

## College Operating Procedures (COP)



<b>Procedure Title:</b>	Disability Accommodation and Prohibition of Harassment and Discrimination
<b>Procedure Number:</b>	01-0104
<b>Originating Department:</b>	Office of the President
<b><u>Specific Authority:</u></b>	
Board Policy	6Hx6:5.02
Florida Statute	
Florida Administrative Code	n/a
<b>Procedure Actions:</b>	Adopted: 11/22/2016; 02/15/2021
<b>Purpose Statement:</b>	Florida SouthWestern State College provides accommodation to individuals with disabilities as provided by law and also prohibits discrimination or harassment of individuals with disabilities in the College's programs and activities.

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### Guidelines:

The American's with Disability Act (ADA), Section 504 and their implementing federal regulations prohibit discrimination on the basis of disability under any program or activity receiving Federal financial assistance. As provided by law, Florida SouthWestern State College prohibits discrimination against individuals with disabilities. In addition, the College provides individuals with disabilities with equal employment and educational opportunities and with reasonable accommodations.

The College through this procedure assures the College's students, staff or faculty members, or other members of the College community that it will take steps to eliminate disability harassment and discrimination and take steps to prevent reoccurrence and to correct its discriminatory effects.

**For Students Seeking an Accommodation** - the Director of the Office of Adaptive Services is responsible for coordinating the College's compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 and serves as the College ADA and Section 504 Coordinator. ("Student Coordinator"). The Student Coordinator's contact information appears at the end of this procedure.

**For Employees and Persons Other Than Students Seeking An Accommodation** - the College's Title IX Coordinator and Equity Officer is responsible for coordinating the College's compliance with the Americans with Disabilities Act (ADA) and Section 504 of the

Rehabilitation Act of 1973 and serves as the College ADA and Section 504 Coordinator with respect to all non-student matters. ("Equity Officer"). The Equity Officer's contact information appears at the end of this procedure.

The Student Coordinator and the Equity Officer, or their designees as appropriate, conduct activities such as (but not limited to):

1. Assisting College offices in making their programs and services accessible;

2. Overseeing communication to all College constituents and campus visitors regarding how they can access programs and services consistent with the ADA/Section 504;
3. Reviewing College policies, facilities, and activities to assure institutional compliance with the ADA/Section 504;
4. Responding to any questions or concerns regarding the ADA/Section 504 accommodations to assure prompt resolution.

**A. Requesting an Accommodation:**

1. **For Students Seeking an Accommodation** - It is the obligation of the individual with a disability to request a reasonable accommodation. Students and applicants must submit any request for accommodations to the Office of Adaptive Services (OAS) for consideration. Individuals with a disability must provide recent documentation from a qualified, licensed professional that addresses the disability and the requested accommodation. The Office of Adaptive Services shall determine that the request for accommodation is supported by appropriate documentation. The College and the student have a mutual obligation to engage in a good faith interactive process to explore and discuss options for reasonable accommodations. The process should include the following: (1) the decision is made by relevant officials including faculty members; (2) the decision makers consider a series of alternatives, their feasibility, cost and effect on the academic program; and after reasoned deliberation; and, (3) the decision makers reach a rationally justifiable conclusion that the available alternatives would result either in lowering of academic standards or requiring substantial program alternative. Once a student has been registered with the OAS, it is the student's responsibility to request accommodations for each semester in which accommodation is desired.
2. **For Employees Seeking an Accommodation** - The College provides reasonable accommodations for employees with a disability who can perform their essential job duties with or without accommodation. Reasonable accommodations are provided only when an employee self-identifies as a qualified individual with a disability and provides the appropriate documentation from a healthcare provider. In determining which accommodations are 'reasonable,' the College and the employee have a mutual obligation to engage in a good faith interactive process to explore and discuss options for reasonable accommodations. Additional information regarding the process by which employees can seek accommodations for a disability is available through the Equity Officer.
3. **For Persons Other Than Employees and Students Seeking an Accommodation** - Participants at College public meetings, entertainment events, athletic events and other public gatherings may seek accommodation by contacting the Equity Officer. The College will use its best effort to make campus programs and events reasonably accessible to individuals with disabilities. Any individual, including visitors to campus, who requires an accommodation is urged to contact the event planner at least one week in advance of the event. Please be aware that it may be difficult to provide an accommodation on less than one week's prior notice.

Time Frame: The time required to review an ADA/Section 504 accommodation request will depend on a variety of factors, including the nature and scope of the matter.

**B. Responding to Complaints Regarding Failures to Accommodate**

1. **Students: Resolving Issues through the Dean of Student's Office.**

A student who believes that the College did not follow its procedures in the determination or implementation, regarding an accommodation or consider relevant information during the

process may request a reconsideration of the decision. In order to request reconsideration of a decision regarding an accommodation, the student should request a meeting with the Dean of Students/designee to present additional information and/or documentation and to discuss the nature of the issue or complaint. This meeting must be requested within thirty days of the determination at issue. The Dean of Students/designee may contact the Student Coordinator, faculty, administrators, or other professionals who can provide information pertinent to the case. If confidential information is to be released to or received by a third party not affiliated with the College, the student will be asked to sign a FERPA Release of Information form. Following the review of the request for reconsideration, the Dean of Students/designee will notify the student of the decision. In the absence of unusual circumstances, the review process will be completed within thirty calendar days. 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. If at any point in this process the student or the student's advocates report disability discrimination or harassment then such complaints shall be treated as a separate matter under Paragraph 2(C), below.

## 2. **Employees and Persons Other Than Students: Resolving Issues through the Human Resource Office.**

A College employee who believes that the College did not follow the correct procedures in the determination regarding an accommodation or consider relevant information during the process may request a reconsideration of the decision. In order to request reconsideration of a decision regarding an accommodation, the employee should request a meeting with the Chief Human Resources (HR) & Organizational Development Officer to present additional information and/or documentation and to discuss the nature of the issue or complaint. This meeting must be requested within thirty days of the determination at issue. The Chief HR & Organizational Development Officer may contact the Equity Officer and other professionals who can provide information pertinent to the case. Following the review of the request for reconsideration, the Chief HR & Organizational Development Officer will notify the employee of the decision. In the absence of unusual circumstances, the review process will be completed within thirty calendar days. 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 witness.

In the event that unusual circumstances will delay disposition, all parties will be notified of the delay and the anticipated date of completion.

## **C. Discrimination or Harassment Based Upon Disability**

### **1. Definitions.**

**Disability Harassment:** Disability harassment under Section 504 and the ADA is intimidation or abusive unwelcome behavior directed toward an individual based on disability that 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 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 employee's conditions of employment and creates an abusive work environment then it creates a hostile environment can violate an individual's rights under the Section 504 and Title II regulations. 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 harassment that could create a hostile environment follow.

- Several students continually remark out loud to other students during class that a student with dyslexia is "retarded" or "deaf and dumb" and does not belong in the class. The student tries to act as though she does not hear and makes no comments. Then one day as a result of the comments, the harassed student stops attending the class.
- A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, impeding the classmates' ability to enter the classroom.
- A faculty member repeatedly points out to other students in the class that a blind student is using an audio recorder related to the student's disability, with the result that the student stops attending the class to avoid further embarrassment.
- A professor repeatedly belittles and criticizes a student with a disability for requesting testing accommodations to the point that the student stops utilizing the accommodation and, as a result, her grades decline.
- Several college employees repeatedly tease a visually impaired employee while making use of an enhanced computer monitor calling her "blind as a bat" and, as a consequence, the employee transfers out of the department.

## **2. Complaint Procedures Disability Harassment/Disability Discrimination**

FSW will act on any formal or informal allegation or notice of violation of the policy on Disability Harassment and Nondiscrimination that is received by the Equity Officer the Student Coordinator or a member of administration, faculty, or other employee. The procedures described below apply to all allegations of disability harassment or discrimination involving students, staff or faculty members, or third parties. All complaints involving disability harassment or discrimination 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 of disability harassment or discrimination 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 Discrimination and Harassment 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 ultimately determined at the discretion of the Equity Officer.

All parties involved in the investigation shall be afforded the opportunity to present witnesses and other evidence and all parties shall be provided with the written outcome of the investigation and, if applicable, the appeal finding.

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.

Any evidence that the investigator believes is relevant and credible may be considered, 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.

Unless the investigator determines it is appropriate, the investigation and the finding will not

consider: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) or the character of the responding party.

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 as appropriate. 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.

The investigator(s) will base the determination(s) on the preponderance of the evidence -- whether it is more likely than not that the responding party violated policy as alleged.

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 HR & Organizational Development Officer for disposition. If the responding party is a student, the case will proceed under the Student Code of Conduct for disposition.

#### **D. Contacts**

All applicant/employee ADA complaints, excluding those filed against the ADA Coordinator, should be addressed to ADA Coordinator/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 student ADA complaints should be addressed to the Dean of Students Office, 8099 College Parkway, Ft. Myers, Florida, 33919 or by calling 239.489.9067 or call through the Florida Relay Service at 1.800.955.8771 (TTY).

All ADA complaints filed against the ADA Coordinator should be addressed to the Chief HR & Organizational Development Officer Department, 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).