

Discrimination and Harassment-Complaint & Investigation Procedure

I. Purpose

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

II. Scope

This policy supplements TBR Policies 06.02.00.00 (Sex Discrimination and Sexual Harassment) and 5:01:02:00 (Equal Employment Opportunity and Affirmative Action) relative to the orderly resolution of complaints 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.

For purposes of this procedure, Prohibited Conduct means unlawful discrimination, sexual harassment, discriminatory harassment, or retaliation. Prohibited Conduct will not be tolerated.

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 Prohibited Conduct, except those certain complaints meeting the definition of sexual misconduct and the criteria for filing a formal complaint must be handled in accordance with DSCC’s Sexual Misconduct policy.

Former employees or students may file complaints of Prohibited 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.

These procedures are not intended, and will not be used, to infringe on expression protected by the First Amendment, the Tennessee Campus Free Speech Protection Act, or Board Policy 1.03.02.60, Freedom of Speech and Expression, even though such expression may be offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed, or any other rights provided by the Tennessee or United States Constitutions.

All faculty members, students and staff are subject to this Guideline.

1. Any faculty member, student or staff found to have engaged in Prohibited Conduct will be subject to disciplinary action, which may include dismissal, expulsion or termination, or other appropriate sanction.
2. The College will not tolerate Prohibited Conduct directed at employees or students by vendors, visitors, or other third parties. The manner in which The College responds to a

report will depend on the circumstances involved, including the institution's ability to investigate, and if necessary, implement corrective action.

All faculty and staff members are required to cooperate with investigations of Prohibited Conduct.

1. Failure to cooperate may result in disciplinary action up to and including termination.
2. Students are also required to cooperate with these investigations; failure to do so may result in disciplinary action.

The College must take measures to periodically educate and train employees on preventing and reporting Prohibited Conduct.

1. All employees, including faculty members, are expected to participate in such education and training.
2. All faculty members, students and staff are encouraged to take reasonable and necessary action to prevent and discourage all types of discrimination and harassment.

III. 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 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.

Types of Prohibited Conduct

A. 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.

B. Sexual Harassment and Other Discriminatory Harassment

1. General

- a. 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. Depending on the severity of the conduct, a single incident may be considered sexual or other discriminatory harassment.
- b. Not every action or utterance that may be perceived as offensive will constitute Prohibited Conduct. In addition, institutions may take corrective or educational action, even if an investigation does not support an allegation of Prohibited Conduct, or in the event that conduct violates another policy, appropriate disciplinary action in accordance with that policy.
- c. Rude, inappropriate, or offensive behavior by employees that it is not based on sex or other characteristics protected by state or federal law should be addressed by the appropriate supervisor or through administrative channels in accordance with other applicable policies.

2. Sexual Harassment

- a. With respect to conduct directed at another employee, sexual harassment means unwelcome sexual advances, request for sexual favor, and other verbal or physical conduct of a sexual nature, which includes conduct based on gender, pregnancy 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 that individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, abusive, or offensive work environment.

- b. With respect to conduct directed at a student by an employee, sexual harassment means unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the institution's education program or activity.

- c. With respect to student-on-student harassment and disciplining students for their speech, expression, or assemblies, an institution will not impose disciplinary action, except for unwelcome conduct directed toward a person that is discriminatory on a basis prohibited by federal, state, or local law, and that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an education opportunity or benefit.

- d. Examples of sexual harassment – Sexual harassment is not limited to personal interactions, but can occur via telephone, texting, social media, the internet, and

other methods of communication. 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;
- Suggestive or inappropriate communications, email, texts, notes, letters, or other written or electronic materials displaying objects or pictures which are sexual in nature that would create hostile or offensive work or living environments;
- Sexual innuendoes, comments, and remarks about a person's clothing, body or activities;
- Suggestive or insulting sounds;
- Whistling in a suggestive manner;
- Humor and jokes about sex that denigrate men or women;
- Sexual propositions, invitations, or pressure for sexual activity;
- Use in the classroom of sexual jokes, stories, remarks or images in no way or only marginally relevant to the subject matter of the class;
- Implied or overt sexual threats;
- Suggestive or obscene gestures;
- Patting, pinching, hugging, and other inappropriate touching;
- Unnecessary touching or brushing against the body;
- Attempted or actual kissing or fondling;
- Repeated requests for dates after refusal;
- Sexual violence; including rape, sexual assault, sexual battery, dating violence, domestic violence, and sexual coercion;
- Suggestive or inappropriate acts, such as comments, innuendoes, or physical contact based on one's actual or perceived sexual orientation, gender identity/expression; and
- Institutional policies may delineate additional examples.

e. 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 processes developed by the Sexual Misconduct Policy and this Guideline. Complainants must be notified of the right to file a criminal complaint.

C. Other Discriminatory Harassment

1. With respect to conduct directed at an employee, other discriminatory harassment means unwelcome conduct based on race, color, religion, national origin, age, disability, genetic information, veteran status, and any other category protected by federal or state law that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, abusive, or offensive work environment.

2. With respect to conduct directed toward a student by an employee, other discriminatory harassment means unwelcome conduct based on race, color, religion, national origin, age, disability, genetic information, veteran status, and any other category protected by federal or state law that has the purpose or effect

of unreasonably interfering with an individual's educational performance or creates an intimidating, hostile, or offensive educational environment.

3. Examples of conduct that may constitute discriminatory 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, unwelcome comments about a person's religion or religious garments, offensive graffiti, cartoons or pictures, or offensive remarks about a person's age.

D. Retaliation

1. "Retaliation" means to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Guideline, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Retaliation is a violation of this policy regardless of whether the underlying alleged violation is ultimately found to have merit.

2. The exercise of rights protected under the First Amendment does not constitute retaliation.

3. Charging an individual with a policy or guideline violation for making a materially false statement in bad faith in the course of a proceeding under this Guideline does not constitute retaliation.

Consensual Relationships

Intimate, romantic, and dating 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 and for other reasons.

1. These relationships could lead to undue favoritism or the perception of undue favoritism, abuse of power, compromised judgment or impaired objectivity.
2. Engaging in a consensual relationship with a student over whom the faculty member has either grading, supervisory, or other authority is prohibited.
3. 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.
4. Likewise, it is prohibited for a supervisor to engage in a consensual relationship with a subordinate over whom he or she has evaluative or supervisory authority.
 - a. The supervisor must take action to resolve the conflict by assigning another individual to supervise and/or evaluate the subordinate or by terminating the personal relationship.
 - b. In circumstances where a consensual relationship is permitted, regardless of whether it involves physical intimacy, both parties should ensure that their respective actions and attentions are welcomed by the other party.

Grievance Procedures General

1. The following procedures are intended to protect the rights of the person who is alleged to be the victim of conduct that could violate this guideline (hereinafter, "the Complainant") as well as the person who has been alleged to be a perpetrator of conduct that could violate this guideline (hereinafter, "the Respondent"), as required by State and Federal laws. Each complaint must be properly and promptly investigated absent unusual circumstances, such as the inability to conduct an investigation. When warranted, appropriate corrective and/or disciplinary action taken.
2. The Office of General Counsel (hereinafter, "the Legal Counsel") shall always be consulted prior to investigation.
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). Legal Counsel shall be contacted before any immediate action is taken.
4. Each employee, applicants for employment and student shall be notified of the name, address, email address, and telephone number of the designated Equal Employment Officer, Student Affairs, Title VI and Title IX officer(s) responsible for assuring compliance with this Guideline, applicable TBR policies and Federal laws.

A. Filing Complaints

1. Any current or former student, applicant for employment, or current or former employee who believes he or she has been subjected to Prohibited Conduct at shall present the complaint to the designated EEO, Student Affairs, Title VI or Title IX Coordinator responsible for the compliance of this Guideline. Any employee required or encouraged to make such a report should use the same reporting procedure.
2. Complaints under Title VI must be brought within 180 days of the last incident of discrimination or harassment. Complaints must be brought within 365 days of the most recent incident of discrimination or harassment.
 - a. Complaints brough after that time period will not be pursued absent extraordinary circumstances.
 - b. Whether the complaint was timely or whether extraordinary circumstances exist to extend the complaint period must be made after consultation with Legal Counsel.
3. Every attempt will be made to get the Complainant to provide the complaint in writing. The complaint shall include the circumstances giving rise to the complaint, the dates of the alleged occurrences and names of witnesses, if any. The complaint should 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. Complaints made anonymously or by a third party must also be investigated to the extent possible.

4. Complaints or reports received by the System Office will be directed to the institution's Title IX Coordinator (for complaints involving sex discrimination) or EEO/AA Officer (for other allegations of Prohibited Conduct), unless the matter should be investigated by System Office personnel or an outside investigator- in accordance with Section V of this Guideline.

5. If the allegations, even if proved, would not violate this Guideline, the Investigator may dismiss the complaint without further investigation after consultation with Legal Counsel.

a. The Complainant should be informed of other available processes such as the employee grievance/complaint process, or a student non-academic complaint process.

b. Any such dismissal shall be in writing, conveyed to the Complainant and Respondent, and retained in accordance with record retention obligations.

B. Investigation

1. Legal Counsel shall be notified of the complaint, whether written or verbal, as soon as possible in order to provide legal advice.

2. If a person wishes to make a complaint or report of Prohibited Conduct against a high level administrator (such as a Vice President, the EEO/AA Officer, Student Affairs Officer, Title VI or Title IX Coordinator/Officer) or someone who is reasonably believed to have a conflict of interest or bias, or if a person is otherwise uncomfortable using the reporting procedures in this Guideline, a complaint or report may be directed to the President, Chancellor, TBR System Office Title IX Coordinator (for complaints involving sex discrimination), or TBR System Office EEO/AA Officer (for other allegations of Prohibited Conduct), who should consult the Office of General Counsel. An appropriate person will be appointed to investigate the matter. Complainants are encouraged submit a signed, written complaint and to include the circumstances giving rise to the complaint, the name of the Respondent, the dates of the alleged occurrences, and the names of witnesses, if any. When a Complainant makes an allegation of Prohibited Conduct against the President, the recipient of the report shall notify the Office of General Counsel. An appropriate person will be appointed to investigate and report to the Chancellor.

3. Any investigation and/or disciplinary action against a student shall be consistent with the institution's student conduct and disciplinary procedures policy, and in the event of a conflict between that policy and this guideline, that policy shall govern.

4. When a student is involved as the Complainant, the Respondent, or an individual interviewed, documentation shall be subject to the provisions and protections of the Family Educational Rights and Privacy Act (FERPA), T.C.A. § 10-7-504(a)(4), and other applicable law. Certain records may be subject to disclosure pursuant to a public records request or otherwise.

5. The Investigator shall conduct an investigation of the complaint that is appropriate under the circumstances.

a. An investigation shall include interviews with both the Complainant and the Respondent, unless either declines to be interviewed. Follow-up interviews may be

conducted. The Complainant and Respondent are encouraged to provide, as soon as possible, information they want the Investigator to consider.

b. The investigation shall also include review of documents, other information, and interviews with relevant witnesses, including those named by the Complainant and Respondent, as well as those otherwise identified by the Investigator.

c. The purpose of the investigation is to determine whether there has been a violation of the applicable policies and this Guideline. Determinations will be based on whether a preponderance of the evidence establishes a policy or Guideline violation. The burden of obtaining evidence and (if supported by the evidence) establishing a violation shall be on the institution.

6. It is the responsibility of the investigator to weigh credibility and to determine the weight to be given information received during the course of the investigation. To the extent possible, the investigation will be conducted in such a manner to protect the confidentiality of both parties.

a. In the case of a complaint or report involving Prohibited Conduct, if the Complainant wishes to maintain confidentiality or requests that no investigation be conducted, or no disciplinary action be taken, the institution will weigh that request against the institution's obligation to provide a non-discriminatory environment for the Complainant, as well as other students and employees, and other applicable policies. A decision to honor a request for confidentiality or not to investigate a matter must be confirmed in writing with the Complainant, approved by the President, and maintained by the institution. The Office of General Counsel must be consulted before such a decision is made.

b. The Complainant, Respondent and all individuals interviewed shall be informed that the institution has an obligation to address alleged harassment and that, in order to conduct an effective investigation, complete confidentiality cannot be guaranteed.

c. Information may need to be revealed to the Respondent and to potential witnesses.

d. Information about the complaint should be shared only with those who have a need to know about it.

e. 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 unless made confidential pursuant to FERPA or other law.

f. A Complainant may be informed that if they want to speak privately and in confidence about discrimination or harassment, they may wish to consult with a social worker, counselor, therapist or member of the clergy who is permitted, by law, to assure greater confidentiality. Confidentiality and available resources are discussed in institutional Sexual Misconduct policies.

g. The Complainant shall be informed that when the institution receives notice of alleged retaliation, it will take immediate and appropriate steps to investigate and will take corrective action if it determines that retaliation occurred.

h. Retaliation is prohibited and should be reported to the Investigator immediately.

i. Allegations of retaliation must also be investigated pursuant to the procedure set out in this Guideline.

7. The Investigator shall notify in writing the Respondent within five (5) working days of receipt of a written complaint or the decision to initiate an investigation.

a. 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 that the institution will comply with FERPA and only disclose information as required by FERPA and other applicable law.

9. The Complainant, the Respondent and all individuals interviewed shall be notified that any retaliation engaged against someone because they filed a complaint or participated in an investigation is strictly prohibited, regardless of the outcome of the investigation and may, in itself, be grounds for disciplinary action.

10. At any time prior to completion of the investigation report, the Investigator may meet with both the Complainant and the Respondent individually for the purpose of attempting to resolve the complaint informally.

a. Either party has the right to end informal processes at any time.

b. If informal resolution is successful in resolving the complaint, a report of such, having first been reviewed by Legal Counsel, shall be submitted to the President.

11. Unless there is an informal resolution, the Investigator shall draft a report summarizing the investigation, which shall be sent to the Office of General Counsel for legal review.

a. Each report shall outline the basis of the complaint, 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, and recommendations regarding disposition of the complaint.

b. After receiving advice from the Office of General Counsel, the report shall be submitted to the President within sixty (60) calendar days following receipt of the complaint, absent cause for extending the investigation timeline. In situations where more time is needed to complete the investigation, for reasons such as difficulty in locating a necessary witness, or complexity of the complaint, additional time may be taken, but only following notice to Legal Counsel and written notice to both the Complainant and the Respondent.

c. Working papers, investigator notes, witness statements, etc. generated in the investigation generally should not be attached to the report. Relevant exhibits such as emails, photographs, and other documents that were not created as part of the investigation may be attached.

12. If, after investigation, a preponderance of the evidence does not establish a violation of policy or this Guideline, it may be appropriate to discuss the complaint with the Complainant and/or Respondent so that they understand relevant policies and appropriate behavior standards.

- a. Any investigation and subsequent discussion should be documented and retained.
- b. Conduct which does not rise to the level of a policy violation may, nevertheless, provide a basis for disciplinary action.

13. The President shall review the Investigator's report and make a written determination within a reasonable time as to whether a policy or Guideline violation has occurred and the appropriate resolution.

- a. After the President has made this determination, absent unusual circumstances and after consultation with Legal Counsel, the Complainant and the Respondent should receive a copy of the determination and the Investigator's report.

14. If the President finds that a preponderance of the evidence establishes that a violation of policy or this Guideline has occurred, the President must take appropriate corrective or remedial action.

- a. When it has been determined that an employee has violated policy or this Guideline, the employee is subject to disciplinary action, up to and including, termination of employment. A faculty member's violation of this policy may constitute "adequate cause" for disciplinary action, including termination.
- b. Remedial action may include meeting with the Respondent and/or the Complainant and attempting to resolve the problem by agreement, e.g., through restorative justice.
- c. The institution will take steps designed to prevent the recurrence of Prohibited Conduct and to remedy effects on the Complainant and others, as appropriate.
- d. Copies of the determination (including any reconsideration and/or appeal), the Investigator's report, the investigation file, the complaint (if it concerns an employee) and documentation of any disciplinary action, any remedies provided to the Complainant, should be placed in a file maintained by the institution.
- e. Copies of any documentation establishing disciplinary action shall also be maintained in the personnel or student record, as appropriate.

(1) Some documents involved in an investigation may be subject to the Public Records Act and thus open to public inspection.

(2) Other documents may be protected under FERPA, the attorney/client privilege, or attorney work product and would not be releasable.

(3) If a Public Records Act request is received, Legal Counsel must be consulted prior to the release of any documents.

15. A complaint found to have been intentionally dishonest or maliciously made will subject the Complainant to appropriate disciplinary action. A finding that the evidence does not establish a violation of policy or this Guideline, in and of itself, does not establish that a complaint was dishonest or malicious.

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.

IV. 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.

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.

V. 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.

VI. Revision History

Policy created December, 2004. Policy revised September, 2012; approved by Administrative Council on 12/14/12. Revised April 2024; approved by Administrative Council on 4/25/2024.