

**Policy Title: DISCRIMINATION/HARASSMENT COMPLAINT PROCEDURE FOR EMPLOYEES**

Mid-State Technical College is committed to be in compliance with state and federal equal opportunity laws and regulations and does not discriminate in its services, employment programs, and/or its educational programs and activities. Discrimination contrary to law and harassment by supervisors, administrators co-workers, students, non-employees on the basis of age, race, creed, color, disability, marital status, sex, gender, sexual orientation, national origin, ancestry, arrest or conviction record, pregnancy, service in the armed forces, genetic or honesty testing, the use or non- use of lawful products off the College's premises during non-working hours and/or declining to attend a meeting or participate in any communication about religious or political matters or other protected status under state or federal law ("protected status") is prohibited by the College.

The College has set forth the following complaint procedures for employees who allege discrimination based on a protected status or prohibited harassment. Copies of this procedure and related forms can be obtained from the Affirmative Action/Equal Opportunity Officer.

**COMPLAINT**

Complaint means an allegation of personal discrimination contrary to law or harassment on the basis of age, race, creed, color, disability, marital status, sex, gender, sexual orientation, national origin, ancestry, arrest or conviction record, pregnancy, service in the armed forces, genetic or honesty testing, the use or non- use of lawful products off the College's premises during non-working hours and/or declining to attend a meeting or participate in any communication about religious or political matters ("protected status") in regard to any employment, procedure, or practice of the College.

This policy applies when a member of the college community ('complainant' as defined below) believes that he or she has been subjected to harassment or discrimination contrary to law by an instructional, administrative or faculty member or other individual identified in this policy ('respondent'), provided that at least a substantial portion of the alleged wrongful behavior either occurred on college-controlled, college-leased or college-owned property, or otherwise had a significant connection to the activities of the College.

*Discrimination* means a difference in treatment contrary to law on the basis of protected status which adversely affects an individual's employment.

*Harassment* means the use of verbal or physical conduct based on protected status which (1) has the purpose of effect of creating an intimidating, hostile or offensive work environment; (2) has the purpose or effect of unreasonable interference with an individual's work; or (3) otherwise adversely affects an individual's work.

The term "harassment" encompasses "sexual harassment" which means unwelcome sexual advances, unwelcome physical contact of a sexual nature, unwelcome requests for sexual favors and other verbal or physical conduct of a sexual nature (including but not limited to the deliberate, repeated making of

unsolicited gestures or comments, or the deliberate or repeated display of sexually graphic materials, which is not necessary for educational purposes) when (1) submission to such conduct is made either explicitly or implicitly a term or condition of employment; (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions; or (3) such conduct has the purpose or effect of substantially interfering with an individual's employment or creates an intimidating, hostile or offensive academic environment.

### **COMPLAINANT**

Complainant means any of the following who have a personal complaint based on their protected status as defined:

1. An employee, permanent, project or limited term, of the College.
2. An employee or group of employees of the College submitting a complaint all of whom have indicated, in writing, his/her willingness to be part of the complaint which is based on the same facts. Mutual agreement with the Affirmative Action/Equal Opportunity Officer is required to process a group complaint.
3. An applicant for employment with the College.
4. Any other person not covered by the above definition may be referred to the appropriate civil authorities or investigated in a manner deemed appropriate by the Affirmative Action/Equal Opportunity Officer.

### **RESPONDENT**

Respondent means a person and/or persons alleged to be responsible, or who may be responsible for the violation alleged in a complaint. The term may be used to designate persons with direct responsibility for a particular action or those areas covered in the complaint. In the case of harassment a respondent may include a co-worker, supervisor, administrator, Board member, vendor, or guest of the College.

### **AFFIRMATIVE ACTION/EQUAL OPPORTUNITY OFFICER**

The Vice President, Human Resources has been designated by the College as having the responsibility of coordinating the internal complaint procedure. Questions regarding this procedure should be directed to: Vice President, Human Resources, Affirmative Action/Equal Opportunity Officer, 500 32nd Street N, Wisconsin Rapids, WI 54494. Telephone (715) 422-5325.

### **DAYS**

All days listed in this policy are regular business days when the College is open for business. Weekends, holidays, and days when the College is closed for business are excluded.

### **NON-RETALIATION**

Retaliatory action against anyone filing a complaint of any type of discrimination or harassment or anyone who participates in the investigation of a complaint is strictly prohibited. The complainant, any person

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who participates in the investigation of a complaint, and the accused will be advised of the College's policy in this regard when a complaint has been filed. Retaliation is itself a form of misconduct that may form the basis for disciplinary actions. Any complaints of retaliation, on any basis, should be referred immediately to the Affirmative Action/Equal Opportunity Officer.

### **CONFIDENTIALITY**

Confidentiality is critical to the complaint procedure. A complaint, in and of itself, is not evidence of inappropriate behavior. We respect the privacy of all persons involved in the complaint – the complainant, a person accused of engaging in the prohibited conduct, witnesses, and others as deemed necessary. These individuals shall maintain confidentiality and not discuss any part of the complaint investigation, findings, or any action taken, except with those persons who have a legitimate need to know. The College shall maintain confidentiality to the extent allowed by law and to the extent necessary to conduct a thorough and efficient investigation of the complaint. All procedures under this policy shall be closed and shall include only those participants designated by the College.

### **GENERAL PROCEDURE**

Conduct which might be offensive to some individuals might be considered inoffensive by others. Because of this, it is difficult for the College to learn of and take effective action unless the affected individual alerts a manager or supervisor or the Affirmative Action/Equal Employment Officer to the occurrence and the fact that the conduct in question violates this policy.

If an individual feels she/he has been subjected to conduct or actions or witnessed anything in violation of this policy, even if she/he considers it minor, the College needs your cooperation to make this policy as effective as possible. In the event of harassment, the College encourages you to approach the alleged harasser and ask him/her to immediately stop the offensive activity. The alleged harasser may not know how you or others feel. This step is not required if it makes you feel uncomfortable or is not effective.

Whether or not the harasser has been confronted, if an employee believes that harassment or conduct or action in violation of this policy by any person including, but not limited to, co-worker, supervisor, administrator, vendor, or guest of the College has occurred or if an employee believes they have witnessed conduct in violation of this policy including harassment or threats to a safe environment, the employee is strongly encouraged to report the facts of the incident and the names of the individual(s) involved within forty-eight (48) hours, if at all possible, to any of the following individuals: the employee's supervisor, any other supervisor, a member of the Human Resources staff, or directly to Affirmative Action/Equal Opportunity Officer at (715) 422-5325. You are required, however, to report the conduct to somebody in management. Prompt reporting will assist the College in conducting a thorough and timely investigation. The College will investigate all allegations promptly, thoroughly and fairly; and will ensure confidentiality to the extent possible.

The College treats all claims of violation of this policy seriously. All employees are required to cooperate fully in any investigation. All employees are responsible for helping to assure that conduct contrary to this policy does not occur, including harassment or threats to safety.

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### *Resolution*

The College's policy is to investigate all such complaints thoroughly and promptly. To the fullest extent practicable and consistent with Wisconsin statutes and this policy, the College will keep complaints and terms of their resolution confidential. If an investigation confirms that harassment or unsafe conditions have occurred, the College will take appropriate corrective action including discipline up to and including immediate termination of employment.

### **DISABILITY/RELIGIOUS ACCOMMODATION REQUEST PROCEDURE**

Mid-State has adopted and publishes a procedure that provides a prompt and equitable consideration of requests for accommodation based on disability or religion. These procedures are applicable to any anticipated accommodation request.

1. Any employee has the right to file a request in writing for an accommodation due to disability or religion and should discuss their accommodations concerns with their immediate supervisor as soon as the need for an accommodation is known. An employee may be requested to provide additional information to support or explain the need for the accommodation as part of the process.
2. If an employee with a disability or making a request based on religion disagrees with a decision regarding an accommodation request, a complaint can be filed. A complaint must be filed by completing the *Failure to Provide Requested Accommodation Complaint* form available from the Human Resources/Equal Opportunity Office.
3. The written complaint must be filed and will be processed as provided in the procedures under this policy commencing at Step One.
4. Pending the outcome of the complaint, any accommodations already established by the College shall continue.

The above stated procedures shall be construed to protect the substantive rights of interested persons, to meet appropriate due process standards, and to assure that Mid-State Technical College complies with the ADA and Section 504 of the Rehabilitation Act and implementation of the regulations.

### **COMPLAINT PROCEDURE**

#### Step One

1. A complainant shall, as soon as possible and within thirty (30) days of the date of the action causing the complaint, contact the Affirmative Action/Equal Opportunity Officer, employee's supervisor, any other supervisor, a member of the Human Resources staff. If the subject of the complaint is the Affirmative Action/Equal Opportunity Officer, then the complainant shall contact the College President who will then determine the Complaint Procedure to be followed.
2. The complaint may be verbal or in writing. The complainant shall provide full and complete information on the facts underlying the complaint.

3. The Affirmative Action/Equal Opportunity Officer shall inform the complainant of his/her rights under College policy and federal/state law.

### Step Two

1. The Affirmative Action/Equal Opportunity Officer shall determine if the complaint is valid under the established complaint procedure. Validity does not mean whether or not an unfair act has occurred but whether or not the action underlying the complaint is within the scope of the complaint procedure.
2. A decision by the Affirmative Action/Equal Opportunity Officer that this policy does not apply is not final and may be appealed to the College President within seven (7) days. By way of example, the Affirmative Action/Equal Opportunity Officer shall find that this policy does not apply upon determining any of the following:
  - a. That even if the complainant's allegations are true; the respondent's conduct would not constitute harassment or discrimination as defined in this policy.
  - b. That the alleged conduct did not occur on college-owned, college-leased or college- controlled property or did not otherwise have a significant connection to the activities of the College.
  - c. That the complainant is not a college member as defined in this policy.
  - d. That the complainant was not the party harmed by the discrimination or harassment.

This list is not exclusive, and other situations may result in the Affirmative Action/Equal Opportunity Officer determining that the policy does not apply.

### Step Three

1. If the Affirmative Action/Equal Opportunity Officer determines that this policy applies, the Affirmative Action/Equal Opportunity Officer shall conduct an investigation of the complaint in any manner the Affirmative Action/Equal Opportunity Officer deems appropriate. As soon as practicable and without undue delay after the complaint is filed, the Affirmative Action/Equal Opportunity Officer shall provide the complainant and the respondent with the Affirmative Action/Equal Opportunity Officer's findings relating to the complaint.
2. If the Affirmative Action/Equal Opportunity Officer finds that the evidence does not justify such a finding of violation, the Affirmative Action/Equal Opportunity Officer will dismiss the complaint.
3. At any point in the investigation, the Affirmative Action/Equal Opportunity Officer may attempt to conciliate complaint through contact with all parties involved. Any agreement reached as a result of conciliation shall be in writing and signed by all parties involved.
4. In the event that a violation is found the College shall take action to remedy the situation and

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ensure compliance with the policy.

5. A decision by the Affirmative Action/Equal Opportunity Officer that the evidence does not justify such a finding of violation may be appealed by the complainant to the College President within seven (7) days by presenting a written complaint as set forth in this policy. If no complaint is timely filed, the complaint will be deemed dropped.

#### Step Four

1. A decision by the Affirmative Action/Equal Opportunity Officer that the evidence does not justify a finding of violation may be appealed within seven (7) days to the College President for an impartial review by the complainant, by presenting a written complaint as set forth in this policy and a written statement indicating the reasons for the appeal.
2. The College President shall review the written recommendations of the Affirmative Action/Equal Employment Officer and issue a written decision within fourteen (14) days of the date of the recommendations.
3. Prior to this decision, the respondent and the complainant may present written arguments to the College President.
4. The College President's decision shall include a statement regarding the validity of the complaint allegation and a specification of any corrective action to be taken, if any.
5. The decision of the President shall be final.

#### Restrictions

No action relating to employment, termination, transfer, demotion or rates of pay can be taken until the complaint has been resolved, unless such action is decided necessary to the well-being of the complainant or to the function of the College.

Neither the complainant nor the respondent shall arbitrarily delay action of the complaint procedure.

All participants in all proceedings under this policy will observe confidentiality to the extent reasonably possible. However, in the event of any final determination of a violation of this policy, the College President will provide appropriate information to appropriate officials. The College may also use any information obtained in the proceedings to defend itself against any claims, complaints or allegations brought against it or as may be required by law.

#### Exceptions and Time Limits

The outcome of a complaint may not be determined by a non-substantial procedural violation. Therefore the Affirmative Action/Equal Opportunity Officer or the College President may make exceptions to the provisions of this policy (including time deadlines); provided, however, that any exception is intended to bring about a fair investigation process, a just outcome, and/or is relatively minor in nature. Any time

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limits set by this procedure may be extended as set forth in this policy or by mutual consent of the affected individual and the College.

#### Information

The College shall provide complainants and respondents, with access to relevant college policies as well as anti-discrimination laws and regulations.

#### Role of the Affirmative Action/Equal Opportunity Officer

It is the primary responsibility of the Affirmative Action/Equal Opportunity Officer to ensure the effective implementation, processing, recordkeeping, and notification required by the complaint procedure. Records shall be kept of each complaint in the office of the Affirmative Action/Equal Opportunity Officer. Such records shall be maintained on a confidential basis.

The Affirmative Action/Equal Opportunity Officer or the President may designate other person(s) to assist in any part of the process and procedure.

#### Interpretation

The authority to interpret this policy rests with the College President and is generally delegated to the Affirmative Action/Equal Opportunity Officer. Any findings under the terms of this policy shall endeavor to conform to the requirements of applicable state or federal law.

#### Referral Services

While employees are encouraged to use the processes set forth under this policy in order to seek resolution of the complaint, nothing in this complaint procedure shall preclude the complainant from seeking a remedy under state or federal law.

- State of Wisconsin Department of Workforce Development
- Equal Employment Opportunity Commission
- U.S. Department of Labor

*Adopted: August 2011*

*Last Reviewed: July 2017*

*Last Revised: August 2013*