

PROCEDURES MEMORANDUM

TO: MCC Staff

FROM: Office of the President

OBJECT: Policy Prohibiting Harassment of Employees and Discrimination.

DATE: September 24, 2014

PURPOSE: To ensure that all employees and prospective employees are treated in accordance with the mission and values of Metropolitan Community College (MCC) and to ensure compliance with all federal, state, and local regulations and statutes.

SCOPE: Equal employment opportunities will be provided to all employees and applicants for employment without regard to race, color, national or ethnic origin, religion, age, sex, sexual orientation, disability, marital status, status as a protected veteran (disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces Service Medal veteran), or status in any group protected by applicable federal, state, or local law, except where required by bona fide occupational qualifications.

1. General Principles

The College recognizes classes of protected persons as stated in this procedure memorandum, even though those classes may not be legally protected by the Equal Employment Opportunity Commission, Nebraska Equal Opportunity Commission, or Federal, State or local laws and regulations. Treating all employees and prospective employees fairly, and with dignity and respect, demonstrates MCC's commitment to equal employment opportunities and to MCC's mission.

In keeping with MCC's commitment, the college will not tolerate prohibited discrimination or harassment against administrators, faculty, or staff by anyone acting on behalf of MCC. All employees are responsible for creating and maintaining an environment free of discrimination and harassment.

Equal employment opportunities apply to all aspects, terms, conditions and privileges of employment, including but not limited to: screening process, hiring, job placement, assignment of responsibilities, performance evaluation, promotion and advancement, compensation, fringe benefits, training and professional development opportunities, layoff, recall from layoff, transfer, leaves of absence, facility and service accessibility, discipline of any kind, termination, and formulation and application of any and all human resource and college rules and policies.

MCC's commitment to equal employment opportunities expressly prohibits any form of unlawful discrimination or harassment based on race, color, national or ethnic origin, religion, age, sex, sexual orientation, disability, marital status, status as a protected veteran (disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces Service Medal veteran), or status in any group protected by applicable federal, state, or local law, except where required by bona fide occupational qualifications. Improper interference with the capability or ability of any employee to perform his/her expected job duties will not be tolerated.

The College forbids retaliation against anyone who in good faith has reported prohibited discrimination. However, accusations of prohibited discrimination are serious and should never be made casually and/or without cause. MCC's mission or policy shall not be used to bring malicious or bad faith charges against administrators, faculty or staff.

2. Definitions

A. Discrimination Defined and Prohibited

- 1) College policy forbids discrimination against employees. Discrimination is defined in civil rights law as unfavorable or disparate treatment of a person or class of persons when that person's protected status is a factor in the treatment.
- 2) Different or unfavorable treatment of similarly situated employees is not necessarily unlawful discrimination. Treating a person unfavorably in comparison to others may be unlawful only when that person's protected status is a factor in the treatment.

B. "Harassment" Defined and Prohibited

- 1) College policy forbids harassment of employees. Harassment includes the bases of race, color, national or ethnic origin, religion, age, sex, sexual orientation, disability, marital status, status as a protected veteran (disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces Service Medal veteran), or status in any group protected by applicable federal, state, or local law, except where required by bona fide occupational qualifications.
- 2) Harassment includes basing a term or condition of employment on an employee's submission to unwelcome offensive conduct. Harassment also includes subjection to a "hostile environment." A hostile environment occurs when unwelcome conduct or speech is sufficiently severe and pervasive that it interferes with an individual's job performance or creates a hostile, intimidating, or offensive work environment. A hostile environment may occur without tangible or economic job consequences, such as loss of pay or promotion.
- 3) Harassment may include, but is not limited to:
 - the use of insulting or derogatory names or gestures;

- display of derisive, abusive or offensive written, graphic, pictorial or electronic material;
 - the use of intimidating, insulting or ridiculing language;
 - making unwanted contact with a person's body;
 - telling of unwelcome lewd, crude or offensive stories or jokes; and
 - the use of sexual, racial, ethnic, age-based, religion-based, marital status-based, disability-based, sexual preference-based or other offensive, derogatory and insulting names.
- 4) Harassment of MCC employees by other employees is expressly prohibited and will subject the offender to appropriate disciplinary sanctions up to and including dismissal from employment.

3. Statement on Sexual Harassment

A. Sexual harassment is considered a form of gender discrimination. Sexual harassment may occur between individuals of the same or opposite sex. Sexual harassment includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment. Unwelcome sexual advances, requests for sexual favors, and other physical, verbal, or visual conduct based on sex constitute sexual harassment when:

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

B. Conduct that constitutes sexual harassment is separate from an action or incident that is a purely personal, social relationship without a discriminating employment effect. In determining whether conduct constitutes sexual harassment, the College will examine the record as a whole and the totality of the circumstances, such as the nature of the conduct and the context in which alleged incidents occurred.

4. Supervisor and Manager Responsibilities

A. Discrimination and harassment interfere with and are inconsistent with the College's mission, have no place at the College, and will not be tolerated. All College personnel are responsible for respecting the rights of their co-workers and avoiding discriminatory or harassing conduct. The College expects each employee to attempt to assure a working environment free from harassment and intimidation. In addition, all personnel must be vigilant in ensuring that a hostile environment does not exist and must respond in appropriate ways concerning unwelcome offensive conduct or complaints of discrimination or harassment.

B. Supervisors and management are responsible for:

- 1) Creating and maintaining a work environment free of discrimination and harassment;
- 2) Notifying the Associate Vice President for Equity and Diversity, the College's General Counsel, or the Associate Vice President of Human Resources immediately upon receiving or learning about allegations or complaints of employment discrimination or harassment. After notifying one of these individuals, supervisors shall not engage in any investigation of the allegations or complaints unless authorized or instructed to do so;
- 3) Taking corrective action promptly after consulting with the Associate Vice President for Equity and Diversity, the College's General Counsel, or the Associate Vice President of Human Resources to prevent prohibited conduct from reoccurring;
- 4) Ensuring no retaliatory actions are taken against employees who report or file complaints of discrimination or harassment or who assist in an inquiry or investigation.

5. Complaint Procedures

- A. Allegations or reports of discrimination, harassment, bad faith allegations, or retaliation made by College employees will be investigated thoroughly in accordance with the procedures set forth in this Procedures Memorandum.
- B. MCC will thoroughly and promptly investigate discrimination and harassment complaints. All inquiries, complaints and investigations will be kept confidential to the maximum extent possible. Information will be revealed strictly on a need-to-know-basis, or as the College deems necessary to protect the legal interests of the College.
- C. Employees who believe they have been subjected to unlawful discrimination or harassment should file a complaint with the Associate Vice President for Equity and Diversity, the College's General Counsel, or the Associate Vice President of Human Resources.
- D. The Associate Vice President for Equity and Diversity, the College's General Counsel and the Associate Vice President of Human Resources shall promptly notify each other upon learning of allegations or complaints.
- E. The Associate Vice President for Equity and Diversity, the College's General Counsel, and the Associate Vice President of Human Resources are jointly responsible for assigning, coordinating, and supervising investigations of alleged EEO violations.

- F. Upon receipt of a complaint that allegedly constitutes discrimination or harassment as defined in this Policy, prompt and appropriate investigative action shall be taken, followed by corrective action if warranted.
- G. Any complaint filed under this memorandum must be in writing, signed by the complainant on the College's Discrimination and Harassment Complaint Form. A copy of the form can be found on the College's Forms Bank.
- H. Whenever appropriate, informal means will be utilized to resolve complaints. MCC encourages all parties involved in a conflict to consider conflict resolution at the lowest level possible at every available opportunity unless it is inappropriate to do so. All informal resolutions will be documented in a written report.
- I. Whenever a matter cannot be resolved informally, a report of the investigation will be prepared by the party or parties conducting the investigation, along with a recommendation, considering the evidence gathered by the investigator, the investigator's conclusions, and any necessary follow-up investigation in preparing his/her report.
- J. If the Complaint is substantiated, recommendations may include discipline for the violator and/or restoration of any employment terms, conditions, or opportunities the complainant lost or was denied because of the discrimination or harassment.
- K. Recommendations will be submitted to the President or his/her designee for approval. Upon approval, the Associate Vice President for Equity and Diversity, the College General Counsel, and/or the Associate Vice President of Human Resources will ensure that appropriate corrective measures are taken.
- L. Due to the individual nature of reports/complaints, each report/complaint will be handled on a case-by-case basis. Every reasonable effort will be made to investigate and conclude the handling of a report/complaint in a timely fashion.
- M. Retaliation will not be tolerated. No adverse actions shall be taken against complainants in retaliation for filing a good faith discrimination complaint. Retaliation will be addressed according to the procedures set forth in this memorandum. In addition, no adverse actions shall be taken against persons who are party to or participate in discrimination or harassment investigations. No manager, supervisor or employee at MCC will discourage or obstruct employees from filing a complaint within MCC or any governmental entity charged with investigation into discrimination or harassment.
- N. Bad faith allegations or use of this memorandum for purposes unrelated to its intent are expressly prohibited. Disciplinary actions may be taken as appropriate if it is determined that a bad faith allegation of harassment has been made to harass, intimidate, or coerce an individual against whom the allegation has been made. Complaints of bad faith allegations will be addressed according to the procedures set forth in this memorandum.

- O. Any manager, supervisor or employee at MCC who is notified of charges filed with any governmental entity should immediately notify the College's General Counsel.
- P. To the extent the Associate Vice President for Equity and Diversity, the College's General Counsel, or the Associate Vice President of Human Resources is unable to serve in the capacities described in this memorandum, the President may appoint an alternate to serve in their place.

6. Discipline

Employees who are determined to have engaged in discriminatory conduct, harassment or retaliation will be subject to appropriate disciplinary or corrective actions. Appropriate disciplinary or corrective actions may include, but not be limited to, oral reprimand, written reprimand, probation, demotion, transfer, required professional counseling, and/or termination of employment. Victims of discrimination or harassment may be informed, in general terms, of the action the College is taking to stop the conduct and prevent its recurrence.

7. Confidentiality and Privacy

Reasonable efforts will be made to protect the confidentiality and privacy interests of all persons concerned respecting matters arising under the Procedure Memorandum. However, the College may disclose complaints, reports, facts, identities, and other information, as the College deems necessary to conduct an adequate investigation or to protect the legal interests of the College.

Adopted 11/25/87; Revised 7/1/01; 9/8/05;7/20/06 (title changes only); 8/2/06; 5/14/09; 9/24/14