



Category
DISCRIMINATION & HARASSMENT POLICY – 8:04:00:00
Approval
Corresponding Policies: TBR Policies 5:01:02:00 , 6:01:00:00 , 6:02:00:00 , and 6:03:00:00 ; TBR Guidelines P-080 , P-110 , P-111 and G-125
President’s Council Approved: October 1, 2014
Effective Date/Approved: October 1, 2014
Revised: October 1, 2014; editorial update July 14, 2016
Responsible Party: Title IX Coordinator

I. PURPOSE

The purpose of this policy is to supplement Board Policies 5:01:02:00 Equal Employment Opportunity and Affirmative Action, 6:01:00:00 Sex Discrimination, Sexual Harassment or Sexual Misconduct, 6:02:00:00 Sex Discrimination and Sexual Harassment, 6:03:00:00 Sexual Misconduct, and TBR Guidelines P-080 Discrimination Harassment Complaint Investigation Procedure, and G-125 Filing Title VI Complaints and to implement Motlow College policies 8:01:00:00 General Prohibition Against Discrimination, Harassment and Sexual Misconduct and 8:02:00:00 Sex Discrimination, Sexual Harassment or Sexual Misconduct, 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 Motlow State Community College campuses including employees, applicants for employment, or students who believes 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 I 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. 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 Title IX / EEO Coordinator 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 believe they have been subject to discrimination or harassment at the College, or who believes they have 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/complaint process, or a student non-academic complaint 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 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, or other person assigned to the investigation, 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. When the allegation of harassment is against the President, the Title IX/EEO Coordinator shall notify the OGC who will assign an investigator who will make his/her report to the Chancellor.
3. When the Respondent is a student, the Title IX Coordinator or his/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 the College's student 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 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 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. 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 or 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.
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 or 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 Guideline P-080 and this policy. 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, except in the case of sexual assault. 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, and any related corrective action, and notice of the appeal process to the parties at the time that the parties 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 a P-080 matter 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/her sole discretion, to allow an in-person appeal.
4. The appealing party 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 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 their status, (e.g., employee, student, faculty) to appeal the sanction only.

Employees –

TBR Guidelines P-110 Employee Grievance-Complaint Guideline,
P-111 Support Staff Grievance, and
Motlow Policy 5:10:06:00 Employee Grievance-Complaint Procedure

Students –

TBR Policy 3:02:00:01 General Regulations Student Conduct Disciplinary Sanctions, and
Motlow Policy 3:02:00:06 Student Disciplinary Procedures Part 6

Faculty –

TBR Policy 5:02:03:70 Academic Tenure Community Colleges, and
Motlow Policy 5:02:03:00 Academic Freedom Responsibility and Tenure

APPENDIX A

DISCRIMINATION/HARASSMENT ALLEGATION FORM

Complainant: _____ Date: _____

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 witnesses 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 Compliance Office