

VIII:04:00 DISCRIMINATION AND HARASSMENT

I. Purpose

The purpose of this policy is to supplement TBR Policies 2:02:10:01, 5:01:02:00, 6:01:00:00, 6:02:00:00 and 6:03:00:00 and TBR Guideline P-080 and to implement Volunteer State Community College policies VIII:01:00 and VIII:02:00, relative to the orderly resolution of allegations 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 law.

Fair and prompt consideration shall be given to all allegations in accordance with the procedures set forth below. These procedures may be utilized by any person on the Volunteer State Community College campus(es) including employees, applicants for employment, or students who believe he or she has been subjected to discrimination or harassment. Former employees or students may file allegations concerning conduct which took place during the time of employment or enrollment provided the allegation is timely filed pursuant to Section III of this policy and the conduct has a reasonable connection to the institution.

II. Procedures

A. General

1. The following procedures are intended to protect the rights of the aggrieved party (hereinafter, “the Complainant”) as well as the party against whom an allegation of discrimination or harassment is lodged (hereinafter “the Respondent”), as required by state and federal laws. Each allegation must be promptly and properly investigated and, when warranted, appropriate disciplinary action taken against the Respondent.
2. The TBR Office of General Counsel (OGC) shall always be consulted upon receipt of an allegation and prior to an investigation.
3. In situations that require immediate action because of safety or other concerns, the College may take any administrative action which is appropriate, e.g., administrative leave with pay pending the outcome of the investigation. Students may be placed on interim suspension under the appropriate circumstances pending the outcome of the investigation, as described in the Student Handbook and Volunteer State Community College Policy III:00:05. OGC shall be contacted before any immediate action is taken.
4. Each employee, applicant for employment and student shall be notified of the name, office, and telephone number of the designated Equal Employment/Affirmative Action Officer responsible for assuring compliance with this policy, Board Guideline and federal law.

B. Reporting Allegations

1. Any person, including current or former students, applicants for employment, or current or former employees, who believes he/she has been subject to

discrimination or harassment at the College or who believes he/she has observed discrimination or harassment taking place, shall present the allegation to the Title IX/EEO Coordinator. The Title IX/EEO Coordinator will investigate or assign the investigation to an appropriate person for investigation. When so assigned, the investigator will maintain communication with the Title IX/EEO Coordinator throughout the process.

2. Allegations under Title VI must be brought within 180 days of the last incident of discrimination or harassment. All other allegations must be brought within 365 days of the last incident of discrimination or harassment. Allegations brought after those time periods will not be pursued absent extraordinary circumstances. The determination of whether the allegation was timely filed or whether extraordinary circumstances exist to extend the allegation period must be made in conjunction with OGC.
3. Allegations may be brought in writing or reported verbally to the Title IX/EEO Coordinator who will reduce it to writing. The allegation shall include the circumstances giving rise to the allegation, the dates of the alleged occurrences and the names of witnesses, if any. A sample allegation form is provided in Appendix A. Every effort shall be made to obtain a signature by the Complainant; however, when the Complainant chooses not to provide or sign a written allegation, the matter will still be investigated and appropriate action taken. Allegations made anonymously or by a third party will also be investigated to the extent possible.
4. If the subject matter of the allegation does not properly address a matter of discrimination or harassment, the Investigator may dismiss the allegation without further investigation after consultation with OGC. The Complainant should be informed of other available processes, such as the employee grievance/allegation process or a student non-academic allegation process.

C. Investigation

1. OGC shall be notified of the allegation, 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 OGC. The Title IX/EEO Coordinator or designee shall notify the President that the investigation is being initiated.
2. When the allegation of discrimination or harassment is against the Title IX/EEO Coordinator, the President will identify an individual who has been trained in investigating such allegations to investigate the allegation and carry out the responsibilities assigned pursuant to this policy. If it is against some other person that has been assigned to the investigation, the Title IX/EEO Coordinator will reassign the investigation to an individual who has been trained in investigating such allegations. When the allegation of harassment is against the President, the Title IX/EEO Coordinator or designee shall notify the OGC who will assign an investigator who will make his or her report to the Chancellor.
3. When the Respondent is a student, the Vice President for Student Services or his or her designee, in conjunction with the Title IX/EEO Coordinator or his or her designee, will investigate the allegation 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 this policy and the College's student disciplinary procedures, found in Volunteer State Community College Policy III:00:05. When the Respondent is an employee, the Title IX/EEO Coordinator or his or her designee, in conjunction with appropriate the College administrator(s), if applicable, will investigate the allegation 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 this policy and the College's employee disciplinary procedures.

4. When a student is involved as the Complainant, the Respondent or an individual interviewed, all documentation referring to that student shall be subject to the provisions of the Family Educational Records and Privacy Act (FERPA) and Tennessee Code Annotated Section 10-7-50(a) (4) which requires that certain students' disciplinary records are subject to disclosure pursuant to a public records request.
5. In consultation with and under the direction of OGC, the Investigator shall conduct an investigation of the allegation. This investigation shall include interviews with both the Complainant and the Respondent. The investigation shall also include interviews with relevant witnesses, as well as those 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 to 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 College has an obligation to address harassment and that, in order to conduct an effective investigation, complete confidentiality cannot be guaranteed. Additionally, all individuals shall be informed that discussion of the investigation with persons not involved in the investigation process may constitute retaliation in an appropriate case. Information may need to be revealed to the Respondent and to potential witnesses. However, information about the allegation 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.
7. A Complainant may be informed that if he or she wants to speak privately and in confidence about discrimination or harassment, he/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. A list of available community resources may be obtained from the Advising Center or by calling 615-230-3702.
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 shall be given assurances that measures will be taken against the Respondent should there be retaliation against him/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.
10. The Respondent and all participants in the investigation shall be notified that retaliation against the Complainant or other participants in the investigation is prohibited and that such conduct is subject to separate/additional disciplinary action.
11. The Investigator shall notify the Respondent about the allegation, in writing, as soon after receipt as practicable. The Respondent may provide a written response to the allegation within five (5) working days following receipt of the Investigator's notification.
12. 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 allegation informally. Either party has the right to end informal processes at any time.

13. If no informal resolution is reached, the Investigator shall draft a report summarizing the investigation which shall be sent to OGC for review. Each report shall outline the basis of the allegation, 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 allegation informally, a determination of whether there was a violation of the policy and recommendations regarding the disposition of the allegation.
14. After review and approval by OGC, the report shall be submitted to the President no later than sixty (60) calendar days following receipt of the allegation, 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 allegation, additional time may be taken but only following notice to OGC and written notice to both the Complainant and the Respondent.
15. If, after investigation, there is insufficient evidence to support the allegation or in any situation in which the Complainant refuses to cooperate in the investigation, it may be appropriate to discuss the allegation with the Respondent, informing him or her that he or she is not being accused of a P-080 violation, but that the conduct alleged, had it been substantiated, could be found to violate TBR Guideline P-080, this policy and/or College policies VIII:01:00, VIII:02:00, VIII:03:00 and VIII:05:00. Conduct which does not violate the College's policies prohibiting discrimination may, nevertheless, provide a basis for disciplinary action against the Respondent.
16. The President shall review the Investigator's report and shall make a final determination within a reasonable time as to whether a violation has occurred and what the appropriate resolution should be.
17. 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. Appropriate steps must be taken to ensure that the discrimination or harassment will not reoccur.
18. After the President has made the determination, the Investigator shall, absent unusual circumstances and after consultation with OGC, provide both the Complainant and the Respondent with notice of the determination, any related corrective action and notice of the appeal process, to the parties at the time that they are advised of the outcome of the investigation.
19. After completion of the investigation and any subsequent disciplinary proceedings, all documentation shall be forwarded to OGC. However, copies of the President's determination, the Investigator's report, the allegation (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 the Title IX/EEO Coordinator's office. If such action was taken, copies of documentation establishing disciplinary action taken against the Respondent, whether an employee or student, shall be maintained in the Respondent's personnel or student record, as appropriate.
20. Some documents involved in an investigation may be subject to the Public Records Act and, thus, open to 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, OGC must be consulted prior to the release of any documents.

21. An allegation found to have been intentionally dishonest or maliciously made will subject the Complainant to appropriate disciplinary action.

D. Appeal of Decision

1. Both the Complainant and the Respondent shall have an opportunity to appeal the President's decision concerning the allegation.
2. Appeals to the President shall be delivered to the investigator within ten (10) days from receipt of notice of the outcome of the investigation.
3. 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 or her sole discretion, to allow an in-person appeal.
4. The appealing party(ies) must explain why he/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.
5. The President will issue a written decision regarding the appeal as promptly as possible. This decision will constitute the institution's final decision with respect to the President's determination.

III. Other Applicable Procedures

While the decision of the President is final with regard to whether or not a violation of the College's policy against discrimination has occurred, where disciplinary action results in termination of employment, suspension or expulsion, the affected party shall have the right to utilize policies applicable to his or her status, (e.g., employee, faculty, or student) to appeal the sanction only. See also College Policies V:01:16 Grievance and Complaint Procedures for Non-Faculty Personnel, II:01:00 Academic Tenure, III:00:06 Student Complaint Procedures, the Student Handbook and /or TBR Guidelines P-110 and P-111 and TBR Policy 5:02:03:70.

VSCC Source: President's Cabinet, 09/25/2014; President's Cabinet, 04/03/2017

This Policy Replaces College Policy V:02:19

APPENDIX A

SAMPLE DISCRIMINATION/HARASSMENT ALLEGATION FORM

Date:

Complainant:

Address:

Email Address:

Phone: (home) (work) (cell)

Name(s) of person(s) accused of wrongdoing:

Describe all actions of person(s) named above. Be as detailed as possible; include the date, time and place of each event(s) or conduct involved. Attach additional pages, if needed.

Why do you think the person(s) treated you this way?

What effect has this had on you?

Name(s) of witness(es) to the above-described events. Include phone number(s), if known.

Name(s) of anyone with whom you discussed the above-described events. Include phone number, if known.

How would you like this matter resolved?

Complainant Signature:

Return completed form to Human Resources