

College Operating Procedures (COP)



Procedure Title:	Unlawful Harassment, Discrimination and Retaliation Complaint Procedure
Procedure Number:	05-0107
Originating Department:	Office of Human Resources
<u>Specific Authority:</u>	
Board Policy	6Hx6:2.03
Florida Statute	1001.65
Florida Administrative Code	n/a
Procedure Actions:	Adopted: 04/1/2010; 11/1/2010; 04/16/2012; 10/28/2013; 05/10/2018, 11/18/2020
Purpose Statement:	To provide students, employees, and members of the College community with a complaint procedure for alleged violation of the District Board of Trustees Discrimination and Harassment Policy 6xH6.2.03.

Guidelines:

Florida SouthWestern State College (College) is committed to providing an environment free from unlawful harassment based on such factors as race, sex, gender, age, color, religion, national origin, ethnicity, disability, pregnancy, sexual orientation, marital status, genetic information, or veteran's status. The College, as a matter of policy and in compliance with Title VII of the Civil Rights Act of 1964, Florida Civil Rights Act of 1992, Title IX of the Education Act of 1972, and the Florida Education Equity Act, absolutely opposes and prohibits any act of unlawful discrimination, harassment, and retaliation.

This College Operating Procedure applies to the College's students, staff, faculty members, and to all members of the College community including participants in College programs and activities. This policy applies to any incidents of unlawful harassment or discrimination that are alleged to have occurred on College property or at a College-related program or activity or that adversely impacts the educational environment.

At all times during the process, the College reserves the right to investigate, pursue, and otherwise take appropriate action with respect to allegations that may come to its attention on the basis of facts and evidence available. Those who report incidents that the College determines likely to be a violation of the policy should understand that their allegations may be investigated by the College on behalf of all College students and employees whether or not they personally choose to pursue the complaint.

It is contrary to College policy for any individual to engage, directly or indirectly, in retaliatory conduct against a person who files a complaint of unlawful discrimination or harassment or who gives information during an investigation of such complaint. Any person who believes retaliatory actions have been taken for having filed a complaint or provided information in the investigation of a complaint, should notify the Equity Officer

College Operating Policies concerning discrimination and harassment are as follows:

This College Operating Procedure addresses complaints based upon all other legally protected classes including race, color, age, religion, genetic information, national origin, ethnicity, marital status, or veteran's status.

Complaints involving unlawful harassment or discrimination based upon sex, gender, sexual orientation, and pregnancy are addressed by College Operating Procedure [01-0108](#); complaints involving a failure to provide an accommodation or unlawful harassment, or discrimination based upon disability are addressed by College Operating Procedure [01-0104](#).

Definitions

Unlawful Discrimination

Differential treatment based upon race, sex, gender, age, color, religion, national origin, ethnicity, disability, pregnancy, sexual orientation, marital status, genetic information or veteran's status or any other protected status that affects the terms or conditions of employment or education constitute unlawful discrimination. As a matter of policy, the College prohibits, and will not tolerate, unlawful discrimination.

Unlawful Harassment: Unlawful harassment is intimidation or abusive unwelcome behavior directed toward an individual based on such factors as race, sex, gender, age, color, religion, national origin, ethnicity, disability, pregnancy, sexual orientation, marital status, genetic information, or veteran's status. Unlawful harassment creates a hostile environment by interfering with an individual's participation in or receipt of benefits, services, or opportunities in the institution's programs and activities. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

Hostile Environment: When unlawful harassing conduct directed at an individual is sufficiently and objectively and subjectively severe, persistent, or pervasive that it interferes with or limits a student's ability to participate in or benefit from the services or opportunities offered by a school or, in the employment context, it alters the employees conditions of employment which may create an abusive work environment then it creates a hostile environment and can violate an individual's rights under state and federal law. A hostile environment may exist even if there are no tangible effects on the individual, where the harassment is serious enough to adversely affect the individual's ability to participate in or benefit from the College's programs and activities including its educational programs.

Examples of unlawful harassment that could create a hostile environment follow.

- Damaging, defacing, or destroying the College's property or the property of any individual because of these protected classes.
- Expressing in words (including "fighting words" likely to provoke an immediate or violent reaction), pictures or symbols commonly understood to convey hatred or contempt because of these protected classes.
- Engaging in acts based on these protected categories that obstruct or attempt to obstruct or seriously impair the College's activities on College property or in other locations where College-sponsored activities occur.

Unlawful Retaliation: Unlawful retaliation occurs when the College, its employees or students take materially adverse action because an individual has engaged, or may engage, in activity in furtherance of the equal opportunity laws. These laws include the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Rehabilitation Act, the Equal Pay Act, and the Genetic Information Nondiscrimination Act which cover the protected categories discussed above. These statutory provisions prohibit individuals from retaliating because an individual engaged in “protected activity”. Generally, protected activity consists of either making a complaint or participating in an investigation concerning alleged discrimination or opposing discrimination or unlawful harassment.

Complaint Procedures Unlawful Harassment, Discrimination or Retaliation

The College will act on any formal or informal allegation or notice of violation of this College Operating Procedure that is received by the Equity Officer. The procedures described below apply to allegations of unlawful harassment, discrimination or retaliation involving students, staff or faculty members, or third parties. Complaints involving unlawful harassment, discrimination or retaliation should be promptly submitted to the Equity Officer for disposition under this College Operating Procedure.

The College reserves the right to initiate an investigation without a complaint or participation by a complaining party. The Equity Officer will notify the complainant if an investigation will commence, or if there is no reasonable cause to pursue an investigation.

Following receipt of notice, the Equity Officer engages in a preliminary inquiry to determine if there is reasonable cause to believe the Unlawful Harassment, Discrimination and Retaliation Policy has been violated and if interim remedies should be provided during the investigation.

The interim remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering the housing situation of the responding party--resident student or resident employee (or the reporting party, if desired)
- Altering work arrangements for employees
- Providing campus escorts
- Providing transportation accommodations
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

In cases where the reporting party wishes to proceed or the College determines it will proceed, and the preliminary inquiry shows that reasonable cause exists, the Equity Officer will direct an investigation to commence. The process followed considers the preference of the complainant but is determined by the Equity Officer.

All parties involved in the investigation shall be afforded the opportunity to present witnesses and other evidence to the investigator and all parties shall be provided with the written outcome of the investigation and any subsequent determinations.

If, during the preliminary inquiry or at any point during the investigation, the Equity Officer determines that there is no reasonable cause to believe that the policy has been violated, the process will end unless the reporting party requests that the Equity Officer makes an

extraordinary determination to re-open the investigation. This decision lies in the sole discretion of the Equity Officer.

The investigator will consider all evidence that may be considered relevant and credible including history and pattern evidence. The investigator may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Questions of fact will be resolved employing the preponderance of the evidence standard -- whether it is more likely than not that the responding party violated policy as alleged.

In the absence of unusual circumstances, the College will complete all investigations within a sixty (60) calendar daytime period. The time period for the completion of the investigation may be extended as necessary for appropriate cause by the Equity Officer with notice to the parties. Unusual circumstances would include such matters as scheduled and unscheduled College closures, the need to obtain new or additional evidence from third parties or, the unavailability of the complainant or necessary witnesses. In the event that unusual circumstances will delay disposition all parties will be notified of the delay and the anticipated date of completion.

Typically, within ten (10) calendar days of the close of an investigation, the Equity Officer or designee will provide the complaining parties and the responding parties with written finding(s) of the investigation and may make recommendations for further action. If the responding party is an employee, the findings and recommendations will be forwarded to the Chief Human Resources and Organizational Development Officer for disposition. If the responding party is a student, the case will proceed under the Student Code of Conduct for disposition.

Contacts

All complaints, excluding those filed against the Equity Officer, should be addressed to Title IX Coordinator/Equity Officer, 8099 College Parkway, Ft. Myers, Florida 33919 or by calling 239.489.9051 or call through the Florida Relay Service at 1.800.955.8771 (TTY).

All complaints filed against the Equity Officer should be addressed to the Chief Human Resources and Organizational Development Officer, 8099 College Parkway, Ft. Myers, Florida, 33919 or by calling 239.489.9357 or call through the Florida Relay Service at 1.800.955.8771 (TTY).

Questions pertaining to educational equity, equal access, or equal opportunity may also be addressed to the Assistant Secretary for Civil Rights, United States Department of Education, 16 Forsyth Street S.W., Suite 19T10, Atlanta, GA 30303-8927. Telephone: 404.974.9406 Facsimile: 404.974.9471 [Email: OCR.Atlanta@ed.gov](mailto:OCR.Atlanta@ed.gov).