

PROCEDURE: V. A. I. Unlawful Harassment and Discrimination of Students



Revised: July 16, 2014; April 25, 2013; March 9, 2007
Last Reviewed: July 16, 2014
Adopted: April 25, 2013

I. PURPOSE:

It is the policy of the Technical College System of Georgia (TCSG) that all students shall be provided an environment free of unlawful harassment (including sexual harassment and sexual violence), discrimination, and retaliation.

All students and employees are expressly prohibited from engaging in any form of unlawful harassing, discriminating, intimidating or retaliatory behavior or conduct (“prohibited conduct”) in all interactions with each other, whether or not the interaction occurs during class or on or off campus. Visitors to campuses also shall not engage in prohibited conduct and may be barred for such prohibited conduct if other corrective measures are ineffective. Allegations of prohibited conduct occurring at clinical sites to which students are assigned shall be investigated in accordance with this procedure.

Any individual who has engaged in prohibited conduct will be subject to disciplinary action up to and including expulsion or dismissal. Nothing in this procedure shall be interpreted to interfere with any person’s right to free speech as provided by the First Amendment to the Constitution of the United States of America.

All students are encouraged to report any prohibited conduct. Reports will be treated in an expeditious and confidential manner.

TCSG will not tolerate retaliation for having filed a good faith harassment and/or discrimination complaint or for having provided any information in an investigation. Any individual who retaliates against a complainant or witness in an investigation will be subject to disciplinary action, up to and including expulsion or dismissal.

Any individual who knowingly makes a false charge of unlawful harassment/discrimination or retaliation, or who is untruthful during an investigation may be subject to disciplinary action, up to and including expulsion or dismissal.

Employee complaints of unlawful harassment or discrimination shall be conducted pursuant to the process outlined in Procedure III.A.1, Unlawful Harassment of Staff.

II. APPLICABILITY:

All work units and technical colleges associated with the Technical College System of Georgia.

III. RELATED AUTHORITY:

Title IX of the Educational Amendments of 1972

20 U.S.C. §§ 1681 et seq.

Violence Against Women Reauthorization Act of 2013

Campus Sexual Violence Elimination Act (Campus SaVE)

O.C.G.A. § 19-7-5

Titles VI and VII of the Civil Rights Act of 1964

Age Discrimination Act of 1975

Rehabilitation Act of 1973, as amended

Americans with Disabilities Act of 1990

Americans with Disabilities Amendments Act (ADAAA) of 2008

Genetic Information Nondiscrimination Act (GINA) of 2008
Procedure: Student Grievances

IV. DEFINITIONS:

A. Unlawful Harassment (Other Than Sexual Harassment): unlawful verbal or physical conduct that disparages or shows hostility or aversion toward an individual because of that person's race, color, religion, gender, national origin, age, genetic information or disability and which:

1. Has the purpose or effect of creating an objectively and unreasonably intimidating, hostile or offensive educational environment, or
2. Has the purpose or effect of objectively and unreasonably interfering with an individual's educational performance.

Unlawful harassing conduct or behavior can include, but is not limited to, epithets, slurs, negative stereotyping, or threatening, intimidating or hostile acts that relate to race, color, religion, gender, national origin, genetic information, age or disability. Unlawful harassing conduct can include jokes or pranks that are hostile or demeaning with regard to race, color, religion, gender, national origin, age or disability. Unlawful harassing conduct may also include written or graphic material that disparages or shows hostility or aversion toward an individual or group because of race, color, religion, gender, national origin, age, or disability, and that is displayed on walls, bulletin boards, computers, or other locations, or otherwise circulated in college community in any format.

Conduct which threatens, coerces, harasses or intimidates another person or identifiable group of persons, in a manner that is considered unlawful under state and federal laws pertaining to stalking or dating/domestic violence while on college premises or at college sponsored activities may also be considered unlawful harassment under this procedure.

B. Sexual Harassment (a form of unlawful harassment): unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, written, electronic

or physical conduct of a sexual nature when:

1. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's education;
2. Submission to, or rejection of, such conduct by an individual is used as the basis for education decisions affecting such individual; or,
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic performance or creating an intimidating, hostile or offensive educational environment.

Sexually harassing conduct or behavior (regardless of the gender of the persons involved) can include but is not limited to:

Physical touching, sexual comments of a provocative or suggestive nature, suggestive looks or gestures, sexually explicit jokes, electronic media/communication, printed material or innuendos intended for and directed to another, requests for sexual favors, making acceptance of any unwelcome sexual conduct or advances a condition for grades, continued enrollment or receipt of any educational benefit or determination.

C. Sexual Violence (a form of unlawful harassment): physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent, including but not limited to sexual assault, rape, sexual battery, and sexual coercion. All acts of sexual violence are considered unlawful sexual harassment, regardless of gender, for purposes of this procedure.

D. Unlawful Discrimination: the denial of benefits or admission to the college or to any of its programs or activities, either academic or nonacademic, curricular or extracurricular, because of race, color, religion, age, gender, national origin, genetic information or disability.

E. Unlawful Retaliation: unfavorable action taken, unfavorable condition created, or other action taken by a student or employee for the purpose of intimidation that is directed toward a student because the student initiated an allegation of unlawful harassment/retaliation or participated in an investigation of an allegation.

F. Technical College System of Georgia: all work units and technical colleges under the governance of the State Board of the Technical College System of Georgia.

G. Employees: any individual employed in a full or part time capacity in any TCSG work unit or technical college.

H. Visitor: any third party (e.g. volunteer, vendor, contractor, member of the general public etc.) who conducts business or regularly interacts with a work unit or technical college.

I. Clinical Site: any off-campus location to which students or faculty are assigned for completion of program requirements including labs, internships, or practicums.

J. President: the chief executive officer responsible for the management and operation of the technical college where the accused violator is currently enrolled or employed.

K. Human Resources Director: the highest ranking employee responsible for the human resources function at a technical college or TCSG work unit.

L. Local Investigator: the individual(s) at the technical college who is responsible for the investigation of an unlawful harassment, discrimination and/or, retaliation complaint. Local investigators may be assigned based upon the subject matter of the complaint or their function within the organization.

M. Compliance Officer: the individual designated by the Commissioner to coordinate TCSG compliance with Title IX of the Educational Amendments of 1972 and other state and federal laws governing unlawful discrimination and harassment.

N. Title IX Coordinator: an individual designated by the president of the college to ensure compliance with Title IX of the Educational Amendments of 1972, 20 U.S.C. §§ 1681 et seq., and related federal regulations. The Title IX Coordinator may also be assigned the responsibility for compliance with other state and federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education.

O. Section 504 Coordinator: an individual designated by the president of the college to ensure compliance with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 as Amended, and any other state and federal regulations governing disabilities; the responsibilities of the 504 Coordinator will include, but may not be limited to evaluating students requesting accommodations for a disability and ensuring equal access to facilities, services and programs.

V. ATTACHMENTS:

[Policy 1.B. Statement of Equal Opportunity](#)

[TCSG Usage for Statement of Equal Opportunity](#)

VI. PROCEDURE:

A. Administration and Implementation

1. Each college president shall designate one or more officials to serve as the Title IX Coordinator and the Section 504 Coordinator and ensure the designated officials have received appropriate training.
2. Contact information for the Title IX and Section 504 Coordinators and the Statement of Equal Opportunity should be permanently displayed on official bulletin boards and included in electronic or written college publications and academic materials as described in the TCSG Usage for Statement of Equal Opportunity.
3. Instructors/administrators must take ongoing proactive steps to ensure educational opportunities (to include classrooms, clinics, labs, programs, etc.) and student activities (clubs, sports, etc.) are accessible and free from

any type of unlawful discrimination or harassment.

4. The Compliance Officer will conduct training programs and monitor the colleges to ensure the correct administration and implementation of this procedure, and will ensure that proactive or corrective measures have been taken to prevent unlawful discrimination, harassment, or retaliation.

B. Reporting and Management Action

1. All students are encouraged to report events of unlawful harassment, discrimination, sexual violence and/or retaliation (“prohibited conduct”) against themselves or others, regardless of where the incident occurred.

2. Students have the right to file (or not to file) a criminal complaint for sexual violence with the local law enforcement authorities before, during, or after filing a complaint with the college. The technical college shall not unreasonably delay investigation under this procedure to await the outcome of any criminal investigation.

3. If a student filing a complaint requests anonymity or asks that the complaint not be pursued, the college must inform the student that its ability to respond may be limited, that retaliation for filing a complaint is prohibited and steps to prevent harassment and retaliation will be taken. The college should take all reasonable steps to investigate and respond to the complaint consistent with the request and pursue other steps to limit the effects of the alleged harassment and prevent recurrence.

4. Colleges may weigh a request to not pursue a complaint considering the following factors: the seriousness of the alleged conduct, the complainant’s age, whether there have been other harassment complaints about the same individual, and the alleged harasser’s rights to receive information about the allegations if the information is maintained as an “education record” under FERPA. The college must inform the student if the request cannot be ensured.

5. Reports concerning all prohibited conduct referenced in this procedure will be processed confidentially to the extent permitted by law; communications regarding complaints will be disseminated to others on a need-to-know basis to ensure that necessary steps are taken to protect the community as a whole and that appropriate disciplinary measures or corrective actions are considered and taken.

6. Allegations or suspicions of unlawful discrimination, harassment, sexual harassment, sexual violence or unlawful retaliation may be reported to the technical college’s Title IX or Section 504 Coordinators, the president, the Commissioner, or the Human Resources Director (should the complaint involve employees). Complaints may also be emailed to unlawfulharassment@tcsq.edu.

7. Complaints under this procedure can be expressed in writing, by

telephone, or in person; individuals are, however, encouraged to express complaints in writing to ensure all concerns are addressed.

8. If an allegation of unlawful harassment, discrimination, sexual harassment, sexual violence or retaliation is made to an employee not designated to receive such reports, the employee receiving the complaint must report the allegation as provided in section 6 above.

9. Allegations of any sexual conduct involving individuals under the age of 18 must also be reported as an allegation of child abuse as outlined in O.C.G.A. § 19-7-5.

10. The Commissioner or president may suspend, transfer or reassign employees or students in order to prevent possible further harassment, discrimination, sexual violence or retaliation; to facilitate the investigation or to implement preventive or corrective actions under this procedure.

11. Any allegation of unlawful harassment, discrimination, sexual harassment, sexual violence or retaliation against employees must be reported to the Human Resources Director who may elect to conduct the investigation in conjunction with other local investigators.

C. Investigations

1. All complaints of prohibited conduct under this procedure shall be investigated by local investigators thoroughly and should be completed within 45 business days of the receipt of the complaint. The parties will be notified if extraordinary circumstances exist requiring additional time.

2. A complaining party will be notified within 5 business days of receipt of the complaint if the complaint does not specify facts sufficient to allege unlawful discrimination, harassment, sexual violence or retaliation and that a formal investigation will not be conducted pursuant to this procedure. The complaining party may appeal the decision in writing to the president within 5 business days of receiving the notice. The president's decision will be final.

3. Individuals designated to investigate, review or recommend corrective actions in response to allegations will be trained to conduct investigations in a manner that protects the safety of victims and promotes accountability. Individuals assigned as the investigator for a particular incident shall disclose to the president any relationship with the parties that could call into question their ability to be objective prior to taking any action with respect to the investigation. The president will reassign alternate individuals if necessary.

4. Investigations will be conducted by gathering relevant information and interviewing appropriate witnesses. Both the complaining party and the respondent (the parties) will be given equal opportunity to identify

witnesses and offer evidence in person or in writing. Best efforts will be made to interview all witnesses identified by the parties. Both the complaining party and the respondent may be accompanied by an advisor of his or her choice. However, the advisor may not speak on behalf of the party.

5. The college will evaluate the information collected during the investigation and determine whether a preponderance of the evidence substantiates that unlawful discrimination, unlawful harassment sexual violence and/or unlawful retaliation has occurred.

6. Investigations and summary findings will be documented appropriately.

7. No later than 10 business days after completion of an investigation, both of the parties will be simultaneously provided a summary of the results of the investigation in writing.

8. Any information prohibited from disclosure by law or policy will be redacted from any documents prior to distribution.

D. Corrective Actions

1. Colleges will take all reasonable steps to prevent unlawful retaliation against complainants and any other individuals participating in investigations under this procedure.

2. If prohibited conduct is determined to have occurred following the investigation, the college, through the appropriate officials, shall implement steps to prevent a recurrence and to correct the discriminatory effects on the complaining party and others as appropriate. Steps may include, but are not limited to, mandating training or evaluation, disciplinary sanctions, policy implementation or reassignment of students or employees.

3. Should recommended disciplinary sanctions involve academic suspension, expulsion or dismissal from employment, the matter must be referred to either the Vice President for Student Affairs for students or the Human Resources Director for employees. Allegations regarding students shall be considered and sanctions assigned as provided by the college's Student Code of Conduct and Disciplinary Procedure. Sanctions for employees shall be considered as provided by the Positive Discipline Procedure.

4. Individuals who are responsible for conducting or reviewing investigations or proposing sanctions under this procedure should not also serve as reviewing officials or hearing officers in the appeal of sanctions arising from an investigation.

Even in the absence of sufficient evidence to substantiate a finding that unlawful discrimination, unlawful harassment, sexual

violence or retaliation has occurred, colleges are expected to address any inappropriate conduct and take all reasonable steps to prevent any future unlawful discrimination, harassment, sexual violence or retaliation.

E. Reviews and Dispositions

1. Any of the parties to a complaint under this procedure may request a review of the investigative findings within 5 business days of receiving notice of the investigative results by submitting a written request to the president.
2. The president shall review all investigations conducted under this procedure and ensure that the appropriate corrective actions have been implemented.
3. Within 10 business days of receiving a request for a review of the investigative findings, the president of the college will notify the parties in writing of his/her final determination, including any change in the result of the findings. The notice will inform the parties they have a right to appeal the determination to the Technical College System of Georgia's Legal Services Office by submitting a written request within 3 business days by regular mail or email to one of the following:

Technical College System of Georgia
Office of Legal Services
1800 Century Place, N.E.
Suite 400
Atlanta, Georgia 30345

OR

Unlawfulharassment@tcsg.edu

4. The Office of Legal Services will convene a panel of at least 3 individuals not employed by the requestor's college to review the investigative findings. The panel's decision is final and will conclude the processing of the complaint. Both parties will be notified in writing simultaneously of the results of the review and any changes in the results of the investigative findings under appeal.

VII. RECORD RETENTION:

Documents relating to formal complaints including investigations, dispositions and the complaint itself shall be held for 5 years after the graduation of the student or the date of the student's last attendance. Confidential Documents shall be held in a secure location under the custody and control of the Vice President of Student Affairs or the President's designee. Documents

pertaining to employees that are maintained by the Office of Human Resources shall be maintained in a secure location and in accordance with the Georgia Secretary of State's records retention schedule.