



August 17, 2020

M E M O R A N D U M

TO: Jim Murdaugh, Ph.D.
President

FROM: Barbara Wills, Ph.D.
Vice President for Administrative Services and Chief Business Officer

SUBJECT: Policy Manual Changes

Item Description

This item requests Board approval of Policy Manual changes in Chapter 3.0 – General Administration.

Overview and Background

The College brings forth a request to modify the College's Policy Manual: revise Policy 03-01 – Equal Access/Equal Opportunity, Discrimination, Sexual Misconduct, and Unlawful Harassment.

Highlights of these changes are outlined below:

- Policy 03-01 was revised to clarify definitions and processes prescribed by new regulations of Title IX of the Education Amendments Act of 1972.

Funding/ Financial Implications

N/A.

Past Actions by the Board

The Board last took action on Policy 03-01 on March 19, 2018.

Recommended Action

Approve revision of College policy as presented.

**TALLAHASSEE COMMUNITY COLLEGE
DISTRICT BOARD OF TRUSTEES
POLICY**

<p>TITLE: Equal Access/Equal Opportunity, Discrimination, Sexual Misconduct, and Unlawful Harassment</p>	<p>NUMBER: 03-01</p>
<p>AUTHORITY: Florida Statute: 1001.64, 1001.65, 1006.35, 1006.67 Florida Administrative Code: 6A-14.0262, 6A-14.060, 6A-19.008 Age Discrimination in Employment Act of 1967, as amended Executive Order 11246, <u>as amended</u> Section 504, Rehabilitation Act of 1973, as amended Title II, Genetic Information Non-Discrimination Act of 2008 Titles VI and VII of the Civil Rights Act of 1964, amended 1972 <u>Title VII of the Civil Rights Act of 1964, as amended</u> Title IX, <u>of the</u> Education Amendments <u>Act</u> of 1972 Florida Educational Equity Act of 1984, as amended</p>	<p>SEE ALSO:</p> <ul style="list-style-type: none"> • <u>Administrative Procedure 03-01-1AP: Equal Opportunity, Discrimination, Sexual Misconduct, and Unlawful Harassment;</u> • <u>Administrative Procedure 03-01-2AP: Title IX Sexual Harassment</u>
<p>DATE ADOPTED: 12/01/97; revised 01/22/01; 09/21/09; 08/20/12; 11/17/14; 03/16/2015; 08/24/15; 08/15/16; 03/19/18; <u>08/17/20</u></p>	

A. EQUAL ACCESS/EQUAL OPPORTUNITY STATEMENT

Tallahassee Community College (TCC or the College) does not discriminate against any person on the basis of age, color, disability, ethnicity, gender identity, genetic information, marital status, national origin, pregnancy, race, religion, sex, sexual orientation, or veteran status in its programs and activities.

As an institution of higher education, the College reaffirms its policies of equal opportunity and open admissions, and is committed to maintaining and promoting nondiscrimination in all aspects of its programs and activities. The College has an Equity Plan to ensure equal access/ equal opportunity to all individuals and has designated a College Equity Officer/Title IX Coordinator to ensure compliance with applicable TCC Policy, State and Federal laws.

The College will broadly publish and circulate its policy of equal access/equal opportunity by including the policy in correspondence, media communication, and printed material. The College will engage the services of only those professional organizations, employment agencies, contracts, or other agents whose policies are in alignment with the equal opportunity policy of the College.

B. POLICY STATEMENT

1. The College is committed to having a learning and working environment that is free of discrimination, sexual misconduct, and unlawful harassment. Discrimination, sexual misconduct, or harassment of students or employees in the learning and/or working environment will not be tolerated. Accordingly, members of the college community, including students, faculty, administrators, staff, vendors and the public can expect professional and courteous treatment at all times.
2. It shall be a violation of this policy for a faculty/staff, students, or vendors of the College to discriminate against, participate in sexual misconduct, or harass another student, faculty member, administrator, staff member, or vendor.
3. The College will not tolerate retaliation against students, employees or witnesses for filing complaints, or protesting practices which are prohibited under this policy.
4. Terms and conditions of employment based on a bona fide occupational requirement or distinction (i.e. gender specific restrooms, athletic activities, or other areas) is not a violation of this policy.
5. Discrimination, sexual misconduct, and unlawful harassment on the part of vendors toward any member of the College community will not be tolerated. Vendors will be required to promptly investigate claims of discrimination, sexual misconduct, or harassment reported against their employees or subcontractors.
6. All complaints of discrimination, sexual misconduct, and unlawful harassment will be kept confidential to the extent allowed by law.

C. DEFINITIONS

1. Complainant – is an individual who is alleged to be the victim of conduct that could constitute a violation of College policy.

2. Determination - is the conclusion of a dispute by the rendering of a final decision.

3. Discrimination - is defined as treating any member of the College community differently than others on the basis of age, color, disability, ethnicity, gender identity, genetic information, marital status, national origin, pregnancy, race, religion, sex, sexual orientation, or veteran status, or other legally protected classifications.

Conduct which falls under the definition of discrimination and which is prohibited by this policy includes, but is not limited to:

Equal Access/Equal Opportunity, Discrimination, Sexual Misconduct, and Unlawful Harassment

- a. Disparate treatment in employment, job placement, promotions, demotions, salaries or wages, benefits, or other terms and conditions of employment, on the basis of one of the protected categories outlined above.
- b. Limiting a person's access to athletic, social, cultural or other activities of the college on the basis of one of the protected categories outlined above.

3.4 Gender Identity - refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.

5. Preponderance of Evidence Standard – is an evidence standard which means concluding that a fact is more likely than not to be true, based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

4.6 Respondent – is an individual who has been reported to be the perpetrator of conduct that could constitute a violation of College policy.

3.7. Retaliation - is any adverse action taken against the person(s) who makes, ~~or~~ supports, or participates in the investigation of a complaint of discrimination, sexual misconduct, or harassment.

4. 8. Sex - refers to either of the two major forms of individuals that occur in many species and that are distinguished respectively as female or male especially on the basis of their reproductive organs and structures.

5.9. Sexual Misconduct - includes but is not limited to sexual violence, (which includes any kind of nonconsensual sexual contact), sexual harassment, sexual exploitation or any other conduct of a sexual nature that is nonconsensual, or has the purpose or effect of threatening, intimidating, or coercing.

- a. Sexual Exploitation - is defined as taking non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage ~~any one~~ anyone other than the one being exploited, and that behavior does not otherwise constitute one of the sexual misconduct offenses.
- b. Sexual Harassment - is defined as any unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct or communication of a sexual nature when:
 - 1. Submission to or rejection of such conduct is used explicitly or implicitly as a basis for any decision affecting terms or conditions of an individual's employment, academic status, participation in any program or activity, receipt of College services; or

~~or~~

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4.2. Such conduct has the purpose or effect of interfering with an individual's work performance or academic experience by creating an intimidating, hostile, or offensive environment for work or learning.

Sexual harassment can occur between any persons including students, faculty, administrators, staff, vendors, or visitors.

c. ~~Sexual Violence - is sexual offenses as outlined in the Uniform Crime Reporting Handbook, and~~ defined as any sexual act directed against another person, without the consent of the complainant/victim, including instances where the complainant/victim is incapable of giving consent.

10. Title IX Sexual Harassment – includes the following behaviors with respect to participation in the College's education programs or activities, which include locations, events, or circumstances over which the College exercise substantial control over both the respondent and the context in which the sexual misconduct occurred. Title IX Sexual Harassment - is conduct on the basis of sex that satisfies one or more of the following:

- a. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., *quid pro quo*); or
- b. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
- c. Sexual assault (as defined in the Clery Act), or dating violence, domestic violence or stalking as defined in the Violence Against Women Act (VAWA).

611. Unlawful Harassment - is defined as conduct that is a) unwelcome and b) unreasonably interferes with an individual's ability to learn or work due to the creation of an intimidating, hostile, or offensive environment.

Extended definitions and examples of terms listed above may be found in TCC's Glossary of Terms located on the TCC Equity and Civil Rights web page, and within Administrative Procedures AP03-01-1AP and 3-01-2AP.

D. REPORTING, INVESTIGATION, AND RESOLUTION

1. Reporting

The College strongly encourages persons to promptly report any occurrence of discrimination, sexual misconduct, or unlawful harassment. The registering of a complaint will not be used or held against the student or employee, nor will it have an adverse impact on the complainant's educational or employment status.

- a. Complaints of discrimination, sexual misconduct, or unlawful harassment involving applicants, faculty/staff, students, vendors, or guests should be filed ~~promptly within 180 days from the date of the incident~~ via Tallahassee Community College's (TCC) on-line Complaint Form, or directly with the College's Equity Officer/Title IX Coordinator at (850) 201-6074, or tolsonr@tcc.fl.edu, or postmark to:

Tallahassee Community College
Attn: Renae Tolson, Equity Officer & Title IX Coordinator
Room 239 Administration Building
444 Appleyard Drive
Tallahassee, FL 32304-2895

- b. Any College personnel, student, vendor or guest who becomes aware of an alleged conduct of discrimination, sexual misconduct, or unlawful harassment must report this information immediately to the College's Equity Officer/Title IX Coordinator.
- c. ~~All complaints of discrimination, sexual misconduct, or unlawful harassment will be logged in the TCC Equity and Civil Rights Complaint Log. The log will include the complaint number, complainant's name, person whom the complaint is filed against, incident date(s), brief summary, and the determination/resolution. The Equity Officer/Title IX Coordinator is the official custodian of the log.~~

2. Investigation

- a. Upon receipt of a complaint, the College Equity Officer/Title IX Coordinator will coordinate with TCC's Police Department, ~~the Student Conduct and Community Standards Office~~ Student Affairs Office, ~~the Human Resources Office Director~~ and/or other TCC personnel as appropriate to ensure a supportive and safe environment. The College will ensure an adequate, reliable, and impartial investigation of complaints, including the opportunity for the complainant and respondent to present witnesses and other evidence. See TCC Administrative Procedure 3-01-1AP and 03-01-2AP for complete details regarding the reporting, investigation and resolution process.
- b. The Equity Officer/Title IX Coordinator will assign one of the College's trained investigators as the College's Investigating Official of record for the complaint. The College's Investigating Official will follow state and federal guidelines, College Policy, Administrative Procedures AP03-01-1AP and 03-01-2AP, ~~TCC's Sexual Misconduct Guide~~, and the Student Code of Conduct, as appropriate, in reviewing the complaint.

- c. Investigations will be completed within 60 calendar days from the date the complaint was filed, unless otherwise agreed upon by the parties or upon extenuating circumstances.
 - d. The College Investigating Official will use a preponderance of evidence standard for resolving any conflicts in the evidence, and deciding the facts of the complaint.
 - e. At the conclusion of the investigation, the Investigating Official will send the investigative report, including findings of fact and proposed resolution, to the College Equity Officer/Title IX Coordinator for review; and determination, or submission for hearing as appropriate. See TCC Administrative Procedure 3-01-1AP and 03-01-2AP for complete details regarding the reporting, investigation and resolution process.
3. Resolution
- a. The College will take steps to prevent the recurrence of any discrimination or harassment found to have occurred upon an investigation, and to correct its discriminatory effects on the complainant and others, if appropriate.
 - b. Once the complaint determination is made ~~by the Equity Officer/Title IX Coordinator~~, written notification will be provided to both the complainant and respondent, informing them of the determination of the complaint outcome of the investigation and the subsequent appeals process.
 - c. If the decision regarding an employee or student complaint is not satisfactory for the complainant or respondent, it may be appealed to the Equity Appeals Committee (~~the Appeals Committee~~). The College offers both parties an appeal from determination of responsibility, from a school's dismissal of a formal complaint or any allegations therein, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel (investigators, coordinators and decision makers) had a conflict of interest or bias that affected the outcome of the matter. The complainant or respondent must file a written appeal to the Equity Office within seven (7) calendar days after the decision is rendered. The Appeals Committee may adjudicate the complaint based on the records or may call witnesses or examine other documents as deemed necessary. The Appeals Committee will issue a final decision to the student or employee within fourteen (14) calendar days of receiving the appeal. The decision of the Appeals Committee will be final and binding.

E. RETALIATION

1. Retaliatory acts include adverse actions taken against the person who makes ~~or~~ supports or participates in the investigation of a complaint of discrimination, sexual misconduct, or harassment.

2. Students and/or employees who believe that retaliatory actions have been taken against them for having filed a complaint of discrimination, sexual misconduct or harassment, or having provided testimony in an investigation should notify the College Equity Officer and Title IX Coordinator. Any such reports will be investigated and findings of retaliatory conduct will be dealt with through appropriate action.

F. CONFIDENTIALITY/PUBLIC RECORDS

1. All information regarding discrimination, harassment, retaliation, and sexual misconduct will remain confidential to the extent possible to provide for an effective investigation, and as allowed by law.
2. Only those individuals necessary for the investigation and resolution of the complaint shall be involved. All parties to the complaint, including witnesses, should treat the matter under investigation with discretion and have respect for the reputation of everyone involved.
3. Written records developed through the use of [this](#) internal complaint process are confidential in accordance with state law until a final determination is made.

G. FALSE COMPLAINTS

Any person who knowingly files a false complaint of discrimination, harassment, retaliation, or sexual misconduct against another will be in violation of this policy.

H. DISCIPLINE

Violation of this policy shall result in appropriate corrective and/or disciplinary action.

**TALLAHASSEE COMMUNITY COLLEGE
DISTRICT BOARD OF TRUSTEES
P O L I C Y**

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