

1.11
EMPLOYMENT DISCRIMINATION
CHAPTER 2
POLICY 1.11

Board of Trustees Approval: 11/13/2002
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I. PURPOSE

Salt Lake Community College (SLCC) is committed to the advancement of knowledge, freedom of thought and inquiry, and the personal, social, and intellectual development of its students, faculty, and staff. An atmosphere of mutual respect among members of our academic community is necessary for us to function as a center of academic freedom and intellectual advancement. As such, it is the policy of the College to provide all personnel with a work environment free from any type of unlawful employment discrimination.

II. POLICY

Employment discrimination and harassment are prohibited by Title VII of the 1964 Civil Rights Act, the Utah Anti-discrimination Act of 1965 and the SLCC Sexual Harassment Avoidance Policy. In addition, various other constitutional provisions, statutes and common law causes of action prohibit such discriminatory conduct (see Procedures for Policy, Section I. References.) It is the policy of the College to prohibit such conduct in compliance with these laws and policy.

All employees are responsible for assuring that employment discrimination does not take place and that the working and educational environment of the College is not threatening, hostile, or offensive to diverse individuals on our campuses and centers. The kinds of employment discrimination prohibited by this policy are those which occur on the basis of race, color, gender, sexual orientation, religion, national origin, disability, age and/or veteran status. The College will make affirmative efforts toward education and support to prevent such misconduct. When violations of this policy occur, employees who engage in such behavior may be subject to various forms of disciplinary actions including expulsion, immediate suspension, or termination from employment. Retaliation against any person who has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy is also prohibited.

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I. REFERENCES

- A. SLCC Faculty Handbook.
- B. Academic Affairs Policy No. 1.01, Academic Freedom, Professional Responsibility and Tenure.
- C. Personnel Policy No. 2.01, Employee Definitions and Categories.
- D. Personnel Policy No. 3.06, Employee Grievance Procedure.
- E. Personnel Policy No. 2.06, Sexual Harassment Avoidance.
- F. Title VII of the Civil Rights Act of 1964, as amended.
- G. The Equal Pay Act of 1963, as amended.
- H. The Americans with Disabilities Act of 1990, as amended.
- I. The Rehabilitation Act of 1973, as amended.
- J. The Age Discrimination in Employment Act of 1967, as amended.
- K. The Vietnam Era Veterans Readjustment Act of 1974, as amended.
- L. The Utah Anti-discrimination Act of 1965, as amended.
- M. State of Utah 1993 Executive Order, Standards and Procedure on Sexual Harassment Prevention.

II. DEFINITIONS

- A. **Cabinet Members** include the President and any other administrative positions so designated by the President. For the purposes of this policy, the appropriate cabinet member is defined as the cabinet member who has direct supervisory responsibility over the area in which the respondent is employed or where the alleged employment discrimination occurred for claims involving outside parties. If the appropriate

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- cabinet member is unavailable or declares a conflict warranting recusal, the President may appoint a designee.
- B. **Complainant** is an individual or group of individuals making a complaint; the individual(s) alleged to be harmed must consent to being identified to the Respondent in the formal resolution procedure, unless such identification is legally withheld.
 - C. **Complaint** is a claim by an aggrieved party or an administrator acting on behalf of the College that an individual has violated a college policy against employment discrimination.
 - D. **Employment Discrimination** under this policy is defined as conduct including words, gestures and other actions, which unfairly disadvantages persons based upon characteristics such as their race, color, gender, sexual orientation, religion national origin, disability, age, and/or veteran status.
 - E. **Employee** refers to all faculty, staff, and students hired on a full-time or part-time basis.
 - F. **Faculty** or **Faculty Member** means all those, of any rank, who teach or conduct other education related activities at or under the auspices of the College including adjunct faculty with teaching or curriculum development responsibilities and other instructional personnel.
 - G. **Harassment** is defined under this policy as unwelcome conduct that is demeaning or derisive of, or occurs substantially because of the race, color, gender, sexual orientation, religion, national origin, disability, age and/or veteran status of a student or employee or groups of these individuals and which creates a hostile learning or work environment.
 - H. **Participant** means a person, other than a student, faculty or staff member, who is participating or attempting to participate in or is receiving or attempting to receive the benefits of any program, service or activity conducted under the sponsorship or auspices of the College, including but not limited to applicants for admission, applicants for employment, clients, spectators, visitors, vendors, and volunteers.
 - I. **Respondent** is the person against whom the claim is made.

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- J. **Responsible Person** is the appropriate supervisor, who may be a lead, foreman, manager, director, division chair, dean, vice president, executive dean, assistant to the president, or others who hold another positional title assigned to College supervisory personnel.
- K. **Retaliation** under this policy is any form of sanction or adverse treatment against a person because that person has asserted, or has assisted another person to assert, a discrimination complaint in either a formal or informal manner with the College or with any state or federal agency, or because that person has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to a discrimination complaint.
- L. **Sexual harassment** is defined in the SLCC Sexual Harassment Avoidance Policy, Personnel Policy 2.06.
- M. **Staff or Staff Member** means a person other than a faculty member who receives compensation for work or services from funds controlled by the College, regardless of the source of the funds, the duties of the position or the amount of compensation paid.
- N. **Student** is a person applying for admission to, admitted to and duly registered as a participant in, or formerly admitted to any program of instruction or training offered by the College at any level, whether or not for credit.

III. PROCEDURES

A. Confidentiality.

Any person who believes he or she is the victim of employment discrimination or who has knowledge of such conduct is encouraged to report that conduct directly to his/her supervisor, or second level supervisor if the supervisor is the respondent, the Director of Equal Employment Opportunity, or the Director of Administrative Services. The confidentiality of all participants in complaint proceedings and investigations should be respected insofar as it does not interfere with the College's obligation to investigate allegations of employment discrimination and to take corrective action.

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Records of all employment discrimination or harassment complaints will be maintained and stored for a minimum of three years in the Director of Equal Employment Opportunity's office and all information contained in the complaint file is classified as confidential.

B. General Information.

1. Supervisors are responsible for taking prompt necessary steps, including appropriate disciplinary action, to ensure and maintain a working environment free of intimidation, coercion, harassment, and retaliation against the Complainant, witnesses, those conducting the investigation, and others involved in the investigative process.
2. When informed of a concern or a complaint, the appropriate supervisor or other responsible person will notify the Director of Equal Employment Opportunity within one working day. Similarly, the Director of Equal Employment Opportunity will notify the appropriate Cabinet member of any employment discrimination concerns filed by a member of his/her faculty or staff within one working day.
3. Any supervisor or other responsible person who is approached with a complaint will advise the Complainant of the option of filing a complaint with their immediate or second- level supervisor or with the Director of Equal Employment Opportunity.
4. All College personnel are required to cooperate in all proceedings conducted pursuant to this policy. Failure or refusal to cooperate in, or interference with, any investigation or proceedings conducted pursuant to this policy will result in disciplinary action up to and including termination.
5. Questions from Cabinet members regarding procedures under this policy and legal proceedings will be referred to the College Legal Counsel. Any written communications regarding final reports and documents for disciplinary action will be reviewed as to form by College Legal Counsel.
6. Office of the Director of Equal Employment Opportunity.

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- a. The Director of Equal Employment Opportunity serves as a resource to the College to provide information, counseling, training, and advice regarding employment discrimination. An employee with a concern or complaint is encouraged to discuss it with the Director of Equal Employment Opportunity in order to clarify whether employment discrimination may be occurring and to determine his or her options, including the pursuit of more formal action.
- b. The Director of Equal Employment Opportunity receives all employment discrimination complaints that are reported and directs all investigations in collaboration with the supervisor(s) involved. Criminal complaints will be investigated by the College Public Safety Office.

C. Complaints: Filing, Informal and Formal Resolution

1. Filing a Complaint.

- a. Any person who believes he or she has been harmed and wishes to assert a employment discrimination complaint should file the complaint with their supervisor or the Director of Equal Employment Opportunity, as soon as possible after the event(s) which give(s) rise to the complaint. Those who believe they are victims of employment discrimination, witnesses, or others may also initiate outside legal action through private sources, the Utah Antidiscrimination and Labor Division (UALD), or the appropriate federal enforcement agency. It is recommended that, where time allows (before applicable statutes of limitations have expired), procedures addressed in (1) the Student Code of Conduct, (2) the Academic Freedom, Professional Responsibility and Tenure Policy, and/or (3) the grievance procedures within the College will be utilized.
- b. A complaint may be made orally or in writing and should set forth in plain language the circumstances which the Complainant believes support the allegation of employment discrimination, the names of the individual(s) against whom the claim is made, and any remedies that the Complainant seeks.
 - i. **Another employee.** When the Respondent is another employee, the Complainant should contact, or be referred to, his or her immediate supervisor or the Director of Equal Employment Opportunity. The

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supervisor, with the assistance of the Director of Equal Employment Opportunity, will explain options and procedures to the Complainant and take immediate action to try to resolve the complaint. The supervisor will notify the second level supervisor of the existence of the complaint and the Director of Equal Employment Opportunity will notify the appropriate Cabinet member. All employment discrimination complaints must be reported regardless of the severity of the incident.

The Director of Equal Employment Opportunity will review the complaint and make a recommendation as to which procedure to follow, informally by the supervisor or formally via an investigation.

- ii. **Immediate Supervisor.** When the Respondent is the employee's immediate supervisor, the employee should report the complaint to the second level supervisor or the Director of Equal Employment Opportunity. The complaint will be reviewed and a decision made by the second level supervisor in coordination with the Director of Equal Employment Opportunity as to which procedure to follow, informally by the supervisor or formally via an investigation. The appropriate Cabinet member will also be notified.
 - iii. **Student(s).** Discrimination complaints involving students should be referred to the Dean of Students.
 - iv. **Third Party.** When an employee observes an apparent act of employment discrimination involving someone else, the employee should report the conduct to his/her immediate supervisor or the Director of Equal Employment Opportunity.
- c. The appropriate supervisor or the Director of Equal Employment Opportunity will explain reasonable options and procedures to the Complainant and take immediate action to try to resolve the complaint.
 - d. Filing a complaint that is frivolous or fails to state facts that raise an issue of illegal employment discrimination may be dismissed by the appropriate Cabinet member upon recommendation from the Director of Equal Employment Opportunity. A person who knowingly and intentionally files a false complaint will be subject to disciplinary actions as described in the College Policy and Procedures Manual.

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- e. A complaint may be handled informally or formally. Informal procedures may include advising and mediation. While a request for formal resolution may be made at any time, the more promptly the complaint is filed and the more information the Complainant can provide, the more likely it is that a satisfactory resolution can occur.
 - f. The supervisor or the Director of Equal Employment Opportunity will advise the Complainant of the College's procedures under this policy and provide information relating to any external remedies including applicable state or federal agency procedures.
 - g. At its discretion and on the advice of its Legal Counsel, the College may choose not to investigate a complaint as long as any external administrative or judicial proceeding initiated by the Complainant is being actively pursued against the College or any of its officers or employees.
2. Filing a Complaint and its Relationship to other College Proceedings:
- a. All employment discrimination complaints will be handled under this policy. If allegations of employment discrimination are raised in proceedings under another established College complaint or grievance procedure, College administrators or faculty involved will refer the employment discrimination complaint to the Director of Equal Employment Opportunity for investigation under this policy.
 - b. In the event of multiple allegations that include claims of employment discrimination, those unrelated claims will be investigated and resolved through established College procedures. Employment discrimination claims will be handled pursuant to this procedure.
3. The Informal and Formal Resolution Processes
- a. **Resolution.** When a complaint of employment discrimination is filed, the resolution process can be either informal or formal as determined by the Director of Equal Employment Opportunity and appropriate supervisor. Consideration will be given to the Complainant's requests regarding the investigation process; however, College officials reserve the right to override these preferences in handling complaints. Additionally, the Director of Equal

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Employment Opportunity may initiate a formal investigation into and resolution of alleged employment discrimination when deemed appropriate. The Director of Equal Employment Opportunity will promptly inform the Respondent of the existence of the charge(s) filed and afford a full and complete opportunity for a response to all charges made. The Director of Equal Employment Opportunity will also inform the Respondent of his/her rights and responsibilities during the investigation and will review the investigative procedures.

- b. **Informal Process.** The complaint may be handled informally if the Complainant, along with the Director of Equal Employment Opportunity, seeks to resolve issues directly with the individual(s) involved or through supervisory personnel. The initial complaint may be submitted either orally or in writing and the appropriate supervisor will use best efforts to resolve the complaint through mediation and negotiation with all parties. The appropriate Cabinet member will be notified by the Director of Equal Employment Opportunity and consulted throughout the investigation.

- i. **Investigation.** The Director of Equal Employment Opportunity will assist the supervisor in conducting a timely complaint investigation.

The extent of the investigation will be determined by the Director of Equal Employment Opportunity and should be completed within 20 working days of receipt of the complaint, unless a longer period of time is deemed necessary. The Director of Equal Employment Opportunity will attempt to keep the parties informed of the progress of the investigation. If the Director of Equal Employment Opportunity determines there is cause to support a formal investigation, the appropriate Cabinet member will be notified and the formal investigation will be initiated.

- ii. **Resolution and Documentation.** If satisfactory resolution is reached informally, no further action will be taken and the matter will be considered closed. If, however, the determination merits any sanctions above a verbal warning, the Director of Human resources must be involved in determining appropriate discipline and reviewing any required documentation.

- c. **Formal Process.** The complaint may be handled formally, at the request of the Complainant, when the complaint is filed with the Office of Equal Employment Opportunity or at any time deemed appropriate by the Director

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of Equal Employment Opportunity. The appropriate Cabinet member will be notified by the Director of Equal Employment Opportunity, consulted throughout the investigation, and will determine corrective action, if any.

- i. **Investigation.** The investigation will be conducted by a two person Investigative Team. Where possible, the team will be composed of the Director of Equal Employment Opportunity and either the Director of Administrative Services or the Dean of Students. If a team member is unavailable or declares a conflict warranting recusal, the President may appoint a designee.

The Team will review the complaint with the appropriate supervisory personnel before conducting a thorough investigation of the complaint. The Team should complete the investigation within 20 working days of receipt of the complaint unless a longer period of time is deemed necessary. The Team will attempt to keep the parties informed of the progress of the investigation. If delays occur, the parties will be informed in writing.

The investigation in the formal process will include interviews with all Complainants and Respondents and any other persons believed to have pertinent information. All witnesses will have the opportunity to review, edit, and acknowledge by signature the accuracy of their own written statements or accountings of their interviews.

Within ten working days of the conclusion of the investigation, unless a longer period of time is deemed necessary, the Team will provide a written Complaint Summary to the Complainant and Respondent. The Complaint Summary will summarize the complaint, response, evidence adduced from the investigation, and the findings. The findings will include a concluding judgment as to whether or not a violation of this policy occurred. The parties will then have ten working days to provide to the Team their written responses to the Complaint Summary. At the end of that ten-day period, the Team will provide the Complaint Summary and any written responses to the Director of Human Resources and the Business Vice President for review.

The Complaint Summary and any written responses will then be presented to the appropriate Cabinet member.

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- ii. **Resolution and Documentation.** If a complaint is found to be factually supported in whole or in part, the appropriate Cabinet member will consult with the Director of Human Resources to determine and implement corrective and remedial steps necessary to eliminate the effects of the employment discrimination.

4. Determination

- a. In making a determination as to whether or not a violation of this policy occurred and the appropriate disciplinary action, the appropriate Cabinet member will consider and review the record in its entirety, including the Complaint Summary with findings and conclusions, and may solicit whatever additional counsel and advice is deemed appropriate to assist in arriving at a determination. The Cabinet member will determine whether to close the complaint, attempt informal conciliation between the parties, or initiate disciplinary proceedings. Should any sanctions or disciplinary actions be invoked, those actions will be subject to due process procedures provided in applicable College policies.
- b. The Cabinet member will provide a written determination to the Director of Equal Employment Opportunity for the case file. This written determination will include any discipline and sanctions to be invoked.
- c. After consulting with the Director of Human Resources, the Cabinet member will notify the Complainant and Respondent in writing about resolution of the claim. A copy of this letter will be provided to the Director of Equal Employment Opportunity for the case file.

D. Remedial Action

- 1. If there appears to be no foundation to the allegation(s), no record will be placed in the Respondent's personnel file.
- 2. If a cause determination is found, the corrective and remedial action that may be imposed upon a faculty or staff member under this policy will be appropriate to the circumstances and may include, but not be limited to, mandatory training, oral

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or written reprimand, warning letter, temporary reduction in pay, probation, suspension with or without pay, or termination.

3. The College does not condone or permit employment discrimination or retaliation against the Complainant or anyone involved in the investigative process; intentional false claims, statements, or bad faith allegations may result in disciplinary action against the person(s) making such allegations.

E. Appeals.

1. Either party may appeal according to applicable College grievance procedures within 10 working days of receipt of the notification from the Cabinet member regarding resolution of the complaint. Failure to file a written appeal within this time will be considered a waiver of the right to an appeal unless the President grants an exception. If neither party submits a timely written appeal, the findings and determination will become final.
2. The filing of an appeal does not preclude a voluntary settlement of the complaint by agreement.

IV. COMPLAINT REVIEW

Within 90 calendar days following resolution of a complaint or the imposition of sanctions resulting from a complaint, the Director of Equal Employment Opportunity will conduct a review to determine if the resolution of the case is being followed. If the review indicates that the resolution is being followed, the matter will be terminated and the case file closed. If the follow-up review indicates that the resolution is not being followed, the case will be referred back to the appropriate Cabinet member for consideration of additional disciplinary actions.

Additional disciplinary actions may be taken against the Respondent and/or the supervisor who failed to ensure that corrective action or resolution was followed or if the unacceptable behavior continued to exist.

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V. REPORTING

The Director of Equal Employment Opportunity will issue an annual report to the President summarizing the nature and types of complaints filed with the Equal Employment Office pursuant to this policy, the identity of the individuals by category (student, faculty, staff, participant), and the ultimate disposition of the complaints. The names and identities of the individuals will be kept confidential.

Policy Originator: Director, Office of Equal Employment Opportunity and Risk Administration