

Chapter 3 - General Institution

AP 3410 Prohibition of Unlawful Discrimination

References:

Education Code Sections 66250 et seq., 200 et seq., and 72010 et seq.; Penal Code Sections 422.55 et seq. ; Title 5 Sections 59300 et seq.; and Accreditation Standard II.B.2.

I. Introduction:

Mt. SAC is committed to a work and educational environment in which all individuals are treated with respect and dignity. Each individual has the right to work and learn in a professional atmosphere that promotes equal employment opportunities and prohibits unlawful discriminatory practices, including harassment.

Mt. SAC has developed this administrative procedure to ensure that all its employees and students can work and learn in an environment free from unlawful discrimination, harassment, and retaliation. We will make every reasonable effort to ensure that all concerned are familiar with these policies and are aware that any complaint in violation of such policies will be investigated and resolved appropriately.

These written procedures and protocols are also intended to ensure that individuals or groups subject to discrimination receive resources and information. All students, employees, or third parties who allege that they have been subjected to discrimination shall be provided with information regarding options and assistance available to them. Information shall be available at Human Resources.

II. Jurisdiction:

Any unlawful discrimination, as defined by BP 3410, Prohibition of Discrimination, whether committed by an employee, or student occurring on campus is subject to applicable employee or student discipline procedures. The College may resolve complaints of unlawful discrimination through informal or formal procedures, as applicable.

This jurisdiction encompasses the College's main campus, any other property used by the College, and off-campus conduct and/or actions, including electronic activity such as e-mails sent from a mtsac.edu address and telephone calls or texts placed in the interest of College business, when the College Compliance Officer, using the preponderance of the evidence standard, determines that the off-campus conduct in question could reasonably negatively affect, disrupt, or interfere with students or employees in the College's program(s) or activities.¹

¹ 5 CCR § 59320 - 59342

III. Reporting Options

Any student, employee, or third parties to the College may report incidents of unlawful discrimination to the College Compliance Officer, or designee, in-person, over the phone at (909) 274-4225, via email to eeo.titleix@mtsac.edu or online at <http://www.mtsac.edu/discriminationcomplaint>.

Any employee who is made aware of or witnesses incidents that infringe upon BP 3410 are strongly encouraged to inform the College Compliance Officer within 24 hours or as soon as practically possible. When reporting, the information should include the names of the parties, even where the person has requested anonymity.

The College prohibits false reports of unlawful discrimination. The College will address false reports in accordance with AP 3050 (employees) and AP 5520 (students).

IV. College Compliance Officer

The College Compliance Officer is the College official responsible for the College's compliance with local, state, and federal laws and regulations pertaining to claims of discrimination in the College's educational programs, activities, and employment.

V. Confidentiality

Information regarding a complaint may be shared with other campus employees for legitimate business purposes, and with law enforcement, except for some limited exceptions. The College Compliance Officer shall endeavor to honor any request for confidentiality; however, the College Compliance Officer shall also weigh requests for confidentiality against the College's duty to provide a safe and nondiscriminatory environment for all members of the Campus community. Confidentiality, therefore, cannot be ensured. The College Compliance Officer, or designee, receives all complainant requests for confidentiality involving cases of discrimination, and determines if the request can be honored under the facts and circumstances of the particular case.

The College Compliance Officer will determine whether such confidentiality requests are granted given the circumstances of each such incident.

VI. Administrative Process:

The administrative process for investigating complaints will be addressed in accordance with AP 3435, Discrimination and Harassment Investigations. Complaints of sexual harassment under Title IX will be addressed in accordance with AP 3434, Responding to Harassment Based on Sex Under Title IX.

1. Notice:

Once notice of discrimination has been received by the College Compliance Officer, or designee, the complainant will be contacted to schedule a meeting with the College Compliance Officer, or designee, and provided the following:

- a. A copy of the College's Board Policies and Administrative Procedures regarding discrimination.
- b. A list of campus and local support services and resources available to Complainant, including confidential and health services, if applicable.
- c. A formal written complaint form and notification of the right to file a complaint.
- d. Information on how to notify proper law enforcement authorities, including on-campus and local law enforcement, if applicable.
- e. The option to be accompanied by a support person (see section VII).

2. Supportive Measures:

The Complainant will be given the opportunity to identify and discuss reasonable supportive measures, as appropriate.

The College will work with students and employees to ensure their safety and promote their well-being. This assistance may take the form of immediate interim actions or remedies to support and protect the involved students or employees in the immediate aftermath of an incident or while an investigation or disciplinary action is pending.

The College Compliance Officer or designee may determine measures, such as, but not limited to, remedies relating to adjusting academic schedules, Campus Safety escort services, restrictions on the respondent pending an investigation, and other remedies to promote the well-being, safety, and restoration of the campus community. The complainant shall be notified of any supportive measures.

3. Informal Resolution:

The Complainant may seek informal resolution to a complaint. Efforts at informal resolution need not include any investigation unless the College Compliance Officer, or designee, determines that an investigation is warranted by the seriousness of the allegations.

The College must obtain all parties' voluntary, written consent to the informal resolution process. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and continue the formal resolution process.

If informal resolution is determined to be appropriate, the College Compliance Officer, or designee, will undertake efforts to informally resolve the charges, including but not limited to rearrangement of work/academic schedules, obtaining apologies, providing informal counseling and/or training, etc. The College Compliance Officer, or designee, will also:

- (1) Advise the complainant that they need not participate in informal resolution;
- (2) Notify the complainant of their right to pursue a formal investigation and explain the procedure for doing so;
- (3) Assure the complainant that they will not be required to confront, or work out problems with, the person accused of discrimination;
- (4) Advise the complainant that they may also file a complaint with the Office for Civil Rights of the U.S. Department of Education (OCR), U.S. Equal Employment

Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where such a complaint is within that agency's jurisdiction.

Selecting an informal resolution does not extend the time limitations for pursuing a formal investigation. Efforts at informal resolution may continue after the decision to pursue a formal investigation in accordance with AP 3435, and the investigation will be completed unless the matter is informally resolved and the complainant dismisses the formal investigation. Even if the complainant does dismiss the formal investigation, the College Compliance Officer, or designee, may require the investigation to continue if they determine that the allegations are serious enough to warrant it.

Forms of informal resolution may include restorative justice, obtaining apologies, mediation, participating in training, counseling on professional behavior, and other resolutions that are mutually agreed upon by all parties.

Restorative may be appropriate when the respondent takes responsibility for their actions and the harm they have caused. Restorative justice practice prioritizes restoration of the complainant and the community and holds the respondent accountable, while also giving the respondent an opportunity to redeem themselves and to not cause further harm. This approach requires a meeting between the parties, facilitated by Human Resources, or designee, and may include other members of the college community, if appropriate. The process involves the parties to share their experience of what happened, to discuss who was harmed by the respondent's actions and to create a consensus for what can be done to repair done to the complainant.

4. Formal Investigation:

Where informal resolution is inappropriate or the complainant, orally or in writing, requests a formal investigation and/or resolution, the College Compliance Officer, or assigned investigator, shall conduct an investigation in accordance with AP 3435, Discrimination and Harassment Investigations.²

The standard of evidence applied to investigations of allegations of discrimination is the preponderance of the evidence, that is, the greater weight of the evidence. In applying this standard, the investigator will consider whether the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side.

5. Communication:

The College Compliance Officer or the assigned investigator shall keep complainants informed of any ongoing investigation. Information may include the status of any student or employee disciplinary proceedings or appeal.

All inquiries from reporters or other media representatives about alleged discrimination shall be referred to the College's Public Information Officer, which shall work with College officials to assure that all confidentiality rights are maintained.

² 5 CCR § 59327 - 59336

Police & Campus Safety will be responsible for maintaining the College's Annual Security Report, which includes a statement regarding the College's programs to prevent discrimination and procedures that should be followed after an offense occurs. The Annual Security Report does not include any personally identifying information, but does include statistics of reported crimes, including, but not limited to hate crimes.

VII. Support Person(s)

Both the complainant and the respondent may elect to be accompanied by a support person. The support person may be, but does not have to be an attorney, a collective bargaining representative as permitted by existing bargaining agreements, or another person of the complainant or respondent's choice. A support person shall not be an individual who may serve as a witness in the investigation. The support person may attend any investigatory meeting(s) or interview(s). The support person's role is limited to observing, consulting with, and providing support to the complainant or respondent. A support person may not participate in the investigation on the behalf of the complainant or respondent.

VIII. Concurrent Proceedings

College administrative proceedings are independent from criminal court, civil court, or other administrative proceedings. Discipline may be instituted against an individual also charged in civil or criminal courts based on the same facts that constitutes the alleged violation of applicable Board Policy. The College may proceed before, concurrently with, or after any judicial, criminal, or administrative proceedings. In cases of discrimination, the College shall proceed with investigation without undue delay, in accordance with federal and state law requirements, and College policies and procedures.

IX. Retaliation

Any form of retaliation against anyone who has complained of or formally reported discrimination or has participated in an investigation of such a complaint, regardless of whether the complaint is substantiated, will not be tolerated, and violates Board Policy 7700, this procedure, and applicable law.

X. Education and Prevention

Information regarding unlawful discrimination will be posted on the Human Resources website and in other prominent locations on-campus. A copy of BP 3410, Prohibition of Discrimination, shall be provided to each employee at the time of hire.

Human Resources shall provide two (2) hours of required training to all employees every two (2) years on the College compliance process for addressing unlawful discrimination to include the reporting, informal resolution, formal investigation, and possible outcomes and remedies to resolve incidents of unlawful discrimination.

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