination by another student, or would like assistance in determining whether or not he or she has been or is a victim of harassment or discrimination, shall be referred to the designated Campus Coordinator at the college where that complaint originates to discuss his or her concerns.
2. The Campus Coordinator shall meet with the concerned individual to:
  - a. Understand the nature of the concern and undertake efforts to informally resolve the complaint;
  - b. Give the complainant a copy of the District policy and procedure concerning such unlawful harassment and discrimination and inform complainant of his or her rights under any relevant complaint procedure or policy;
  - c. Advise the complainant that he or she need not participate in informal resolution;

- d. Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for doing so;
- e. Assure the complainant that he or she will not be required to confront or work out problems with the person accused of unlawful discrimination;
- f. Advise the complainant that he or she may file a complaint with the Office for Civil Rights/San Francisco, of the U.S. Department of Education (OCR), 50 United Nations Plaza, Room 239, San Francisco, CA 94102, in accordance with procedures available via the website at [www.de.gov/ocr](http://www.de.gov/ocr). -Filing a complaint with the Office for Civil Rights may be made at the time of filing an informal complaint, or during or after use of the District harassment or discrimination formal complaint process.

3. Both parties shall be advised that they may be accompanied by a representative throughout the informal process.
4. If the parties agree to a proposed resolution that does not include disciplinary action, the resolution shall be implemented and the informal process shall be concluded. At any time during the informal process, the complainant may initiate a formal complaint by completing and signing the District's Student-To-Student Unlawful Harassment and Discrimination Complaint form or an approved form obtained from the California State Chancellor's Office.
5. 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 Section 59334 of Title 5, California Code of Regulations, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. 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.

### C. Formal Complaint Procedure

To initiate the formal process, a student shall complete and sign the District's Student-To-Student Unlawful Discrimination Complaint form within one year of the date on which the complainant knew or should have known of the facts of the harassment or discrimination incident. The District's complaint form can be obtained from the District website at <http://hr.fhda.edu/diversity/policies>.

An approved complaint form can also be obtained from the State Chancellor's website at as follows: <http://www.cccco.edu/divisions/legal/discrimination/discrimination.htm> and then following the links to System Office/Divisions/Legal Affairs.

The student shall file the complaint with the designated Campus Coordinator at the college where the incident occurred. On the complaint form, the complainant shall describe in detail the

alleged discrimination or harassment and the action the complainant requests to resolve the matter. The complaint must be signed and dated and shall contain at least the name(s) of the individual(s) involved, the approximate date(s) of the event(s) at issue and a detailed description of the actions constituting the alleged harassment or discrimination.

#### D. Criteria for Filing a Formal Complaint

When a formal written complaint is filed, an investigation will be initiated if the complaint meets the following requirements:

- a. The complaint alleges unlawful harassment or discrimination prohibited under Section 59300 of Title 5, California Code of Regulations, and
- b. The complaint is filed by someone who alleges that he or she has personally suffered unlawful harassment or discrimination, or by someone who has learned of such unlawful harassment or discrimination in his or her official capacity as a District employee; and
- c. The complaint 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 of unlawful discrimination.

#### E. Defective Complaints

Defective complaints will be returned within three (3) working days of receipt by the Campus Coordinator or designee to the complainant with a complete explanation of why an investigation could not be initiated under Title 5, California Code of Regulations, Section 59300 et seq.

### **VII. INVESTIGATION UPON FILING A FORMAL WRITTEN COMPLAINT**

#### A. Notice to the Complainant

Once a formal complaint is properly filed as described above, the District shall:

- a. Notify the complainant that the complaint has been received.
- b. Provide the complainant with a copy of the District's Student-to-Student Complaint policy and procedure concerning unlawful harassment and discrimination.
- c. Advise the complainant of his/her right of legal protection against retaliation for filing a complaint of unlawful harassment or discrimination.
- d. Advise the complainant of both the limits and obligations of confidentiality and anonymity within the constraints of the investigative process.
- e. Advise the complainant that he/she may file a complaint with the Office for Civil Rights/San Francisco, U.S. Department of Education, in accordance with procedures available via the website at [www.de.gov/ocr](http://www.de.gov/ocr).

Notice to the complainant shall occur as soon as possible and appropriate within the circumstances, normally within five (5) working days.

### **B. Notice to Respondent**

Once a formal complaint is properly filed as described above, the District shall:

- a. Notify the respondent(s) that a complaint has been filed.
- b. Provide the respondent(s) with a copy of the complaint and a copy of the District's Student-to-Student Complaint policy and procedure concerning unlawful harassment and discrimination.
- c. Advise the respondent that an assessment of the accuracy of the allegations has not yet been made.
- d. Advise the respondent that the complaint will be investigated and that s/he will be provided an opportunity to present her/his side of the matter and respond to each allegation.
- e. Advise the respondent that s/he has the right to have a representative present during the investigation.
- f. Advise the respondent that any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.
- g. Advise the respondent of both the limits and obligations of confidentiality and anonymity within the constraints of the investigation.

Notice to the respondent shall occur as soon as possible and appropriate within the circumstances, normally within five (5) working days.

### **C. Investigation Process**

1. Within three (3) working days upon receipt of a complaint filed in writing and in accordance with the regulations and the criteria described above, the Campus Coordinator shall commence an investigation, or shall appoint an investigator to investigate the charges, and shall also notify the Vice Chancellor of Human Resources and Equal Opportunity of the Foothill-De Anza Community College District and the Chancellor of the California Community Colleges System that a written complaint has been received and a formal investigation has begun. ~~The complainant shall be advised that he/she may file a complaint with the Office for Civil Rights, U.S. Department of Education OCR, 50 United Nations Plaza, Room 239, San Francisco, CA 94102.~~
2. Once a formal complaint is filed in accordance with the regulations, the respondent(s) shall be advised of that filing and shall be forwarded a copy of the complaint and these procedures. This shall occur as soon as possible and appropriate under the circumstances (normally within five (5) working days). The respondent(s) shall also be advised of the following:
  - a. Assessment of the accuracy of the allegations has not yet been made;
  - b. The complaint will be investigated;

- ~~e. He or she will be provided an opportunity to present his or her side of the matter; and~~
- ~~d. Any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.~~

32. The investigator shall, within ten (10) working days of the complainant's referral to the formal process, give the complainant an opportunity to meet with the investigator to review the nature of the complaint and identify the scope and nature of the investigation. If the complainant fails to meet with the investigator within a reasonable time (usually 15 working days), the investigator will continue the investigation to the best of its abilities based on the written formal complaint.

Within ten (10) working days of meeting with the complainant, or 15 days as noted above, the investigator shall give the respondent an opportunity to meet with the investigator to receive the respondent's answer to the complaint and to review with the respondent the scope and nature of the investigation. If the respondent fails to meet with the investigator within a reasonable time, (usually 15 working days), the investigator will continue the investigation to the best of its abilities.

4. The investigator shall complete a full impartial fact-finding investigation. Parties may request the presence of witnesses and may present documents in support of their positions. Both parties shall be advised that they may be accompanied by a representative throughout the formal process. The parties may present written and oral evidence. The proceedings may be recorded on audio tape or such other method (such as videotape or stenographic record) as the formal process investigator may direct.
5. The investigator will review all credible factual information presented and incorporate such information into the investigative report. Confidentiality will be maintained to the extent possible. Once the investigation is complete, the investigator will meet with the complainant and respondent separately to give an overview of the steps taken during the investigation and to request additional information. Complainant and respondent will also be asked for the names of any others the investigator should speak with or if there is anything else he/she would like for the investigator to review before finalizing his/her report.
6. The results of the investigation shall be set forth in a written report and presented to the responsible person(s) at the involved college which shall include:
  - a. a description of the circumstances giving rise to the complaint;
  - b. a summary of the information provided by each witness, including the complainant and any witnesses identified by the complainant in the complaint;
  - c. an analysis of any relevant data or other evidence collected during the course of the investigation;

d. any other information deemed appropriate.

7. ~~Each~~ The college shall be responsible for reviewing the investigative report and making a specific finding as to whether there is probable cause to believe that harassment or discrimination occurred with respect to each allegation in the complaint. The findings shall take into consideration the severity of the conduct, the pervasiveness of the conduct, the pertinent background, and other relevant District policies.

### **VIII. DISCIPLINARY ACTION**

Harassment and discrimination are violations of the Student Code of Conduct and students are subject to disciplinary sanction for this behavior. If a violation of harassment or discrimination is sustained in any respect, the responsible person(s) at the involved college shall take the appropriate disciplinary measures, which may include: reprimand, probation, social probation, suspension or expulsion.

If disciplinary action is recommended, appropriate Due Process Procedures shall be invoked and the respondent shall have all the rights offered to him or her pursuant to the Due Process Procedures.

If the finding is that there is no evidence to sustain the allegations, the record shall be kept confidential except to the extent that disclosure may be required by law.

### **IX. CONFIDENTIALITY**

Complainants shall be informed that the law protects them against retaliation for filing an unlawful discrimination or harassment complaint. If a complainant requests that his or her name not be revealed, the Campus Coordinator shall explain that the process of investigation and determination is a confidential process but that it cannot guarantee the anonymity of the complainant. The Coordinator shall further inform the complainant of the college's obligation to investigate a complaint once it is formally notified of the complaint.

### **X. ADMINISTRATIVE DETERMINATION AND NOTICE TO STATE CHANCELLOR'S OFFICE, COMPLAINANT AND RESPONDENT**

Within ninety (90) days of receiving a complaint of harassment or unlawful discrimination filed under Title 5, Sections 59300 et seq., the college shall complete its investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant, and respondent, and

The complainant and State Chancellor shall also be provided written notice setting forth all the following ~~to both the complainant and the Chancellor:~~

1. The decision of the college as to whether there is probable cause to believe harassment or discrimination occurred with respect to each allegation in the complaint;

2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
3. The proposed resolution of the complaint; and
4. The complainant's right to appeal to the District Board of Trustees and to the State Chancellor of the California Community Colleges, per Section XII Complainant Right To Appeal.

The respondent shall also be provided written notice of a right to submit a written response to the administrative determination, per Section XI Respondent Right to Respond.

## **XI. RESPONDENT RIGHT TO RESPOND**

Within ten (10) days of notice of the administrative determination, the respondent may submit to the Campus Coordinator a written response to the administrative determination. The written response shall be included in, and become part of, the investigation file.

## **XII. COMPLAINANT RIGHTS TO APPEAL**

~~Complainants may appeal the results of the administrative determination. When the administrative determination and a copy of investigative report or summary is mailed to the complainant, the college will notify the complainant of his or her appeal rights as follows:~~

### **First level of appeal:**

The complainant has the right to file an appeal the administrative determination by filing a written appeal with the District's Board of Trustees within fifteen (15) days from the date of the notice of the administrative determination. The Board of Trustees will review the original complaint, the investigative report, the administrative determination, and the appeal. The Board of Trustees will either:

- (a) issue a final District decision in the matter within forty-five (45) days after receiving the appeal; or
- (b) elect to take no action within 45 days, in which case the original decision in the administrative determination will be deemed to be affirmed and shall become the final District decision in the matter.

A copy of the final decision rendered by the District Board of Trustees will be forwarded to the complainant and to the State Chancellor's Office. The complainant shall also be notified of his/her right to appeal to the State Chancellor's Office.

**Second level of appeal:**

The complainant shall have the right to appeal the District's decision by filings a written appeal with the Chancellor of the California Community Colleges System within thirty (30) days ~~after from 1) the date of notice of the Board of Trustees' has issued the final District decision; or 2) expiration of the 45-day review period during which the Board elected to take no action, thereby affirming the administrative decision. permits the administrative determination to become final by taking no action within 45 days.~~ The written appeal must be accompanied by a copy of the decision of the Board or evidence showing the date on which the complainant filed an appeal with the Board, and a statement under penalty of perjury that no response was received from the Board within 45 days from that date.

~~Complainants must submit all appeals in writing.~~

**XII. RESPONDENT RIGHTS TO RESPOND**

~~Upon receipt of the administrative determination, the respondent shall also be notified that he or she may submit a written response within ten (10) days to the Campus Coordinator. The written response shall be included in the investigation file.~~

**XIII. FORWARD TO THE STATE CHANCELLOR**

Within 150 days of receiving a complaint, the college will forward the following to the State Chancellor of the California Community Colleges in Sacramento:

- A copy of the final District decision rendered by the Board of Trustees, 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 that was sent by the college to the complainant.
- Any other information that the State Chancellor may require.

**XIV. EXTENSIONS**

If for reasons beyond its control, the college 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 college will file a written request that the Chancellor grant an extension of the deadline. The request will be submitted no later than 10 days prior to the expiration of the deadlines established by Title 5 in Sections 59336 and/or 59340 and will set forth the reasons for the request and the date by which the college expects to be able to submit the required materials.

A copy of the request for an extension will be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt.

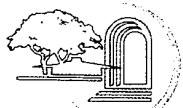
The Chancellor may grant the request unless delay would be prejudicial to the complainant. If an extension of the 90-day deadline is granted by the Chancellor the 150-day deadline is automatically extended by an equal amount.

#### XV. DISSEMINATION

The District will disseminate these procedures and related information regarding District policies and appropriate procedures on harassment and discrimination to all students, administrators and supervisors, and publish them in prominent places throughout the District including, but not limited to, the college catalogue, schedule of classes and/or student publications.

May, 1995  
Revised July, 2002  
Updated January 2004  
Revised March 2006  
Revised November 2008

May, 1995November 2008  
Revised July, 2002  
Updated January 2004  
Revised March 2006



FOOTHILL-DE ANZA  
Community College District

## FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

### UNLAWFUL DISCRIMINATION COMPLAINT FORM

#### PLEASE PRINT

Complainant Full Name: \_\_\_\_\_

Complainant Status:  Student  Employee  Other (please specify): \_\_\_\_\_

Today's Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Location:  Foothill College  De Anza College  District Office

(Please provide specific details)

I wish to complain against (identify person, college, program or activity that allegedly discriminated against you):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of most recent incident of the alleged discrimination: \_\_\_\_/\_\_\_\_/\_\_\_\_

(Non-employment complaints must be filed within one year of the date of the alleged unlawful discrimination.

Employment complaints must be filed within six months of the date of the alleged unlawful discrimination)

I allege discrimination, harassment and/or retaliation based on one or more of following categories protected under Title 5: (you must select at least one)

Age  Ethnic Group Identification  Mental Disability  Race  Sexual Orientation  
 Ancestry  Marital Status  National Origin  Religion  
 Color  Medical Condition  Physical Disability  Sex or Gender (includes Harassment)

Clearly state your complaint. Describe each incident of alleged discrimination separately. For each action provide the following information: 1) date(s) the discriminatory action occurred; 2) what happened and 3) why you believe the action was discriminatory and/or, if applicable, why you believe you were retaliated against for filing a complaint or asserting your rights. (Attach additional pages as necessary) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What would you like the District/College to do as a result of your complaint? What remedy are you seeking?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that this information is correct and to the best of my knowledge.

Complainant Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Send original to: Vice Chancellor, Human Resources and Equal Opportunity, Foothill-De Anza Community College District, 126345 El Monte Road, Los Altos Hills, CA 94022

**INSTRUCTIONS TO COMPLAINANT:**

Please complete the information listed below. This information will be kept strictly confidential and will not be given to the respondent.

**PLEASE PRINT**

Complainant Full Name: \_\_\_\_\_

Complainant Address: \_\_\_\_\_  
Street or P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Daytime Phone #: (      ) \_\_\_\_\_ Evening Phone #: (      ) \_\_\_\_\_

Please list the names, addresses and phone numbers of any witnesses to the alleged discrimination:

**Witness #1:**

Name: \_\_\_\_\_ Phone Number: (      ) \_\_\_\_\_

Address: \_\_\_\_\_  
Street or P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**Witness #2:**

Name: \_\_\_\_\_ Phone Number: (      ) \_\_\_\_\_

Address: \_\_\_\_\_  
Street or P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**Witness #3:**

Name: \_\_\_\_\_ Phone Number: (      ) \_\_\_\_\_

Address: \_\_\_\_\_  
Street or P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**Witness #4:**

Name: \_\_\_\_\_ Phone Number: (      ) \_\_\_\_\_

Address: \_\_\_\_\_  
Street or P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**I certify that this information is correct and to the best of my knowledge.**

Complainant Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Send original copy to:

Vice Chancellor, Human Resources and Equal Opportunity  
Foothill-De Anza Community College District  
126345 El Monte Road, Los Altos Hills, CA 94022