

Policy Title: DISCRIMINATION/HARASSMENT COMPLAINT PROCEDURE FOR EMPLOYEES

Mid-State Technical College is committed to be in compliance with state and federal equal opportunity laws and regulations and does not discriminate in its services, employment programs, and/or its educational programs and activities. Discrimination and harassment by supervisors, co-workers, students, non-employees on the basis of race, sex, national origin, disability, or other protected status is prohibited by the College.

The College has set forth the following complaint procedures for employees who allege discrimination based on a protected status or prohibited harassment. Copies of this procedure can be obtained from the Affirmative Action/Equal Opportunity Officer.

COMPLAINT

Complaint means an allegation of personal discrimination or harassment on the basis of political affiliation, age, race, creed, color, disability, marital status, sex, national origin, ancestry, religion, sexual orientation, arrest or conviction record, service in the armed forces, genetic testing, and the use or non-use of lawful products off the College's premises during non-working hours in regard to any employment, procedure, or practice of the College.

This policy applies when a member of the college community ('complainant' as defined below) believes that he or she has been subjected to harassment or discrimination by an instructional, administrative or faculty member ('respondent'), provided that at least a substantial portion of the alleged wrongful behavior either occurred on college-controlled, college-leased or college-owned property, or otherwise had a significant connection to the activities of the College.

COMPLAINANT

Complainant means any of the following who have a personal complaint based on their protected status as defined:

- An employee, permanent, project or limited term, of the College.
- An employee or group of employees of the College submitting a complaint all of whom have indicated, in writing, his/her willingness to be part of the complaint.
- An applicant for employment with the College.
- Any other person not covered by the above definition will be referred to the appropriate civil authorities.

RESPONDENT

Respondent means a person and/or persons alleged to be responsible, or who may be responsible for the violation alleged in a complaint. The term may be used to designate persons with direct responsibility for a particular action or those areas covered in the complaint.

AFFIRMATIVE ACTION/EQUAL OPPORTUNITY OFFICER

The Vice President of Human Resources has been designated by the College as having the responsibility of coordinating the internal complaint procedure. Questions regarding this procedure should be directed to: Vice President of Human Resources, Affirmative Action/Equal Opportunity Officer, 500 32nd Street N, Wisconsin Rapids, WI 54494. Telephone (715) 422-5325.

DAYS

All days listed in this policy are regular business days when the College is open for business. Weekends, holidays, and days when the College is closed for business are excluded.

ASSURANCE OF NON-RETALIATION

Retaliatory action against anyone filing a complaint of any type of discrimination or harassment or anyone who participates in the investigation of a complaint is strictly prohibited. The complainant, any person who participates in the investigation of a complaint, and the accused will be advised of the College's policy in this regard when a complaint has been filed. Retaliation is itself a form of misconduct that may form the basis for disciplinary actions. Any complaints of retaliation, on any basis, should be referred immediately to the Affirmative Action/Equal Opportunity Officer.

CONFIDENTIALITY

Confidentiality is critical to the complaint procedure. A complaint, in and of itself, is not evidence of inappropriate behavior. We respect the privacy of all persons involved in the complaint – the complainant, a person accused of engaging in the prohibited conduct, witnesses, and others as deemed necessary. These individuals shall maintain confidentiality and not discuss any part of the complaint investigation, findings, or any action taken, except with those persons who have a legitimate need to know. The College shall maintain confidentiality to the extent allowed by law and to the extent necessary to conduct a thorough and efficient investigation of the complaint.

HARASSMENT COMPLAINT PROCEDURE

Conduct which might be offensive to some individuals might be considered inoffensive by others. Because of this, it is difficult for managers or supervisors to learn of and take effective action to halt harassment unless the affected individual alerts a manager or supervisor or both to the occurrence and the fact that the conduct in question is offensive or unwanted.

If an individual feels she/he has been subjected to or witnessed harassment of any kind, even if she/he considers it minor, the College needs your cooperation to make this policy as effective as possible. The College encourages you to approach the alleged harasser and ask him/her to immediately stop the offensive activity. The alleged harasser may not know how you or others feel. This step is not required if it makes you feel uncomfortable or is not effective.

Complaint Procedure

Whether or not the harasser has been confronted, if an employee believes that harassment by any person including, but not limited to, co-worker, supervisor, vendor, or guest of the College has occurred or if an employee believes they have witnessed harassment or threats to a safe environment, the

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employee is strongly encouraged to report the facts of the incident and the names of the individual(s) involved within forty-eight (48) hours, if at all possible, to any of the following individuals: the employee's supervisor, any other supervisor, a member of the Human Resources staff, or directly to Affirmative Action/Equal Opportunity Officer at (715) 422-5325. You are required, however, to report the harassment to somebody in management. Prompt reporting will assist the College in conducting a thorough and timely investigation. Harassment situations can be sensitive. The College will investigate all allegations promptly, thoroughly and fairly; and will ensure confidentiality to the extent possible.

The College treats all claims of harassment seriously. The College representative conducting the investigation shall obtain a complete and clear statement of the alleged acts from the complainant, shall obtain names and statements from witnesses and shall obtain a clear and complete statement from the alleged harasser/accused employee. All employees are required to cooperate fully in any investigation.

The College representative conducting the investigation shall maintain full documentation during the investigation, including the complaint, all statements, documents, notes and other information relevant to the complaint.

All employees are responsible for helping to assure that harassment or threats to safety do not occur. The College forbids retaliation against anyone who has legitimately reported harassment or unsafe conditions or anyone who participates in an investigation. Anyone who engages in or assists in such retaliatory actions will be subject to disciplinary action up to and including the termination of employment.

Resolution

The College's policy is to investigate all such complaints thoroughly and promptly. To the fullest extent practicable and consistent with Wisconsin statutes, the College will keep complaints and terms of their resolution confidential. If an investigation confirms that harassment or unsafe conditions have occurred, the College will take appropriate corrective action including discipline up to and including immediate termination of employment.

DISCRIMINATION COMPLAINT PROCEDURE

Informal Complaint Procedure

1. A complainant shall, within thirty (30) days of the date of the action causing the complaint, contact the Affirmative Action/Equal Opportunity Officer. If the subject of the complaint is the Affirmative Action/Equal Opportunity Officer, then the complainant shall contact the College President who will then administer this informal complaint procedure.
2. The informal complaint may be verbal or in writing. The complainant shall provide full and complete information on the facts underlying the complaint.
3. The Affirmative Action/Equal Opportunity Officer shall inform the complainant of his/her rights under federal and state law.

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4. The Affirmative Action/Equal Opportunity Officer shall determine if the complaint is valid under the established complaint procedure. Validity does not mean whether or not an unfair act has occurred but whether or not the action underlying the complaint is within the scope of the complaint procedure.
5. Upon receipt of the complaint, the Affirmative Action/Equal Opportunity Officer shall determine whether this policy applies. A decision by the Affirmative Action/Equal Opportunity Officer that this policy does not apply is not final and may be appealed to the College President within seven (7) days. By way of example, the Affirmative Action/Equal Opportunity Officer shall find that this policy does not apply upon determining any of the following:
 - a) That even if the complainant's allegations are true, the respondent's conduct would not constitute harassment or discrimination as defined in this policy.
 - b) That the alleged conduct did not occur on college-owned, college-leased or college-controlled property or did not otherwise have a significant connection to the activities of the College.
 - c) That the complainant is not a college member as defined in this policy.
 - d) That the complainant was not the party harmed by the discrimination or harassment.

This list is not exclusive, and other situations may result in the Affirmative Action/Equal Opportunity Officer determining that the policy does not apply.

6. If the Affirmative Action/Equal Opportunity Officer determines that this policy applies, the Affirmative Action/Equal Opportunity Officer shall conduct an investigation of the complaint in any manner the Affirmative Action/Equal Opportunity Officer deems appropriate. Not later than fifteen (15) days after the complaint commencement date, the Affirmative Action/Equal Opportunity Officer shall provide the complainant and the respondent with a report of the Affirmative Action/Equal Opportunity Officer's actions and findings.
7. If the Affirmative Action/Equal Opportunity Officer finds that the evidence does not justify such a preliminary finding of violation, the Affirmative Action/Equal Opportunity Officer will dismiss the complaint. A decision by the Affirmative Action/Equal Opportunity Officer that the evidence does not justify such a preliminary finding of violation may be appealed by the complainant to the College President within seven (7) days by presenting a written complaint as set forth in this policy. If no complaint is timely filed, the complaint will be dismissed, and the complainant, respondent, and College President will be notified.
8. At any point in the investigation, the Affirmative Action/Equal Opportunity Officer may attempt to conciliate the informal complaint through contact with all parties involved. Any agreement reached as a result of conciliation shall be in writing and signed by all parties involved.
9. In the event that a violation is found the College shall take prompt, effective and affirmative action to remedy the situation and ensure compliance with the policy.

Formal Complaint Procedure

1. Step One

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- a) Within seven (7) days of the failure of conciliation or a finding of no violation, whichever occurs first, the complainant may file a written request for hearing with the Affirmative Action/Equal Opportunity Officer. If the subject of the complaint is the Affirmative Action/Equal Opportunity Officer, then the complainant may file a written request for hearing with the College President who will then serve in the role of the Affirmative Action/Equal Opportunity Officer for this formal complaint procedure. Failure to meet this time requirement will cause the dismissal with prejudice of the complaint.
- b) The written complaint shall be a clear, concise statement indicating the issues involved, the date the incident or violation took place, and the relief sought.
- c) Within seven (7) days of the receipt of the written request for hearing, the Affirmative Action/Equal Opportunity Officer shall forward a copy to the respondent(s).
- d) Within seven (7) days of the receipt of the written complaint, the Affirmative Action/Equal Opportunity Officer shall schedule such meeting(s) with complainant and the respondent as necessary to hear the complaint. The Affirmative Action/EO Officer shall return a written answer to the complainant within seven (7) days.
- e) If the complainant is dissatisfied with the Affirmative Action/Equal Opportunity Officer's answer, the complaint may be appealed to Step Two.

2. Step Two

- a) The complainant may file an appeal of the Affirmative Action/Equal Opportunity Officer's answer at Step One within seven (7) days through a request for an impartial review by the Executive Committee.
- b) The Executive Committee will convene and a hearing date shall be scheduled within fourteen (14) days of receipt of the request, to review preliminary testimony, study the evidence, and conduct further interviews and deliberations as necessary to make recommendations to the College President. The Executive Committee serves as the College President's hearing panel.
- d) Before the hearing, the Executive Committee shall participate in an orientation session provided by the Affirmative Action/Equal Opportunity Officer or her/his designated representative. The orientation will include a review of federal and state anti-discrimination legislation and related guidelines as well as relevant college documents or policies.
- e) Persons present at the hearing shall include the Executive Committee, the complainant, the respondent(s), any representative(s) of either the complainant or the respondent, and, unless sequestered by the Executive Committee, any individual requested by either party to provide information relevant to the evaluation of the complaint. The hearing will be closed to the public.
- f) Both the complainant and the respondent shall have the right to present such witnesses as they deem necessary to develop the facts pertinent to the complaint. The complainant and respondent shall have the right to ask questions of any person participating in the hearing.

- g) Formal rules of evidence shall not be applied at the complaint hearing. To the greatest extent possible, the hearing shall be conducted in an informal manner. The objective of the hearing is to facilitate the understanding of the facts by the Executive Committee. It is not intended that either party be surprised at the hearing by the appearance or testimony of any witness. Therefore, the Affirmative Action/Equal Opportunity Officer may require that the respondent and the complainant provide written pre-hearing statements to the Executive Committee and the other parties, setting forth the name of witnesses and the nature of their anticipated testimony. The Executive Committee may adopt any procedures for the hearing as may further the intent of this policy.
- h) Neither party shall be permitted to introduce information not presented at Step One, unless she/he can show cause as to why it was not introduced in Step One.
- i) The Executive Committee shall make written notification of its findings to the College President within seven (7) days after the hearing. The findings shall include the committee's determination regarding the validity of the complaint and its recommendations for any necessary corrective action, as well as a statement of the reasons on which the findings were made. After deliberation, if a majority of Executive Committee members do not determine that a preponderance of probative, reliable, and substantial evidence justifies a finding that the respondent has violated the policy prohibiting harassment or discrimination, the complaint shall be terminated. The Executive Committee will notify the Affirmative Action/Equal Opportunity Officer, who will notify the complainant, the respondent, the Vice President of Human Resources as well as the President. The Executive Committee's decision to terminate the complaint may be appealed.
- j) All findings and recommendations of the hearing panel shall be determined by majority vote. Any committee member in disagreement with the majority shall have the option of preparing a dissenting opinion.

3. Step Three

- a) The College President shall review the written recommendations of the Executive Committee and issue a written decision within fourteen (14) days of the date of the recommendations.
- b) Prior to this decision, the respondent and the complainant may present written arguments to the College President.
- c) The College President's decision shall include a statement regarding the validity of the complaint allegation and a specification of any corrective action to be taken, if any.

4. Final Decision

- a) The complainant may appeal the decision of the College President to the Mid-State Technical College District Board.
- b) The grounds of the appeal are limited to the following:
 - New evidence that was not reasonably available until after the hearing.

- The complainant was denied due process because of failure to follow the procedures set forth in this policy, and such failure affected the outcome in a manner detrimental to the complainant.
- c) Written notice of appeal and the grounds therefore must be made within thirty (30) days of the date of the College President's decision. Written notice of appeal and the grounds therefore must be sent to the Chairperson of the District Board.
- d) The decision of the District Board shall be based on the record developed to that point and is limited to one of the following actions:
 - Confirmation of the findings of the College President.
 - A finding of no discrimination or harassment and dismissal of the complaint.
 - Remanding the matter to the Affirmative Action/Equal Opportunity Officer for further investigation and/or hearing pursuant to this policy.
- e) The decision of the District Board shall constitute the final decision issued on any complaint.

Restrictions

- No action relating to employment, termination, transfer, demotion or rates of pay can be taken until the complaint has been resolved, unless such action is decided necessary to the well-being of the complainant to the function of the College.
- Neither the complainant nor the respondent shall arbitrarily delay action of the complaint procedure.
- All procedures and hearings shall be closed session.
- It is not intended that the outcome of a complaint be determined by a non-substantial procedural violation. Therefore the Affirmative Action/EO Officer, the Executive Committee or the College President may make exceptions to the provisions (including time deadlines) of this policy; provided, however, that any exception is intended to bring about a just outcome, is relatively minor in nature and does not unreasonably adversely affect another participant in the process.
- All participants in all proceedings under this policy will observe confidentiality to the extent reasonably possible. However, in the event of any final determination of a violation of this policy, the College President will provide appropriate information to appropriate officials. The College may also use any information obtained in the proceedings to defend itself against any claims, complaints or allegations brought against it or as may be required by law.

Extension of Time

Any time limits set by this procedure may be extended by mutual written consent of the complainant(s) and the respondent(s).

Information

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The College shall provide complainants and respondents, with access to copies of anti-discrimination laws and regulations, as well as relevant college policies.

No Retaliation

No person shall be subjected to discharge, suspension, discipline, harassment, or any form of discrimination for having utilized or having assisted others in the utilization of the complaint process.

Maintenance of Records

- The Executive Committee hearing shall be recorded. Such recording shall be made available to the complainant(s) and the respondent(s) at their request. Such recordings shall be maintained for a minimum period of three years after resolution of the complaint.
- Records shall be kept of each complaint in the office of the Affirmative Action/Equal Opportunity Officer. These shall include, at minimum: the name of the complainant and her/his position at the College; the date of complaint filing; the specific allegation made in the complaint and any corrective action requested; the names of respondents; the levels of processing and the resolution, dates; hearing committee members; a summary of the major points, facts and evidence presented by each party to complaint; and a statement of the final resolution and the nature and date of any corrective action taken. Such records shall be maintained on a confidential basis.
- All written complaint records shall be maintained for a minimum of three years after the complaint resolutions.

Role of the Affirmative Action/Equal Opportunity Officer

- It is the primary responsibility of the Affirmative Action/Equal Opportunity Officer to ensure the effective installation, maintenance, processing, recordkeeping, and notification required by the complaint procedure.
- The Affirmative Action/Equal Opportunity Officer may designate other person(s) to assist in any part of the process and procedure.

Interpretation

The authority to interpret this policy rests with the College President and is generally delegated to the Affirmative Action/Equal Opportunity Officer.

Referral Services

Nothing in this complaint procedure shall preclude the complainant from seeking a remedy under state or federal law.

- State of Wisconsin Department of Workforce Development
- Equal Employment Opportunity Commission

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- U.S. Department of Labor
- Office for Civil Rights

DISABILITY/RELIGIOUS ACCOMMODATION COMPLAINT PROCEDURE

MSTC has adopted and publishes a complaint procedure that provides a prompt and equitable resolution of complaints alleging any action that would violate Title II of the ADA, Section 504, or violation of reasonable religious accommodation. These procedures are applicable to any anticipated complaint including appeal of a denied accommodation request.

1. Any employee has the right to file a complaint verbally or in writing due to an alleged failure by the College to provide requested reasonable accommodations. Employees should discuss their accommodations concerns with their immediate supervisor.
2. If an employee with a disability disagrees with a decision regarding an accommodation request, a complaint can be filed. A complaint must be filed by completing the *Failure to Provide Requested Accommodation Complaint* form available from the Human Resources/Equal Opportunity Office.
3. The written complaint must be filed within thirty (30) days of the alleged discriminatory action. The complaint must be submitted to the College's Affirmative Action/Equal Opportunity Officer.
4. An investigation conducted by the College's Affirmative Action/Equal Opportunity Officer, as may be appropriate, shall follow the filing of a complaint. All interested parties and their representatives, if any, will be afforded the opportunity to submit evidence relevant to the complaint.
5. Pending the outcome of the complaint, disability-related accommodations already established by the College shall continue.
6. The complainant shall be given opportunity to provide additional information or statements. It is the complainant's responsibility to provide all necessary documentation in support of the complainant at his/her expense.
7. The complainant will be notified of the final decision in writing within thirty (30) days after the complaint is filed.
8. The MSTC Affirmative Action/Equal Opportunity Officer shall maintain the files and records relating to the complaints filed.
9. The complainant can request a reconsideration of the case by the Executive Committee in instances of dissatisfaction with the resolution. The request for reconsideration must be made within ten (10) days after receipt of the written decision. The request must be submitted to the MSTC Affirmative Action/Equal Opportunity Officer, who will be responsible for convening a meeting of the Executive Committee to review the initial decision.

10. A written determination as to the validity of the complaint and a description of the resolution shall be issued by the College President or designee and forwarded to the complaint within ten (10) days after the request for reconsideration.
11. At any point in the process, or in lieu of the college's appeals process, an individual may also file an Americans with Disability Act/Affirmative Action or discrimination complaint with the appropriate external government agency.

The above stated procedures shall be construed to protect the substantive rights of interested persons, to meet appropriate due process standards, and to assure that Mid-State Technical College complies with the ADA and Section 504 of the Rehabilitation Act and implementation of the regulations.

Adopted: August 2011

Reviewed:

Revised: