

College Operating Procedures (COP)



Procedure Title: Discrimination and Harassment Complaint Procedure
Procedure Number: 05-0107
Originating Department: Office of Human Resources

Specific Authority:

Board Policy 6Hx6:2.03
Florida Statute 1001.65
Florida Administrative Code n/a

Procedure Actions: Adopted: 4/1/10; 11/1/10; 4/16/12; 10/28/2013

Purpose Statement: To provide complaint procedures for students, employees and members of the College community for alleged violation of the District Board of Trustees Discrimination and Harassment Policy 6xH6.2.03.

Guidelines:

It is the policy of Florida SouthWestern State College to provide a method for current and prospective students and employees, and members of the College community to register complaints or problems concerning discrimination or harassment. This procedure does not apply to employees with respect to disciplinary action, suspension or termination.

This policy applies to all members of the College community, whether the incident(s) of harassment or discrimination under consideration take place on College property, at a College-related activity, or off-campus if it is in combination with on-campus action or a College-related activity or function when that conduct interferes with a person's work or academic environment.

At all times during the process, the College reserves the right to investigate, pursue, and otherwise take appropriate action with respect to any allegations that may come to its attention on the basis of facts and evidence available. The College has a legal responsibility to investigate any complaint to its satisfaction. Those who report incidents that a College official determines likely to be a violation of the policy should understand that their allegations may be investigated on behalf of all College students and employees whether or not they personally choose to pursue the complaint.

Members of the College community are required to cooperate in any investigation pursuant to this procedure.

Anonymous complaints will be taken seriously although it may be difficult to conduct a meaningful investigation without full and complete information that is in accordance with the legal rights of all parties. Confidentiality cannot be guaranteed but will be assured to the extent possible.

It is contrary to College policy for any individual to engage, directly or indirectly, in retaliatory conduct against a person who files a discrimination or harassment complaint, or who gives information during an investigation of such complaint. Any student or employee, who believes retaliatory actions have been taken for having filed a complaint or provided information in the investigation of a complaint, should notify the Equity Officer at 239-489-9305 or equity@fsw.edu.

It is the intent of this policy to encourage full discussion and resolution of problems at the lowest level possible and in a prompt manner. The College recognizes the value and importance of resolving misunderstandings and maintaining good relations and believes the following procedure will ensure that complaints receive full consideration

Procedures

1. Informal Complaint Resolution

- a. If an employee, student, applicant, or member of the public believe that they have been a victim of discrimination or harassment as part of an educational program, employment duties, application process, college activity, or use of college facilities then that individual may pursue an informal complaint with the appropriate administrator, dean, or Human Resources. The aim of the informal complaint is not to determine whether there was intent to harass and/or discriminate but to ensure that the alleged harassing and/or discriminatory conduct ceases and that the matter is resolved at the lowest possible level.
- b. No disciplinary action is taken against employees or students in resolving informal complaints. Hence, informal complaint procedures should not be used for severe cases of harassment and/or discrimination, nor should they be used when the accused has been the subject of a previous complaint.
- c. There is no requirement that informal procedures be used before filing a formal complaint, or that the complaint be put into writing before informal complaint procedures are used.
- d. In severe cases of harassment and/or discrimination or in instances when the accused has been the subject of previous complaints, the College may conduct a College-generated investigation if there is sufficient reason to believe that harassment and/or discrimination could have or does exist.
- e. An initial course of action for any student, faculty member or staff member who feels he/she is being harassed or discriminated against, is for that individual to tell or otherwise inform the accused that the conduct is unwelcome or offensive and must stop.
- f. However, if the individual is not comfortable in dealing with this matter in this manner or the offensive conduct continues, the individual may seek assistance from an administrator of the College, such as Deans, department heads, or the Vice President, Research, Technology and Accountability (Equity Officer).

- g. In the informal complaint procedure, the administrator may assist in resolving the matter informally or advance the matter to the Assistant Vice President, Student Affairs/Dean of Students (student complaints) and/or the Equity Officer for formal review and resolution.
- h. If there is no resolution as a result of the informal complaint procedure, the accusing party may proceed with filing a formal complaint.
- i. At any point in this process the Equity Officer or designee may become involved as an objective third party.

2. Formal Complaint Resolution

- a. Who may file a complaint: Employees, applicants for employment, applicants for admission to College programs, students, participants in College-sponsored activities, and other persons affiliated with the College.
- b. Time for filing complaint: If the complainant is a student or seeking admission, the complainant must file a formal complaint to the Dean of Students within 90 calendar days of the incident. If the complainant is faculty or staff, or an applicant for a position, the complainant must file a formal complaint to the Equity Officer within 30 calendar days of the incident. The filing deadline will be stayed pending the resolution of the informal complaint process.
- c. Requirements of a complaint: Each complaint must include the following:
 - i. The full name and address of the complainant, who must be the individual claiming to be harmed by the alleged harassment and/or discrimination.
 - ii. The full name of the accused.
 - iii. A clear and concise statement of the facts that constitute the alleged harassing and/or discriminating conduct, including pertinent dates and sufficient information to identify any other individuals who may provide information during the course of an investigation.
 - iv. A statement by the complainant verifying that the information supporting the allegations is true and accurate to the best of the complainant's knowledge.
 - v. Information that establishes that both the complainant and the accused have a sufficient relationship to the College to require application of the College policies and procedures.
 - vi. Intake interview. Within five (5) business days after the time the complainant initiates a formal complaint, the Assistant Vice President, Student Affairs/Dean of Students (student complaints) or the Equity Officer or his/her designee, will conduct an interview with the complainant.

d. Complaint Processing:

- i. In the case of a student complaint the Assistant Vice President, Student Affairs will notify the Equity Officer of any formal complaints received immediately after conducting the intake interview.
 - ii. The Equity Officer , in consultation with the College's General Counsel, will determine who will conduct the investigation if an outside investigator is needed otherwise, the Equity Officer or his/her designee will conduct the investigation.
 - iii. The investigator(s) will file a written report with the Equity Officer within 30 business days of the filing of the formal complaint. If the Equity Officer serves as the investigator then he/she will file a written report with the College's General Counsel within 30 business days of the filing of the formal complaint. This time frame may be extended with notice to the complainant and the accused.
 - iv. The investigator's report will outline the investigative findings and indicate whether there is reasonable cause to believe that harassment or discrimination has occurred based on the evidence obtained. The report may recommend appropriate action to be taken by the College.
 - v. Within ten (10) business days of receiving the report, the Equity Officer will set forth a written decision as to whether the College is in agreement with the findings of the investigator and whether any further action is needed. If the investigation has been conducted by the Equity Officer then the General Counsel will set forth a written decision as to whether the College is in agreement with the findings of the investigator and whether any further action is needed. The Equity Officer or the General Counsel, if applicable, has the right to accept, reject, or request further investigation when reviewing the investigator's report.
 - vi. The Equity Officer along with the designated investigator will provide the complainant and the accused with the opportunity to meet separately to discuss the investigative findings. After being advised of the decision as described above in d(v.), the complainant and the accused will be deemed to have accepted the College's decision, and the formal complaint resolution process concluded, unless at least one of them chooses to appeal the decision.
- e. Appeals: The issues raised on appeal shall be limited to those issues raised during the investigation. Any issues not raised during the investigation or new issues that could have been raised but were not, shall be precluded on appeal.
- i. If the complainant or the accused wishes to file an appeal the appeal must be submitted in writing to the Director, Human Resources within

seven (7) calendar days after receiving the decision of the College as stated above in (5)(v.) .

- ii. Within thirty (30) business days of the filing of the appeal, the Vice President, Student Affairs & Enrollment Management (for student issues) or the Vice President, Administrative Services (for employment issues or other community issues) will review the investigation reports and the appeal documents and render a decision supporting or over-turning the initial recommendation.
- iii. Within seven (7) calendars days after receiving the decision on the appeal as stated above in (e)(ii), either the complainant or the accused may further appeal the decision of the Vice President, Student Affairs & Enrollment Management or the Vice President, Administrative Services to the President or designee. This second appeal must be submitted to the Director, Human Resources and must be in writing. The President will review the investigation reports and the appeal documents and render a decision supporting or over-turning the decision. The President may assign a final appeal review to his designee. The decision of the President or designee is final and must be rendered within five (5) business days of the filing of this last appeal.
- iv. The President *may* direct all actions necessary to protect the health, safety, and welfare of the College.