

# COLLEGE of CHARLESTON

## OFFICIAL POLICY

**9.1.10**

PROHIBITION OF DISCRIMINATION AND  
HARASSMENT, INCLUDING SEXUAL HARASSMENT  
AND ABUSE

**10/5/2020**

### **Policy Statement**

THIS POLICY ALSO REPEALS AND SUPERSEDES IN ITS ENTIRETY THE POLICY FORMERLY ENTITLED: REPORTING RESPONSIBILITIES, INVESTIGATION AND COMPLAINT RESOLUTION FOR PROTECTED STATUS DISCRIMINATION AND/OR HARASSMENT/ABUSE.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY.

THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

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### **Policy Manager and Responsible Department or Office**

Office of Human Resources

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## **Purpose/Reason for the Policy**

### **1.0 APPLICABILITY**

This Policy applies to all members of the COLLEGE COMMUNITY while on College owned or leased property.

### **2.0 GENERAL POLICY STATEMENT**

It is the Policy of the College of Charleston to promote and protect a learning and living environment where civil discourse, respect for the individual and appreciation for the diversity of human experiences are valued as compelling academic interests. Accordingly, it is a violation of this Policy for any member of the COLLEGE COMMUNITY to discriminate or harass students or employees, or applicants for admission to the College or applicants for any College employment position, based on gender, sexual orientation, gender identity or expression, age, race, color, religion, national origin, veterans' status, genetic information, or DISABILITY, as proscribed by law and as further described below. In addition, discrimination against members or potential members of the United States UNIFORMED SERVICES, as proscribed by the

Uniformed Services Employment and Reemployment Rights Act (USERRA), is also prohibited under this Policy. Retaliation against any person arising from the good faith reporting of a suspected violation of this Policy, or for participating in an investigation of discrimination under this Policy, is strictly prohibited.

### **3.0 DISPARATE TREATMENT**

Disparate treatment of a member of the COLLEGE COMMUNITY occurs when a person is singled out and treated less favorably than others similarly situated on the basis of one or more of the discriminatory reasons prohibited by this Policy.

#### **3.1 Age**

It is a violation of this Policy to discriminate against an individual in any aspect of employment because that individual is 40 years old or older, unless a specific statutory or regulatory exception allowing for different treatment applies, as determined by the Office of Legal Affairs. It is also a violation of this Policy to discriminate in any College program or activity on the basis of age, except as may be provided under controlling regulations of the United States Department of Education, as interpreted by the Office of Legal Affairs.

#### **3.2 Disability**

It is the Policy of the College that no QUALIFIED INDIVIDUAL WITH A DISABILITY shall, on the basis of DISABILITY, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the College. Specially, a handicapped person who meets the academic and technical standards requisite

to admission or participation in a College education program or activity shall not be denied admission or participation because of his/her DISABILITY.

The College will not discriminate against a qualified individual on the basis of DISABILITY in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. This includes: (a) any action that has the purpose or effect of limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the DISABILITY of such applicant or employee; (b) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a DISABILITY who is an applicant or employee, unless the College can demonstrate that the accommodation would impose an undue hardship on the operation of its business and activities; or (c) denying employment opportunities to a job applicant or employee who is an otherwise QUALIFIED INDIVIDUAL WITH A DISABILITY, if such denial is based on the need of the College to make reasonable accommodation to the physical or mental impairments of the employee or applicant.

Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or DISABILITY insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, reinstatement, and payment of sick leave shall be applied to DISABILITY due to pregnancy, childbirth or related medical conditions on the same terms and conditions as they are applied to other disabilities.

### 3.3 Equal Pay

It is a violation of this Policy to discriminate on the basis of sex by paying wages to employees at a rate less than the rate at which the College pays wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to: (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex. The College will not, in order to comply with the provisions of this provision, reduce the wage rate of any employee.

### 3.4 Gender Based Discrimination

It is a violation of this Policy to deny educational benefits or to exclude employment applicants or employees because of pregnancy, childbirth or related medical conditions. Nor shall the College discriminate due to marital or family status with respect to employment opportunities or academic programs and activities.

No person shall, on the basis of sex, sexual orientation, gender identity or expression, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or

activity operated by the College or be denied any job opportunity or treated differently with respect to terms, conditions, or privileges of employment.

### 3.5 Genetic Information

It is a violation of this Policy: (1) to fail or refuse to hire, or to discharge, any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of GENETIC INFORMATION with respect to the employee; or (2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of GENETIC INFORMATION with respect to the employee.

It is also a violation of this Policy to request, require, or purchase GENETIC INFORMATION with respect to an employee or a family member of the employee except if OLA determines that such a request, requirement, or purchase is in accordance with controlling provisions of law and regulation.

### 3.6 National Origin

It is a violation of this Policy to discriminate because of an individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group. When investigating allegations of national origin discrimination, the College will review such matters as (a) marriage to or association with persons of a national origin group; (b) membership in, or association with an organization identified with or seeking to promote the interests of national origin groups; (c) attendance or participation in schools, churches, temples or mosques, generally used by persons of a national origin group; and (d) whether an individual's name or spouse's name is associated with a national origin group.

### 3.7 Race and Color

It is a violation of this Policy to discriminate against any employee or applicant for employment because of race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. No employment decisions shall be based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. It is also a violation of this Policy to discriminate against any student or student applicant in regard to any academic program or activity or any educational benefit because of race or color.

Employment and student opportunities cannot be denied because of marriage to or association with an individual of a different race; membership in or association with ethnic based organizations or groups; or attendance or participation in schools or places of worship generally associated with certain minority groups. Discrimination on the basis of an immutable characteristic associated with race, such as skin color, hair texture, or certain facial features, violates this Policy, even though not all members of the race share the same characteristic.

Discrimination based on color is also prohibited by this Policy. Even though race and color clearly overlap, they are not synonymous. Thus, color discrimination occurs when a person is

discriminated against based on the lightness, darkness, or other color characteristic of the person.

### 3.8 Religion

#### Students:

The College of Charleston community is enriched by students of many faiths that have various religious observances, practices, and beliefs. We value student rights and freedoms, including the right of each student to adhere to individual systems of religion. The College prohibits discrimination against any student because of such student's religious belief or any absence thereof.

The College acknowledges that religious practices differ from tradition to tradition and that the demands of religious observance in some traditions may cause conflicts with student schedules. In affirming this diversity, like many other colleges and universities, the College supports the concept of "reasonable accommodation for religious observance" in regard to class attendance, and the scheduling of examinations and other academic work requirements, unless the accommodation would create an undue hardship on the College.

Faculty are required, as part of their responsibility to students and the College, to ascribe to this Policy and to ensure its fair and full implementation. The accommodation request imposes responsibilities and obligations on both the individual requesting the accommodation and the College. Faculty members are expected to reasonably accommodate individual religious practices. Examples of reasonable accommodations for student absences might include: rescheduling of an exam or giving a make-up exam for the student in question; altering the time of a student's presentation; allowing extra-credit assignments to substitute for missed class work or arranging for an increased flexibility in assignment dates. Regardless of any accommodation that may be granted, students are responsible for satisfying all academic objectives, requirements and prerequisites as defined by the instructor and by the College.

#### Employees:

It is the Policy of the College to accommodate the religious practices of employees and prospective employees. The College will not fail to reasonably accommodate the religious practices of an employee or prospective employee, unless there is finding by the College that the accommodation would result in undue hardship on the conduct of its business.

After an employee or prospective employee notifies the College of his or her need for a religious accommodation, the College has an obligation to reasonably accommodate the individual's religious practices. A refusal to accommodate is justified only when the College determines that an undue hardship would in fact result from each available alternative method of

accommodation. A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship.

Some alternatives for accommodating religious practices might disadvantage the individual with respect to his or her employment opportunities, such as compensation, terms, conditions, or privileges of employment. Therefore, when there is more than one means of accommodation which would not cause undue hardship, the College will offer the alternative which least disadvantages the individual with respect to his or her employment opportunities.

When religious practices conflict with work schedules, the supervisor should consider whether one of the following accommodations is suitable and will not present an undue hardship to the College:

- (i) Voluntary Substitutes and "Swaps;"
- (ii) Flexible Scheduling; or
- (iii) Lateral Transfer and Change of Job Assignments.

### 3.9 Uniformed Services

It is a violation of this Policy to deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment motivated in whole or in part on the basis that a person is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a UNIFORMED SERVICE of the United States?

#### **4.0 DISPARATE IMPACT**

In addition to discriminatory conduct that is directly targeted to an individual (See DISPARATE TREATMENT, Section 3.0), the College will not engage in any employment or academic procedure or practice that, while neutral on its face, will have a disparate impact on persons due to their race, color, religion, gender, national origin, or genetic background unless such a procedure or practice is job related and consistent with business necessity or the educational mission of the College and there is no less discriminatory alternative available.

An employment or academic procedure or practice that has a disparate impact on older workers is not a violation of this Policy if that procedure or practice is based on a reasonable non-age factor (such longevity of employment and benefits accruing under a bonafide seniority system or a system of leave accrual).

#### **5.0 SEXUAL HARASSMENT AND HARASSMENT BASED ON LEGALLY PROTECTED STATUS**

##### **(A) Sexual/Gender Harassment:**

Sexual/gender harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when ( 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or access to or the enjoyment of an educational benefit; (2) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions or decisions concerning educational benefits affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or other educational benefit or creating an intimidating, hostile, or offensive working, learning or living environment. Additionally, sexual harassment also includes conduct (as described in this paragraph) that is directed at an employee or student because of his or her sexual orientation or gender identity or expression.

Sexually-related conduct forms the basis of a sexual harassment claim if a reasonable person, in view of all the surrounding circumstances, would consider it sufficiently severe or pervasive to interfere unreasonably with academic, other educational, or employment performance or participation in a College activity or living environment.

Sexual harassment most often occurs when one person has actual or apparent power or authority over another; however, it may also occur between individuals of equal status or rank within the College. Sexual harassment may occur between persons of the same gender.

Because faculty occupy positions of particular influence and control over students, when sexual harassment is alleged by a student against a member of the faculty and when the faculty member asserts a defense based on the consent of the student, the College will accord more weight to the student's version of events.

## Examples:

Acts of sexual harassment include the following:

- Unwelcome sexual advances or requests for sexual favors based upon gender, sexual orientation, gender identity or gender expression;
- Unwanted physical contact, including touching, pinching or brushing the body;
- Verbal harassment, such as sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions or threats; epithets; slurs; negative stereotyping (including "jokes");
- Non-verbal conduct, such as display of sexually suggestive objects or pictures, leering, whistling, or obscene gestures; written or graphic material (including communications by computers) that defames or shows hostility or aversion toward an individual or group because of gender, sexual orientation, gender identity, or gender expression.
- Repeated, unwelcome requests for social engagements;
- Questions or comments about sexual behavior or preference; and
- Acts of physical aggression, intimidation, hostility, threats based on gender, sexual orientation, gender identity, or gender expression.

## (B) Other Types of Prohibited Harassment:

A member of the COLLEGE COMMUNITY shall not, on the basis of race, color, religion, DISABILITY, age, genetic background, service in a UNIFORMED SERVICE, or national origin, be subjected to conduct that has the purpose or effect of unreasonably interfering with an individual's work or academic performance or other education benefit or creating an intimidating, hostile, or offensive working, learning or living environment. This includes, but is not limited to, threatening, intimidating or hostile acts and verbal, written, or graphic material (including communications by computers) that defames or shows hostility or aversion toward an individual or group based on race, color, religion, DISABILITY, age, genetic background, service in a UNIFORMED SERVICE, or national origin.

## **6.0 REPORTING DUTIES<sup>3</sup>**

### 6.1 Generally

The promotion and protection of a discrimination-free environment is the responsibility of every member of the College Community. The College can take corrective action only when it becomes aware of problems. Timeliness of reporting is extremely important; it allows a more complete investigation and better prevention of recurrence. Therefore, the College strongly



encourages persons who believe that they have experienced or witnessed sexual harassment, other prohibited harassment, or proscribed discrimination, as defined in this Policy, to come forward promptly with their inquiries, reports, or complaints.

## 6.2 Duty to Report

Any member of the COLLEGE COMMUNITY who reasonably believes that s/he has experienced or witnessed discrimination, harassment or abuse proscribed by this Policy has a responsibility to report the situation immediately to one of the Designated Officials listed in the *Operating Procedures for Processing Initial Complaints Against Faculty and Administrative Staff* (see Attachment ).

A member of the COLLEGE COMMUNITY who witnesses but fails to report such a situation may be subject to the immediate consideration of disciplinary or other remedial action if the failure to report has placed a member of the COLLEGE COMMUNITY at risk of harm or the College at risk of legal liability. The nature and extent of the action taken, if any, will depend on the following factors: (a) the severity of the circumstances observed; (b) the position/status of the person who observed the incident; (c) the position/status of the observed victim and observed violator; and (d) the consequences of the failure to report or the failure to report in a timely manner.

## 6.3 Additional Duty in Reporting Child Abuse

South Carolina law requires certain persons to report CHILD NEGLECT OR ABUSE as it affects students and others younger than age 18, even when it occurs outside the College.

Among other designated persons, South Carolina law requires that schoolteachers, counselors, healthcare clinicians, substance abuse treatment staff, childcare workers in any day care center, police or law enforcement officers, and computer technicians, who have reasonable cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by ABUSE OR NEGLECT, as defined by state law, are to immediately report it to the local Department of Social Services or other proper law enforcement agency.

A faculty or staff member who suspects or has any concern regarding CHILD ABUSE OR NEGLECT may report this information promptly to his/her Department Head, Director of Human Relations and Minority Affairs, the Dean of Students, the

Campus Police or other law enforcement authority, the Provost, or the Senior Vice President for Legal Affairs. College officials who receive such reports shall consult with the Office of Legal Affairs and the College's Chief of Police who will determine the College's duty under the circumstances and, if determined appropriate, will assist in contacting the proper external authorities.

A faculty member or member of the administration who has reason to suspect abuse or neglect and fails to report it is subject to prosecution; however, the person making the report based on valid suspicion and concern is protected by law from both civil and criminal retaliation.

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**3 This Policy repeals and supersedes in its entirety the Policy formerly entitled: "Reporting Responsibilities, Investigation and Complaint Resolution for Protected Status Discrimination and/or Harassment/Abuse".**

## 6.4 Cooperation

All Members of the COLLEGE COMMUNITY are expected to fully cooperate, as requested, in any investigation of an alleged violation of this Policy. If the College determines that anyone involved in the investigation has intentionally withheld material information or knowingly provided false information at any time, appropriate disciplinary and/or remedial action will be taken.

## 6.5 Personal Advisers

Both the COMPLAINANT and the RESPONDENT shall be allowed to have one personal adviser to accompany them throughout all phases of the investigatory process following the making of a COMPLAINT, provided that the adviser-

- (a) acts as a personal adviser only;
- (b) is a member of the COLLEGE COMMUNITY (other than a Trustee or a person Holding the position of a vice president or higher);
- (c) is not a supervisor of the investigator or the decisional authority;
- (d) is not a witness to the alleged violation(s) of this Policy;
- (e) is willing to sign a confidentiality agreement;
- (f) does not have an economic interest in the investigation or its outcome;
- (g) does not disrupt the investigative proceedings or speak for the COMPLAINANT or RESPONDENT and;
- (h) agrees to following the directions of the investigator during the pendency of the Investigation.

An adviser (if a College employee) must request permission from the adviser's immediate supervisor prior to leaving her/his workstation during work hours to accompany a COMPLAINANT or RESPONDENT to a meeting or interview held by the investigator. Such supervisor may deny the request if, in the exercise of that supervisor's discretion, the employee's absence for the times requested will adversely affect the operations under the management responsibility of the supervisor, provided that in such event the supervisor may suggest an alternative time that will not adversely affect such operations. Advisers will be considered as performing services within the scope of their employment when acting in accordance with this Section 6.5; however, employees may not spend more than 4 hours during a work week performing services as an adviser.

The opportunity to have a personal adviser is provided as a matter of comity and not as of right. Any violation of one or more condition listed in this Section 6.5, including any breach of a signed confidentiality agreement, or any abuse of this courtesy, will result in the immediate withdrawal of this courtesy for the individual(s) involved.

## 7.0 RESPONSE AND PROCEDURES

### 7.1 Prevention

This Policy will be posted and disseminated to the COLLEGE COMMUNITY. Among other

efforts to disseminate this Policy ---

(a) the Policy shall be presented and discussed by the Dean of Students, or the Dean's designee, during orientation for new undergraduate students and by the Office of the Graduate School for new graduate students;

(b) the Office of Human Relations and Minority Affairs will present and discuss the Policy with each new employee, who will be asked to sign a statement that acknowledges that she/he was informed of the Policy and either given a copy of the Policy or directed where to find the Policy on College's Policy webpage;

(c) the Office of the Provost will ensure that the Policy is shared with all new adjunct faculty and graduate assistants during their orientation. Each adjunct faculty and graduate assistant will be asked to acknowledge that she/he was informed of the Policy and either given a copy of the Policy or directed where to find the policy on the Human Resources webpage; and

(d) the Executive Vice Presidents shall ensure that this Policy is announced and publicized among all employees currently employed and all students then enrolled as of the effective date of this Policy.

## 7.2 Education

Appropriate educational sessions will be conducted by the College on an ongoing basis to: (1) inform students and employees about identifying proscribed discrimination (including harassment) and the problems caused by discrimination; (2) advise members of the COLLEGE COMMUNITY about their rights and responsibilities under this Policy; and (3) train personnel in the administration of this Policy. The Director of Human Resources and the Office of Human Relations and Minority Affairs shall be responsible for planning, coordinating and conducting such sessions, either directly or through the use of outside consultants and experts.

## 7.3 Contractors, Vendors, Consultants, Volunteers and Others

Any party external to the College, including but not limited to, College contractors, consultants, or vendors found to have violated this Policy on the College campus, or on any property rented or leased by the College, may be held in breach of contract and, in such event, may be subject to such sanctions and damages as may be allowed under the relevant contract and/or applicable law including, but not limited to, ineligibility to be considered a responsible source for subsequent contracting with the College. Other parties who violate this Policy on the College campus, or on any property rented or leased by the College, but who do not have a contractual relationship with the College (including volunteers) may be barred from the College campus.

## 8.0 INFORMATION AND COUNSELING

Information about or assistance with this Policy may be obtained from a variety of College resources, including the College's Resource Coordinators, the Office of Human Resources and the Office of Human Relations and Minority Affairs. For counseling services, employees may also

contact the Human Resources Office regarding the employee assistance program (EAP) and students may contact the Counseling and Substance Abuse Services for support regarding discrimination, harassment, abuse or retaliation. Discussions with representatives of EAP and/or the Counseling and Substance Abuse Services offices do not constitute a complaint to the College.

## **9.0 COLLEGE INITIATED ACTION**

In circumstances when a report of inappropriate behavior is made, but the COMPLAINANT does not wish to pursue the matter, the College reserves the right to investigate the report and take appropriate action under this Policy. The College is likely to make a decision to pursue such a matter if it determines, in the exercise of its discretion, that: (a) the allegations, if true, give reason to believe that the COMPLAINANT or other members of the COLLEGE COMMUNITY may be at continued risk of victimization and/or that the College may be put at risk of legal liability; and (b) the COMPLAINANT is credible.

The College also reserves the right to receive and investigate, at the College's discretion, complaints or reports by persons external to the COLLEGE COMMUNITY about conduct of a member of the COLLEGE COMMUNITY alleged to be in contravention of this Policy.

## **10.0 STANDARDS**

There may be a violation of this Policy regardless of whether the underlying conduct is legally actionable. A violation of this Policy will be deemed to exist if the material facts needed to establish a violation are deemed more probably true than not true. (See the *Operating Procedures for Processing Initial Complaints Against Faculty and Administrative Staff*, (See Attachment).

## **11.0 WRITTEN REPORT/COMPLAINT**

Once a COMPLAINT of discrimination or harassment has been made under this Policy, the COMPLAINANT may be asked to submit a written statement to the individual designated to investigate the COMPLAINT. The COMPLAINANT is expected to cooperate with the College's investigation including, but not limited to, preparation and submission of a comprehensive written complaint. The failure to submit a written complaint, however, will not be deemed as sufficient cause not to investigate a matter.

## **12.0 CONFIDENTIALITY**

The College recognizes that confidentiality is important. Information gathered during an investigation shall be maintained as confidential to the extent reasonably possible and permitted under law. Examples of situations when confidentiality will not be maintained include circumstances when the College is required by law to disclose information (i.e., in response to legal process) or when disclosure is required by the College's outweighing interest to protect the rights and safety of others.

## **13.0 NO RETALIATION**

The College prohibits adverse treatment of employees or students for exercising their rights under this Policy. Any good faith report of discrimination and/or harassment, experienced or observed, should be made without fear of retaliation by the College.

RETALIATION AGAINST ANY EMPLOYEE OR STUDENT FOR FILING A COMPLAINT OR PARTICIPATING IN AN INVESTIGATION IN GOOD FAITH IS STRICTLY PROHIBITED BY LAW AND THIS POLICY. VIOLATORS WILL BE SUBJECT TO THE IMMEDIATE CONSIDERATION OF DISCIPLINARY AND/OR REMEDIAL ACTION THAT COULD INCLUDE SEPARATION FROM THE COLLEGE.

Intentionally making a false report or providing false or materially misleading information during an investigation also constitute grounds for discipline and/or remedial action.

#### **14.0 INVESTIGATIVE PROCEDURES DETERMINATIONS AND DISCIPLINARY/REMEDIAL ACTIONS**

Alleged violations of this Policy shall be investigated, and the merits determined, in accordance with the *Operating Procedures for Processing Initial Complaints Against Faculty and Administrative Staff (See Attachment)*.

#### **15.0 COMPLIANCE COORDINATORS**

The Director of Human Relations and Minority Affairs has been designated by the President of the College to be the compliance coordinator for those statutes listed below:

- Title IX, Education Act Amendments of 1972
- ADA/Rehabilitation Act of 1973
- Age Discrimination Act of 1975

#### **16.0 AFTER THE DECISION IS MADE**

In the event the College determines that a corrective action is necessary, the accused individual may APPEAL the finding pursuant to the *Operating Procedures for Processing Initial Complaints Against Faculty and Administrative Staff(Attachment to this Policy)*.

#### **17.0 RESPONSIBILITY FOR POLICY MAINTENANCE**

The Director of Human Relations and Minority Affairs, upon consultation with the Director of Human Resources, shall be responsible for the periodic review and maintenance of this Policy. Such reviews shall take place no less frequently than once during each three year period and shall be provided to the PRESIDENT'S EXECUTIVE TEAM within seven calendar days of completion.

#### **18.0 RECORDS**

##### **18.1 Federal Requirements**

In compliance with federal law and the College's Program Participation Agreement with the U.S. Department of Education, the College's Office of Institutional Research completes and submits surveys (Fall Enrollment Survey and Fall Staff) conducted as part of the Integrated Postsecondary Education Data System (IPEDS) reflecting racial/ethnic data on students and employees.

## 18.2 State Requirements and Affirmative Action Plans

It shall be the responsibility of the Office of Human Relations and Minority Affairs to prepare and submit such affirmative action plans and reports as may be required under the laws of South Carolina.<sup>4</sup> Prior to the submission of any such Plan, however, it shall be submitted for approval to the Director of Human Resources and the PRESIDENT'S EXECUTIVE TEAM.

## 19.0 AMENDMENTS

This Policy and Procedure may be amended at anytime in accordance with the Colleges *Campus Wide Policy Making Procedures*.

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### ***South Carolina law provides as follows:***

§ 1-13-1 10. Affirmative action plans by State agencies; approval by Commission; action by General Assembly. Each State agency shall develop an Affirmative Action Plan to assure equitable employment for members of minorities (race and sex) and shall present such Plans to the Human Affairs Commission. On or before February 1 of each year, the Human Affairs Commission shall submit a report to the General Assembly concerning the status of the Affirmative Action Plans of all State agencies. If any Affirmative Action Plans have been disapproved, the report shall contain the reasons for such disapproval. If the General Assembly takes no action within sixty (60) days on those Plans which have been disapproved, the action of the Human Affairs Commission shall be final.

## GLOSSARY

**Definitions:** The definitions contained in this Policy will be interpreted and applied by the College in a manner that is consistent with applicable law, professional usage, and conventional understanding within the community. In the event of any alleged conflict in meaning, statutory and legal interpretations shall prevail and be deemed controlling.

"APPEAL" - shall have the meaning ascribed to that term in Section 8.0 of the *Operating Procedures for Processing Initial Complaints Against Faculty and Administrative Staff*

"CAMPUS COMMUNITY" or "COLLEGE COMMUNITY" - shall mean the students, faculty, and staff of the College, whether part-time, full time or temporary, the College Board of Trustees, visiting faculty, contractors and consultants performing work or performing services on College owned or leased property and all other invitees of the College.

"CHILD ABUSE OR NEGLECT" or "HARM"- means, with respect to a person under 18 years of age, conduct occurring when the parent, guardian, or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:

(i) is administered by a parent or person in loco parentis;

(ii) is perpetrated for the sole purpose of restraining or correcting the child;

(iii) is reasonable in manner and moderate in degree;

(iv) has not brought about permanent or lasting damage to the child; and

(v) is not reckless or grossly negligent behavior by the parents.

(b) commits or allows to be committed against the child a sexual offense as defined by the laws of this State [South Carolina] or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child;

(c) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59 [South Carolina Code Ann.], supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so, and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal

to cooperate. For the purpose of this chapter "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law;

(d) abandons the child;

(e) encourages, condones, or approves the commission of delinquent acts by the child and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; or

(f) has committed abuse or neglect as described in subsections (a) through (e) such that a child who subsequently becomes part of the person's household is at substantial risk of one of those forms of abuse or neglect.

"COLLEGE" - shall mean the College of Charleston.

"COMPLAINANT"- shall mean a person who makes a complaint, whether written or verbal, of facts that, if true, would constitute a violation of this Policy.

"COMPLAINT" - shall mean a verbal or written report of a potential violation of this Policy that is received by a "Designated Official" within the meaning of Section 2.0 of the *Operating Procedures for Processing Initial Complaints Against Faculty and Administrators and Staff*

"DISABILITY"- shall mean, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

"GENETIC INFORMATION"

(a) In general. The term "genetic information" means, with respect to any individual, information about--

(i) such individual's genetic tests,

(ii) the genetic tests of family members of such individual, and

(iii) the manifestation of a disease or disorder in family members of such individual.

(b) Inclusion of genetic services and participation in genetic research. Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual.

(c) Exclusions. The term "genetic information" shall not include information about the sex or age of any individual.

"GENETIC MONITORING"



The term "Genetic Monitoring" means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

#### "GENETIC SERVICES"

The term "Genetic Services" means—

- (a) a genetic test;
- (b) genetic counseling (including obtaining, interpreting, or assessing genetic information);  
or
- (c) genetic education.

#### "GENETIC TEST"

- (a) The term "Genetic Test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.
- (b) Exceptions. The term "Genetic Test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

"OFFICE OF LEGAL AFFAIRS" or "OLA"- means the Office of Legal Affairs of the College of Charleston.

"PRESIDENT'S EXECUTIVE TEAM"- shall mean such Executive Vice Presidents, Senior Vice Presidents, Executive and Senior staff as the President may, from time to time, designate.

"QUALIFIED INDIVIDUAL WITH A DISABILITY" -- Qualified individual with a disability means:

- (a) With respect to any program or activity (except employment), an individual with a disability who, with or without reasonable modifications or aids, meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.
- (b) With respect to employment, a Qualified individual with a disability means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.<sup>5</sup>

"RESPONDENT"- means the person(s) named in a complaint who is accused of a violation of this Policy or who would be found to have violated the Policy if the material facts alleged in a complaint are determined to be more likely true than not true.

"UNIFORMED SERVICES" means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

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*5 Exceptions will be recognized to this definition that are consistent with Federal regulations (see e.g. 29 C.F.R. §*

## **OPERATING PROCEDURES FOR PROCESSING INITIAL COMPLAINTS AGAINST FACULTY AND ADMINISTRATORS AND STAFF INTRODUCTION**

### **INTRODUCTION**

Without changing the substantive provisions of any College Policy or amending any provision of the Faculty/Administration Manual, this document will describe how certain complaints alleging inappropriate conduct or omissions by faculty, administrators and staff will be initially investigated.<sup>1</sup>

These Operating Procedures ("Procedures") specify the acceptable method for conducting initial investigations of the types of matters listed in Section 1.0 below. The Procedures will also provide those managers making initial decisions on complaints (the "Decisional Authorities") an improved opportunity to receive and review the facts and to discuss policy and legal implications at meaningful times prior to decision making.

With respect to the parties involved in the matter, it is intended that the Procedures will provide more information on "process" and the rights of both the Complainants (those alleging a policy violation) and Respondents (those alleged to have violated College policy). Similarly, these Procedures will afford supervisors and managers and the heads of affected operating units, such as department chairs, appropriate notice and an opportunity to provide input into the investigatory process.

Finally, it is expected that this standardization of the investigatory process will also promote consistency and uniformity in the type and content of communications sent to all concerned parties.

NOTHING CONTAINED IN THESE OPERATING PROCEDURES IS INTENDED TO MODIFY, AFFECT, OR REPEAL ANY COLLEGE POLICY, ANY PROVISION OF THE FACULTY/ADMINISTRATION MANUAL ("FAM"), OR ANY RIGHT TO A GRIEVANCE PROCEDURE AS PROVIDED FOR UNDER THE FAM OR THE LAWS OF SOUTH CAROLINA AND RELEVANT REGULATIONS PROMULGATED PURSUANT THERETO.

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<sup>1</sup> *For ease of convenience. in this document administrators and staff will be collectively referred to as "administrative staff."*

## 1.0 APPLICABILITY

1.1 Covered Policies -- This Procedure will be used to investigate initial complaints<sup>2</sup> concerning a matter, or an alleged violation of a policy, dealing with one or more of the following (each a "Covered College Policy"):

- (a) the College Policies entitled, Prohibition of Discrimination and Harassment Including Sexual Harassment and Abuse, and the Consensual Relations Policy, described in the FAM when an alleged violation of that latter Policy is included within a claim of discrimination (collectively "Discrimination");
- (b) student grievances against faculty members or others (not covered under (a)), as described in the FAM, except that student grade appeals are not subject to investigation under these Procedures;
- (c) Code of Professional Conduct and Statement of Professional Ethics, as described in the FAM (not covered under (a)); or
- (d) legal regulatory compliance issues.

1.2 Other Matters -- Alleged violations of the College Code of Conduct and Disciplinary Actions not specifically covered under a policy listed in Section 1.1 may be investigated in a reasonable manner deemed most suitable under the circumstances by the immediate supervisor of the Respondent, if a disinterested party, and the Director of Human Resources. If the immediate supervisor of the Respondent is not a disinterested party the Director of Human Resources shall decide how the matter is to be investigated. Complaints may be initially conveyed to or filed with the immediate supervisor or Director of Human Resources, but if the immediate supervisor of the Complainant is not a disinterested party, complaints shall be filed with or presented to the Director of Human Resources. In all circumstances, however, the Complainant and the Respondent shall be given a meaningful opportunity, at a meaningful time, to present their respective positions.

1.3 Duty to Investigate - In the event that a Complainant discloses information that, if true, would constitute a violation of a Covered Policy, but then subsequently refuses to reduce his/her complaint to writing or to cooperate in an investigation, the Designated Official (see Section 2.0) or the investigator (see Section 3.0) shall consult with the Senior Vice President for Legal Affairs. The Senior Vice President, after consultation with the appropriate Executive Vice President and/or the President, will determine the legal responsibilities of the College to proceed with an investigation under the attending circumstances.

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*For purposes of these Procedures a "complaint" or a "grievance" may be used interchangeably to indicate one or more allegations made by a complaining party that would trigger an initial factual*

*investigation by the College to determine facts relevant to a determination of whether a member of the College community has violated a covered Policy. Students, faculty, administrators, staff, trustees and College volunteers are considered to be members of the "College community". Claims of improper conduct by students, however, will be investigated and resolved in accord with the Swdenr Code of Conduct.*

President and/or the President, will determine the legal responsibilities of the College to proceed with an investigation under the attending circumstances.

## **2.0 ACCEPTANCE OF COMPLAINTS**

2.1 Designated Officials. Except as provided below in Sections 2.2 and 2.3, alleged violations of a Covered Policy may be made to one or more Designated Officials (as appropriate) occupying the employment positions noted next to each matter listed immediately below in subsections a) through (d). Once received by a Designated Official, the matter will be referred to an investigator as provided for in Section 3.0.

### **(a) Discrimination Complaints Including Sexual Harassment and Harassment of Protected Groups-** Complaints may be conveyed to or filed with:

- (1) Director of Human Relations ("HRe"): for Complainants who are employees, Students, College volunteers, College invitees or employees of College contractors Alleging Discrimination on College owned or leased property ("College Property");
- (2) An Associate Provost: for Complainants who are faculty and administrative staff employed by Academic Affairs and who elect not to file with the Senior Vice President For Legal Affairs, or Office of Human Relations and Minority Affairs;
- (3) **Dean of Students:** for Complainants who are students only;
- (4) Senior Vice President for Legal Affairs: for all of the above.

### **(b)** Student Grievances for Other Than Discrimination Covered under Subsection (a)

- (1) With respect to a grievance against a faculty member made by a student for other Than Discrimination, The Complainant/student may convey or file a grievance with the Chair or the Program Director of the unit that is the employing office of the Respondent faculty member.
- (2) Grievances against non-faculty members and other students should be brought to the Attention of the Dean of Students or, if Discrimination by an employee is alleged by the Student, to any one of those persons listed in (a)(1) through (4) above.
- (3) In all cases concerning the alleged violation of a Covered Policy, however, the Dean

Of Students must transmit the complaint, or direct the student, to the appropriate Designate Official. Such a referral does not preclude the Dean of Students from initiating proceeding Under the Student Code of Conduct in cases when the alleged conduct would violate both a Policy and the Student Code of Conduct. In such a situation, and in the absence of exigent circumstances, the Dean of Students will await the outcome of the factual investigation before proceeding with a disciplinary hearing.

(c) Code of Professional Conduct and Statement of Professional Ethics - Except for Discrimination, complaints may be conveyed to or filed with the appropriate Executive Vice President having responsibility for the area in which the Respondent is employed. A complaint against an Executive Vice President or the Senior Vice President for Legal Affairs may be conveyed to or filed with the President.

(d) Regulatory Compliance Issues-Complaints or disclosures of non-compliance with laws, rules, or regulations by College personnel, students, volunteers, or College contractors, or subcontractors or subrecipients of sponsored research, may be conveyed to or filed with the Senior Vice President for Legal Affairs or the appropriate Executive Vice President having responsibility for the area in which the Respondent is employed. Violations of state or local criminal law may also be reported to the College's Chief of Police. A complaint against an Executive Vice President or the Senior Vice President for Legal Affairs may be conveyed to or filed with the President.

**2.2 The President** -- Alleged violations of a Covered Policy by the President may be made to the Chair of the Board of Trustees, the Secretary of the Board, or to the Senior Vice President for Legal Affairs.

**2.3 Board of Trustees** -- Alleged violations of a Covered Policy by a Member of the Board of Trustees shall be made to the Chair of the Board of Trustees or to any other disinterested member of the Board.

**2.4 Notice to the President-** In all circumstances the President shall be provided prompt notice of all allegations that a Senior or Executive Vice President has violated a Covered Policy.

### **3.0 REFERRAL TO INVESTIGATOR**

**3.1 Referrals or Investigations by the Designated Officials** -- Except as provided in Section 3.2, upon receipt of a complaint, a Designated Official shall refer the matter for investigation, or shall conduct the investigation, in accordance with the following:

(a) Discrimination

(i) Alleged violations of the Policy on Prohibition of Discrimination and Harassment, Including Sexual Harassment and Abuse shall be referred to the Office of Human Relations and Minority Affairs for investigation, except as may otherwise be determined, in exceptional cases, by the Senior Vice President for Legal Affairs, the President, or the Board of Trustees.<sup>3</sup>

(ii) When complaints of Discrimination involve both students and non- students, the Dean of Students and the Director of the Office of Human Relations and Minority Affairs shall consult and coordinate their respective activities. The Office of the Provost shall also be consulted if the complaint involves, or is likely to involve, issues of academic freedom, academic integrity, or other issues that may involve an academic matter. The Center for Disability Services will be consulted if the complaint involves, or is likely to involve, actual or apparent disabilities, within the meaning of the Americans with Disabilities Act or accommodations under that Act.

(b) Student Grievances for Other than Discrimination - Grievances lodged against a faculty member for other than Discrimination shall be referred to and investigated by the Chair of the Respondent faculty member's employing department or unit in accordance with the provisions of the FAM. Student grievances alleging a violation of policy by another student shall be investigated in accord with the Student Code of Conduct; complaints against administrative staff shall be investigated by those persons described in (a), (c), (d), (e) or (f) of this Section 3.0.

(c) Code of Professional Conduct and Statement of Professional Ethics- In the case of a complaint against a faculty member for unprofessional conduct (other than Discrimination), the Dean of the appropriate School, after consultation with the Office of the Provost, shall appoint a disinterested investigative review panel

***3 For the purposes of this subsection only, an exceptional case will be deemed to exist if, for example, the respondent is a dean or a member of the President's Executive Team.***

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consisting of no more than three faculty members or academic administrators from the School to investigate the matter.<sup>4</sup> The results of that investigation shall be reviewed and commented on by the Chair of the Respondent's department or unit. The Chair's recommendation and comments shall be conveyed to the Dean for a decision or a recommendation to the Provost, as may be appropriate (see Section 7.0). The decision or recommendation of the Dean shall be provided to the Chair, the Complainant, and to the Respondent faculty member.

(d) Compliance Issues-- Compliance issues shall be investigated in a manner directed by the Senior Vice President for Legal Affairs after consultation with the President and/or the appropriate Executive Vice President, provided that if the Executive Vice President is an involved party in the challenged activity, the Senior Vice President shall consult only with the President. Complaints against the Senior Vice President for Legal Affairs shall be handled in a manner deemed most appropriate under the circumstances by the President.

**3.2 All Complaints Dealing with the President or a Trustee** -- Complaints against the President for a violation of a covered Policy shall be investigated and resolved in a manner deemed most appropriate under the circumstances by the Board of Trustees. Complaints against a Trustee for a violation of a covered Policy shall be investigated and resolved in a manner deemed most appropriate under the circumstances by the disinterested Members of the Board.

**3.3 Uncertainty Regarding Referrals for Investigation** - In the event that a Designated Official is uncertain as to the proper person to whom a Complaint should be referred, the matter shall be referred to the Senior Vice President for Legal Affairs who shall consult with the appropriate Executive Vice President and/or the President prior to making a final decision on the appropriate referral.

*4 In exceptional circumstances the Provost may determine, in the exercise of her/his discretion, that fundamental fairness would be better served by appointing a panel outside of the School to conduct the investigation.*

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## **4.0 INFORMAL RESOLUTION**

**4.1 Mediation** - Except as provided for in Section 4.4, mediation is the preferred way to resolve most disputes between members of the College community. In order for mediation to take place on any complaint, however, it must be mutually acceptable to both the Respondent and the Complainant. During the mediation, the investigator meets individually and/or with both parties, as appropriate. Either the Complainant or the Respondent may refuse mediation or, once commenced, end mediation at any time. No adverse inference is to be drawn from any such decision to accept or reject mediation. If a mediated compromise is reached between the parties, it must be approved by the investigator and the Executive Vice President in the supervisory chain. The Executive Vice President may consult, as appropriate, with affected supervisor(s) and others and shall seek legal advice from the Senior Vice President for Legal Affairs to resolve or discuss legal issues.

**4.2 Interim Action** - Upon receipt of a complaint, the investigator is to perform a preliminary assessment of the need for immediate interim action (e.g. removal, reassignment, administrative leave, or suspension). If the investigator believes that interim action is needed, the investigator is to provide notification to the Provost or other appropriate Executive Vice President and those in the supervisory chain, as may be appropriate under the circumstances. The recommended interim action, if approved by the relevant Executive Vice President (after consultation with the Senior Vice President for Legal Affairs), is to be taken by the Respondent's supervisor or the first disinterested manager higher up in the supervisory chain.

**4.3 Next Step--** If mediation is not feasible or appropriate under the circumstances, or if not successful within a reasonable period of time, the investigator is to commence a formal investigation.

**4.4 Inappropriate Circumstances for Mediation** -- The College will not agree to any mediated solution to a complaint, despite the wishes of the parties, when it has reason to believe that: (a) a sexual assault or any other form of violence has taken place; (b) the Complainant and the Respondent are so diametrically adverse in positions or have such conflicting views of an appropriate solution that resolution by mediation seems unlikely; (c) there is an unreasonable risk of violence or intimidation by one party against the other; (d) the Respondent has been charged with a crime arising out of the event giving rise to the Complaint; or (e) for other good cause in the interest of the College, or the parties, as determined in the discretion of the investigator.

## **5.0 FORMAL INVESTIGATION**

5.1 Commencement -- The investigator shall first identify all provisions of applicable policies that may have been violated if the allegations made by the Complainant prove more likely true than not true. Only those allegations that would, if true, constitute a violation of a Covered Policy should be investigated; and only evidence that tends to prove or disprove such allegations shall be considered relevant to the investigation. If the investigator determines that even if all allegations prove true there would be no violation of a Covered Policy, the matter shall not be investigated.

5.2 Notice -- Except as provided in this Section 5.2, the investigator is to notify the Respondent that allegations have been made against him/her and the nature of the allegations. The appropriate policy shall be cited and the Respondent shall be informed that retaliation in any form against the Complainant or a witness is strictly prohibited. The Respondent shall also be notified that s/he will have an opportunity to address the allegations and to submit evidence on his/her own behalf. In exceptional cases, notification of the Respondent may be delayed if the investigator determines that such notification may put the Complainant or a witness at risk or impede the investigation.

### 5.3 Evidence ••

(a) Fact Gathering-- The investigator is to conduct fact finding through interviews of the Complainant, the Respondent and other witnesses, the examination of written statements from the parties, the review of all relevant documents, and the consideration of any other evidence that would tend to prove or disprove the factual allegations. Executive Vice Presidents are to take reasonable measures to assure that the investigator has access to witnesses, documents, and such other evidence as may be reasonably necessary under the circumstances to discover and consider relevant facts. The investigator shall make notes of all interviews conducted as part of the investigation.

(b) Counsel -- Witnesses, including the Complainant and the Respondent, may have legal counsel present at interviews, but counsel may not participate in the interview (that is, answer questions for, or ask questions on behalf of, their clients) and may be asked to leave the interview site if disruptive or causing an unreasonable delay in the conduct of the interview. Prior to any such interview with counsel in attendance, the investigator shall notify the Senior Vice President of Legal Affairs and afford the Senior Vice President the opportunity to attend the interview.

(c) No Inference -- A negative inference may not be drawn by the Respondent's decision not to provide a statement or give an interview. In such event, the matter will be decided without the benefit of the Respondent's participation.

(d) Interference - A member of the College community who interferes with an

investigation conducted under these Procedures shall be subject to disciplinary action up to and including termination or expulsion, depending on the frequency or seriousness of the offense.

5.4 Opportunity to Respond--The Respondent must be given a meaningful opportunity, at a meaningful time, to respond to the allegations and present relevant evidence on his/her behalf during the initial investigation.

5.5 Time Estimates - The investigator shall conduct an investigation in a manner and within a timeframe most appropriate to the circumstances, taking into account pending workload requirements, other assigned cases, and the complexity of the individual complaint being investigated. Upon inquiry by either the Complainant or the Respondent, the investigator shall give a good faith estimate of when the Report of Investigation will be completed.

5.6 Facilitators - If the investigator, in the exercise of her/his sole discretion, determines that the appointment of a "facilitator" would be of assistance to the investigator in the conduct of the matter under investigation, the investigator may request the appropriate Executive Vice President to appoint a disinterested employee to assist the investigator. Such assistance may include, but not be limited to, gathering relevant documents, arranging for the interview of potential witnesses, and keeping the Complainant and the Respondent informed of the progress of the investigation and its expected time of completion. All facilitators shall be subject to the direction of the investigator and shall sign an appropriate confidentiality agreement prepared by OLA prior to performing any services under this Section 5.6.

5.7 Pending Criminal Matter- Generally, a College investigation will not be postponed if the Complainant or Respondent has been charged with a crime arising out of an event related to the Complaint. In each such circumstance, the OLA shall be notified of the criminal matter and will decide, on a case-by-case basis, whether exceptional circumstances exist to warrant delaying the investigation of the matter.

5.8 Personal Advisers

When investigations are conducted under the authority of either the Prohibition of Discrimination and Harassment, Including Sexual Harassment and Abuse Policy or the Consensual Relations Policy both the Complainant and the Respondent shall be allowed to have one personal adviser to accompany them throughout all phases of the investigatory process following the making of a complaint. This courtesy, however, shall be subject to all of the terms and conditions stated in Section 6.5 of the Prohibition of Discrimination and Harassment, Including Sexual Harassment and Abuse Policy.

## **6.0 REPORT OF INVESTIGATION**

6.1 Issuance of a Report of Investigation (the "Report") by the Investigator -- The content of the Report shall be principally confined to the allegations, the applicable Covered Policy, and the findings and conclusions of fact. No legal conclusions are to be presented in the Report as to the applicability of any law, or whether any law was violated; except that, the Report must state that retaliation is a violation of both law and College policy. The Report shall contain at least the following five sections:

- (a) the allegations;
- (b) the applicable policy or policies involved;
- (c) the method of investigation, including a list of witness interviewed, documents reviewed and other evidence considered;
- (d) findings of fact; and
- (e) factual conclusions.

6.2 **Office of Legal Affairs** -- The Report is to be forwarded to the Decisional Authority through the Office of Legal Affairs ("OLA"). OLA may not amend the Report in any way, but may prepare a legal memorandum for use by the Decisional Authority to accompany the Report. The memorandum will be protected by privilege and will contain a legal review and an explanation of the range of options legally available to the Decisional Authority under the circumstances. The memorandum may also indicate the rights, if any, that the Respondent may have to address any proposed conclusion and discipline prior to the issuance of a final decision.

6.3 **The Record**- The Report and all its exhibits and referenced materials, as well as, newly discovered evidence, as described in Section 8.3, shall be the official record of the investigation. The investigator, however, may summarize voluminous evidence in the Report, with appropriate references, provided that the Decisional Authority is advised of his/her authority and opportunity to review the entire record.

6.4 **Maintenance of the Record** - After the investigation has been completed and the matter has been closed, the official record of the investigation, the Report of Investigation and the disposition of the Decisional Authority shall be maintained in the Office of the investigator. These materials shall be available to: (a) the Complainant and the Respondent, with such redactions as may be required under law; (b) the investigator, the Decisional Authority, and the OLA; and (c) such third parties who may have a legal right to access such materials, in whole or in part, as determined by the Senior Vice President for Legal Affairs.

## 7.0 **DECISIONAL AUTHORITY**

7.1 **Responsibilities** -- The initial Decisional Authority is the manager who receives the Report of Investigation and who initially opines on whether the Respondent has violated the relevant Covered Policy and, if so, the nature and extent of the discipline and/or remedial action to be imposed or recommended to a higher management authority (the "Initial Decisional Authority"). The decision must contain a determination as to the material facts established by

the record (deemed more probably true than not true), whether the established facts constitute a violation of the Covered Policy and, if so, what discipline and/or remedial action is to be imposed or recommended. In lieu of a decision, the matter may also be remanded by the Initial

Decisional Authority to the investigator for more investigation. AU decisions regarding a policy violation must be based solely on the Report of Investigation.

7.2 Decisional Authorities --The Initial Decision Authorities for the matters listed below are as follows:

(a) **Discrimination or Code of Professional Conduct and Statement of Professional Ethics:**

- (i) If a Faculty member is the Respondent – The Initial Decisional Authority is the relevant Chair or Dean.
- (ii) If the Respondent is Administrative Staff – The Initial Decisional Authority is the first supervisor in the supervisory line of the Respondent who is at the level of an Associate Vice President or higher.

(b) Student Grievances –

- (i) Against Faculty Members for other than Discrimination-These grievances shall be initially decided by the Chair of the relevant department and appeals from that decision are to be resolved by the appropriate Dean. Subsequent proceedings, if any, are to be conducted in accordance with the FAM.
- (ii) Against Administrative Staff—Student grievances against administrative staff Based on alleged Discrimination or violation of the Code of Professional Conduct and Statement of Professional Ethics shall be treated under the Procedures provided for under subsection (a) of this Section 7.2.
- (iii) Against other Students—These matters shall be resolved by the Dean of Students Under the Student Code of Conduct or as provided for under a Covered Policy, whichever is more appropriate under the circumstances.

7.3 **Automatic Disciplinary Reviews** Disciplinary action against Faculty or Administrative Staff that is more severe than an oral or written reprimand must be approved by the appropriate Executive Vice President. In such a case, the lower level supervisors shall forward the Report, the OLA legal memorandum and his/her recommendations to the appropriate Executive Vice President. Notification of the recommendation submitted to the Executive Vice President shall be provided to the Complainant and the Respondent to afford each of them an opportunity to comment on the recommendations directly to the Executive Vice President.

7.4 **Compliance Issues** - Legal opinions regarding whether the College has acted in a manner inconsistent with laws, rules, or regulations shall be made by the Senior Vice President for Legal Affairs and shall be provided to such person(s) as may be appropriate under the circumstances.

## 8.0 APPEALS

8.1 **Generally--** An appeal is not a grievance proceeding. Rather, it is a request that the appropriate higher level manager in the supervisory chain overturn or modify an action taken by an initial Decisional Authority or decline to follow the recommendation of the initial Decisional Authority.

8.2 **Non-Appealable Matters** -- Verbal or written reprimands and the findings on which they are based are not appealable. In the case of a written reprimand, however, the Respondent may be permitted to include in her/his official personnel file a response to the written reprimand, provided that such response, in the opinion of the appropriate Executive Vice President upon consultation with the Senior Vice President for Legal Affairs, is relevant, does not defame any person or the College, respects the privacy rights of students, and avoids expletives and pejorative language.

8.3 **Special Consideration** -- Decisions on appeal shall be based solely on the Report of Investigation, except that, an appeal may also raise the following issues:

- (a) newly discovered evidence that was previously unknown and not reasonably discoverable at the time of the initial investigation and that could affect the outcome; or
- (b) an irregularity in the process that affected the finding of a material fact or that could have Otherwise affected the outcome.

8.4 **Standard of Review** --Upon an appeal, the findings of the Decisional Authority will be overturned only if the Appeal Authority determines that there was no circumstance under which a reasonable person could reach the same factual conclusion based on the Record, as it may be modified under section 8.3. The sanctions imposed in a case will not be modified unless the Appeal Authority determines that they are materially disproportionate to the severity of the violation or not supported by the factual conclusions of the Initial Decisional Authority.

8.5 **Termination of Tenured Faculty** - Nothing contained in these Procedures is intended to indicate that the standard for the termination of a tenured faculty member is other than "clear and convincing evidence in the record considered as a whole," as provided for in the FAM.

## 9.0 ASSISTANCE

Upon request, investigators and Decisional Authorities shall be provided legal assistance by the Office of Legal Affairs.

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**Departments/Offices Affected by the Policy**

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**Procedures Related to the Policy**

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**Related Policies, Documents or Forms**

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<b>Issue Date:8/27/2010</b> <b>Date of Policy Review: 10/5/2020</b>	<b>Next Review Date:10/8/2025</b>
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**POLICY APPROVAL**

**(For use by the Office of the Board of Trustees or the Office of the President)**

Policy Number: 9.1.10

President or  
Chairman, Board of Trustees



Date: 10/5/2020