

Procedure: 4.3.1p. [III.A.1.]

Unlawful Discrimination, Harassment and Retaliation in Employment

Revised: January 12, 2016
Last Reviewed: January 12, 2016
Adopted: March 9, 2007



I. PURPOSE:

The purpose of this procedure is to ensure that all employees of the Technical College System of Georgia are provided an environment free of unlawful discrimination, harassment (including sexual harassment) and retaliation.

All employees are expressly prohibited from engaging in any form of unlawful discrimination or harassment. Any employee who has engaged in such prohibited behaviors or conduct will be subject to disciplinary action, up to and including dismissal.

All employees are required to report any act of unlawful discrimination and harassment. Reports will be treated in an expeditious and confidential manner to the extent provided by law.

TCSG will not tolerate retaliation for having filed a good faith complaint of unlawful discrimination or harassment or for having provided any information in an investigation of such. Any employee who retaliates against a complainant or witness in an investigation will be subject to disciplinary action, up to and including dismissal.

Employees in a supervisory or managerial capacity are prohibited from knowingly permitting unlawful discrimination, harassment or retaliation in their assigned work unit(s) and from making sexual advances, welcome or unwelcome, toward any subordinate.

The harassment of an employee by a non-employee (e.g. vendor, contractor, etc.) in conjunction with the performance of his/her assigned duties and responsibilities and the harassment of a non-employee by an employee will not be tolerated.

Conduct which does not rise to the level of unlawful harassment may still violate other policies or procedures and subject an employee to disciplinary action, up to and including dismissal from employment.

II. RELATED AUTHORITY:

Title IX of the Educational Amendments of 1972
20 U.S.C. §§ 1681 et seq.
Titles VI and VII of the Civil Rights Act of 1964
Age Discrimination Act of 1975
Rehabilitation Act of 1973, as amended
Americans with Disabilities Act of 1990
Americans with Disabilities Amendments Act (ADAAA) of 2008

III. APPLICABILITY:

All work units and technical colleges associated with the Technical College System of Georgia. The terms of this Procedure will govern behavior during normal work hours, at work-related functions at or away from the primary work site before or after normal work hours, and/or while off duty when negatively impacting an employee's ability to effectively perform their duties.

IV. DEFINITIONS:

A. Unlawful Discrimination: the treatment, or consideration of, or making a distinction in favor or against a person based upon a legally protected characteristic, class or category to which the person belongs: e.g. race, color, religion, gender, national origin, age, or disability. Unlawful discrimination can also be the effect of a procedure or practice that confers or denies privileges to a protected class because of race, color, religion, etc.

B. Unlawful Harassment (Other Than Sexual Harassment): Verbal or physical conduct that disparages or shows hostility or aversion toward an individual because of that person's race, color, religion, gender, national origin, age, or disability. The conduct will be considered Unlawful Harassment if it:

1. Has the purpose or effect of creating an intimidating, hostile or offensive work environment; or
2. Has the purpose or effect of unreasonably interfering with an individual's work performance.

Examples of Unlawfully Harassing Conduct or Behavior (Other Than Sexual Harassment) or Generally Offensive Behavior/Conduct:

Offensive remarks, jokes, epithets, slurs, negative stereotyping, or threatening, intimidating or hostile acts that relate to race, color, religion, gender, sexual orientation, national origin, age or disability;

Displaying offensive written or graphic material, pictures, photographs, or drawings on walls, bulletin boards, computers, or other work locations, or which are circulated in the work place;

Offensive e-mail, text or voice mail message(s), or inappropriate use of state resources (e.g. downloading sexually explicit websites and/or information); and

Foul or obscene language.

This is a representative list of harassing conduct or behavior and is not intended to be exhaustive.

D. Sexual Harassment (a form of unlawful harassment): unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, written, electronic or physical conduct of a sexual nature when:

1. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
2. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of Sexually Harassing Conduct or Behavior: Sexually harassing conduct or behavior (regardless of the gender of the persons involved) includes:

Physical touching;

Sexual comments of a provocative or suggestive nature;

Suggestive looks or gestures;

Jokes, printed material or innuendoes; or

Making acceptance of unwelcome sexual conduct, advances, or requests for sexual favors of any nature a condition for employment, employment decisions, or continued employment (pressure for sexual favors).

This is a representative list of conduct or behavior and is not intended to be exhaustive.

- E. Retaliation: Unfavorable employment action taken, unfavorable employment condition created, or other action taken for the purpose of intimidation that is directed toward an employee because the employee reported or complained of unlawful discrimination or harassment or because the employee participated in an investigation of such.
- F. Employees: Any individual employed in a full or part time capacity in any work unit and/or technical college associated with the Technical College System of Georgia ("TCSG").
- G. Non-Employee: Any third party, (e.g. volunteer, vendor, contractor, etc.) who conducts business with or on behalf of a work unit or technical college.
- H. President: the chief executive officer responsible for the management and operation of the technical college where the complainant and/or respondent are currently employed.
- I. Human Resources Director: The highest ranking employee responsible for the human resource function at a technical college. The System Office Human Resources Director provides technical assistance and expertise to all college HR Directors and manages the human resource function for all work units not associated with a technical college.
- J. Local Investigator: The person(s) at the technical college who is delegated the responsibility for the investigation of employee complaints of unlawful discrimination, harassment, and retaliation complaints. Local Investigators are typically staff from the college's Office of Human Resources but may also include Title IX Coordinators.
- K. Title IX Coordinator: an individual designated by the president of the college to ensure compliance with Title IX of the Educational Amendments of 1972, 20 U.S.C. §§ 1681 et

seq., and related federal regulations. The Title IX Coordinator may also be assigned the responsibility for compliance with other state and federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the U.S. Department of Education.

Èò **ATTACHMENTS:**

Attachment: 4.3.1p.a1. Employee Acknowledgment Form

Ê×ò **PROCEDURE:**

A. Policy Administration

1. The State Board Policy Statement on Equal Opportunity should be permanently displayed on official bulletin boards of the technical colleges and System Office and easily assessable to staff.
2. Supervisors must take ongoing proactive steps to ensure their work environments are free from any type of discrimination, unlawful harassment and retaliation and to educate their staff on appropriate conduct.
3. All current and future employees shall be required to read and become familiar with the Statement of Equal Opportunity and other employment-related policies and procedures located in the TCSG State Board Policy Manual (tcsgeu.edu).
4. As a condition of employment, all employees (current and future) are required to read and sign the employee acknowledgment of this procedure which will become a permanent part of the employee's personnel record.
5. Any employee, student, contractor or volunteer who has any questions concerning this Procedure should direct those questions to the college's Title IX Coordinator or Human Resources Director.
7. Presidents should ensure that employees receive appropriate training on the identification, prevention, and reporting of sexual harassment.

B. Reporting and Management Action

1. All employees are required to report allegations of unlawful discrimination, harassment and retaliation against themselves or others, as well as other possible policy violations.
 - a. Allegations of unlawful discrimination, harassment or retaliation may be reported by employees within their chain of command, or may bypass the normal chain of command and report an allegation/suspicion directly to the Title IX Coordinator or Human Resources Director; employees may also email complaints to . UnlawfulHarassment@tcsgeu.edu.
 - b. Complaints can be expressed in writing, by telephone, or in person.
2. Supervisors who have reason to believe that unlawful discrimination, harassment and/or retaliation may exist shall immediately inform the President, Human

Resources Director, Title IX Coordinator or the System Office Human Resources Director.

3. Other than reporting the information and discussing it with the investigator, employees must keep the information confidential unless release is approved, or unless final action has been taken pursuant to this Procedure.
4. Employment related unlawful discrimination, harassment or retaliation complaints received by the Title IX Coordinator shall be immediately reported to the Human Resources Director.
5. A President or other designee of the Commissioner may suspend with pay, temporarily transfer, or reassign employees involved in an investigation in order to prevent further discrimination or harassment or to facilitate the effectiveness of an investigation. Whenever possible, any changes in assignments or work status for a complainant should not be made.
6. Unless otherwise authorized by the System Office Human Resources Director or Office of Legal Services, no disciplinary action shall be taken against the respondent until an investigation has been completed. *NOTE: A suspension with pay pending completion of an investigation is not a disciplinary action.*
7. All allegations of unlawful discrimination, harassment and retaliation by or against a System office employee, Vice President or President of a technical college shall be referred to the System Office Human Resources Director or the Office of Legal Services.
8. A President may refer any allegation of unlawful discrimination harassment, and/or retaliation to the System Office Human Resources Director or Office of Legal Services for investigation. Investigations may also be conducted in conjunction with the Local Investigator.

C. Investigations

1. All complaints shall be investigated thoroughly and should be completed within 45 business days of the receipt of the complaint. The parties will be notified if extraordinary circumstances exist requiring additional time.
2. If a complaint does not specify facts sufficient to support an allegation of unlawful discrimination, harassment or retaliation the President, after consultation with the Office of Legal Services, may determine the allegations will not be investigated pursuant to this Procedure. The complaint, if appropriate, may be investigated pursuant to the Employee Complaint Procedure. The complainant must be notified of the decision within five (5) business days of receipt of the complaint.

Upon consent by both the complainant and the respondent, any complaint not rising to an allegation of unlawful conduct may also be referred for mediation in lieu of investigation. Mediations must be conducted by a qualified objective-third party not employed by the college.

3. Both the complaining party and the respondent will be given an equal opportunity to identify witnesses and offer evidence in person or in writing. Best efforts will be made to interview all witnesses identified by the parties.
4. Conduct which does not rise to the level of unlawful discrimination or harassment as those terms are defined in this Procedure may still violate other policies or procedures and any such violations should be included in investigative findings.
5. Investigative materials generated through the application of this Procedure will be processed and maintained confidentially to the extent permitted by law.

D. Review and Disposition

1. Local Investigators and Presidents should consult with the Office of Legal Services when making the determination whether or not the facts support a finding of unlawful conduct.
2. If the results of the investigation do not support a finding of unlawful discrimination, harassment or retaliation, or other policy violations, the matter will be closed and the parties notified of such.
3. If the results of the investigation support a finding of unlawful harassment, discrimination or retaliation or any other policy violation, the President shall promptly take any necessary action to ensure the conduct is not repeated. Actions may include, but not be limited to, mandating training, issuance of disciplinary actions, or dismissal from employment.
4. Both the complainant and the respondent will be notified in writing of the results of the investigation; provided, however, that if disciplinary action is to be initiated as a result of the investigation, neither party will be notified until all disciplinary actions are taken.

VI. RECORD RETENTION:

Acknowledgment statements shall be retained permanently in the official personnel files of employees. Investigative files shall be retained for 5 years after the close of the investigation or effective date of any adverse employment action resulting from the investigation.

ACKNOWLEDGMENT STATEMENT

UNLAWFUL DISCRIMINATION, HARASSMENT AND RETALIATION

As an employee of _____, I understand that any form of unlawful discrimination or harassment (including sexual harassment) will not be tolerated. I declare that I have read or will read and will fully comply with the Statement of Equal Opportunity issued by the State Board of the Technical College System of Georgia and all procedures relating to Unlawful, Discrimination, Harassment and Retaliation in Employment, as well as the Standards of Business Conduct. All policies and procedures may be found in the State Board Policy Manual located at tcsg.edu or may be located in a college Employee Handbook.

I understand I am required to immediately report any act or allegation of discrimination, harassment (including sexual harassment) to my supervisor and/or the Office of Human Resources; and that I may also make such reports to the President or the TCSG Office of Legal Services, I acknowledge the expectation that I will cooperate fully with any investigation.

If I am or become a supervisor, I understand that I am prohibited from making any sexual advances, welcome or unwelcome, toward any subordinate. I further acknowledge that retaliation against any individual who reports or participates in an investigation of unlawful harassment or discrimination will not be tolerated.

Employee's Signature

Date Signed

Employee's Printed Name

Employee's ID#

Record Retention: Retain permanently in the personnel file.

(Revised January 2016)