

## 1B.4 Nondiscrimination in Employment and Education Opportunity

**Part 1. Policy Statement.** DCTC is committed to a policy of nondiscrimination in employment and education opportunity. No person shall be discriminated against in the terms and conditions of employment, personnel practices, or access to and participation in, programs, services, and activities with regard to race, sex, color, creed, religion, age, national origin, disability, marital status, status with regard to public assistance, or sexual orientation. In addition, discrimination in employment based on membership or activity in a local commission as defined by law is prohibited.

Harassment on the basis of race, sex, color, creed, religion, age, national origin, disability, marital status, status with regard to public assistance, or sexual orientation is prohibited. Harassment may occur in a variety of relationships, including faculty and student, supervisor and employee, student and student, staff and student, employee and employee, and other relationships with persons having business at, or visiting the educational or working environment.

This policy is directed at verbal or physical conduct that constitutes discrimination /harassment under state and federal law and is not directed at the content of speech. In cases in which verbal statements and other forms of expression are involved, DCTC will give due consideration to an individual's constitutionally protected right to free speech and academic freedom. However, discrimination and harassment are not within the protections of academic freedom or free speech.

The college shall maintain and encourage full freedom, within the law, of expression, inquiry, teaching and research. Academic freedom comes with a responsibility that all members of our education community benefit from it without intimidation, exploitation or coercion.

This policy shall apply to all individuals affiliated with DCTC, including but not limited to, its students, employees, applicants, volunteers, agents, and Board of Trustees, and is intended to protect the rights and privacy of both the complainant and respondent and other involved individuals, as well as to prevent retaliation or reprisal. Individuals who violate this policy shall be subject to disciplinary or other corrective action.

This policy supersedes all existing college non-discrimination policies.

### Part 2. Definitions.

**Subpart A. Consensual Relationship.** A sexual or romantic relationship between two persons who voluntarily enter into such a relationship. Employees who are members of the same household should also refer to the Board of Trustees Nepotism policy 4.10.

**Subpart B. Discrimination.** Discrimination is defined as conduct that is directed at an individual because of his or her protected class and that subjects the individual to different treatment by agents or employees so as to interfere with or limit the ability of the individual to participate in, or benefit from, the services, activities, or privileges provided by the college or otherwise adversely affects the individual's employment or education.

**Subpart C. Discriminatory harassment.** Discriminatory harassment is defined as verbal or physical conduct that is directed at an individual because of his or her protected class, and that is sufficiently severe, pervasive, or persistent so as to have the purpose or effect of creating a hostile work or educational environment.

As required by law, DCTC has further defined sexual harassment as a form of sexual discrimination which is prohibited by state and federal law. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education, evaluation of a student's academic performance, or term or condition of participation in student activities or in other events or activities sanctioned by the college; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions or other decisions about participation in student activities or other events or activities sanctioned by the college; or
3. Such conduct has the purpose and effect of threatening an individual's employment; interfering with an individual's work or academic performance; or creating an intimidating, hostile, or offensive work or educational environment.

**Subpart D. Employee.** DCTC personnel include all faculty, staff, administrators, teaching assistants, graduate assistants, residence directors and student employees.

**Subpart E. Protected Class.** Protected class for the purpose of this policy means that discrimination and harassment in employment and education are prohibited on the basis of: race, sex, color, creed, religion, age, national origin, disability, marital status, status with regard to public assistance or sexual orientation. In addition, membership or activity in a local human rights commission is a protected class in employment.

**Subpart F. Retaliation.** Retaliation includes, but is not limited to, intentionally engaging in any form of intimidation, reprisal or harassment against an individual because he or she made a complaint under this policy or assisted or participated in any manner in an investigation, or process under this policy, regardless of whether a claim of discrimination or harassment is substantiated; or associated with a person or group of persons who are disabled or are of a different race, color, creed, religion, sexual orientation or national origin. Retaliation may occur whether or not there is a power or authority differential between the individuals involved.

**Subpart G. Sexual harassment and violence as sexual abuse.** Under certain circumstances, sexual harassment or violence may constitute sexual abuse according to Minnesota law. In such situations, DCTC shall comply with the reporting requirements in Minnesota Statutes Section 626.556 (reporting of maltreatment of minors) and Minnesota Statutes Section 626.557 (Vulnerable Adult Protection Act). Nothing in this policy will prohibit DCTC from taking immediate action to protect victims of alleged sexual abuse. DCTC 1B.5 Sexual Violence Policy addresses sexual violence.

**Subpart H. Student.** "Student" means an individual who is:

1. admitted, enrolled, registered to take or is taking one or more courses, classes, or seminars, credit or noncredit, at the college; or
2. between terms of a continuing course of study at the college, such as summer break between spring and fall academic terms; or
3. expelled or suspended from enrollment as a student at the college, during the pendency of any adjudication of the student disciplinary action.

**Part 3. Consensual Relationships.** An employee of DCTC shall not enter into a consensual relationship with a student or an employee over whom he or she exercises direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority or influence. In the event a relationship already exists, the college shall develop a procedure to reassign evaluative authority as may be possible to avoid violations of this policy. This prohibition does not limit the right of an employee to make a recommendation on personnel matters concerning a family or household member where the right to make recommendations on such personnel matters is explicitly provided for in the applicable collective bargaining agreement or compensation plan.

**Part 4. Retaliation.** Retaliation as defined in this policy is prohibited at DCTC. Any individual subject to this policy who intentionally engages in retaliation shall be subject to disciplinary or other corrective action as appropriate.

DCTC shall establish procedures to implement this policy. The Nondiscrimination in Employment and Education Opportunity Policy and Procedures of DCTC shall comply with MnSCU Policy 1B.1 and Procedure 1B.1.1.

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**Related Documents:**

- [Procedure 1B.1.1](#) - Report/Complaint of Discrimination/Harassment Investigation and Resolution
- [Minnesota State Statute 626.556](#) - reporting of maltreatment of minors
- [Minnesota State Statute 626.557](#) - Vulnerable Adult Protection Act

## **Procedure 1B.4.1 Report/Complaint of Discrimination/Harassment Investigation and Resolution**

### **Part 1. Purpose and applicability.**

**Subpart A. Purpose.** This procedure is designed to further implement DCTC policies relating to nondiscrimination by providing a process through which individuals alleging violation of Policy 1B.4 Nondiscrimination in Employment and Education Opportunity may pursue a complaint. This includes allegations of retaliation, or discrimination or harassment based on sex, race, age, disability, color, creed, national origin, religion, sexual orientation, marital status, or status with regard to public assistance. In addition, discrimination in employment based on membership or activity in a local commission as defined by law is prohibited.

**Subpart B. Applicability.** This procedure shall apply to all individuals affiliated with DCTC, including its students, employees, and applicants for employment, and is intended to protect the rights and privacy of both the complainant and respondent and other involved individuals, as well as to prevent retaliation/reprisal. Individuals who violate this procedure shall be subject to disciplinary or other corrective action.

A single act of discrimination or harassment may be based on more than one protected class status. For example, discrimination based on anti-Semitism may relate to religion, national origin, or both; discrimination against a pregnant woman might be based on sex, marital status, or both; discrimination against a transgender or transsexual individual might be based on sex or sexual orientation.

Not every act that may be offensive to an individual or group constitutes discrimination or harassment. Harassment includes action beyond the mere expression of views, words, symbols or thoughts that another individual finds offensive. To constitute a violation of DCTC Policy 1B.4, conduct must be considered sufficiently serious to deny or limit a student's or employee's ability to participate in or benefit from the services, activities, or privileges provided by DCTC.

**Subpart C. Scope.** This procedure is not applicable to allegations of sexual violence; allegations of sexual violence are handled pursuant to Policy 1B.5 Sexual Violence and DCTC Procedure 1B.5.1. In addition, harassment and discrimination complaints not arising from alleged violations of DCTC Policy 1B.4, are to be addressed under other appropriate policies and established practices.

**Part 2. Definitions.** The definitions in DCTC Policy 1B.4 also apply to this procedure.

**Subpart A. Designated officer.** Designated officer means an individual designated by the college president to be primarily responsible for conducting an initial inquiry, determining whether to proceed with an investigation under this procedure, and investigating or coordinating the investigation of reports and complaints of discrimination/harassment in accordance with this procedure.

Prior to serving as the designated officer, the individual must complete investigator training provided by the Office of the Chancellor.

**Subpart B. Decision maker.** Decisionmaker means a high level administrator designated by the college president to review investigative reports, to make findings whether DCTC Policy 1B.4 has been violated based upon the investigation, and to determine the appropriate action for the institution to take based upon the findings.

Prior to serving as a decisionmaker for complaints under this procedure, administrators must complete decisionmaker training provided by the Office of the Chancellor.

**Subpart C. Retaliation.** Retaliation means any action against a complainant or other individual because the individual:

1. Participated in the investigation or resolution of a complaint under this procedure;
2. Opposed conduct the individual believes was in violation of DCTC Policy 1B.4.; or
3. Associates with another individual who is protected from discrimination under Policy 1B.4.

**Part 3. Consensual relationships.** Policy 1B.4 Nondiscrimination in Employment and Education Opportunity prohibits consensual relationships between an employee and a student or another employee over whom he or she exercises direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority or influence, whether or not both parties appear to have consented to the relationship, except as noted.

Examples of prohibited consensual relationships include, but are not limited to:

- An employee and a student if the employee is in a position to evaluate or otherwise significantly influence the student's education, employment, housing, participation in athletics, or any other college or university activity (employee includes, for example, administrators, coaches, advisors, program directors, counselors);
- A faculty member and a student who is enrolled in the faculty member's course, who is an advisee of the faculty member, or whose academic work is supervised or evaluated by the faculty member; and
- A supervisor and an employee under the person's supervision.

A faculty member or other employee is prohibited from undertaking a romantic or sexual relationship or permitting one to develop with a student or supervisee who is enrolled in the person's class or is subject to that person's supervision or evaluation.

If a consensual, romantic or sexual relationship exists between an employee and another individual and subsequent events create a supervisor/supervisee, faculty/student or similar relationship between them, the person with evaluative or supervisory authority is required to report the relationship to his or her supervisor so that evaluative functions can be reassigned if possible.

This procedure does not cover consensual relationships between individuals that do not require one to exercise direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority or influence over the other.

This prohibition does not limit the right of an employee to make a recommendation on personnel matters concerning a person with whom they have a consensual relationship where the right to make recommendations on such personnel matters is explicitly provided for in the applicable collective bargaining agreement or compensation plan.

#### **Part 4. Reporting incidents of discrimination/harassment**

**Subpart A. Reporting an incident.** Any individual who believes she or he has been or is being subjected to conduct prohibited by DCTC Policy 1B.4 is encouraged to report the incident to the designated officer. The report/complaint should be brought as soon as possible after an incident occurs.

Any student, faculty member or employee who knows of, receives information about or receives a complaint of discrimination/harassment is strongly encouraged to report the information or complaint to the designated officer at DCTC.

**Subpart B. Duty to report.** Administrators and supervisors shall refer allegations of conduct that they reasonably believe may constitute discrimination or harassment under DCTC Policy 1B.4 to the designated officer, or in consultation with the designated officer may inquire into and resolve such matters.

**Subpart C. Reports against a president.** A report/complaint against the college president shall be filed with the Office of the Chancellor. However, complaints against the college president shall be processed by the college if the president's role in the alleged incident was limited to a decision on a recommendation made by another administrator, such as tenure, promotion or non-renewal, and the president had no other substantial involvement in the matter.

**Subpart D. Reports against Office of the Chancellor employees or Board of Trustees.** For reports/complaints that involve allegations against Office of the Chancellor employees, the responsibilities identified in this procedure as those of the president are the responsibilities of the chancellor. Reports/complaints that involve allegations against the chancellor or a member of the Board of Trustees shall be referred to the chair or vice chair of the Board for processing. Such reports/complaints may be assigned to appropriate system personnel or outside investigatory assistance may be designated.

**Subpart E. False statements prohibited.** Any individual who is determined to have provided false information in filing a discrimination report/complaint or during the investigation of such a report/complaint may be subject to disciplinary or corrective action.

**Subpart F. Withdrawn complaints.** If a complainant no longer desires to pursue a complaint, DCTC reserves the right to investigate and take appropriate action.

**Part 5. Right to representation.** In accordance with federal law and applicable collective bargaining agreement and personnel plan language, represented employees may have the right to request and receive union representation during an investigatory meeting.

Nothing in this procedure is intended to expand, diminish or alter in any manner whatsoever any right or remedy available under a collective bargaining agreement, personnel plan or law. Any disciplinary action imposed as a result of an investigation conducted under this procedure will be processed in accordance with the applicable collective bargaining agreement or personnel plan.

**Part 6. Investigation and Resolution.** DCTC has an affirmative duty to take timely and appropriate action to stop behavior prohibited by DCTC Policy 1B.4, conduct investigations and take appropriate action to prevent recurring misconduct.

**Subpart A. Personal resolution.** This procedure neither prevents nor requires the use of informal resolution by an individual who believes he or she has been subject to conduct in violation of DCTC Policy 1B.4. In such a situation, the individual should clearly explain to the alleged offender as soon as possible after the incident that the behavior is objectionable and must stop. If the behavior does not stop or if the individual believes retaliation may result from the discussion, the individual should report to the designated officer. Under no circumstance shall an individual be required to use personal resolution to address prohibited behaviors.

**Subpart B. Information privacy.** Confidentiality of information obtained during an investigation cannot be guaranteed; such information, however, will be handled in accordance with applicable federal and state data privacy laws.

**Subpart C. Processing the complaint.** The designated officer must be contacted in order to initiate a report/complaint under this procedure. The scope of the process used in each complaint/report shall be determined by the designated officer based on the complexity of the allegations, the number and relationship of individuals involved, and other pertinent factors.

1. **Jurisdiction.** The designated officer shall determine whether the report/complaint is one which should be processed through another college procedure available to the complainant; if appropriate, the designated officer shall direct the complainant to that procedure as soon as possible.
2. **Conflicts.** The designated officer should identify to the college president any real or perceived conflict of interest in proceeding as the designated officer for a specific complaint. If the college president determines that a conflict exists, another designated officer shall be assigned.
3. **Information provided to complainant.** At the time the report/complaint is made, the designated officer shall:
  - a.) inform the complainant of the provisions of DCTC Policy 1B.4 and this procedure;
  - b.) provide a copy of or Web address for DCTC Policy 1B.4 and this procedure to the complainant;
  - c.) determine whether other individuals are permitted to accompany the complainant during investigatory interviews and the extent of their involvement; and
  - d.) inform the complainant of the provisions of DCTC Policy 1B.4 prohibiting retaliation.
4. **Complaint documentation.** The designated officer shall insure that the complaint is documented in writing. The designated officer may request, but not require the complainant to document the complaint in writing using the complaint form of the college.
5. **Information provided to the respondent.** At the time initial contact is made with the respondent, the designated officer shall inform the respondent in writing of the existence and general nature of the complaint and the provisions of the nondiscrimination policy. At the initial meeting with the respondent, the designated officer shall:
  - a) provide a copy of or Web address for DCTC Policy 1B.4 and this procedure to the respondent;
  - b.) provide sufficient information to the respondent consistent with federal and state data privacy laws to allow the respondent to respond to the substance of the complaint;
  - c.) explain to the respondent that in addition to being interviewed by the designated officer, the respondent may provide a written response to the allegations;
  - d.) determine whether other individuals are permitted to accompany the respondent during investigatory interviews and the extent of their involvement; and
  - e.) inform the respondent of the provisions of DCTC Policy 1B.4 prohibiting retaliation.
6. **Investigatory process.** The designated officer shall:
  - a.) conduct a fact-finding inquiry or investigation into the complaint, including appropriate interviews and meetings;
  - b.) inform the witnesses and other involved individuals of the prohibition against retaliation;
  - c.) create, gather and maintain investigative documentation as appropriate;
  - d.) disclose appropriate information to others only on a need to know basis consistent with state and federal law, and provide a data privacy notice in accordance with state law; and
  - e.) handle all data in accordance with applicable federal and state privacy laws.
7. **Interim Actions.**
  - a.) **Employee reassignment or administrative leave.** Under appropriate circumstances, the college president may, in consultation with system legal counsel and labor relations, reassign or place an employee on administrative leave at any point in time during the report/complaint process. In determining whether to place an employee on administrative leave or reassignment, consideration shall be given to the nature of the alleged behavior, the relationships between the parties, the context in which the alleged incidents occurred and other relevant factors. Any action taken must be consistent with the applicable collective bargaining agreement or personnel plan.
  - b.) **Student summary suspension or other action.** Under appropriate circumstances, the college president may, in consultation with system legal counsel, summarily suspend a student at any point in time during the report/complaint process. A summary suspension may be imposed only in accordance with The DCTC Student Conduct Code and associated college procedures. After the student has been summarily suspended, the report/complaint process should be completed within the shortest reasonable time period, not to exceed nine (9) class days. During the summary suspension, the student may not enter the campus or participate in any college activities without obtaining prior permission from the college president. Other temporary measures may be taken in lieu of summary suspension where the president or designee determines such measures are appropriate.
8. **No basis to proceed.** At any point during the processing of the complaint, the designated officer may determine that there is no basis to proceed under DCTC Policy 1B.4. The designated officer shall refer the complaint as appropriate. The designated officer shall notify the complainant and respondent of the outcome as appropriate, in accordance with applicable data privacy laws.

**Subpart D. Resolution.** After processing the complaint the designated officer may consider one or more of the following methods to resolve the complaint as appropriate:

1. conduct or coordinate education/training;
2. facilitate voluntary meetings between the parties;
3. recommend separation of the parties, after consultation with appropriate college personnel;
4. other possible outcomes may include recommending changes in workplace assignments, enrollment in a different course or program, or other appropriate action;
5. the college may use alternative dispute resolution or mediation services as a method of resolving discrimination or harassment complaints. Alternative dispute resolution and mediation options require the voluntary participation of all parties to the complaint;
6. upon completion of the inquiry, the designated officer may dismiss or refer the complaint to others as appropriate.

**Subpart E. Decision process.** If the above methods have not resolved the complaint within a reasonable period of time to the satisfaction of the designated officer, or the designated officer feels additional steps should be taken, the procedures in this subpart shall be followed.

1. **Designated officer.** The designated officer shall:
  - a.) prepare an investigation report and forward it to the decisionmaker for review and decision;
  - b.) take additional investigative measures as requested by the decisionmaker; and
  - c.) be responsible for coordinating responses to requests for information contained in an investigation report in accordance with the Minnesota Government Data Practices Act and other applicable law including, but not limited to, the Family Educational Rights and Privacy Act (FERPA).  
In determining the appropriate response, the designated officer shall consult with the campus data practice compliance official and/or the Office of General Counsel.
2. **Decision maker.** After receiving the investigation report prepared by the designated officer, the decisionmaker shall:
  - a.) determine whether additional steps should be taken prior to making the decision. Additional steps may include:
    1. a request that the designated officer conduct further investigative measures;
    2. a meeting with the complainant, respondent or other involved individuals. If a meeting involving a represented employee is convened, the complainant or respondent may choose to be accompanied by the bargaining unit representative, in accordance with the applicable collective bargaining agreement and federal and state law; and
    3. a request for additional information which may include a written response from the complainant or respondent relating to the allegations of the complaint.
  - b.) take other measures deemed necessary to determine whether a violation of DCTC Policy 1B.4 has been established;
  - c.) when making the decision, take into account the totality of the circumstances, including the nature and extent of the behaviors, the relationship(s) between the parties, the context in which the alleged incident(s) occurred, and other relevant factors;
  - d.) determine the nature, scope and timing of disciplinary or corrective action and the process for implementation if a violation of the nondiscrimination policy occurs. This may include consultation with human resources or supervisory personnel to determine appropriate discipline;
  - e.) As appropriate, consistent with applicable state and federal data privacy laws, report in writing to the complainant, respondent and the designated officer her or his findings, and the basis for those findings, as to whether DCTC Policy 1B.4 has been violated. The written response to the complainant shall be provided within 60 days after a complaint is made unless reasonable cause for delay exists.
  - f.) Conduct that is determined not to have violated DCTC Policy 1B.4 shall be referred to another procedure for further action, if appropriate.

**Part 7. College action.** The college shall take the appropriate corrective action based on results of the investigation, and the designated officer shall make appropriate inquiries to ascertain the effectiveness of any corrective or disciplinary action. Complainants are encouraged to report any subsequent conduct that violates DCTC Policy 1B4.1, as well as allegations of retaliation.

Written notice to parties relating to discipline, resolutions, and/or final dispositions resulting from the report/complaint process is deemed to be official correspondence from the college. In accordance with state law, the college is responsible for filing the complaint disposition concerning complaints against employees with the Commissioner of Employee Relations within 30 days of final disposition.

## **Part 8. Appeal.**

**Subpart A. Filing an appeal.** The complainant or the respondent may appeal the decision of the decisionmaker. An appeal must be filed in writing with the college president or designee within ten (10) business days after notification of the decision. The appeal must state specific reasons why the complainant or respondent believes the decision was improper. In a complaint against the college president or other official who reports directly to the chancellor, an appeal may be considered by the chancellor whether or not the chancellor served as the decisionmaker.

**Subpart B. Effect of review.** For employees represented by a collective bargaining agreement, an appeal under this procedure is separate and distinct from, and is not in any way related to, any contractual protections or procedures. During the pendency of the appeal disciplinary or corrective action taken as a result of the decision shall be enforced. In addition, in cases involving sanctions of suspension for ten (10) days or longer, students shall be informed of their right to a contested case hearing under Minnesota Statutes Chapter 14.

**Subpart C. Appeal process.** The college president or designee shall review the record and determine whether to affirm or modify the decision. The college president or designee may receive additional information if the president or designee believes such information would aid in the consideration of the appeal. The decision on appeal shall be made within a reasonable time and the complainant, respondent and designated officer shall be notified in writing of the decision, consistent with applicable state and federal data privacy laws. The decision on appeal exhausts the complainant's and respondent's administrative remedies under this procedure except as provided herein.

**Part 9. Education and training.** DCTC shall provide education and training programs to promote awareness and prevent discrimination/harassment, such as educational seminars, peer-to-peer counseling, operation of hotlines, self-defense courses, and informational resources. Education and training programs should include education about DCTC Policy 1B.4 and this procedure. DCTC shall promote awareness of DCTC Policy 1B.4 and this procedure, and shall publicly identify the designated officer.

**Part 10. Distribution of college policy 1B.4 and this procedure.** Information regarding DCTC Policy 1B.4 and this procedure shall, at a minimum, be distributed to students at the time of registration and to employees at the beginning of employment. Distribution may be accomplished by posting on an internet Web site, provided all students and employees are directly notified of how to access the policy and procedure by an exact address, and that they may request a paper copy. Copies of the policy and procedure shall be conspicuously posted at appropriate locations at DCTC at all times and shall include the designated officers' names, locations and telephone numbers.

Designated officers also must be identified by name, location and phone number in informational publications such as student catalogs, student and employee handbooks, bulletin boards, campus Web sites and other appropriate public announcements.

**Part 11. Maintenance of report/complaint procedure documentation.** During and upon the completion of the complaint process, the complaint file shall be maintained in a secure location in the office of the designated officer for the college in accordance with the applicable records retention schedule. Access to the data shall be in accordance with the respective collective bargaining agreement or personnel plan, the Minnesota Government Data Practices Act, the Family Educational Rights and Privacy Act or other applicable law.

*Effective date:* February 17, 1997

*Date & Subject of Revisions:*

*January 31, 2007– Procedure completely reviewed – Technical changes throughout. Part 3 – Revised to support the change in the 1B.1 policy concerning consensual relationships*

*Updated January 2008 as per MnSCU revisions*

