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TO: Dr. Monty Sullivan
LCTCS President

THROUGH: Joseph F. Marin
Chief Operations Officer

FROM: Gena Doucet
Chief Human Resources and Development Officer

SUBJECT: Revised Prohibition and Prevention of Discrimination, Harassment, and
Retaliation Policy

DATE: May 17, 2019

Received
APPROVED

JKK 6/12/19
LCTCS BOARD OF SUPERVISORS

FOR REVIEW AND ADVISEMENT

Recommendation: Staff recommends that the Board accept for review and advisement
the attached revised Prohibition and Prevention of Discrimination, Harassment, and
Retaliation Policy (#6.011).

Background: This policy has been revised to comply with Act 270 of the 2018 Regular
Legislative Session, titled "Prevention of Sexual Harassment". The specific changes
include (1) a definitions section; (2) how complaints are handled; (3) required
confidentiality; (4) list of prohibited conduct; (5) employee responsibilities; and (6)
reporting of incidents and outcomes.

History of Prior Actions: This policy was last revised in February of 2017.

Benefits to System: The proposed changes will allow an over-arching policy for the
System Office and the Colleges to use for compliance with Act 270 of the 2018 Regular
Legislative Session.

Approved for Distribution to the Board
Dr. Monty Sullivan, President

6-12-19
Date

LOUISIANA COMMUNITY & TECHNICAL COLLEGE SYSTEM
Policy # 6.011

Title: Prohibition and Prevention of
Discrimination, Harassment, ~~Discrimination~~ and Retaliation

Authority: Board Action

Original Adoption: 06/13/01

Effective Date: ~~02/08/2017~~ 01/01/2019

Last Revision: ~~02/08/2017~~ 06/12/2019

The Louisiana Community and Technical College System (LCTCS) is committed to maintaining an environment free from any type of discrimination, harassment, and retaliation. ~~seeks to maintain a workplace that fosters respect and promotes a harmonious and productive working relationship.~~ This policy LCTCS prohibits discrimination, and/or harassment and retaliation of any kind by or against any applicant, employee, student, or any other individual on the basis of based on race, creedcolor, color, marital status, sexual orientation, religion, gender, gender identity, gender expression, genetic information, religion, sex (including identity and pregnancy), national origin, age, mental or physical disability, genetic information, veteran status and/or any other basis protected by federal or state law. by any person, applicant, vendor or contractor. LCTCS also prohibits retaliation against any individual who reports discrimination or harassment, or who participates in an investigation into discrimination or harassment.

This policy applies to all members of the LCTCS Board of Supervisors, classified and unclassified employees, faculty, vendors, and all other individuals doing business with LCTCS. It is the policy of LCTCS that no member of the LCTCS community may discriminate, harass or retaliate against another. Additionally, under appropriate circumstances, LCTCS may take action to protect its employees from harassment, on LCTCS property or at LCTCS sponsored events, by individuals who are not employees of LCTCS.

DEFINITIONS

Complaint: Any allegations of discrimination, harassment and/or retaliation, filed in good faith and in accordance with established procedures.

Complainant: Any student or employee who alleges a violation under this policy.

Discrimination: Inequitable treatment of an individual based on their protected characteristics or status rather than individual merit.

Harassment: Unwelcomed conduct that is sufficiently severe, persistent, or pervasive to limit a student's or employee's ability to participate in or benefit from the education program or from one's employment, or to create a hostile or abusive educational or work environment.

~~**Harassment** shall mean physical, verbal and/or visual conduct that is based on an intimidating, offensive, or hostile environment, which interferes with work performance.~~

Hostile Environment: Includes conduct of a sexual nature that is sufficiently severe, persistent, or pervasive to limit a student's or employee's ability to participate in or benefit from the education program or from one's employment, or to create a hostile or abusive educational or work environment. Note: This is not the same as the legal definition of "hostile work environment" as it relates to harassment based on a protected class.

Respondent: Any student or employee against whom a complaint under this policy has been made.

Retaliation: Any acts or attempted acts for the purpose of interfering with any report, investigation, or proceeding under this Policy, or as retribution or revenge against anyone who has reported Sexual Misconduct or who has participated (or is expected to participate) in any manner in an investigation or proceeding under this Policy. Prohibited retaliatory acts include, but are not limited to, intimidation, threats, coercion or discrimination.

Responsible Party: Any employee who has the authority to take action to redress sexual violence or who has been given the duty of reporting incidents of sexual violence or any other misconduct prohibited by this policy or other appropriate institutional designee.

Sexual Harassment: Includes unwelcomed sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature, when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic credit or interferes with a person's performance, or such conduct has the purpose and effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile or offensive working environment.

Sexual Misconduct: A sexual act or contact of a sexual nature that occurs, regardless of personal relationship, without the consent of the other person(s), or that occurs when the person(s) is unable to give consent or whose consent is coerced or obtained in a fraudulent manner. Sexual misconduct includes, but is

not limited to, sexual assault, sexual abuse, violence of a sexual nature, sexual harassment, non-consensual sexual intercourse, sexual exploitation, video voyeurism, contact of a sexual nature with an object, or the obtaining, posting or disclosure of intimate descriptions, photos, or violence and stalking, as well as crimes of a sexual nature as defined in Title 14 or the Louisiana Revised Statutes or at La. R.S. 44:51.

~~Sexual Harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature, when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic credit or interferes with a person's performance, or such conduct has the purpose and effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.~~

~~Racial slurs, ethnic jokes, obscene gestures, posting of offensive statements, posters or cartoons, or other similar conduct based on race are examples of racial harassment.~~

~~Workplace harassment infringes on employees' right to a comfortable work environment, and it is a form of misconduct that undermines the integrity of the employment relationship. No employee—male or female—should be subjected to unsolicited and unwelcome overtures or conduct, either verbally, visually, physically or electronically transmitted.~~

~~This policy applies to all members of the LCTCS Board of Supervisors, classified and unclassified employees, faculty, vendors, and all other individuals doing business with LCTCS. It is the policy of LCTCS that no member of the LCTCS community may harass another. Additionally, under appropriate circumstances, LCTCS may take action to protect its employees from harassment, on LCTCS property or at LCTCS sponsored events, by individuals who are not employees of LCTCS.~~

ComplaintsPOLICY

Institutional and Board Office Responsibilities

This policy applies to all institutions of the LCTCS. These procedures may be supplemented by more specific campus procedures that are consistent with this policy and state and federal laws. All institutions are required to:

- Provide to all employees a copy of this policy or their campus policy and post to their website. A contact list identifying individual names, titles, physical location and telephone number(s) where complaints may be filed shall also be included.
- Develop a system of recording all formal written complaints to be submitted and kept on file in the institution Chancellor's or Director's (as appropriate) office and in the office of the System President for those of LCTCS system office staff.
- Regularly offer training, educational and prevention programs for employees.

NOTE: If a complaint is filed under this policy; however, it is deemed to be a Title IX case, then the Title IX investigatory process would supersede this one.

Individual Responsibilities

Every employee is responsible for ensuring a safe and respectful environment and are required to reporting any unacceptable behavior or environment which may violate this policy. ~~A~~ Complaints of discrimination, harassment, or retaliation should be reported presented as promptly as possible ~~after the alleged harassment occurs~~. Any employee who believes they are he/she is the subject of discrimination, harassment, or retaliation or who has knowledge of discriminatory, harassing, or retaliatory behavior must report such conduct to their direct supervisor, and the institution's human resource department.

~~No employee is required to report or make a complaint of discrimination, harassment, or retaliation to the person who is allegedly engaging in the problematic conduct. All institutions are required to develop a system of recording all formal written complaints to be submitted and kept on file in the institution Chancellor's or Director's (as appropriate) office and in the office of the System President for those of LCTCS system office staff. No employee is required to report or make a complaint of harassment to the person who is allegedly engaging in the problematic conduct. In the event that an individual feels uncomfortable making a complaint at the institution level, such complaint may be made at the system level to the:~~

~~with the LCTCS Chief Director of Human Resources and Development Officer~~

~~s (225-922-2800), Louisiana Community and Technical College System;~~

~~265 South Foster Drive,
Baton Rouge, Louisiana 70806.
Phone Number: 225-922-2800~~

~~Each campus is required to provide to employees a copy of this policy and post a poster with contact list identifying individual names, titles, physical location and telephone number where complaints may be filed.~~

Complaints of discrimination, harassment, and retaliation will be taken seriously, investigated promptly and in as impartial and confidential a manner as possible. A member of human resources will conduct investigations, unless circumstances dictate otherwise.

Complaints

Anyone who believes they have been subjected to sexual misconduct or any other violation of this policy has a right to report the conduct to the responsible party, which includes but is not limited to the institutional administrator with responsibility for human resources or the department head of a relevant academic department.

Notification of Complaints

When the responsible party becomes aware of information that indicates that a violation of this policy may have occurred, they or their designee shall notify the parties involved of their rights under this policy.

Interim Measures

At any time after becoming aware of a complaint, a responsible party may recommend that interim protections or remedies be provided to impacted parties. Remedies may include issuing a timely warning to the campus community, separating the parties, placing limitations on contact between the parties, interim suspension from campus, or offering alternative workplace. Interim measures may vary depending on the nature of the complaint, status of respondent or other criteria. All parties shall be notified of the availability of these measures as well as the fact that such measures are put into effect.

Confidentiality

All parties involved in a complaint, any investigation, and/or resolution, including witnesses, are expected to keep information concerning the complaint private until a final decision is rendered in order to protect both the complainant and the respondent.

Information may be divulged on a need-to-know basis in order to properly address the complaint, when there is a threat to others, pursuant to subpoena, or other court or administrative order, or as may be required by law. Violations of confidentiality by any other persons involved in the resolution, investigation or administration of the complaint, including any employee, faculty, staff or student if identified and confirmed, may result in disciplinary action.

PROHIBITED CONDUCT

Discrimination

Discrimination in the work or educational environment involves taking adverse action against, or preferential treatment of an individual because of their protected status. Examples include, but are not limited to:

- Denying or granting promotions or other advancement opportunities based on an individual's protected status;
- Denying or granting preference in education or employment based on an individual's protected status;
- Denying or granting work assignments based on an individual's protected status;
- Denial or granting of leave based on an individual's protected status.

Harassment

Harassment in the work or educational environment consists of unwelcomed and objectively offensive physical, verbal, or nonverbal conduct that unreasonably interferes with an individual's work or educational activities or creates an intimidating, hostile or offensive work or educational environment.

Examples include, but are not limited to:

- Verbal threats, offensive jokes, epithets, derogatory comments, ridicule or mockery or slurs;
- Gratuitous visual displays such as posters, photographs, cartoons, drawings or gestures;

- Unwanted physical conduct such as toughing, intimidation or blocking normal movement.

Sexual Harassment

Sexual Harassment is a form of discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature when:

- Submission to that conduct is made a term or condition of employment;
- Submission to or rejection of that conduct is used as a basis for employment decisions affecting the employee; or
- That conduct has the effect of unreasonably interfering with an individual's work performance or of creating a hostile, offensive, or intimidating work environment.

Examples include:

- Making unwanted sexual advances including touching, kissing, hugging, or massaging;
- Making sexual gestures or visual displays such as leering;
- Offering employment or academic benefits in exchange for sexual favors;
- Gratuitous displays of sexually suggestive objects, pictures, cartoons, or drawings;
- Sending suggestive or obscene letters; notes or invitations;
- Engaging in graphic sexual commentary about an individual's body.

Retaliation

Retaliation includes over or covert acts of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or group exercising rights under this policy.

PROCESSING OF COMPLAINTS

Initial Review

The responsible party of the appropriate institution shall conduct or supervise the initial review of the complaint. The initial review of the complaint shall be concluded as quickly as possible, within a reasonable amount of time required to complete the review in a manner that is adequate, reliable and impartial. Generally, the initial review should be completed in fifteen (15) business days of receipt of the complaint. The purpose of the initial inquiry is to determine whether there is reasonable cause to believe a specific policy has been violated.

Notice of Investigation

If reasonable cause is found during the initial review, an investigation shall be conducted. Both the complainant and respondent will be provided notice that an investigation will be undertaken as well as the nature of the complaint.

Investigation

The appropriate institutional responsible party or designees shall conduct a full investigation into the facts and circumstances of the complaint. Both complainant and respondent will be given the opportunity to identify witnesses to be interviewed. Interviews may include in-person meetings. The investigator may also collect and review any documents or other relevant information.

Upon issuance of the notice of investigation, any and all effort should be made to conduct a thorough and prompt investigation based on the facts and circumstances of each complaint ordinarily within thirty (30) business days of the notice. Complicated or extensive investigations may take longer.

Investigation Results

After a full investigation a determination that a policy has been violated or not shall be made by the investigator or designee. Both the complainant and the respondent will be given notice of the results of the investigation.

For an individual to make an intentionally false and/or malicious accusation of harassment, discrimination, and/or retaliation is a violation of this policy. Any individual found to have done so will be subject to disciplinary action, up to and including termination. This is not intended to discourage complaints and/or reports when there is sincere belief that harassment, discrimination, and/or retaliation occurred.

LCTCS will not tolerate any type of discipline or other form of retaliation, direct or indirect, against any employee or other person who, in good faith, files a complaint of or responds to questions in regard to having witnessed harassment. All employees are required to fully cooperate in any investigation. False charges are treated as serious offenses and may result in disciplinary and/or civil action.

Consequences of Violations

Any employee who is found, after appropriate investigation, to have engaged in conduct prohibited by this policy shall be subject to appropriate disciplinary action up to and including termination of employment. Also, any person or business found in violation of this policy may be prohibited from conducting business with the institution involved.

Retaliation

LCTCS will not tolerate any type of discipline or other form of retaliation, direct or indirect, against anyone who, in good faith, files a complaint of or responds to questions in regard to having witnessed discrimination or harassment. All employees are required to fully cooperate in any investigation. False charges are treated as serious offenses and may result in disciplinary and/or civil action.

False Claims

For an individual to make an intentionally false and/or malicious accusation of discrimination, harassment, and/or retaliation is a violation of this policy. Any

individual found to have done so will be subject to disciplinary action, up to and including termination. This is not intended to discourage complaints and/or reports when there is sincere belief that discrimination, harassment, and/or retaliation occurred.

TRAINING, EDUCATION, AND PREVENTION PROGRAMS

As mandated by Louisiana state law all employees are required to receive a minimum of one hour of education and training on preventing sexual harassment during each full calendar year of their employment. In addition, each supervisor and any person designated as an investigator of a complaint of sexual harassment shall receive additional education and training.

MANDATORY REPORTING

As mandated by state law the LCTCS Office and each college shall develop a report each February 1st containing information from the previous calendar year regarding compliance with this ACT 270 including:

- The number and percentage of the colleges employee that have completed the training requirements;
- The number of sexual harassment complaints received by the college;
- The number of complaints which resulted in a finding that sexual harassment occurred;
- The number of complaint in which the finding of sexual harassment resulted in discipline or corrective action; and
- The amount of time it took to resolve each complaint.

REFERENCES:

Act No. 270 – Prevention of Sexual Harassment

LA R.S. 44:51 – Sexual Misconduct

Equal Pay Act of 1963

Title VII of the Civil Rights Act of 1964

Executive Order 11246 of 1965

Age Discrimination in Employment Act of 1967

Section 501, 503, and 505 of the Rehabilitation Action of 1973

Title I and Title V of the Americans with Disabilities Active of 1990

Civil Rights Active of 1991

Title II of the Genetic Information Nondiscrimination Active of 2008

Complaint Form

Name of Complainant: _____ Date form completed: _____

Department/Institution:

Home Phone: _____ Business Phone: _____

1. Charge of discrimination based on:

Race/Color _____ Sex _____

Sexual Orientation _____ Religious Creed _____

National Origin/Ancestry _____ Disability or Medical Condition _____

Age _____ Other _____

2. Please provide the following information (use an attached sheet if necessary):

1) Date(s), time(s), and location(s) of the incident/incidences that took place

2) Description of each incident: e.g., Was any physical contact made? What was said and/or done? etc.

3) Name(s) of anyone present during each incident

4) Anyone with whom you've discussed the incident/incidences

Comments:

Complainant Signature: _____ Date: _____

Complaint Recipient Signature: _____ Date: _____

LCTCS COMPLAINT INVESTIGATION FORM

Investigator: _____ Date: _____

Complainant: _____ Location/Dept.: _____

- Take the complaint seriously and inform Director of Human Resources
- Make arrangements to conduct investigation immediately – don't delay. Assure that the complainant is comfortable with the person(s) assigned to conduct the investigation.
 - Determine appropriate person to conduct the investigation.
 - Have a witness during the investigation.
- Document the facts each step of the investigation beginning with initial complaint.
- Maintain the confidentiality of the investigation—limit to those involved and those with a need to know.

1. Interview the complainant—Explore the allegations thoroughly and ask follow-up questions as needed.

- Who was the alleged harasser?
- What is your relationship with the accused (i.e. subordinate, co-worker, personal friend)?
- What exactly happened/nature of the harassment (comments, touching)?
- When and where did the incident(s) occur? Be specific: dates & times.
- Was the incident limited to one instance or was it continuing in nature? Explain.
 - How did you react to the incident(s)?
 - What did you tell the alleged harasser?
- Can any witnesses be identified (I may need to speak to them)?
 - Is there any other evidence of the incident occurring?
- Are you aware of any other employees that may have experienced the same or similar...?
 - Why the delay in reporting the incident (if not immediate)?

- Are you aware of the system's harassment policy? (provide a copy)
- Was there a specific reason for the harassment, i.e. intimidation, retaliation, or attraction?
 - How were you and your work affected by this?
 - Did you discuss the incident with anyone else?
 - What is your desired result?
- Express a genuine concern and assure the employee that you will take the complaint seriously.
- Inform him/her that retaliation will not be tolerated, and that you will follow up after the investigation.
- Instruct him/her to keep the incident & contents of discussion confidential as to not impede the investigation.

2. Interview the Alleged Harasser

- Determine if any past problems have occurred in this or other areas.
 - Inform the accused/alleged harasser of the claim (as specific as necessary) and afford an opportunity to respond to the allegations.
 - Listen and document carefully.
- Are you aware of the system's harassment policy? (give a copy)
 - Are there any witnesses to substantiate his/her position?
 - What is your relationship with the complainant?
- Communicate **NO** tolerance of retaliation, i.e. mistreatment of the complainant
 - Be sensitive, yet firm
- Let him/her know how you intend to proceed and that confidentiality will be maintained to the extent possible, keeping the investigation on a need to know basis.
- Instruct him/her to keep the incident & contents of discussion confidential as to not impede the investigation.

3. Resolve the complaint

- Interview witnesses (consider whether to interview before or after the alleged harasser).

- ~~Was policy violated?~~
- ~~Was conduct of a sexual nature? Was the sexual conduct unwelcome?~~
 - ~~Was harassment *quid pro quo* or *hostile work environment*?~~
 - ~~Was the complainant a participant?~~
 - ~~What is the emotional character of the complainant?~~
 - ~~What is the accused/alleged harasser's emotional character?~~
 - ~~How does the complainant want it handled?~~

4. ~~Follow up~~

- ~~With the complainant, accused/alleged harasser, witnesses, or anyone else who has an ***absolute need to know***.~~
 - ~~Apply appropriate disciplinary action.~~

~~FAILURE TO INVESTIGATE PROMPTLY AND TAKE PROMPT REMEDIAL ACTION MAY SUBJECT EMPLOYER TO LIABILITY~~