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Responsible Party: Vice President, Human Resources and Diversity

Effective Date: 12/18/2012

Volume 2 - Nondiscrimination and Equal Opportunity

Investigating and Resolving Discrimination, Harassment and Sexual Harassment Complaints

Procedure Effective Date: 12/18/2012

Procedure:

I. INTRODUCTION

- A. Investigating and Resolving Discrimination, Harassment and Sexual Harassment Complaints
- B. Valencia College recognizes and accepts its responsibilities to act in accordance with the College's policy, federal and state laws and regulations of the State Board of Education. Therefore, the College establishes these Nondiscrimination and Equal Opportunity Dispute Resolution Procedures to review, investigate, and resolve allegations of harassment and discrimination on the basis of race, ethnicity, color, national origin, age, religion, disability, marital status, gender, genetic information, sexual orientation and any other factor protected under applicable federal state, and local civil rights laws, rules and regulations ("the Protected Categories"). The College may, from time to time, amend these procedures as necessary.
- C. These internal procedures provide mechanisms for aggrieved students, faculty and staff to receive a fair hearing on issues of harassment and discrimination. Complainants, accused and witnesses who participate in these processes are bound by rules of confidentiality. Employees are not required to exhaust these procedures with regard to any complaint before pursuing remedies outside the College with any external enforcement agencies including, the Equal Employment Opportunity Commission, the Florida Commission on Human Relations, and the Office of Civil Rights of the Department of Education and the Department of Labor.

II. JURISDICTION OF THE OFFICE OF EMPLOYEE RELATIONS, DIVERSITY, AND COMPLIANCE AND THE VICE PRESIDENT FOR HUMAN RESOURCES AND DIVERSITY OFFICE

A. Complaint by Student, Faculty, or Staff against Faculty or Staff

In carrying out the applicable College policies, any of the Vice Presidents, Campus Presidents, Deans, or the Director, Office of Employee Relations, Diversity, and Compliance receives complaints of harassment and discrimination at Valencia, and refers the matter to the Office of Employee Relations, Diversity, and Compliance to investigate or facilitate investigation and make recommendations following such investigations. Consistent with federal and state law and the State Board of Education's and College policies related to harassment and nondiscrimination, these offices will investigate (or facilitate investigation) complaints of harassment and discrimination on the basis of any Protected Category. These offices may also conduct investigations (or facilitate investigations) based upon requests for Administrative Reviews from Deans, Directors, Department Heads, Campus Presidents, Vice Presidents, and the President when those administrators believe that harassment and/or discrimination in violation of federal or state law or the State Board of Education's and College policies may be occurring in their units.

B. Complaint by Student against Student

Upon receipt of a complaint by a student against another student charging harassment or discrimination, the Office of Employee Relations, Diversity, and Compliance shall refer the complaint to the appropriate Dean of Student Services Office. The Office of Employee Relations, Diversity, and Compliance may assist the Dean of Student Services Office with such complaints upon request to do so.

- C. It is a violation of this policy to file a harassment and/or discrimination complaint for the purpose of injuring the reputation or causing harm to another person. Without minimizing the injury that can be suffered by the victim of harassment and/or discrimination, the College also recognizes that the filing of a harassment and/or discrimination complaint can have serious consequences for the person accused of harassment or discrimination. That person, too, has rights that the policy on Nondiscrimination must preserve and protect. A person who abuses this policy by filing a frivolous complaint will himself or herself be subject to discipline if it is determined that the complaint was filed in bad faith. This provision is not meant in any way to discourage legitimate complaints.

III. PRINCIPLE OF NON-RETALIATION

The College strongly encourages any victims of harassment and/or discrimination to report the incident and seek redress, if s/he is unable to resolve it satisfactorily and completely through informal means. The College recognizes the unusual burden that the alleged harassing or discriminatory conduct places on the recipient and acknowledges the necessity for a thorough and careful resolution of all reported cases. It is illegal and contrary to College policy for any individual to engage, whether directly or indirectly, in retaliatory conduct against a person who files a harassment and/or discrimination complaint or gives testimony during an investigation of such a complaint. As used in this paragraph, "retaliatory conduct" means conduct that adversely and unjustifiably affects another's terms and conditions of employment, educational experience, or quality of life, and that is motivated by an intent to cause harm because of the targeted individual's involvement in the filing or investigation of a harassment and/or discrimination complaint. Any student or employee who believes that retaliatory actions have been taken against him or her for having filed a complaint or provided testimony in an investigation of harassment and/or discrimination may seek redress through the Office of the Vice President of Human Relations and Diversity, or the Office of Employee Relations, Diversity, and Compliance.

IV. GENERAL INFORMATION

A. Consultation

Anyone may seek advice, information or counseling on matters related to harassment and/or discrimination without having to lodge an informal or formal complaint. Persons who feel they are being harassed or discriminated against, or are uncertain as to whether what they are experiencing is harassment and/or discrimination, and/or desire information as to their options in dealing with harassment and/or discrimination are encouraged to talk with any of the Vice Presidents, Campus Presidents, Deans, the Director, Office of Employee Relations, Diversity, and Compliance.

B. External Resources

Complainant(s) may also contact external agencies such as the Florida Commission on Human Relations; Equal Employment Opportunity Commission (Miami Office); and the Office of Civil Rights, U.S. Department of Education. The phone numbers for these agencies can be found in the "Government" section (blue pages) of your local phone book.

V. RESOLUTION PROCESS (When the Accused is Faculty or Staff)

A. First Steps: Informal Dispute Resolution

1. The aim of the informal dispute resolution process is not to determine whether there was intent to harass and/or discriminate but to ensure that the alleged harassing and/or discriminatory conduct ceases and that the matter is resolved promptly at the lowest possible level.
2. No disciplinary action is taken in resolving informal complaints. Hence, informal dispute resolution procedures should not be used for severe cases of harassment and/or discrimination, nor should they be used when the Accused has been the subject of a previous formal complaint.
3. Additionally, there is no requirement that informal procedures be used before filing a formal complaint, or that the complaint be put into writing before informal resolution procedures are utilized. Likewise, the Complainant is free to withdraw from informal procedures altogether and file formally with the College.
4. In severe cases of harassment and/or discrimination or instances when the Accused is a repeat offender(s), the College may conduct a College-generated investigation if there is sufficient reason to believe that harassment and/or discrimination could have or does exist.
5. An initial course of action for any faculty member, staff member, or student who feels that s/he is being harassed or discriminated against is for that individual to tell or otherwise inform the Accused that the harassing and/or discriminatory conduct is unwelcome or offensive and must stop. However, in some circumstances this course of action may not be feasible, may be unsuccessful, or the individual may be uncomfortable dealing with the matter in this manner.
6. To encourage individuals to come forward, the College provides several channels of communication, information, and both informal and formal dispute resolution procedures. The College is committed to ensuring that harassment/discrimination ceases. If the problems do not cease after taking any of these informal actions, you are encouraged to immediately contact any of the Vice Presidents, Campus Presidents, Deans, or the Director, Office of Employee Relations, Diversity, and Compliance and to proceed with the negotiated procedure or the formal procedure, as deemed appropriate by the Complainant.
7. Some informal actions that may be appropriate are:

- a. Talk personally with or write a confidential (no third person receives a copy) letter to the Accused informing him/her of the alleged harassing and/or discriminatory conduct, the resulting impact on the Complainant, and what the Complainant wants next, usually "I want the harassing/discriminatory conduct to stop," or "I want to be treated the way a student or fellow employee should be treated." This is a personal step taken solely among the parties.
- b. Contact the Office of Employee Relations, Diversity, and Compliance to resolve the complaint informally with the help of a third party, to be identified by the Office of Employee Relations, Diversity, and Compliance, or an external person identified by the College. The goal here is to allow the parties to resolve complaints without an investigation and without elevating the complaint within the College. However, persons in these positions are obligated to follow up to be sure the situation has been resolved. This action might include referring to an appropriate individual within the College or sharing some of this information with other persons holding positions of responsibility at the College. The third party may:
 - i. Speak to the Accused on behalf of the Complainant;
 - ii. Meet with the Accused and the Complainant together to facilitate communication and explain the College's policy.
 - iii. Request through the Office of Employee Relations, Diversity, and Compliance that a workshop be conducted for the department/ area for purposes of education and/or sensitivity training.

B. Negotiated Procedure

1. This is a more formal procedure which can be chosen by contacting the Office of Employee Relations, Diversity, and Compliance which will assign a negotiator to handle your matter. By this procedure, the Complainant formally requests remedial action on the part of the Accused. If the Accused agrees to participate, both parties work towards resolution with the help of a negotiator.
2. The negotiator may be a member of the Office of Employee Relations, Diversity, and Compliance, another member of the faculty or staff trained for this purpose, or an outside person.
3. A Complainant is not required to seek a negotiated solution, but may bring the matter directly to a formal complaint for resolution by contacting any of the Vice Presidents, Campus Presidents, Deans, or the Director, Office of Employee Relations, Diversity, and Compliance.

a. Initiating the Negotiations

The Complainant gives a statement through the Office of Employee Relations, Diversity, and Compliance which includes the names of the Complainant and the Accused, and the details of the conduct which s/he alleges as harassing and/or discriminatory. The negotiator promptly forwards the report to the Accused, provides the Accused with a copy of the College's complaint policies and procedures, and requests participation in negotiations. The Accused must reply within seven (7) calendar days of receiving the notice.

b. Negotiation Sessions

Meetings are held as quickly as possible and, normally, no more than one (1) week apart. Every effort should be made to reach resolution within one (1) month.

c. Outcomes

The negotiations end when a resolution has been reached or when the Complainant or the Accused has terminated the process. Some examples of possible resolutions include discussion of the feelings and perceptions of the Complainant and the Accused; agreement to terminate the harassing and/or discriminatory conduct; letter to the file; withdrawal of the complaint. (The complaint is resolved to the satisfaction of both parties). Or, the complaint is not resolved: In cases where resolution of the complaint is not possible, the Director, Office of Employee Relations, Diversity, and Compliance, or the negotiator will advise the Complainant of the option of filing a formal complaint within the College.

C. Formal Dispute Resolution

1. The Complainant files a written or verbal complaint with any of the Vice Presidents, Campus Presidents, Deans, or the Director, Office of Employee Relations, Diversity, and Compliance in order to initiate a formal investigation and determine whether a violation of College policy has occurred. The procedure and person handling formal complaints depends on the College community status of the Complainant and the College community status of the Accused. "College community status" refers to whether a person is a student, faculty member, or staff member. Accordingly, formal complaints are filed as follows: (Please note that for purposes of this discussion "student" is defined to include all students whether credit or noncredit.) If the Accused is a student, file the complaint with the Campus Dean of Student Services. If the Accused is a Faculty or Staff member, file the grievance with any of the Vice Presidents, Campus Presidents, Deans, or the Director, Office of Employee Relations, Diversity, and Compliance.
2. All formal investigating officials will conduct prompt investigations. Investigating officials will provide the Accused with the allegations, to which s/he will be required to respond in a timely manner. During the course of the investigation, the formal investigating officials normally will interview the Complainant, the Accused, and witnesses identified by each party. As previously indicated herein, to the extent possible, complaints will be handled confidentially, with the facts made available only to those who have a need to know for purposes of investigation, resolution, or legal compliance. At any time during the formal process, the investigating officials (or designee) may work to negotiate or mediate resolution between the Complainant and the Accused.

a. Some possible outcomes of a formal investigation include:

- i. a negotiated or mediated resolution; or
- ii. a finding that there is a reasonable basis for believing that inappropriate conduct or a violation of College policy occurred; or
- iii. a finding that there is no reasonable basis for believing that inappropriate conduct or a violation of College policy occurred; or
- iv. if the investigator finds there is a reasonable basis for believing that inappropriate conduct or a violation of College policy occurred, the investigator may also issue a separate recommendation to the Assistant Vice president or Campus President, or next layer of management, as may be appropriate, regarding sanctions up to and including termination and/or other corrective action deemed appropriate, such as education and training.

b. Harassment and Discrimination Formal Complaint Procedures

- i. Who May File a Complaint. Employees, applicants for employment, applicants for admission to College programs, participants in College-sponsored activities, other persons affiliated with the College, and students (if the complaint is against an employee or affiliate of the College, but not another student) may file a complaint alleging harassment and/or discrimination with the Office of Employee Relations, Diversity, and Compliance in accordance with these procedures.
- ii. Time for Filing a Complaint. To be timely, a Complainant must submit a complaint to the Office of Employee Relations, Diversity, and Compliance within ninety (90) days of the most recent alleged harassing and/or discriminatory conduct.
- iii. Requirements of a Complaint. Although not required to be accepted for filing, the complaint should be on a form provided by the Office of Employee Relations, Diversity, and Compliance.
 - a) Elements. Each complaint shall include the following:
 - aa) The full name and address of the Complainant, who must be the individual claiming to be harmed by the alleged harassment and/or discrimination;
 - ab) The full name of the Accused;
 - ac) A clear and concise statement of the facts that constitute the alleged harassing and/or discriminatory conduct, including pertinent dates and sufficient information to identify any other individuals who may provide information during the course of an investigation conducted under these procedures and to bring the matter within the jurisdiction of the Office of Employee Relations, Diversity, and Compliance to investigate;
 - ad) A statement by the Complainant verifying that the information supporting the allegations

of harassment and/or discrimination is true and accurate to the best of the Complainant's knowledge;

ae) Information that establishes that both the Complainant and the Accused have a sufficient relationship to the College to require application of the State Board of Education's or College policies as to the alleged harassing and/or discriminatory conduct.

(b) Intake Interview. At or after the time a Complainant initiates a complaint, a representative from the Office of Employee Relations, Diversity, and Compliance shall conduct an interview with the Complainant.

c. Complaint Processing.

- i. Notice to the Accused. The Accused shall be given reasonable notice of the complaint and the allegations contained therein, as well as the opportunity to provide information and to be heard concerning the allegations of the complaint.
- ii. Notice to Others Regarding Complaint. With the exception of the Accused, who is entitled to a summary of the complaint, only those persons with a legitimate need to know will be apprised of the filing of and final disposition of a complaint. Those persons may include, but are not necessarily limited to, appropriate organizational unit administrators (Deans, Department Heads, Directors, Campus Presidents or Vice Presidents), who may have an obligation to monitor the workplace to ensure that retaliatory action does not occur during or after the investigative process concludes, and who may be required to implement recommendations of the Vice President for Human Resources and Diversity Office and/or Office of Employee Relations, Diversity, and Compliance when it completes its investigation.
- iii. Access to Information Regarding the Investigation. The Complainant(s) and the Accused, upon inquiry and during the course of an investigation, shall be advised of the status of the investigation.
- iv. Amending a Complaint. If, during the course of an investigation, a staff member from the Vice President for Human Resources and Diversity Office and/or Office of Employee Relations, Diversity, and Compliance determines that more information is required to enable a meaningful investigation, s/he may request Complainant to clarify or amplify allegations in the complaint. Complainants may also be allowed to add a new Accused or a new charge of harassment and/or discrimination related to the original complaint, so long as the addition falls within the time limits otherwise applicable to the filing of a complaint.
- v. Investigation of Allegations in Complaint. Following receipt of a complaint, the Vice President for Human Resources and Diversity Office and/or Office of Employee Relations, Diversity, and Compliance investigator will act as a neutral fact-finder. The investigator (who may also be a trained/qualified College Faculty or Staff member or outside person) shall assemble statements, documents, and other relevant evidence from the Complainant, the Accused, witnesses, and other identified individuals who have or may have information concerning the allegations set forth in the complaint.

d. Appeal of Finding.

The issues raised on appeal shall be limited to those issues raised during the investigation by the Vice President for Human Resources and Diversity and/or Office of Employee Relations, Diversity, and Compliance. Any issues not raised during the investigation or new issues that could have been raised, but were not, shall be precluded on appeal.

- i. By Accused or by Complainant. Following receipt of a final report, which will identify the Appeals Officer (an Executive Officer of the College) for the matter, the Accused may seek to have a "cause" finding reviewed by the Appeals Officer. Following receipt of a final report, the Complainant may seek to have a "no cause" finding reviewed by the Appeals Officer.
- ii. To secure an appeal, the Complainant or the Accused must file a written request with the designated Appeals Officer no later than thirty (30) days from the date on which the Complainant or the Accused receives a copy of the final report, seeking to have such finding reviewed.
- iii. Upon acceptance of an appeal, the Appeals Officer shall notify the Complainant or the Accused, the Vice President for Human Resources and Diversity and the Office of Employee Relations, Diversity, and Compliance, and those individuals who received a copy of the final investigative report.

- iv. The Appeals Officer shall consider the facts in support of the request and develop any additional facts deemed necessary. The Appeals Officer may request that the Vice President for Human Resources and Diversity and the Office of Employee Relations, Diversity, and Compliance investigator do additional investigation or address particular issues. If the Appeals Officer receives new information pursuant to his/her request for further investigation that s/he believes may change the outcome, the Appeals Officer shall ask the Vice President for Human Resources and Diversity and the Office of Employee Relations, Diversity, and Compliance investigator to reconsider his/her findings in light of the new information. The investigator shall inform the Appeals Officer of his/her reconsidered finding. The Appeals Officer shall apprise the Accused and the Complainant of the new information and the reconsidered finding so that each has an opportunity to review and refute any such additional information before the Appeals Officer renders a final decision.
- v. The Appeals Officer shall complete the review in a timely manner and shall prepare and provide a written decision to the Accused, the Complainant, the Vice President for Human Resources and Diversity and the Office of Employee Relations, Diversity, and Compliance, and to those individuals who received a copy of the final investigative report.
- vi. The Appeals Officer may endorse or reject the findings of the investigator.
- vii. The decision by the Appeals Officer shall be final.

e. Closure.

An investigation shall be considered complete and the investigation shall be closed after the period has passed within which either party may take an appeal if none has been taken, or following a final decision by the Appeals Officer, if either the Accused or the Complainant has requested an appeal. A matter also may be closed administratively when the Vice President for Human Resources and Diversity or the Office of Employee Relations, Diversity, and Compliance decides that further investigation is either impossible or unnecessary.

f. Withdrawal of Complaints.

Once filed, the Vice President for Human Resources and Diversity or the Office of Employee Relations, Diversity, and Compliance has an obligation to investigate complaints raising significant claims of harassment and/or discrimination. However, in appropriate circumstances, and in the discretion and judgment of either the Vice President for Human Resources and Diversity or Office of Employee Relations, Diversity, and Compliance the College may agree, upon a written and signed request to do so by the Complainant, to withdraw a complaint. A Complainant seeking to withdraw a complaint must set forth reasons in the request that support withdrawal. The Vice President for Human Resources and Diversity or the Office of Employee Relations, Diversity, and Compliance shall notify both the Complainant and the Accused of such withdrawal.

g. Further Provisions on Time Limits

Any of the time limits contained within this formal complaint procedure or within the procedures for dispute resolution (all stages) may be extended.

Procedure Related Items

There are no related items for this Procedure