

HAYWOOD COMMUNITY COLLEGE	HUMAN RESOURCES <b>UNLAWFUL DISCRIMINATION AND HARASSMENT</b>	Procedure 3.3.7.2
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Haywood Community College (“College”) strives to make its campuses inclusive and a safe and welcoming learning environment for all members of the College community. Pursuant to multiple federal and state laws and administrative regulations and pursuant to College policy, the College prohibits discrimination in its activities, services and programs based on race, color, national origin, religion, pregnancy, disability, genetic information, age, political affiliation or veterans’ status.

**I. DEFINITIONS – RELATING TO EMPLOYEES**

The following definitions shall apply to this Procedure and shall be collectively referred to herein as “Unlawful Discrimination”.

The definitions are not intended to operate as speech codes, promote content and viewpoint discrimination or suppress minority viewpoints in the academic setting. Indeed, just because an employee’s speech or expression is deemed offensive by others does not mean it constitutes discrimination or harassment.

In applying these definitions, College administrators shall view the speech or expression in its context and totality and shall apply the following standard: the Reporting Party subjectively views the conduct as discrimination or harassment and that the conduct is objectively severe or pervasive enough that a reasonable person would agree that the conduct is discriminatory or harassing.

**A. Discrimination:** any act or failure to act that unreasonably differentiates treatment of others based solely on their Protected Status and is sufficiently serious, based on the perspective of a reasonable person, to unreasonably interfere with or limit the ability of that individual to participate in, access or benefit from the College’s programs and activities. Discrimination may be intentional or unintentional.

**B. Harassment:** a type of Discrimination that happens when verbal, physical, electronic or other behavior based on a person’s Protected Status interferes with a person’s participation in the College’s programs and activities and it either creates an environment that a reasonable person would find hostile, intimidated or abusive or where submitting to or rejecting the conduct is used as the basis for decisions that affect the person’s participation in the College’s programs and activities.

Harassment may include but is not limited to: threatening or intimidating conduct directed at another because of the individual’s Protected Status; ethnic slurs, negative stereotypes and hostile acts based on an individual’s Protected Status.

**C. Protected Status:** race, color, national origin, religion, pregnancy, disability, genetic information, age, political affiliation or veterans’ status.

- D. Preponderance of Evidence** - the College uses the preponderance of the evidence as the standard for proof of whether a violation occurred. This standard means a reported event is more likely than not to have taken place. In the student due process hearing and employee grievance process, legal terms like “guilt, “innocence” and “burden of proof” are not applicable. Student and employee due process hearings are conducted to take into account the totality of all evidence available from all relevant sources. The College will find the Respondent either “responsible” or “not responsible” for violating these Procedures.

## **II. STATEMENTS OF PROHIBITION**

### **A. Prohibition of Retaliation.**

The College strictly prohibits punishing students or employees for asserting their rights to be free from Unlawful Discrimination. Retaliation against any person participating in connection with a complaint of Unlawful Discrimination is strictly prohibited. Reports of retaliation will be addressed through this procedure and/or other applicable College procedures. Retaliation includes, but is not limited to, any form of intimidation, punitive actions from authority figures or peers, reprisal (acts of vengeance) or harassment. Retaliation is a serious violation and should be reported immediately. The College will take appropriate disciplinary action against any employee or student found to have retaliated against another.

### **B. Prohibition of Providing False Information.**

Any individual who knowingly files a false report or complaint, who knowingly provides false information to College officials, or who intentionally misleads College officials involved in the investigation or resolution of a report may be subject to disciplinary action including, but not limited to, employment termination. The College recognizes that a report made in good faith will not be considered false when the evidence does not confirm the report(s) of Unlawful Discrimination.

## **III. REQUESTING ACCOMMODATIONS**

### **A. Students. (See Procedure 5.3.4.2)**

### **B. Employees.**

Employees with disabilities wishing to make a request for reasonable accommodations, auxiliary communication aids or services, or materials in alternative accessible formats should contact the College’s Office of Human Resources located at the Administration/100 Building. Information provided by employees is voluntary and strict confidentiality is maintained.

The College will also provide reasonable accommodation of an employee's religious beliefs/practices provided such expression/practice does not create a hostile environment for other employees and students and/or the accommodation does not cause an undue hardship for the College.

#### **IV. REPORTING OPTIONS**

##### **A. Student Complaints. (See Procedure 5.3.4.2)**

##### **B. Employee Complaints.**

Any employee wishing to make a report related to Unlawful Discrimination may do so by reported the concern to the College's Director of Human Resources located at the Administration/100 Building.

#### **V. INITIAL INVESTIGATION**

As these Procedures apply to both students and employees as either the Reporting Party or the Respondent, the administrator receiving the incident report will determine if the case should be handled by: 1) the Vice President for Student Services, or designee (student/student); 2) the Director of Human Resources, or designee (employee/employee); or 3) both (student/employee). For incidents involving students and employees, the College will utilize the process for both the student investigation and the employee investigation sections as applicable.

##### **A. Student Investigation. (See Procedure 5.3.4.2)**

##### **B. Employee Investigations.**

1. Employees filing reports ("Reporting Parties") are urged to do so in writing as soon as possible but no later than thirty (30) days after disclosure or discovery of the facts giving rise to the report. Reports submitted after the thirty (30) day period will still be investigated; however, Reporting Parties should recognize that delays in reporting may significantly impair the ability of College officials to investigate and respond to such reports. The Director of Human Resources shall fully investigate any reports. During the course of the investigation, the Director of Human Resources may consult with other relevant College administrators and the College Attorney.
2. During the investigation, and if applicable to the report, the Director of Human Resources shall meet with the Reporting Party and the Respondent separately and give each party an equal opportunity to provide evidence, including informing the Director of Human Resources of any potential

witnesses. Both parties will be given access to any information provided by the other in accordance with any federal or state confidentiality laws.

3. During the investigation process, the Director of Human Resources may implement temporary measures in order to facilitate an efficient and thorough investigation process as well as to protect the rights of all parties involved. The Director of Human Resources may suspend an employee with pay pending an investigation if such action is in the College's best interest.
4. A confidential file regarding the report shall be maintained by the Director of Human Resources. To the extent possible, the College will keep all information relating to the report and investigations confidential; however, to maintain compliance with the Clery Act, both parties will be informed of the outcome of any institutional proceedings under this Procedures.
5. The Director of Human Resources shall make every effort to conclude the investigation as soon as possible but no later than thirty (30) calendar days. If the nature of the investigation requires additional time, the Director of Human Resources may have an additional ten (10) calendar days to complete the investigation and shall notify the parties of this extension.
6. Reporting Parties will be notified of available counseling services and other interim protective measures.

## **VI. RECOMMENDATION AND APPEAL**

### **A. Students. (See Procedure 5.3.4.2)**

### **B. Employees.**

1. After the investigation is complete, the Director of Human Resources will put forward a recommendation of finding, based on the Preponderance of Evidence, and sanctions to both the Reporting Party and Respondent. If the recommendation is accepted by both parties involved, the recommendation and sanctions will become effective. A final outcome letter will be submitted to the Reporting Party and Respondent that may include, but not limited to, the following:
  - a. Determination if the Respondent is responsible, not responsible, or if the decision is deemed inconclusive, or shared responsibility.
  - b. Sanction, if appropriate.
  - c. Monitoring of academic schedules or workplace schedule if needed.
  - d. Short-term counseling services will be offered to each party.

2. If the Director of Human Resources' recommendations are not accepted by either the Reporting Party or the Respondent, both may appeal and request a formal hearing. If the Director of Human Resources recommends sanctions that s/he cannot impose (i.e., termination) the matter will automatically be set for a hearing. The President, or his/her designee, will preside over the hearing as the Presiding Officer. The process for the hearing is outlined below:
  - a. Prior to the hearing, the Reporting Party and the Respondent have the right to review all evidence, including written statements by the Respondent, the Reporting Party, or witnesses. Strict rules of evidence do not apply. The Preponderance of Evidence shall apply for the hearing.
  - b. Written notice including the date, time, and location of the hearing will be sent to all parties.
  - c. At the hearing, all pertinent parties have a right to speak and be questioned by the Presiding Officer. Cross-examination between parties is not permitted. The College will provide options for questioning without confrontation. Each phase of the hearing will be heard by both parties in separate rooms by use of a speaker phone.
  - d. The Reporting Party and the Respondent are allowed to be accompanied by an advocate. The advocate may not present on behalf of either party unless otherwise instructed to do so by the Presiding Officer. If the Reporting Party or the Respondent chooses to have an advocate who is an attorney, notification must be provided to the Presiding Officer at least three (3) College business days prior to the hearing date. In this case, the College Attorney will also be present.
  - e. Both parties have a right to a written notice of the hearing outcome.

### **C. Sanctioning.**

The following sanctions may be imposed for those who have violated these Procedures.

1. Students. (See Procedure 5.3.4.2)
2. Employees.
  - a. Verbal or Written Warning
  - b. Performance Improvement Plan
  - c. Required Counseling
  - d. Required Training or Education
  - e. Demotion (President may impose)
  - f. Suspend with or without Pay (President must impose)
  - g. Termination (President must impose)

h. Other consequences deemed appropriate to the specific violation

Adopted: 03-24-2017