

Procedure IV.4002.G.a, Employee Harassment and Discrimination

Associated Policy

Policy IV.4002.G, Employee Harassment and Discrimination

Purpose

This procedure implements the College's policy against employee harassment and employee discrimination, including employee complaints that allege:

- A. discrimination or harassment based on race, creed, color, national origin, citizenship status, age, disability, pregnancy and pregnancy-related conditions, religion, gender/sex, sexual orientation, gender expression or identity, genetic information, marital status, or veteran status; and
- B. failure to provide a reasonable workplace accommodation to an employee required by law based on disability, religion, pregnancy, childbirth, related medical conditions, or lactation.

Exclusion: This procedure does not apply to employee complaints based on sexual misconduct such as sexual harassment, sexual assault, dating violence, domestic violence, stalking, and/or other inappropriate conduct of a sexual nature. Complaints alleging sexual misconduct will be processed under Procedure IV.4002.G.b, Employee Sexual Harassment and Sexual Misconduct.

When an employment complaint contains both sexual and non-sexual allegations, the complaints will be consolidated and investigated pursuant to Procedure IV.4002.G.b, Employee Sexual Harassment and Sexual Misconduct.

Prohibited Conduct: Examples of prohibited conduct include, but are not limited to, the following:

- A. Making an employment decision or taking an action affecting an employee's employment opportunities, benefits, or privileges, creating discriminatory work conditions, and/or using discriminatory evaluative standards in employment when the basis of the discriminatory treatment is, in whole or in part, due to the employee's protected status.
- B. Engaging in conduct based on an employee's protected status that is sufficiently severe, pervasive, persistent, or objectively offensive such that it has the purpose or effect of unreasonably interfering with an individual's academic or work performance or of creating an intimidating, hostile, or offensive academic or work environment or otherwise adversely affects an individual's employment opportunities. Harassment can occur in different forms, including verbal, nonverbal, physical, visual, symbolic, and/or electronically based. Such conduct could include:
 - 1) Demeaning or degrading jokes, slurs, or offensive comments about the employee's abilities, body, appearance, or clothing that are motivated by the employee's protected status.
 - 2) Displaying objectively offensive and/or demeaning explicit graphics, cartoons, pictures, photographs, or objects that are unrelated to the individual's work or course of study and are motivated by the individual's protected status.

- 3) Using electronic equipment and devices, including computer networks, cell phones, and copy machines, to transmit or display objectively offensive material or messages based on the individual's protected status.
- 4) Unwelcome gestures and/or unwelcome touching directed at the employee motivated by the employee's protected status.
- 5) Acts of intimidation, threats of violence, physical assault, and/or physical acts of aggression or damage to another's property when motivated by the employee's protected status.

Informal Assistance and Dispute Resolution

San Jacinto College encourages the prompt reporting of complaints so that rapid and constructive action can be taken, when appropriate. Any individual may seek advice or information on matters related to this policy without having to file a formal complaint by contacting Human Resources, Employee Relations.

Employees are encouraged to seek informal resolution of their complaints through their respective leadership or Employee Relations; however, an employee does not have to make a report to the person who is the alleged perpetrator.

Informal resolution may be useful in situations in which the alleged conduct is not severe or pervasive or the facts are largely undisputed. Informal resolution may include actions such as coaching, counseling, or modification of work assignments.

Confidentiality

To the extent permitted by law, the College will maintain the confidentiality of information related to reports and complaints of discrimination and harassment. The College will attempt to balance the need for confidentiality with the College's responsibility to address such allegations. Some information, including the parties' names, may be disclosed to investigators, witnesses in the case, the respondent and respondent's advisor or attorney, College decision-makers, College attorneys, and others with a responsibility to ensure compliance with this procedure.

Leader Responsibility to Report Discrimination and Harassment

College leaders serve a critical role in preventing discrimination and harassment in the workplace. To assist in enforcement of the College's policy, all leaders must promptly inform Employee Relations whenever they receive information that a reasonable leader would understand as indicating a potential violation of Board Policy IV.4002.G, Employee Harassment and Discrimination. Leaders may contact Employee Relations via email, phone, or in person.

When a leader or supervisor becomes aware of harassment or discrimination allegations or incidents within their area of authority, the leader or supervisor will, even in the absence of a formal, written complaint, take prompt and appropriate action reasonably necessary to ensure compliance with this procedure. The leader or supervisor may make appropriate inquiries to evaluate whether further action is warranted, and they may counsel employees about appropriate

and inappropriate behavior in the workplace and issue appropriate directives to ensure compliance with this procedure.

Complaint and Investigation Procedures

1. Reporting a Complaint

An employee may report a complaint to Employee Relations via email, phone, or in person. An employee also may report complaints to the Title IX Coordinator or to the employee's leader or, if the leader is the respondent, to the next level leader. A leader who receives a complaint from an employee will promptly report the matter to Employee Relations.

As soon as practicable after receiving a report, Employee Relations will contact the employee who has been subjected to alleged discrimination or harassment ("the complainant") to acknowledge receipt of the complaint and to provide information regarding the complaint process and interim measures that may be available. If the complainant has not prepared a written complaint, the complainant should do so within five (5) working days unless extenuating circumstances warrant additional time.

While an investigation may begin based on a verbal report, particularly in circumstances involving an immediate risk of harm, a written statement ensures that Employee Relations has an accurate statement of the allegations to be evaluated and thus minimizes the risk of confusion over the issues to be reviewed. If the complainant needs a reasonable accommodation to communicate their complaint, the complainant may obtain assistance from Employee Relations.

The employee's complaint must contain the complainant's name, signature, contact information, a description of the conduct or event at issue, the name of the alleged perpetrator(s) ("respondent"), date(s) of the alleged incident(s), the names of any witnesses or persons having knowledge of such incident(s), and the resolution sought. The complainant should provide copies of any relevant documents or information when available. A complaint is "signed" when it contains the complainant's physical or digital signature or otherwise indicates that the complainant is the person submitting the complaint.

If the respondent is a student, Employee Relations will provide a copy of the complaint to the Office of Student Rights and Responsibilities and work in conjunction to investigate the complaint.

2. Initial Review of the Complaint

Employee Relations will determine whether the allegations describe unlawful discrimination or harassment. If Employee Relations determines that the allegations, even if true, do not implicate this procedure, they will dismiss the complaint and notify the complainant. If Employee Relations determines that a different procedure applies, they will notify the complainant.

Employee Relations may also dismiss the complaint if the complainant declines to cooperate in the College's investigation, if the requested remedy has already been implemented or was offered and rejected, or if the respondent-employee is no longer employed.

As part of the initial review, Employee Relations will evaluate in conjunction with the relevant leader whether interim measures or supportive measures are appropriate. If the relevant leader is the subject of the complaint, then Employee Relations will consult with the next level leader. Interim measures could include, for example, a change in work schedule, a mutual no-contact directive, or temporary transfer when necessary to prevent disruption, to ensure the integrity of the investigation, or to enhance public or employee safety. Administrative leave of an employee must be approved by the Chancellor, or designee. The terms and conditions, including the employee's pay status, will comply with relevant College policies and procedures.

If the complainant requests that the College not investigate the matter or withdraws the complaint, Employee Relations will determine whether the available information warrants an investigation. The College will consider the seriousness of the alleged conduct; whether the College has received other reports of misconduct involving the same alleged respondent(s); whether there is a risk of harm to others; the complainant's reasons for not proceeding with the complaint, if known; and any other relevant evidence. Employee Relations will notify the complainant if a decision is made to investigate.

In cases in which the respondent is a student, Employee Relations and the Office of Student Rights and Responsibilities will coordinate to determine an appropriate investigation plan to include both departments.

3. Investigating a Complaint

An Employee Relations investigator will be assigned who is impartial and free of conflicts of interest. In the event of a conflict of interest that would preclude an investigation by Employee Relations, the College will arrange for appointment of another investigator. The investigation will be prompt and thorough. Prompt investigation means that the investigation is completed as expeditiously as possible given the nature and complexity of the allegations, availability of witnesses, and academic calendar. Investigations ordinarily will be initiated within five (5) working days of receipt of a written complaint.

Employee Relations will provide a copy of the complaint and this procedure to the respondent who will receive a reasonable time to prepare a written response. Employee Relations will inform the respondent of the policy against retaliation.

A respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made, using a preponderance of the evidence standard. Investigations typically will consist of an interview with the complainant, the respondent, and other persons whom the investigator determines may have pertinent information related to the complaint. Employee Relations will also gather and examine relevant documents and electronically stored information as may be appropriate.

Barring unusual circumstances (e.g., multiple reporting parties and witnesses or the complaint is filed immediately before winter break), most investigations will be completed within 30 to 90 calendar days.

4. Findings, Corrective Action, and Appeals

Employee Relations will prepare findings of fact and a conclusion about whether College policy was violated. Findings will be based on a preponderance of the evidence. To establish something by a “preponderance of the evidence” means to show the greater weight of the credible evidence. This standard is satisfied if the fact or conduct is deemed more likely than not to have occurred. Credibility determinations are allowed but may not be based on an individual’s status as a complainant, respondent, or witness and may not rely on stereotypes based on race, sex, religion, disability, or other categories protected by law.

Employee Relations will summarize the findings and provide the summary to the designated administrator who will determine whether corrective action, discipline, or other action is warranted. The findings and determination(s) will be provided to both the complainant and respondent in writing via a letter. Both parties will have five (5) working days from the date of the letter to submit written comments to the designated administrator. The designated administrator will review the report, the evidence, and any written comments from the parties. Within 30 calendar days, the designated administrator will issue a determination.

If the proposed discipline is termination, then the procedures in Policy IV.4002.B, Termination or Demotion of Contractual Employees, will be followed for contract employees, and Policy IV.4002.C, Termination or Demotion of Non-Contracted Employees, will be followed for non-contract employees.

If the proposed discipline is not termination and either party disagrees with the decision of the designated administrator, within five (5) working days of receipt of the decision they may seek review by submitting a written appeal to the respective SLT member, or designee. The SLT member, or designee, may request written comments from the complainant and the respondent. The SLT member, or designee, will issue a written determination within 30 calendar days. The determination is final; however, employees may choose to appear before the Board during Public Comment.

When both employees wish to appeal the disposition of a harassment or discrimination complaint, the proceedings may be consolidated at the discretion of the SLT member, or designee, so long as this consolidation does not prejudice either party.

If the respondent is a student, then the designated administrator will be the Dean of the Office of Student Rights and Responsibilities, or designee. The student may appeal the decision in accordance with the student discipline procedures in the Code of Student Conduct.

Additional Conduct Rules and Procedures

1. Retaliation

Employees have a legal right to file charges of discrimination and harassment, to oppose discriminatory employment practices, to seek supportive measures, and to participate in an investigation of such complaints. Retaliation against such employees is strictly forbidden.

Retaliation is conduct that a reasonable employee would view as materially adverse and whose purpose or effect is to discourage employees from exercising their rights under this policy or under the law and which would not have occurred but for the employee's complaint or the employee's exercise of their statutory rights. Retaliation does not include exercising one's First Amendment rights or charging an individual with making a materially false statement in bad faith in the course of an investigation or grievance proceeding.

The protection against retaliation applies to all good-faith complaints, even if the underlying complaint ultimately is not sustained. Employees may file retaliation complaints under Policy IV.4002.F, Employee Concerns and Grievances.

2. False Complaints

Any person who in bad faith knowingly files a false complaint under this procedure or provides materially false information is subject to disciplinary action up to and including termination. A determination that a respondent is not responsible for allegations of discrimination or misconduct does not establish the falsity of a report, written complaint, or evidence. Similarly, determining that a respondent is responsible for a policy violation does not imply that a respondent's statements disclaiming responsibility were false.

3. Interference with the Complaint Process

Any person who interferes with an investigation or other complaint proceeding or appeal is subject to disciplinary action up to and including termination. Actions that constitute interference include, but are not limited to:

- (a) Attempting to coerce, compel, or prevent an individual from providing testimony or evidence.
- (b) Removing, destroying, or altering documentation relevant to a complaint.
- (c) Knowingly providing false or misleading information to an investigator, designated administrator, or appeal officer or encouraging others to do so.

4. Calculating Deadlines under this Procedure

When a deadline is stated in terms of "calendar" days and the deadline falls on a weekend or state or federal holiday, the deadline will be moved to the next day that does not fall on a weekend or a holiday. When a deadline is stated in terms of "working" days, the deadline will be calculated based on the days that the College is open for business (whether in person or virtually). The term "working days" excludes spring break and winter break.

The College may extend these time frames for good cause and with written notice to the parties.

Complaints against District Officials

Charges of harassment or discrimination against Employee Relations investigators, the Vice President of Human Resources, the Vice Chancellor of Human Resources, or the Title IX

Coordinator will be filed directly with the Chancellor, or designee. The Chancellor, or designee, will take appropriate action to appoint an impartial, trained investigator to fulfill the investigatory function required under this procedure. The Chancellor, or designee, will serve as the designated administrator who will review and respond to the investigation report. The Chancellor's decision is final. However, if the proposed discipline is termination and the employee holds a contract, then the employee may request a hearing pursuant to Policy IV.4002.B, Termination or Demotion of Contractual Employees.

Charges of harassment or discrimination against the Chancellor or any Board member will be filed directly with the Board Chair. The Board Chair, or designee, will take appropriate action to appoint an impartial, trained investigator to fulfill the investigatory function required under this procedure. If a complaint is filed against the Chancellor, the Board of Trustees will serve as the designated administrator.

If the charge is against the Board Chair, the complaint will be submitted to the Vice Chair who will take appropriate action to appoint an impartial, trained investigator to fulfill the investigatory function required under this procedure. The remaining Board members will serve as the designated administrator.

Definitions

This section includes a list of terms referenced in this and other procedures associated with Policy IV.4002.G, Employee Harassment and Discrimination.

Harassment is unwelcome conduct that is based on race, creed, color, national origin, citizenship status, age, disability, pregnancy and pregnancy-related conditions, religion, gender/sex, sexual orientation, gender expression or identity, genetic information, marital status, or veteran status. Harassment becomes unlawful when enduring the offensive conduct becomes a condition of continued employment, or the conduct is so severe or pervasive that it creates a work environment that is intimidating, hostile, or abusive.

Discrimination occurs when an employee is treated differently, or less favorably, based on race, creed, color, national origin, citizenship status, age, disability, pregnancy and pregnancy-related conditions, religion, gender/sex, sexual orientation, gender expression or identity, genetic information, marital status, or veteran status.

Retaliation: Any adverse action taken against an employee for filing a complaint or supporting another employee's complaint under a variety of laws.

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Effective Date	April 2, 2024
Associated Policy	Policy IV.4002.G, Employee Harassment and Discrimination

Primary Owner of Policy Associated with the Procedure	Vice Chancellor, Human Resources, Organizational and Talent Effectiveness
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Secondary Owner of Policy Associated with the Procedure	Vice President, Human Resources
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