

E-19a PROCEDURE Concern/Complaint Resolution Process

Southeast Community College strives to provide a professional workplace for employees and students, and an environment that is conducive to innovative teaching and student learning. In accordance with the Higher Learning Commission requirements, a process of shared governance will allow all voices of the employees, students and community to be heard.

***NOTE: Grievance Resolution procedures negotiated between the College and the SCC Faculty Association, or the SCC Professional Association are outlined in their respective agreements.**

Employees:

If a concern or complaint arises, a process meeting all fair employment practices will allow the concern or complaint to be brought forward to an immediate supervisor or other responsible administrator for resolution. Concerns should pertain to an alleged violation or misapplication of policy or procedure and resolution should be sought working with an employee's direct supervisor. If the concern cannot be resolved using the initial informal process, a formal Concern/Complaint Resolution Form may be filed. If the reporting employee desires to submit a concern anonymously, they may do so using the designated reporting system.

[NOTE: Grievance Resolution procedures negotiated between the College and the SCC Faculty Association, or the SCC Professional Association are outlined in their respective agreements.]

Informal Process Required

Any staff concern(s) related to employment should first be discussed with the direct supervisor. When the nature of the concern dictates otherwise (e.g., concern is with the immediate supervisor), the employee may choose to present the issue to any higher supervisory position within their division (e.g., Dean, Associate Dean, Vice President, Administrator).

Formal Process Available

If a concern by an employee regarding the alleged violation(s) of inequitable application of College policies or procedures is not satisfactorily resolved within the employee's line of supervision, the individual may complete and submit a Concern/Complaint Resolution Form in writing to the Human Resources Office.

Discrimination, Harassment, or Retaliation Reporting

Employees or students should initially report all instances of discrimination, harassment or retaliation to their immediate supervisor or faculty member or to the compliance coordinator designated to handle complaints of discrimination. If the employee or student is uncomfortable in presenting the problem to the supervisor or faculty member, or if the supervisor or faculty member is the problem, the employee or student may report the alleged discrimination, harassment or retaliation to the designated coordinator, or in the case of students, to another staff person.

Other individuals may report alleged discrimination to the designated coordinator. If the designated coordinator is the person alleged to have committed the discriminatory act, then the complaint should be submitted to the Superintendent for assignment.

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Under no circumstances will a person filing a complaint or grievance involving discrimination be retaliated against for filing the complaint or grievance.

Level 1 (Investigation and Findings)

Once the College receives a grievance, complaint or report alleging discrimination, harassment, or retaliation, or becomes aware of possible discriminatory conduct, the College will conduct a prompt, adequate, reliable, thorough, and impartial investigation to determine whether unlawful harassment occurred. If necessary, the College will take immediate, interim action or measures to protect the alleged victim and prevent further potential discrimination, harassment, or retaliation during the pending investigation. The alleged victim will be notified of his or her options to avoid contact with the alleged harasser, such as changing a class or prohibiting the alleged harasser from having any contact with the alleged victim pending the result of the College's investigation. The College will minimize any burden on the alleged victim when taking interim measures to protect the alleged victim.

The College will promptly investigate all complaints of discrimination, even if an outside entity or law enforcement agency is investigating a complaint involving the same facts and allegations. The College will not wait for the conclusion or outcome of a criminal investigation or proceeding to begin an investigation required by this grievance procedure. If the allegation(s) involve possible criminal conduct, the College will notify the complainant of his or her right to file a criminal complaint, and College employees will not dissuade the complainant from filing a criminal complaint either during or after the College's investigation.

The College will aim to complete its investigation within ten (10) working days after receiving a complaint or report, unless extenuating circumstances exist. Extenuating circumstances may include the unavailability of witnesses due to illness or incapacitation, or additional time needed because of the complexity of the investigation, the need for outside experts to evaluate the evidence (such as forensic evidence), or multiple complainants or victims. If extenuating circumstances exist, the extended timeframe to complete the investigation will not exceed ten (10) additional working days without the consent of the complainant, unless the alleged victim agrees to a longer timeline. Periodic status updates will be given to the parties, when appropriate.

The College's investigation will include, but is not limited to:

- a. Providing the parties with the opportunity to present witnesses and provide evidence.
- b. An evaluation of all relevant information and documentation relating to the alleged discriminatory conduct.
- c. For allegations involving harassment, some of the factors the College will consider include: 1) the nature of the conduct and whether the conduct was unwelcome, 2) the surrounding circumstances, expectations, and relationships, 3) the degree to which the conduct affected one or more students' education, 4) the type, frequency, and duration of the conduct, 5) the identity of and relationship between the alleged harasser and the suspect or suspects of the harassment, 6) the number of individuals involved, 7) the age (and sex, if applicable) of the alleged harasser and the alleged victim(s) of the harassment, 8) the location of the incidents and the context in which they occurred, 9) the totality of the circumstances, and 10) other relevant evidence.
- d. A review of the evidence using a "preponderance of the evidence" standard (based on the evidence, is it more likely than not that discrimination, harassment, or retaliation occurred?)

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The designated compliance coordinator (or designated investigator) will complete an investigative report, which will include:

- a. A summary of the facts,
- b. Findings regarding whether discrimination, harassment or other inappropriate conduct occurred, and
- c. If a finding is made that discrimination, harassment or other inappropriate conduct occurred, the recommended remedy or remedies necessary to eliminate such discrimination, harassment or other inappropriate conduct.

If someone other than the designated compliance coordinator conducted the investigation, the compliance coordinator will review, approve, and sign the investigative report. The College will ensure that prompt, appropriate, and effective remedies are provided if a finding of discrimination, harassment, or retaliation is made. The College will maintain relevant documentation obtained during the investigation and documentation supportive of the findings and any subsequent determinations, including the investigative report, witness statements, interview summaries, and any transcripts or audio recordings, pertaining to the investigative and appeal proceedings.

The College will send concurrently to the party's written notification of the decision (findings and any remedy) regarding the complaint within one (1) working day after the investigation is completed. The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Sec. 11232g; 34 C.F.R. Part 99, permits the College to disclose relevant information to a student who was discriminated against or harassed.

Level 2 (Appeal to the President)

If a party is not satisfied with the findings or remedies (or both) set forth in the decision, he or she may file an appeal in writing with the president within five (5) working days after receiving the decision. The president will review the appeal and the investigative documentation and decision, conduct additional investigation, if necessary, and issue a written determination about the appeal within ten (10) working days after receiving the appeal. The party who filed the appeal will be sent the president's determination at the time it is issued, and a copy will be sent to the designated compliance coordinator. [If the president is the subject of the complaint, the party will file the appeal directly with the Board.]

Level 3 (Appeal to the Board)

If the party is not satisfied with the president's determination, he or she may file an appeal in writing with the Board within five (5) working days after receiving the president's determination. The Board will review the appeal, the president's determination, the investigative documentation and decision, and allow the party to address the Board at a Board meeting to present his or her appeal. The party will be allowed to address the Board at the Board's next regularly scheduled Board meeting (unless the Board receives the appeal within one week of the next regularly scheduled Board meeting) or at a time and date agreed to by the Board, designated compliance officer and the party. The Board will issue a written determination about the appeal within thirty (30) days after the party addresses the Board. The party who filed the appeal will be sent the Board's determination at the time it is issued, and a copy will be sent to the designated compliance coordinator. The Board's determination, and any actions taken, will be final on behalf of the College.

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Confidentiality

The identity of the complainant will be kept confidential to the extent permitted by state and federal law. The College will notify the complainant of the anti-retaliation provisions of applicable laws and that the College will take steps to prevent retaliation and will take prompt and strong responsive actions if retaliation occurs.

If a complainant requests confidentiality or asks that the complaint not be pursued, the College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or the request not to pursue an investigation, as long as doing so does not prevent the College from responding effectively to the harassment and preventing harassment of other students. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the College will inform the complainant that its ability to respond may be limited. Even if the College cannot take disciplinary action against the alleged harasser, the College will pursue other steps to limit the effects of the alleged harassment and prevent its recurrence, if warranted.

Training

The College will ensure that relevant College employees are adequately trained so they understand and know how to identify acts of discrimination, harassment, and retaliation, and how to report it to appropriate College officials or employees.

In addition, the College shall ensure that employees designated to address or investigate discrimination, harassment, and retaliation, including designated compliance coordinators, receive training to promptly and effectively investigate and respond to complaints and reports of discrimination, and to know the College's grievance procedures and the applicable confidentiality requirements.

Designated Compliance Coordinators

Designated compliance coordinators will be responsible for:

- a. Coordinating efforts to comply with anti-discrimination, anti-harassment, and anti-retaliation laws and regulations.
- b. Coordinating and implementing training for students and employees pertaining to anti-discrimination, anti-harassment and anti-retaliation laws and regulations, including the training areas listed above.
- c. Investigating complaints of discrimination (unless the coordinator designates other trained individuals to investigate).
- b. Monitoring substantiated complaints or reports of discrimination, as needed (and with the assistance of other College employees, if necessary), to ensure discrimination or harassment does not recur, and that retaliation conduct does not occur or recur.
- c. Overseeing discrimination complaints, including identifying and addressing any patterns or systemic problems, and reporting such patterns or systemic problems to the Superintendent and the Board of Education.
- d. Communicating regularly with the College's law enforcement unit investigating cases and providing current information to them pertaining to anti-discrimination, anti-harassment, and anti-retaliation standards and compliance requirements.

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- e. Reviewing all evidence in harassment or violence cases brought before the College's disciplinary committee or administrator to determine whether the complainants are entitled to a remedy under anti-discrimination laws and regulations that was not available in the disciplinary process.
- f. Ensuring that investigations address whether other students or employees may have been subjected to discrimination, including harassment and retaliation.
- g. Determining whether College employees with knowledge of allegations of discrimination, including harassment and retaliation, failed to carry out their duties in reporting the allegations to the designated compliance coordinator and responding to the allegations.
- h. Recommending changes to this policy and grievance procedure.
- i. Performing other duties as assigned.

Preventative Measures

The College will publish and widely distribute on an ongoing basis a notice of nondiscrimination (notice) in electronic and printed formats, including prominently displaying the notice on the College's website and posting the notice at each building in the College. The College also will designate an employee to coordinate compliance with anti-discrimination laws (see Designated Compliance Coordinator section, above, for further information on compliance coordinator), and widely publish and disseminate this grievance procedure, including prominently posting it on the College's website, at each building in the College, reprinting it in College publications, such as handbooks, and sending it electronically to members of the College community.

The College also may distribute specific harassment and violence materials (such as sexual violence), including a summary of the College's anti-discrimination, anti-harassment, and anti-retaliation policy and grievance procedure, and a list of victim resources, during events such as College assemblies and back to College nights, if recent incidents or allegations warrant additional education to the College community.

Legal Reference:

Title VI, 42 U.S.C. Sec. 2000d, Title VII, 42 U.S.C. Sec. 2000e, Title IX; 20 U.S.C. Sec. 1681, and the Nebraska Fair Employment Practices Act, Neb. Rev. Stat. Sec. 48-1101 et seq.

Age Discrimination in Employment Act (ADEA), the Older Workers Benefit Protection Act (OWBPA), 29 U.S.C. Sec. 621 et seq., and the Nebraska Age Discrimination in Employment Act, Neb. Rev. Stat. Sec. 48-1001 et seq.;

Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12101 et seq.

Section 504 of the Rehabilitation Act of 1973 (Section 504)

Pregnancy Discrimination Act, 42 U.S.C. Sec. 2000e(k)

Uniform Service Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Sec. 4301 et seq.

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Related Policy: E-19

Admin Team Adopted: 10/21/22

Reviewed: 10/16/12, 04/19/21, 08/10/21, 10/29/21, 12/10/21, 10/22/21

Next Review: TBD

Web link: Concern/Complaint Resolution Form

Tags: staff concern resolution

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