

# Procedure: 4.3.1p. (III.A.1.)

## Unlawful Discrimination, Harassment, and Retaliation in Employment

**Revised:** April 16, 2019; and January 12, 2016.

**Last Reviewed:** September 20, 2022; and April 16, 2019.

**Adopted:** March 9, 2007.



### I. PURPOSE:

This procedure aims to ensure that all the Technical College System of Georgia employees are provided with an environment free of unlawful discrimination, harassment, and retaliation.

Employee complaints of sexual harassment by another employee, which is a form of sex discrimination, should be processed under TCSG Procedure 4.3.1p2.

All employees are prohibited from engaging in unlawful discrimination or harassment. Any employee who has engaged in such prohibited behaviors or conduct will be subject to disciplinary action, including dismissal.

All employees are required to report any act of unlawful discrimination and harassment. Reports will be treated expeditiously and confidentially to the extent provided by law.

TCSG will not tolerate retaliation for having filed a good-faith complaint of unlawful discrimination or harassment or for providing any information in an investigation. Any employee who retaliates against a complainant or witness in an investigation will be subject to disciplinary action, including dismissal.

Employees in a supervisory or managerial capacity are prohibited from knowingly permitting unlawful discrimination, harassment, or retaliation in their assigned work unit(s).

The harassment of an employee by a non-employee (e.g., vendor, contractor, etc.) in conjunction with the performance of their assigned duties and responsibilities and the harassment of a non-employee by an employee will not be tolerated.

Conduct that does not rise to the level of unlawful harassment may still violate other policies or procedures and subject an employee to disciplinary action, including dismissal from employment.

### II. RELATED AUTHORITY:

O.C.G.A. § 20-4-11 – Powers of Board.

O.C.G.A. § 20-4-14 – TCSG Established; Powers and Duties.

20 U.S.C. §§ 1681 et seq.

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.  
TCSG State Board Policy 2.1.1. – Statement of Equal Opportunity.  
TCSG Procedure 4.4.1p. – Positive Discipline.

### III. APPLICABILITY:

All work units and Technical Colleges are associated with the Technical College System of Georgia. The terms of this Procedure will govern behavior during regular work hours, at work-related functions at or away from the primary work site before or after regular work hours, and/or while off duty when negatively impacting an employee's ability to perform their duties effectively.

### IV. DEFINITIONS:

- A. **Unlawful Discrimination:** the treatment, consideration of, or making a distinction in favor or against a person based upon a legally protected characteristic, class, or category to which the person belongs: e.g., race, color, religion, sex, national origin, age, or disability. Unlawful discrimination can also affect a procedure or practice that confers or denies privileges to a protected class because of race, color, religion, etc.
- B. **Unlawful Harassment:** Verbal or physical conduct that disparages or shows hostility or aversion toward an individual because of that person's race, color, religion, sex, national origin, age, or disability. The conduct will be considered Unlawful Harassment if it:
  - 1. Has the purpose or effect of creating an intimidating, hostile, or offensive work environment; or
  - 2. Has the purpose or effect of unreasonably interfering with an individual's work performance.

Examples of Unlawfully Harassing Conduct or Behavior (Other Than Sexual Harassment) or Generally Offensive Behavior or Conduct:

Offensive remarks, jokes, epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts that relate to race, color, religion, gender, sexual orientation, national origin, age, or disability;

Displaying offensive written or graphic material, pictures, photographs, or drawings on walls, bulletin boards, computers, or other work locations, or which are circulated in the workplace;

Offensive email, text or voice mail message(s), or inappropriate use of state resources (e.g., downloading sexually explicit websites or information); and

Foul or obscene language.

This is a representative list of harassing conduct or behavior and is not intended to be exhaustive.

- C. **Retaliation:** Unfavorable employment action taken, unfavorable employment condition created, or other action taken for intimidation directed toward an employee

because the employee reported or complained of unlawful discrimination or harassment or because the employee participated in an investigation.

- D. **Employees:** Any individual employed in a full-time or part-time capacity in any work unit or Technical College associated with the Technical College System of Georgia (“TCSG”).
- E. **Non-Employee:** Any third party (e.g., volunteer, vendor, contractor, etc.) who conducts business with or on behalf of a work unit or Technical College.
- F. **President:** The chief executive officer responsible for managing and operating the Technical College where the complainant and/or respondent are currently employed.
- G. **Human Resources Director:** The highest-ranking employee responsible for the human resource function at a Technical College. The System Office Human Resources Director provides technical assistance and expertise to all college HR Directors and manages the human resource function for all work units not associated with a Technical College.
- H. **Local Investigator:** The person(s) at the Technical College who has delegated the responsibility for investigating employee complaints of unlawful discrimination, harassment, and retaliation. Local Investigators are typically staff from the college's Office of Human Resources but may also include Title IX Coordinators.

**V. ATTACHMENTS:**

Attachment: 4.3.1p.a1. – Employee Acknowledgment Form

**VI. PROCEDURE:**

A. Policy Administration

1. The State Board Policy Statement on Equal Opportunity should be permanently displayed on official bulletin boards of the Technical Colleges and System Office and readily assessable to staff.
2. Supervisors must take ongoing proactive steps to ensure their work environments are free from discrimination, unlawful harassment, and retaliation and to educate their staff on appropriate conduct.
3. All current and future employees must read and become familiar with the Statement of Equal Opportunity and other employment-related policies and procedures in the TCSG State Board Policy Manual (tcsg.edu).
4. As a condition of employment, all employees (current and future) are required to read and sign the employee acknowledgment of this procedure, which will become a permanent part of the employee's personnel record.
5. Any employee, student, contractor, or volunteer with questions concerning this Procedure should direct those questions to the college's Title IX Coordinator or Human Resources Director.
7. Presidents should ensure that employees receive appropriate training on identifying, preventing, and reporting sexual harassment.

B. Reporting and Management Action

1. All employees are required to report allegations of unlawful

discrimination, harassment, retaliation against themselves or others, and other possible policy violations.

- a. Allegations of unlawful discrimination, harassment, or retaliation may be reported by employees within their chain of command or may bypass the typical chain of command and report an allegation/suspicion directly to the Human Resources Director; employees may also email complaints to UnlawfulHarassment@tcsug.edu.
  - b. Complaints can be expressed in writing, by telephone, or in person.
2. Supervisors who have reason to believe that unlawful discrimination, harassment, and/or retaliation may exist shall immediately inform the President, Human Resources Director, or the System Office Human Resources Director.
  3. Other than reporting the information and discussing it with the investigator, employees must keep it confidential unless release is approved, or final action has been taken according to this Procedure.
  4. Employment-related unlawful discrimination, harassment, or retaliation complaints received by the Title IX Coordinator shall be immediately reported to the Human Resources Director.
  5. A President or other designee of the Commissioner may suspend with pay, temporarily transfer, or reassign employees involved in an investigation to prevent further discrimination or harassment or to facilitate the effectiveness of an investigation. Whenever possible, any changes in assignments or work status for a complainant should not be made.
  6. Unless otherwise authorized by the System Office Human Resources Director or Office of Legal Services, no disciplinary action shall be taken against the respondent until an investigation has been completed. *NOTE: A suspension with pay pending completion of an investigation is not a disciplinary action.*
  7. All allegations of unlawful discrimination, harassment, and retaliation by or against a System office employee, Vice President, or President of a Technical College shall be referred to the System Office Human Resources Director or the Office of Legal Services.
  8. A President may refer any allegation of unlawful discrimination, harassment, or retaliation to the System Office Human Resources Director or Office of Legal Services for investigation. Investigations may also be conducted in conjunction with the Local Investigator.

#### C. Investigations

1. All complaints should be investigated thoroughly and should be completed within 45 business days of receipt of the complaint. The parties will be notified if extraordinary circumstances exist requiring additional time. Pursuant to the Employee Complaint Procedure. The complainant must be notified of the decision within five (5) business days of receipt of the

complaint.

Upon consent by both the complainant and the respondent, any complaint not rising to an allegation of unlawful conduct may also be referred for mediation instead of investigation. Mediations must be conducted by a qualified objective third party not employed by the college.

2. Both the complaining party and the respondent will be given an equal opportunity to identify witnesses and offer evidence in person or writing. Best efforts will be made to interview all witnesses identified by the parties.
3. Conduct that does not rise to the level of unlawful discrimination or harassment as those terms are defined in this Procedure may still violate other policies or procedures, and any such violations should be included in investigative findings.
4. Investigative materials generated through the application of this Procedure will be processed and maintained confidentially to the extent permitted by law.

**D. Review and Disposition**

1. Local Investigators and Presidents should consult with the Office of Legal Services when determining whether or not the facts support a finding of unlawful conduct.
2. If the investigation results do not support a finding of unlawful discrimination, harassment or retaliation, or other policy violations, the matter will be closed, and the parties notified of such.
3. Suppose the investigation results support a finding of unlawful harassment, discrimination, retaliation, or any other policy violation. In that case, the President shall promptly take necessary action to ensure the conduct is not repeated. Actions may include but are not limited to mandating training, issuing disciplinary actions, or dismissal from employment.
4. The complainant and the respondent will be notified in writing of the investigation results, provided, however, that if disciplinary action is to be initiated due to the investigation, neither party will be notified until all disciplinary actions are taken.

**VII. RECORD RETENTION:**

Acknowledgment statements shall be retained permanently in the official personnel files of employees. Investigative files shall be retained for five years after the close of the investigation or the effective date of any adverse employment action resulting from the investigation.

**ACKNOWLEDGMENT STATEMENT**

**UNLAWFUL DISCRIMINATION, HARASSMENT, AND RETALIATION**

As an employee of \_\_\_\_\_, I understand that any form of unlawful discrimination or harassment (including sexual harassment) will not be tolerated. Therefore, I declare that I have read or will read and will fully comply with the Statement of Equal Opportunity issued by the State Board of the Technical College System of Georgia and all procedures relating to Unlawful, Discrimination, Harassment, and Retaliation in Employment, as well as the Standards of Business Conduct. All policies and procedures may be found in the State Board Policy Manual located at tcsge.edu or may be located in a college Employee Handbook.

I understand I am required to immediately report any act or allegation of discrimination or harassment (including sexual harassment) to my supervisor and/or the Office of Human Resources; and that I may also make such reports to the President or the TCSG Office of Legal Services, I acknowledge the expectation that I will cooperate fully with any investigation.

If I am or become a supervisor, I understand that I am prohibited from making any sexual advances, welcome or unwelcome, toward any subordinate. I further acknowledge that retaliation against any individual who reports or participates in an investigation of unlawful harassment or discrimination will not be tolerated.

Employee's Signature

\_\_\_\_\_

Date Signed

\_\_\_\_\_

Employee's Printed Name

\_\_\_\_\_

Employee's ID#

\_\_\_\_\_

Record Retention: Retain permanently in the personnel file.

(Revised September 20, 2022)