

Nondiscrimination and Harassment

06: Personnel
06:07:02:03

Purpose:

Dyersburg State Community College (DSCC) has established a procedure that provides a clear, orderly and expedient procedure through which all employees of DSCC may process bona fide grievances in matters regarding discrimination or harassment.

Scope: This policy supplements TBR Policies 2:02:10:01 (Sex Discrimination and Sexual Harassment) and 5:01:02:00 (Equal Employment Opportunity and Affirmative Action) relative to the orderly resolution of grievances of discrimination or harassment on the basis of race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, and any other category protected by Federal or State civil rights law related to the institution. It is the intent of DSCC to fully comply with the applicable provisions of Federal and State civil rights laws, including but not limited to the following:

- Equal Pay Act of 1963, as amended
- Civil Rights Act of 1964, Titles VI and VII, as amended
- Executive Order 11246, as amended (1965)
- Age Discrimination in Employment Act of 1967
- Title IX of the Educational Amendments of 1972, as amended
- Rehabilitation Act of 1973, as amended
- Vietnam Era Veterans Readjustment Act of 1974, as amended
- Age Discrimination Act of 1975
- Pregnancy Discrimination Act (1978)
- Americans with Disabilities Act of 1990, as amended
- Genetic Information Nondiscrimination Act of 2008
- regulations promulgated pursuant thereto

Fair and prompt consideration shall be given to all complaints in accordance with the procedures set forth below. Within the confines of this policy, the words “grievance” and “complaint” are used interchangeably. These procedures may be utilized by any employee, applicant for employment or student who believes he or she has been subjected to discrimination or harassment. Former employees or students may file complaints concerning conduct which took place during the time of employment or enrollment provided the complaint is filed timely pursuant to procedures outlined below under Filing Complaints and the conduct has a reasonable connection to the institution. An aggrieved individual has the ability to file complaints with external agencies such as the Equal Employment Opportunity Commission (EEOC), the Tennessee Human Rights Commission (THRC), the Office of Civil Rights (OCR), and the courts. Please note that the deadlines for filing with external agencies or courts may be shorter than the deadline established for filing a complaint under this Guideline. Examples of shorter deadlines include, but are not limited to, 180 days to file a complaint under Title VI & Title IX, as well as 300 days to file a complaint under Title VII.

Policy: DSCC will promote equal opportunity for all persons without regard to race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, and any other category protected by Federal or State civil rights law.

DSCC affirms that it will not tolerate discrimination against any employee or applicant for employment because of race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, age (as applicable), status as a covered veteran, or genetic

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information, nor will DSCC tolerate harassment on the basis of these protected categories or any other category protected by Federal or State civil rights law.

DSCC shall not subject any student to discrimination or harassment under any educational program, and no student shall be discriminatorily excluded from participation or denied the benefits of any educational program on the basis of race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, or any other category protected by Federal or State civil rights law.

Discrimination may occur by:

1. Treating individuals less favorably because of their race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, or any other category protected by Federal or State civil rights law; or,
2. Having a policy or practice that has a disproportionately adverse impact on protected class members.

Harassment is conduct that is based on a person's race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, status as a covered veteran, age, genetic information, or any other category protected by Federal or State civil rights law, that

1. Adversely affects a term or condition of an individual's employment, education, participation in an institution's activities or living environment;
2. Has the purpose or effect of unreasonably interfering with an individual's employment or academic performance or creating an intimidating, hostile, offensive or abusive environment of the individual; or
3. Is used as a basis for or a factor in decisions that tangibly affect that individual's employment, education, participation in an institution's activities or living environment.

Examples of harassment include, but are not limited to, verbal or physical conduct relating to an employee's national origin, race, surname, skin color or accent, offensive or derogatory jokes based on a protected category, racial or ethnic slurs, pressure for dates or sexual favors, unwelcome comments about a person's religion or religious garments, offensive graffiti, cartoons or pictures, or offensive remarks about a person's age.

Not every act that might be offensive to an individual or a group will be considered harassment. Whether the alleged conduct constitutes harassment depends upon the record as a whole and the totality of the circumstances, such as the nature of the conduct in the context within which the alleged incident occurs. Harassment does not include verbal expressions or written material that is relevant and appropriately related to course subject matter or curriculum.

Examples of sexual harassment include, but are not limited to, the following:

- Refusing to hire, promote, or grant or deny certain privileges because of acceptance or rejection of sexual advances;
- Promising a work-related benefit or a grade in return for sexual favors;
- Sending suggestive or inappropriate communications (email, notes, letters, or other written materials) displaying sexually-oriented objects or pictures;
- Making sexual innuendoes, comments or remarks about a person's clothing, body or activities based on one's actual or perceived sexual orientation, gender identity/expression;
- Making suggestive or insulting sounds, including whistling in a suggestive manner;
- Presenting denigrating humor or jokes about sex;
- Making sexual propositions or invitations or exhibiting pressure for sexual activity;

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- Using sexual jokes, stories, remarks or images in the classroom that are only marginally relevant to the subject matter of the class;
- Making implied/overt sexual threats or suggestive/ obscene gestures;
- Patting, pinching, or other inappropriate physical contact;
- Unnecessary touching or brushing against the body;
- Making attempts to kiss or fondle;
- Committing sexual violence, including rape, sexual assault, sexual battery, and sexual coercion.

Note: This list is not exclusive but simply represents types of conduct that may constitute sexual harassment.

Incidents of sexual violence may constitute criminal acts and, as such, investigation and processing by the criminal justice system, local police, campus security and crisis intervention centers may occur in addition to the process developed under this policy. The complainant must be notified of his/her right to file a criminal complaint.

Consensual Relationships between supervisors and their subordinates and between faculty members and students are strongly discouraged due to the inherent inequality of power in such situations. These relationships could lead to undue favoritism or the perception of undue favoritism, abuse of power, compromised judgment or impaired objectivity.

Engaging in a consensual relationship with a student over whom the faculty member has either grading, supervisory, or other evaluative authority (i.e., member of dissertation committee, thesis director, etc.) constitutes a conflict of interest. The faculty member must take steps to remove the conflict by assigning a different supervisor to the student; resigning from the student's academic committees; or by terminating the relationship at least while the student is in his/her class. Likewise, it is a conflict of interest for a supervisor to engage in a consensual relationship with a subordinate over whom he or she has evaluative or supervisory authority. The supervisor must take action to resolve the conflict of interest (e.g. assigning another individual to supervise and/or evaluate the subordinate).

Grievance Procedures: The following procedures are intended to protect the rights of the aggrieved party (hereinafter, "the Complainant") as well as the party against whom a complaint of discrimination or harassment is lodged (hereinafter, "the Respondent"), as required by State and Federal laws

A. General

1. Each grievance must be properly and promptly investigated and, when warranted, appropriate disciplinary action taken against the Respondent.
2. The Office of General Counsel (hereinafter, "the Legal Counsel") shall always be consulted prior to investigation and should be contacted before any action is taken.
3. In situations that require immediate action because of safety or other concerns, the institution may take any administrative action which is appropriate (e.g. placing employee on administrative leave with pay pending the outcome of the investigation, placing students on interim suspension pending the outcome of the investigation).
4. Each employee, applicant for employment and student shall be notified of the name, office, and telephone number of the designated Equal Employment Officer (hereinafter, "the Investigator") responsible for assuring compliance with this policy and all applicable TBR policies and Federal laws.

B. Filing Grievances

1. Any current or former student, applicant for employment, or current or former employee who believes he or she has been subjected to discrimination or harassment at DSCC or who believes that he/she has observed discrimination or harassment

- taking place shall present the complaint to the Investigator.
2. Grievances must be brought within 365 days of the last incident of discrimination or harassment. Grievances brought after that time period will not be pursued absent extraordinary circumstances. The determination of whether the grievance was timely or whether extraordinary circumstances exist to extend the grievance period must be made in conjunction with Legal Counsel.
 3. Every attempt will be made to get the Complainant to provide the grievance in writing. The grievance shall include the circumstances giving rise to the complaint, the dates of the alleged occurrences and names of witnesses, if any. The grievance shall be signed by the Complainant. However, when the Complainant chooses not to provide or sign a written complaint, the matter will still be investigated and appropriate action taken. Grievances made anonymously or by a third party must also be investigated to the extent possible.
 4. If the grievance does not rise to the level of discrimination or harassment, the Investigator may dismiss the grievance without further investigation after consultation with Legal Counsel. The Complainant should be informed of other available processes such as DSCC policies 06:07:02:01 (Employee Complaint or Grievance), 06:07:02:02 (Support Staff Grievance), and 04:03:03:00 (Student Disciplinary Procedures).

C. Investigation

1. Legal Counsel shall be notified of the grievance, whether written or verbal, as soon as possible after it is brought to the attention of the Investigator, and the investigation will be under the direction of Legal Counsel. All investigatory notes and documents shall be attorney work product. The Investigator shall notify the President that an investigation is being initiated.
2. When the allegation of discrimination or harassment is against the Investigator, the President will identify an individual who has been trained in investigating such complaints to investigate the grievance and carry out the responsibilities assigned pursuant to this policy. When the allegation of harassment is against the President, the Investigator shall notify Legal Counsel who will assign an investigator who will make his/her report to the Chancellor.
3. When the Respondent is a student, the Dean of Student Services will investigate the grievance in compliance with the procedures outlined in this policy. If a finding of violation is made, any resulting disciplinary action will be undertaken in compliance with DSCC policy 04:03:03:00 (Student Disciplinary Procedures).
4. When a student is the Complainant, the Respondent or an individual interviewed, all documentation referring to that student shall be subject to the provisions and protections of the Family Educational Records and Privacy Act (FERPA) and Tennessee Code Annotated Section 10-7-504(a) (4), which requires that certain student disciplinary records are subject to disclosure pursuant to a public records request.
5. In consultation with and under the direction of Legal Counsel, the Investigator shall conduct an investigation of the grievance. This investigation shall include interviews with both the Complainant and the Respondent, unless either declines an in-person interview. The investigation shall also include interviews with relevant witnesses named by the Complainant and Respondent. The purpose of the investigation is to establish whether there has been a violation of the policy. It is the responsibility of the Investigator to weigh the credibility of all individuals interviewed and to determine the weight to be given information received during the course of the investigation.
6. To the extent possible, the investigation will be conducted in such a manner to protect the confidentiality of both parties. However, the Complainant, Respondent and all individuals interviewed shall be informed that the institution has an obligation to address harassment and that, in order to conduct an effective investigation, complete confidentiality cannot be guaranteed. Information may need to be revealed to the Respondent and to potential witnesses. However, information about the complaint should be shared only with those who have a need to know about it. The Complainant and Respondent shall also be informed that a request to inspect

documents made pursuant to the Public Records Act may result in certain documents being released. A Complainant may be informed that if he or she wants to speak privately and in confidence about discrimination or harassment, he or she may wish to consult with a social worker, counselor, therapist or member of the clergy who is permitted, by law, to assure greater confidentiality. Additionally, the Complainant shall be given assurances that measures will be taken against the Respondent should there be retaliation against him or her. Retaliation is prohibited and should be reported to the investigator immediately. Allegations of retaliation must also be investigated pursuant to the procedure set out in this policy.

7. The Investigator shall notify the Respondent in writing within five (5) working days of receipt of the complaint. The Respondent may respond in writing to the complaint within five (5) working days following the date of receipt of the Investigator's notification.
8. If either the Complainant or the Respondent is a student, the Investigator should communicate the prohibition against disclosure of personally identifiable information with regard to the student, based on FERPA.
9. The Complainant, the Respondent and all individuals interviewed shall be notified that any retaliation engaged in connection with the complaint or its investigation is strictly prohibited regardless of the outcome of the investigation and may, in itself, be grounds for disciplinary action.
10. At any time during the course of the investigation, the Investigator may meet with both the Complainant and the Respondent individually for the purpose of resolving the complaint informally. Either party has the right to end informal processes at any time. Mediation will not be used in cases involving sexual assault. If informal resolution is successful in resolving the grievance, a report of such, having first been reviewed and approved by Legal Counsel, shall be submitted to the President.
11. If informal resolution is unsuccessful, the Investigator shall draft a report summarizing the investigation which shall be sent to Legal Counsel for review. Each report shall outline the basis of the grievance, including the dates of the alleged occurrences, the response of the Respondent, the findings of the Investigator, whether there were any attempts made to resolve the complaint informally, a determination of whether there was a violation of the policy, and recommendations regarding disposition of the grievance. After review and approval by Legal Counsel, the report shall be submitted to the President within sixty (60) calendar days following receipt of the grievance, absent cause for extending the investigation timeline. No working papers or statements generated in the investigation should be attached to the report. In situations where more time is needed to complete the investigation (e.g. difficulty in locating a necessary witness or complexity of the complaint), additional time may be taken but only after notice is given to Legal Counsel and written notice to both the Complainant and Respondent.
12. If, after investigation, there is insufficient evidence to corroborate the complaint or, in any situation in which the Complainant refuses to cooperate in the investigation, it may be appropriate to discuss the complaint with the Respondent, informing him or her that he or she is not being accused of discrimination or harassment, but that the conduct alleged, had it been substantiated, could be found to violate this policy. Any investigation and subsequent discussion should be documented and a report submitted as set forth in this procedure. It should also be noted that conduct which does not rise to the level of legally actionable discrimination or harassment may, nevertheless, provide a basis for disciplinary action against the Respondent.
13. The President shall review the Investigator's report and make a final written determination within a reasonable time as to whether a violation has occurred and what the appropriate resolution should be. After the President has made this determination, the Investigator shall, absent unusual circumstances and after consultation with Legal Counsel, provide both the Complainant and the Respondent with a copy of the determination, along with a copy of the Investigator's report.
14. If the investigation reveals evidence that a violation of this policy has occurred, the President must take immediate and appropriate corrective action. Such action may include meeting with the Respondent and/or the Complainant and attempting to resolve the problem by agreement, except in the case of sexual assault. Appropriate

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- steps must be taken to ensure that the discrimination or harassment will not recur.
15. After completion of the investigation and any subsequent disciplinary proceedings, all documentation shall be forwarded to Legal Counsel. However, copies of the President's determination, the Investigator's report, the complaint (if it concerns an employee) and documentation of any disciplinary action taken against the Respondent should be placed in a file maintained on campus. This file shall be maintained in a location designated by the President. If such action was taken, copies of documentation establishing disciplinary action taken against the Respondent, whether an employee or student, shall also be maintained in the Respondent's personnel or student record, as appropriate. Some documents involved in discrimination or harassment matters may be subject to the Public Records Act and thus open to public inspection. Other documents may be protected under FERPA, the attorney/client privilege, or attorney work product and would not be releasable. If a Public Records request is received, Legal Counsel must be consulted prior to the release of any documents.
 16. A grievance found to have been intentionally dishonest or maliciously made will subject the Complainant to appropriate disciplinary action.

Appeal of Decision

Because DSCC is committed to a high quality resolution of every case, it must afford the Complainant and Respondent an opportunity to appeal the President's decision concerning the Respondent's responsibility for the alleged conduct. The appeal process shall consist of an opportunity for the parties to provide information to the institution's attention that would change the decision. The appeal process will not be a de novo review of the decision, and the parties will not be allowed to present their appeals in person to the President unless the President determines, in his/her sole discretion, to allow an in-person appeal.

At the President's discretion, the appeal may or may not be heard by a grievance committee. Procedures as outlined in DSCC Policy 06:07:02:04 shall be followed if the decision is made to utilize a grievance committee. DSCC shall provide written notice of the appeal process to the parties at the time that the parties are advised of the outcome of the investigation

Either party may send a written appeal within ten (10) working days, absent good cause, of receipt of the President's determination. The appealing party or parties must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change the determination in the case. Failure to do so may result in a denial of the appeal.

The President will issue a written response to the appeal as promptly as possible. This decision will constitute the institution's final decision with respect to the President's determination.

Other Applicable Procedures

If the President's decision includes disciplinary action, the procedures for implementing the decision shall be determined by the applicable policies relating to discipline (e.g., employee complaint or grievance policy, student disciplinary policies and academic affairs policies).

Because the courts have imposed strict obligations on employers with regard to discrimination and harassment, institutions must take measures to periodically educate and train employees regarding conduct that could violate this Guideline. All employees, including faculty members, are expected to participate in such education and training. Further, all faculty members, students and staff are responsible for taking reasonable and necessary action to prevent and discourage all types of discrimination and harassment.

Compliance:

All staff, faculty and students are subject to this policy. Any faculty member, student or staff found to have violated this policy by engaging in behavior constituting discrimination or harassment will be subject to disciplinary action which may include dismissal, expulsion, termination or any other appropriate sanction.

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All staff and faculty are to be knowledgeable of policies and guidelines concerning discrimination and harassment. Supervisory employees must promptly report, to the appropriate institutional contact, any complaint or conduct which might constitute harassment, whether the information concerning a complaint is received formally or informally. Failure to do so may result in disciplinary action up to and including termination.

All staff, faculty and students are required to cooperate with investigations of alleged discrimination or harassment. Failure to cooperate may result in disciplinary action up to and including expulsion or termination.

Definitions:

Discrimination: The unjust or prejudicial treatment of an individual or group because of their race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, or any other category protected by Federal or State civil rights law.

Harassment: The act of systematic and/or continued unwanted and annoying actions, including threats and demands, of one party or a group against an individual. Types of harassment include psychological, racial, religious, sexual and sociological. Examples of harassment include stalking, mobbing, hazing, cyber-stalking and bullying.

Employees: Administrators, all full-time and adjunct faculty, professionals, clerical and support personnel. Probationary employees are also included in this definition.

Revision History:

Policy created December, 2004. Policy revised September, 2012; approved by Administrative Council on 12/14/12.