

# Policies and Procedures

## Chapter S4 – Human Resources

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### S4.6 Nondiscrimination and Harassment Policy

#### Responsible Administrator

Vice President of Human Resources

#### Purpose

St. Cloud Technical & Community College (SCTCC) has an enduring commitment to enhancing Minnesota's quality of life by developing and fostering understanding and appreciation of a free and diverse society and providing equal opportunity for all its students and employees. SCTCC is committed to a policy of equal opportunity and nondiscrimination in employment and education.

#### Definitions

**Discrimination:** Employment decisions, education decisions, or treatment of an individual because of protected class status or perceived protected class status that subjects the individual to different treatment to interfere with or limit the ability of the individual to participate in, or benefit from, the services, activities, or privileges provided by SCTCC or otherwise adversely affects the individual's employment or education.

**Employee:** Any individual employed by SCTCC, including student workers.

#### Responsibility

This policy applies to all individuals affiliated with SCTCC, including but not limited to, its students, employees, applicants, volunteers, and administration, and is intended to protect the rights and privacy of all involved individuals, as well as prevents retaliation. Complaints of conduct by an employee at locations other than campus property, including online, are covered by this policy. Complaints of conduct on campus property, including online, by individuals who are not students or employees are subject to appropriate actions by SCTCC, including but not limited to, pursuing civil action against them, referral to law enforcement, or pursuing a no trespass. Individuals who violate this policy will be subject to disciplinary or other corrective action.

This policy supersedes all existing college equal opportunity and nondiscrimination policies.

#### Harassment

##### Discriminatory Harassment

Unwelcome conduct or communication that is based on actual or perceived membership in a protected class, including stereotypes of protected classes, that has a negative effect or is likely to have a negative effect on the complainant or the workplace or educational environment. Harassment may occur in a variety of relationships, including faculty and student, supervisor and employee, students and student, staff and student, employee and employee, and other relationships with persons having business at, or visiting the educational or working environment. Discriminatory harassment includes, but is not limited to:

1. Oral or written conduct such as jokes, innuendo, slurs, name-calling, negative comments about cultural norms, circulating rumors;
2. Physical contact, battery, blocking movement;
3. Non-verbal derogatory gestures, stalking, interference with work performance;

4. Visual displays, including but not limited to, posters, drawings, screen savers, emails and texts with derogatory meaning, epithets written on complainant's personal property or other symbols associated with particular protected classes.

### **Sexual Harassment**

SCTCC further defines sexual harassment as a form of sex discrimination and discriminatory harassment. Sexual harassment is conduct or communication of a sexual nature that is unwelcome, that has a negative effect or is likely to have a negative effect on the complainant or the workplace or educational environment. Sexual harassment includes, but is not limited to:

1. Unwelcome sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, degrading sexual remarks, threats;
2. Unwelcome sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures;
3. Unwelcome physical contact, such as sexual assault and sexual violence molestation, or attempts to commit these assaults; unwelcome touching, pinching, or brushing of or by the body;
4. Preferential treatment

### **Protected class**

Protected class includes race, sex (including pregnancy, child birth, and related medical conditions), color, creed, religion, age, national origin, disability, marital status, status with regard to public assistance, sexual orientation, gender identity, gender expression, veteran status, familial status, and membership or activity in a local human rights commission. Protected class also includes genetic information for employees.

### **Retaliation**

Retaliation includes, but is not limited to, engaging in any form of intimidation, reprisal, or harassment against an individual because the person:

1. Made a complaint or other communication under this policy or opposes conduct prohibited by this policy;
2. Assisted or participated in any manner in an investigation, or process under this policy, regardless of whether a claim of discrimination or harassment is substantiated;
3. Associated with a person or group of persons who are members of a protected class; or
4. Made a complaint or assisted or participated in any manner in an investigation or process with the Equal Employment Opportunity Commission, the U.S. Department of Education Office for Civil Rights, the Minnesota Department of Human Rights or other enforcement agencies, under any federal or state nondiscrimination law, including the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Minnesota Human Rights Act, Minn. State Ch. 363A, and their amendments.

Retaliation may occur whether or not there is a power of authority differential between the individuals involved.

### **Sexual harassment and violence as sexual abuse**

Minnesota law provides special protection for children under 18 and vulnerable adults. These laws, Minnesota Statutes sections 260E and 626.557, identify those who are mandated to report neglect or abuse of children under 18 and maltreatment of vulnerable adults. Faculty, student teachers or clinical participants, day care personnel, and others involved in education or services to children or vulnerable

adults may be considered mandated reporters under both of these laws. Reports of abuse or neglect of a child or vulnerable adult, must be made to law enforcement or state or county social service agencies.

**Student**

For purposes of this policy, the term “student” includes all persons who:

1. Are enrolled in one or more courses, either credit or non-credit, through a college or university;
2. Withdraw, transfer, or graduate, after an alleged violation of the student conduct code;
3. Are not officially enrolled for a particular term but who have a continuing relationship with the college;
4. Have been notified of their acceptance for admission or have initiated the process of application for admission or financial aid; or
5. Are living in a college or university residence hall although not enrolled in, or employed by, the college.

**Consensual Relationships**

A consensual relationship is a sexual or romantic relationship between two or more persons who voluntarily enter into such a relationship. An employee of Minnesota State shall not enter into a consensual relationship with a student or an employee over whom the person exercises direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority or influence. In the event a relationship already exists, each college, university, and the system office shall develop a procedure to reassign evaluative authority as may be possible to avoid violations of this policy. This prohibition does not limit the right of an employee to make a recommendation on personnel matters concerning a family or household member where the right to make recommendations on such personnel matters is explicitly provided for in the applicable collective bargaining agreement or compensation plan.

**Retaliation**

Retaliation is prohibited at Minnesota State. Any individual covered by this policy who engages in retaliation is subject to disciplinary or other corrective action as appropriate.

**Policies and Procedures**

SCTCC’s policies and procedures on equal opportunity and nondiscrimination in employment and education comply with Minnesota State Board Policy 1B.1 and Minnesota State System Procedure 1B.1.1.

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College President: Jan Kloos Date: 6.24.24  
Date of Adoption: \_\_\_\_\_  
Date of Implementation: \_\_\_\_\_  
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## **S4.6.1 Investigation and Resolution Procedure**

### **Purpose**

To implement SCTCC Nondiscrimination and Harassment policy in Employment and Education and provide a process for investigating and resolving allegations of violations of the policy.

### **Definitions**

**Complainant:** An individual who alleges they are the subject of discrimination, harassment, or retaliation

**Decision-maker:** An administrator who:

- Completed decision-maker training provided by the system office within the past three years,
- Is designated by the president or chancellor to review investigation reports,
- Determines whether policy has been violated based upon the investigation, and
- Determines or recommends the appropriate action for the college to take based upon the findings.

**Designated officer:** An individual who:

- Completed training provided by the system office within the past three years,
- Is designated by the president or chancellor to be primarily responsible for conducting an initial inquiry,
- Determines whether to offer informal resolution,
- Determines whether to proceed with an investigation under this procedure, and
- Investigates or coordinates the investigation of reports/complaints of discrimination, harassment, and retaliation as defined by the policy in accordance with this procedure.

**Investigator:** A person who:

- Has completed training provided by the system office within the past three years,
- Is designated by the designated officer to conduct an inquiry, investigate, or coordinate the investigation of reports/complaints of discrimination, harassment, and retaliation as defined by the policy in accordance with this procedure,
- Determines or recommends whether to proceed with an investigation under this procedure,
- Prepares investigation reports, and
- May be the designated officer.

**Respondent:** An individual who is alleged to have engaged in conduct that could constitute discrimination, harassment, or retaliation as defined in the policy

### **Responsibility**

This policy applies to all individuals affiliated with SCTCC, including but not limited to, its students, employees, applicants, volunteers, and administration, and is intended to protect the rights and privacy of all involved individuals, as well as prevents retaliation. Complaints of conduct by an employee at locations other than campus property, including online, are covered by this policy. Complaints of conduct on campus property, including online, by individuals who are not students or employees are subject to appropriate actions by SCTCC, including but not limited to, pursuing civil action against them, referral to law enforcement, or pursuing a no trespass. Individuals who violate this policy will be subject to disciplinary or other corrective action.

This policy supersedes all existing college equal opportunity and nondiscrimination policies.

## **Reporting Discrimination/Harassment/Retaliation**

### **Reporting**

Individuals who believe they or others have been or are being subjected to conduct prohibited by SCTCC policy are encouraged to make a report of the incident to a designated officer. Reports should be made as soon as possible after the alleged conduct occurs. Any student, faculty member, or employee who knows of, receives information about, or receives a complaint of discrimination/harassment is strongly encouraged to report the information or complaint to the designated officer at SCTCC.

### **Duty to Report**

Administrators and supervisors report allegations of conduct that they reasonably believe may constitute discrimination, harassment, or retaliation as defined by SCTCC Policy to the designated office. Additionally, administrators and supervisors, in consultation with the designated officer, may inquire into and resolve such matters.

### **Reports/complaints against the president**

A report/complaint against the SCTCC president must be filed with the Minnesota State system office designated officer. However, complaints against the SCTCC president may be processed by SCTCC if the president's role in the alleged incident was limited to a decision on a recommendation made by another administrator, such as tenure, promotion, or non-renewal, and the president had no other substantial involvement in the matter.

### **False Statements Prohibited**

Any individual who is determined to have provided false information in filing a report/complaint or during the investigation of such a complaint may be subject to disciplinary or corrective action.

### **Withdrawn Complaints**

If a complainant withdraws their complaint, SCTCC, may at their discretion, continue to investigate and take appropriate action.

### **Right to representation**

In accordance with federal law and applicable collective bargaining agreement and personnel plan language, represented employees may have the right to request and receive union representation during an investigatory meeting.

Nothing in this procedure is intended to expand, diminish or alter in any manner whatsoever any right or remedy available under a collective bargaining agreement, personnel plan or law. Any disciplinary action imposed as a result of an investigation conducted under this procedure will be processed in accordance with the applicable collective bargaining agreement or personnel plan.

### **Investigation and Resolution**

SCTCC has an affirmative action duty to take timely and appropriate action to stop behavior prohibited by the policy, conduct investigations and take appropriate action to prevent recurring misconduct.

### **Personal resolution**

This procedure neither prevents nor requires the use of informal resolution by an individual who believes they have been subject to conduct in violation of The policy. In such a situation, the individual should clearly explain the alleged offender as soon as possible after the incident that the behavior is objectionable and must stop. If the behavior does not stop or if the individual believes retaliation may result from the discussion, the individual should report to the designated officer. Under no circumstance shall an individual be required to use personal resolution to address prohibited behaviors.

## **Information privacy**

Confidentiality of information obtained during an investigation cannot be guaranteed; such information, however, will be handled in accordance with applicable federal and state data privacy laws.

## **Processing the complaint**

The designated officer must be contacted in order to initiate a report/complaint under this procedure. The scope and process used in each report/complaint shall be determined by the designated officer based on the complexity of the allegations, the number of relationship of individuals involved, and other pertinent factors.

1. **Jurisdiction.** The designated officer shall determine whether the report/complaint is one which should be processed through another procedure available to the complainant; if appropriate, the designated officer shall direct the complainant to that procedure as soon as possible.
2. **Conflicts.** The designated officer should identify to the president any real or perceived conflict of interest in proceeding as the designated officer for a specific complaint. If the president determines that the conflict exists, another designated officer shall be assigned.
3. **Information provided to complainant.** At the time the report/complaint is made, the designated officer shall:
  - a. inform the complainant of the provisions of the policy and this procedure;
  - b. provide a copy of or web address to the policy and this procedure to the complainant;
  - c. determine whether other individuals are permitted to accompany the complainant during investigatory interviews and the extent of their involvement; and
  - d. inform the complainant of the provisions of the policy prohibiting retaliation.
4. **Complaint documentation.** The designated officer shall ensure that the complaint is documented in writing. The designated officer may request, but not require the complainant to document the complaint in writing using the complaint form of the college.
5. **Information provided to the respondent.** At the time initial contact is made with the respondent, the designated officer shall inform the respondent in writing of the existence and general nature of the complaint and the provisions of the nondiscrimination policy. At the initial meeting with the respondent, the designated officer shall:
  - a. provide a copy of or web address for the policy and this procedure to the respondent;
  - b. provide sufficient information to the respondent consistent with federal and state data privacy laws to allow the respondent to respond to the substance of the complaint;
  - c. explain to the respondent that in addition to being interviewed by the designated officer, the respondent may provide a written response to the allegations;
  - d. determine whether other individuals are permitted to accompany the respondent during investigative interviews and the extent of their involvement; and
  - e. inform the respondent of the provisions of the policy prohibiting retaliation.
6. **Investigatory process.** The designated officer shall:
  - a. conduct a fact-finding inquiry or investigation into the complaint, including appropriate interviews and meetings;
  - b. inform the witnesses and other involved individuals of the prohibition against retaliation;
  - c. create, gather and maintain investigative documentation as appropriate;
  - d. disclose appropriate information to others only on a need to know basis consistent with state and federal law, and provide a data privacy notice in accordance with state law; and
  - e. handle all data in accordance with applicable federal and state privacy laws.
7. **Interim actions.**

- a. Employee reassignment or administrative leave. Under appropriate circumstances, the president may, in consultation with system legal counsel and labor relations, reassign or place an employee on administrative leave at any point in time during the report/complaint process. In determining whether to place an employee on administrative leave or reassignment, consideration shall be given to the nature of the alleged behavior, the relationships between the parties, the context in which the alleged incidents occurred and other relevant factors. Any action taken must be consistent with the applicable collective bargaining agreement or personnel plan.
  - b. Student summary suspension or other action. Under appropriate circumstances, the president, in consultation with system legal counsel, summarily suspend a student at any point in time during the report/complaint process.
  - c. After the student has been summarily suspended, the report/complaint process should be completed within the shortest reasonable time period, not to exceed nine (9) class days. During the summary suspension, the student may not enter the campus or participate in any SCTCC activities without obtaining prior permission from the president or designee. Other temporary measures may be taken in lieu of summary suspension where the president or designee determines such measures are appropriate.
8. No basis to proceed. At any point during the processing of the complaint, the designated officer may determine there is no basis to proceed under The policy. The designated officer shall refer the complaint as appropriate. The designated officer shall notify the complainant and respondent of the outcome as appropriate, in accordance with applicable data privacy laws.
  9. Timely completion. SCTCC must provide resources sufficient to complete the investigative process and issue a written response

### **Resolution**

After processing the complaint, the designated officer may consider one or more of the following methods to resolve the complaint as appropriate:

1. conduct or coordinate education/training;
2. facilitate voluntary meetings between the parties;
3. recommend separation of the parties, after consultation with appropriate college personnel;
4. other possible outcomes may include recommending changes in workplace assignments, enrollment in different course or program, or other appropriate action;
5. SCTCC may use alternative dispute resolution or mediation services as a method of resolving discrimination or harassment complaints. Alternative dispute resolution and mediation options require the voluntary participation of all parties to the complaint;
6. upon completion of inquiry, the designated officer may dismiss or refer the complaint to others as appropriate.

### **Decision process**

If the above methods have not resolved the complaint within a reasonable period of time to the satisfaction of the designated officer, or the designated officer feels additional steps should be taken, these procedures should be followed:

1. Designated officer. The designated officer shall:
  - a. prepare an investigation report and forward it to the decisionmaker for review and decision;
  - b. take additional investigative measures as requested by the decisionmaker; and
  - c. be responsible for coordinating responses to requests for information contained in an investigation report in accordance with the Minnesota Government Data Practices Act and other applicable law including, but not limited to, the Family Educational Rights and Privacy Act (FERPA). In determining the appropriate response, the designated officer

shall consult with the campus data practice compliance official and/or the Office of General Counsel.

2. Decision maker. After receiving the investigation report prepared by the designated officer, the decisionmaker shall:
  - a. determine whether additional steps should be taken prior to making the decision. Additional steps may include:
    1. a request that the designated officer conduct further investigative measures;
    2. a meeting with the complainant, respondent or other involved individuals. If a meeting involving a represented employee is convened, the complainant or respondent may choose to be accompanied by the bargaining unit representative, in accordance with applicable collective bargaining agreement and federal and state law; and
    3. a request for additional information which may include a written response from the complainant or respondent relating to the allegations of the complaint.
  - b. take other measures deemed necessary to determine whether a violation of The policy has been established;
  - c. when making the decision, take into account the totality of the circumstances, including the nature and extent of the behaviors, the relationship(s) between the parties, the context in which the alleged incident(s) occurred, and other relevant factors;
  - d. determine the nature, scope and timing of disciplinary or corrective action and the process for implementation if a violation of the nondiscrimination policy occurs. This may include consultation with human resources or supervisory personnel to determine appropriate discipline.
  - e. As appropriate, consistent with applicable state and federal data privacy laws, report in writing to the complainant, respondent and the designated officer their findings, and the basis for those findings as to whether The policy has been violated.
  - f. Conduct that is determined not to have violated The policy shall be referred to another procedure for further action, if appropriate.

### **SCTCC action**

SCTCC shall take the appropriate corrective action based on results of the investigation, and the designated officer shall make appropriate inquiries to ascertain the effectiveness of any corrective or disciplinary action. Complainants are encouraged to report any subsequent conduct that violates The policy, as well as allegations of retaliation.

Written notice to parties relating to discipline, resolutions, and/or final dispositions resulting from the report/complaint process is deemed to be official correspondence from SCTCC. In accordance with state law, SCTCC is responsible for filing the complaint disposition concerning complaints against the employees with the Commissioner of Employee Relations within 30 days of the final disposition.

### **Appeal**

#### **Filing an appeal**

The complainant or the respondent may appeal the decision of the decisionmaker. An appeal must be filed in writing with the president or designee within ten (10) business days after notification of the decision. The appeal must state specific reasons why the complainant or respondent believes the decision was improper. In a complaint against a president or other official who reports directly to the chancellor, an appeal may be considered by the chancellor whether or not the chancellor served as the decisionmaker.

**Effect of review**

For employees represented by a collective bargaining agreement, an appeal under this procedure is separate and distinct from, and is not in any way related to, any contractual protections or procedures. During the pendency of the appeal, disciplinary or corrective action taken as a result of the decision shall be enforced. In addition, in cases involving sanctions of suspension for ten (10) days or longer, students shall be informed of their right to a contested case hearing under Minnesota Statutes Chapter 14.

**Appeal Process**

The president or designee shall review the record and determine whether to affirm or modify the decision. The president or designee may receive additional information if the president or designee believes such information would aid in the consideration of the appeal. The decision on appeal shall be made within a reasonable time and the complainant, respondent and designated official shall be notified in writing of the decision, consistent with applicable state and federal data privacy laws. The decision on appeal exhausts the complainant's and respondent's administrative remedies under this procedure except as provided herein.

**Education and training**

SCTCC shall provide education and training programs to promote awareness and prevent discrimination/harassment, such as educational seminars, peer-to-peer counseling, operation of hotlines, self-defense courses, and informational resources. Education and training programs should include education about The policy and this procedure. SCTCC shall promote awareness of The policy and this procedure, and shall publicly identify the designated officer.

**Distribution of the policy and this procedure**

Information regarding The policy and this procedure shall, at a minimum, be distributed to students at the time of registration and to employees at the beginning of their employment. Distribution may be accomplished by posting on an internet Web site, provided all students and employees are directly notified of how to access the policy and procedure by an exact address, and that they may request a paper copy. Copies of the policy and procedure shall be conspicuously posted at appropriate locations at the college at all times and shall include the designated officers' names, locations and telephone numbers.

Designated officers also must be identified by name, location and phone number in informational publications such as student catalogs, student and employee handbooks, bulletin boards, campus Web sites and other appropriate public announcements.

**Maintenance of report/complaint procedure documentation**

During and upon completion of the complaint process, the complaint file shall be maintained in a secure location in the office of the designated officer for SCTCC in accordance with application records retention schedules. Access to the data shall be in accordance with the respective collective bargaining agreement or personnel plan, the Minnesota Government Data Practices Act, the Family Educational Rights and Privacy Act or other applicable law.

**Annual Report to Board of Trustees**

SCTCC annually submits pertinent The policy information to the Minnesota State system Office of Equity and Inclusion. The Offices and General Counsel and Equity and Inclusion submit an annual report to the Board of Trustees of summary data showing Minnesota State Board Policy 1B.1 complaints, categories of complaints, and findings of violations.

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