

MANUAL OF PROCEDURE

PROCEDURE NUMBER: 1665

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PROCEDURE TITLE: Discrimination and Harassment Grievance Process

STATUTORY REFERENCE: Title VI, VIII, Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Civil Rights Act of 1991; Section 504, 1973 Rehabilitation Act; Americans with Disabilities Act (ADA) of 1990; Americans with Disabilities Act Amendments Act (ADAAA) 2008; Genetic Information Non-Discrimination Act (GINA); Sections 1000.05 & 1001.64, Florida Statutes; Florida Administrative Code Rule 6A-19.008; the Whistleblower Protection Enhancement Act of 2012; The Whistleblower's Act, Sections 112.3187-31895, Florida Statutes.

BASED ON POLICY: I-21 Equal Access / Equal Opportunity

EFFECTIVE DATE: May 18, 2004

LAST REVISION DATE: March 12, 2015

LAST REVIEW DATE: March 12, 2015

I. PURPOSE

To provide a grievance procedure for students, employees, or applicants for admission or employment alleging discrimination or harassment based upon sex, race, color, marital status, age, religion, national origin, ethnicity, disability, veteran's status, sexual orientation, or genetic information.

All supervisory and administrative personnel, faculty and staff are expected to become familiar with this procedure and to assist the College and a complainant whenever instances of discrimination, harassment or whistleblowing, as described in this procedure, are observed or reported.

The College's Office of Equal Opportunity Programs/ADA Coordinator (OEOP/ADA) serves as the College's primary resource on all matters relating to discrimination, harassment and whistleblowing.

II. DEFINITIONS

A. Discrimination

Adverse treatment based on an individual's sex, race, color, marital status, age, religion, national origin, ethnicity, disability, veteran's status, sexual orientation, or genetic information.

B. Harassment

Unwelcome conduct, based upon sex, race, color, marital status, age, religion, national origin, ethnicity, disability, veteran's status, sexual orientation, or genetic information that impacts either a condition of work or learning (quid pro quo) or creates a hostile environment.

1. Quid Pro Quo Harassment consists of unwelcome conduct when:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, employment decisions, or academic advancement; or
 - b. Submission to, or rejection of, such conduct by an individual is used as the basis for decisions affecting such individual in matters of employment, employment decisions, or academic advancement.
2. Hostile Environment Harassment consists of unwelcome conduct when:
 - a. Such conduct has the effect of unreasonably interfering with an individual's work or academic performance; or
 - b. Such conduct has the effect of creating an intimidating, hostile or offensive work or learning environment.

C. Retaliation

Conduct causing any interference, coercion, restraint or reprisal against a person complaining of discrimination or harassment or participating in the resolution of a complaint of discrimination, harassment or whistleblowing.

D. Sexual Harassment

All unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature, involving persons of different or of the same gender, directed at an employee, student, or applicant by another when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or educational career;
2. Submission to or rejection of such conduct is used as a basis for employment and/or educational decisions affecting the individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with the individual's work or educational performance; or creating a hostile, intimidating or offensive work or educational environment.
4. Amorous Relationships

The College strongly discourages amorous relationships, whether consensual or not, between employees who supervise students; between faculty members and students

in their classes; and between supervisors and subordinates. In recognition of interests in privacy and free association, the College does not prohibit fully consensual amorous relationships. However, members of the College who hold positions of authority should avoid actions that can be considered sexual harassment. Even an apparently consensual amorous relationship may lead to sexual harassment or other breaches of professional obligations if one of the individuals in the relationship has a professional responsibility toward or is in a position of authority with respect to the other, such as in the context of instruction, advisement, or supervision. Due to the difference in authority, there may be the appearance of favoritism and it may be difficult to assure that the relationship is truly consensual.

If involved in an amorous relationship with someone over whom he or she has supervisory authority, the individual must inform his or her immediate supervisor and take steps to remove him or herself from any participation in recommendations or decisions affecting evaluation, employment conditions, instruction, or the academic status of the other person in the relationship. The supervisor informed of the amorous relationship will document such and will take appropriate action to comply with the provisions of this section.

E. Whistleblowing

A College employee, or an employee of an independent contractor or subcontractor for the College, who reasonably believes there is evidence of gross mismanagement, a gross waste, an abuse of authority, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation by an employee or agent of the College or its independent contractor or subcontractor. Such violations may include, but not be limited to, a federal or state contract or grant (including the competition for or negotiation of a contract) with the College.

III. PROCEDURE

Any Miami Dade College employee, student, applicant for admission or employment or other participant in the College's programs or activities who believes he or she has been unlawfully harassed or discriminated against on the basis of sex, race, color, marital status, age, religion, national origin, ethnicity, disability, veteran's status, sexual orientation, or genetic information is urged to communicate that information to an appropriate College official, as more fully described below. **ALL COLLEGE EMPLOYEES ARE EXPECTED TO REPORT ANY HARASSMENT OR DISCRIMINATION THAT THEY OBSERVE, HAVE HEARD ABOUT, OR BELIEVE MAY BE OCCURRING.**

- A. All complaints must be in writing and on the Miami Dade College Discrimination or Harassment Complaint Form, which may be obtained from the OEOP/ADA or from the College's website (www.mdc.edu) and be filed in a timely manner within 30 days after the occurrence of the most recent allegedly discriminatory act. At the discretion of OEOP/ADA, the date may be extended due to extenuating circumstances. In addition to or instead of filing with OEOP/ADA, the complainant may file a formal charge of discrimination with a state or federal agency authorized by law to receive such claims.

B. The complaint should include the complainant's name and signature; describe the act or acts complained of; identify the person or persons purportedly responsible (the "Respondent"); indicate the date(s) or approximate date(s) on which the act or acts occurred; and the names and contact information of potential witnesses. The complaint should also include the effect the alleged acts have had on the complainant; complainant's desired resolution; and any other information the complainant believes is relevant.

C. Initial Contact and Filing of Complaint

1. If the matter involves a student or applicant for admission, whether as a complainant or a respondent, the Office of the Dean of Students of each campus or a designee of his or her professional staff ("collectively referred to in this procedure as the "Dean's Office") shall be the initial point of contact. This office must provide assistance and support, respond to inquiries and provide general information regarding discrimination issues. This office must also provide a copy of the official complaint to the OEOP/ADA.

The Dean's Office shall describe the discrimination complaint process to the complainant; review information relative to the complaint; and schedule any meetings or hearings requested or required by this procedure. If a complainant cannot state a sufficient basis in fact or law to support a discrimination or harassment claim, the Dean's Office shall attempt to assist the complainant with selecting a more appropriate internal means of resolving the specific complaint.

2. If the matter involves the complainant of an employee or an applicant for employment, the OEOP/ADA shall be the initial point of contact. The OEOP/ADA will provide assistance and support, respond to inquiries and provide general information regarding discrimination issues. The OEOP/ADA shall also describe the discrimination complaint process to the complainant; review information relative to the complaint; and schedule any meetings or hearings requested or required by this procedure. If a complainant cannot state a sufficient basis in fact or law to support a discrimination or harassment claim, the OEOP/ADA shall attempt to assist the complainant with selecting a more appropriate internal means of resolving the specific complaint.

3. Alternate Points of Contact

Employees, students or applicants may initially advise any College official (Area Head, Faculty member, Chairperson, etc.) in whom they have confidence, of a complaint of discrimination or harassment. The College official who is advised of a complaint or potential complaint of discrimination or harassment must refer students to the Office of the Dean of Students, or must refer employees and applicants to the OEOP/ADA.

D. Informal Resolution of Complaint

Complainants are encouraged, where appropriate, to attempt, initially, to resolve complaints by informal resolution. The informal resolution process is an attempt to resolve complaints quickly and to the satisfaction of all parties, while protecting confidentiality to the extent authorized by law. OEOP/ADA will be available to provide assistance to the employment

unit or academic department in order to resolve the complaint. If the complaint cannot be resolved through the informal resolution process, a formal complaint may be filed as outlined in this procedure.

The informal resolution process shall be handled by the following offices:

1. In cases where the complainant is a student, an applicant for admission, or the complaint involves a student as respondent, the Office of the Dean of Students;
2. In cases where the complainant is an employee, the Office of the Campus President, District Vice Provost, Provost for Operations, or designee (collectively referred to in this procedure as the “Area Head”) or the OEOP/ADA;
3. In cases where the complainant is an applicant for employment, the OEOP/ADA.

No later than 10 work days after the filing of the complaint, the appropriate office, as referenced above, will meet separately with the complainant and respondent to determine the factual allegations on which the complaint is based and to discuss the complaint procedures.

If it is determined that the complaint is suitable for informal resolution, that option will be discussed and offered to the complainant and the respondent, who will be given five work days to decide whether to proceed with informal resolution. If the complaint is deemed by the appropriate office to be unsuitable for informal resolution, or if either party declines to participate in or to make a decision regarding informal resolution, OEOP/ADA will conduct an investigation.

At any time during the informal resolution process, either party may elect to terminate the process, and the complaint will then be investigated by OEOP/ADA. OEOP/ADA reserves the right not to proceed with an investigation if it determines that during the informal resolution process a complainant was offered and refused all of the relief to which he or she would be entitled. Generally, OEOP/ADA will not involve any person other than the complainant and respondent in the informal resolution process, except as it may be necessary to consult with appropriate College officials regarding College policies and procedures. Informal resolution should be completed no later than 30 days after the complainant and the respondent have agreed to this process.

If the complaint is successfully resolved, each party will sign a "Memorandum of Understanding" prepared by OEOP/ADA, which describes fully the agreed-upon terms. A copy of the complaint and the Memorandum of Understanding" will be available to the complainant, the respondent and the appropriate Area Head as defined in this procedure.

IV. FORMAL COMPLAINT PROCESS

If it is determined by the coordinating office that informal resolution is not appropriate, it is not agreed to by both parties, it is unsuccessful, or it is a whistleblower complaint, OEOP/ADA will conduct an investigation. As a condition of employment, employees of the College are required to cooperate with these types of investigations by providing truthful and complete information. It is the College's expectation that the employee will answer all questions and provide any knowledge he or she possesses that may be helpful to the inquiry. Employees, who refuse to answer questions related to their employment, are subject to discipline, up to and including termination of employment. The investigation will include, but is not limited to:

1. Interviews with material persons who may have relevant information;
2. Reviewing relevant files and records such as personnel files, departmental and/or unit files, and others;
3. Comparing the treatment of complainant to that of others similarly situated in the department or unit; and
4. Reviewing applicable laws, rule, regulations, policies, procedures and practices.

The investigation shall be concluded within 60 work days of its inception, and OEOP/ADA shall issue a written report making findings of fact and any appropriate recommendations as to whether or not a policy violation is substantiated or has not been substantiated. Copies of the report will be provided to the complainant, the respondent, and the appropriate Campus President/District Vice Provost, Vice Provost for the Division of Human Resources, or Provost for Operations. Confidentiality of the investigation shall be maintained to the extent authorized by law.

In the case of a whistleblower complaint:

1. The OEOP/ADA shall determine whether information provided by the employee or agent of the College or Contractor (independent contractor or subcontractor) demonstrates reasonable cause for a violation of Section 112.3187, Florida Statutes or any other applicable law.
2. OEOP/ADA notifies the complainant and shall conduct an investigation within the time frames provided in Section 112.3189, Florida Statutes, and all other applicable law.
3. Upon conclusion of the investigation, OEOP/ADA shall provide copies of the report to the complainant, the College President, and the appropriate Campus President/District Vice Provost, Vice Provost for the Division of Human Resources, or Provost for Operations. Upon request of the complainant, any documents and other materials that were provided by the complainant shall be returned.

If OEOP/ADA concludes that the complainant's allegations are substantiated, the report will recommend that a directive be issued to stop the discriminatory practice or violation of law, if it is ongoing; recommend disciplinary or other corrective action against the respondent and others; and, if appropriate, recommend provisions for the complainant, such as reinstatement, hiring, reassignment, promotion, training, back pay, or other compensation or benefits.

The appropriate Area Head will make a determination, upon review of the OEOP/ADA's report, consultation with the Dean of Students, the Vice Provost for the Division of Human Resources, and any other appropriate Department head; and upon consideration of any other relevant information, including aggravating or mitigating circumstances, whether disciplinary action is warranted. If the Area Head determines that disciplinary action should be initiated, then, consistent with due process requirements, the respondent will be notified of such determination, in accordance with applicable Florida Board of Education and College policies and procedures, collective bargaining agreements

and the Code of Student Conduct. All appropriate disciplinary procedures as provided for therein will be followed.

The OEOP/ADA will notify the complainant and the respondent, if applicable, of the results of the investigation and subsequent disciplinary or other corrective action taken, if any, to the extent allowed by law.

If OEOP/ADA concludes that the complainant's allegations are not substantiated, the OEOP report may, if appropriate recommend reasonable steps to restore the reputation of the respondent.

If applicable, the OEOP/ADA will notify the respondent of the results of the investigation when no policy violation is found and no further action planned.

The OEOP/ADA report represents the final disposition on the part of the College.

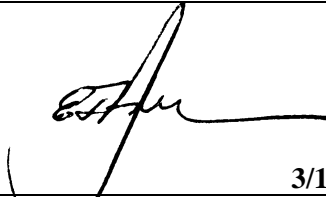
V. OTHER PROVISIONS

- A. Employees and students may be accountable for discrimination or harassment under applicable local, state and federal law as well as under College policies. The College, at its sole discretion, may elect to proceed or may elect to stay disciplinary action while other agency proceedings, either civil or criminal in nature, are pending. College disciplinary action will not be subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced.
- B. The College prohibits retaliation against employees, students and applicants who file complaints of discrimination, harassment or whistleblowing.
- C. This procedure does not eliminate other College policies authorizing individual employees to seek relief through established administrative channels to the College President; however, the aggrieved employee may select only one internal process for the purpose of resolving any one complaint alleging discrimination or harassment. The employee's use of these processes may be terminated at any level, if the complaint has been mutually resolved, or, if the employee concurrently seeks relief through sources external to the College. The matter shall be concluded if the complaint is resolved internally or externally.
- D. Employees who wish to file complaints regarding discrimination or harassment external to the College may contact the U.S. Equal Employment Opportunity Commission (EEOC), Miami District Office, at Miami Tower, 100 SE 2nd Street, Suite, 1500, Miami, Florida 33131.
- E. Students who wish to file complaints external to the College may contact the U.S. Department of Education, Office For Civil Rights at www.ed.gov/ocr/complaintintro.html.
Miami Dade College's Title IX Coordinator (Title IX of the Education Amendments of 1972) is the Director of Equal Opportunity Programs/ADA Coordinator. Contact telephone 305.237.2577.
- F. Whistleblower Protection

In accordance with applicable federal and state laws, the College and its independent contractors or its subcontractors (Contractors) shall not retaliate against an employee of the College or Contractors for reporting to the appropriate government agencies violations of

law, rule, or regulation on the part of the College, its agents or employees that create substantial and specific danger to the public’s health, safety, or welfare. Furthermore, the College and Contractors shall not retaliate against their employees who disclose information to an appropriate government agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of the College, its agents or employee, or Contractors. The College and Contractors shall inform their employees that they may file a complaint with the appropriate governmental agency, which may include, but not be limited to, the U.S. Inspector General, Florida Office of Chief Inspector General, the Florida Commission on Human Relations or the Whistleblower’s Hotline number at 1-800-543-5353 and shall also report such violations to the OEOP/ADA, who for this purpose has been designated as the “agency inspector general.”

The employee may not be discharged, demoted, or otherwise discriminated against as a reprisal for “whistleblowing”. These protections cannot be waived by any agreement, policy, form, or condition of employment.

	
	3/12/2015
PRESIDENT	DATE