

## Policies and Regulations

### NEPN Code: JIAA-R/STI

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#### Students

#### Harassment

##### A. Definitions

**1. Harassment:** Harassment consists of physical or verbal conduct related to a person's race, color, religion, creed, ancestry, national origin, gender (including pregnancy), sexual orientation, age, disability, parental status or marital status or any other basis protected by law, when the conduct is severe or pervasive, and objectively offensive that it:

- a. has the purpose of effecting or creating an intimidating, hostile, or offensive academic environment, or
- b. has the purpose or effect of substantially or unreasonably interfering with a student's academic performance which deprives the student access to educational opportunities.

**2. Sexual Harassment:** Sexual harassment is any unwelcome sexual advance(s), request(s) for sexual favors, and/or other verbal, physical and/or visual contact(s) of a sexual nature, or communication of a sexual nature, including sexual violence when:

- a. submission to such conduct or communication is made, either explicitly or implicitly, a term of a student's academic status or progress;
- b. submission or rejection of such conduct or communication by a student is used as the basis of educational decisions affecting the student; or
- c. submission to or rejection of the conduct or communication by the student is used as the basis for any decision affecting the student regarding benefits and services, honors, programs, or activities available at or through the school; or
- d. such conduct is so severe, pervasive, and objectively offensive that such conduct or communication has the purpose or effect of depriving the student access to educational opportunities or benefits provided by the school.

Sexual harassment may include, but is not limited to, the following conduct when such conduct is severe, pervasive, and objectively offensive:

- a. unwelcome verbal harassment or abuse based upon gender;

- b. unwelcome pressure for sexual activity;
- c. unwelcome, gender motivated, or inappropriate patting, pinching, or physical contact, other than necessary restraint of students by instructors, administrators, or other school personnel to avoid physical harm to persons or property;
- d. unwelcome behavior or words, based upon gender, including demands for sexual favors, accompanied by implied or overt threats concerning a student's educational status;
- e. unwelcome behavior or words, based upon gender, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to a student's educational status; or
- f. sexual violence which includes: physical sexual acts against a person's will, or where a person is incapable of giving consent.

**B. Reporting Incidents of Harassment – Grievance Procedures**

Any student or parent of any minor student who believes he or she has been the victim of harassment as defined above by a student or by school personnel of Southeast Technical College shall report the alleged acts immediately to an Southeast Tech staff member, Southeast Tech administrator, Southeast Tech's Human Resource Specialist, Civil Rights Officer/Title IX Coordinator or Southeast Tech's Vice President of Student Affairs on the Complaint Investigation form available from Southeast Tech's Human Resources Department.

1. **Designated Personnel.** Southeast Tech hereby designates Southeast Tech's Vice President of Student Affairs as the Institute's Civil Rights Officer/Title IX Coordinator to address reports or complaints of harassment from a student. Any Southeast Tech administrator is designated by Southeast Tech to receive reports of harassment.

Before a student makes a report of sexual violence, the supervisor should inform the student 1) of the obligation to report the names of the alleged perpetrator and student involved as well as relevant facts to the Civil Rights Officer/Title IX Coordinator; 2) the student's option to request that Southeast Tech maintain his or her confidentiality, which the Civil Rights Officer/Title IX Coordinator will consider; and 3) that the student has the ability to share information confidentially with counseling services.

Upon receipt of a report of harassment, the supervisor shall ask the individual to complete the Complaint Investigation form and immediately notify the Civil Rights Officer/Title IX Coordinator and forward the report to the Southeast Tech Civil Rights Officer/Title IX Coordinator. Failure to forward any harassment report or complaint as provided herein will result in disciplinary action. If the complaint involves the Civil Rights Officer/Title IX Coordinator, the complaint shall be filed directly with the President. Southeast Tech shall post in the Southeast Tech

Student Catalog/Handbook and the website the name of the Civil Rights Officer/Title IX Coordinator including a mailing address and telephone number.

2. **Submission of a complaint or report of harassment.** Submission of a complaint or report of harassment will not affect the student's employment, grades or work assignments.
3. **Confidentiality.** Southeast Tech will make attempts to respect the confidentiality of the complainant and the individual(s) against whom the complaint is filed as much as possible consistent with Southeast Tech's legal obligations and the necessity to investigate allegations of harassment and take appropriate disciplinary action when the conduct has occurred.
4. **Procedure.** The Complainant will be asked to put the facts surrounding the conduct in writing on the Complaint Investigation form provided by Southeast Tech that includes: Complainant's name and address; date of the incident; type of harassment; description of the incident(s); name of any witnesses; what action, if any, has been taken; and signature of the complainant.
5. **Required Reporting.** If the accusations include possible criminal activity such as molestation, sexual battery, or similar contact, the Civil Rights Officer/Title IX Coordinator shall comply with all mandatory state reporting requirements including, but not limited to, contact with the State Department of Social Services.

Nothing in this grievance procedure forecloses individuals from seeking redress for their concerns through other legal avenues, such as the Office of Civil Rights, the Equal Employment Opportunity Commission or the South Dakota Division of Civil Rights.

### **C. Investigation**

Upon receipt of a written report alleging harassment, the Civil Rights Officer/Title IX Coordinator shall immediately authorize an investigation. This investigation may be conducted by the Civil Rights Officer/Title IX Coordinator, other Southeast Tech officials or by a third party designated by Southeast Tech. The investigating party shall provide a written report of the status of the investigation within ten (10) working days to the Civil Rights Officer/Title IX Coordinator.

In determining whether alleged conduct constitutes harassment, Southeast Tech should consider the surrounding circumstances, the nature of the advances, if any, relationships between the parties involved, and the context in which the alleged incident(s) occurred.

The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigating party.

In addition, Southeast Tech may take immediate steps, at its discretion, to protect the complainant, students, and employees pending completion of an investigation of alleged harassment.

During the investigation all parties directly involved in the complaint may have legal or other representation. If any party elects to be represented at any step of the complaint procedure, the name of the representative must be provided in writing to the Civil Rights Officer/Title IX Coordinator within two (2) days of the filing of the complaint, notification of an investigation, or the filing of any appeal.

**D. Southeast Tech Action**

1. Upon receipt of a recommendation that allegations of a complaint constitute a violation of Southeast Tech's policy, Southeast Tech will take such action as appropriate based upon the results of the investigation. A finding will be determined on the basis of whether or not it is more likely than not the conduct as alleged occurred.
2. The results of the investigation of each complaint will be reported in writing and kept on file in the Southeast Tech Human Resources Department. The report shall include findings of fact and will document the disciplinary action taken, if any, as a result of the complaint.
3. The complainant will be advised of Southeast Tech's decision in writing on a form supplied by Southeast Tech within ten (10) working days from the conclusion of the investigation.
4. If either party is not satisfied with the written decision rendered by the Civil Rights Officer/Title IX Coordinator, he/she may appeal the decision in writing to the President within ten (10) calendar days following receipt of the Civil Rights Officer/Title IX Coordinator's decision. The appeal must include the original complaint form, a copy of the written decision, and a written statement as to the reason for appeal.
5. The President will review the material submitted, investigate the circumstances, and respond in writing within fourteen (14) working days of the appeal with a determination to uphold, modify, or reverse the decision of the Civil Rights Officer/Title IX Coordinator. At the President's discretion, an additional investigation may be conducted, including interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The appeal may also include any other methods or documents deemed pertinent by the President.
6. If either party is not satisfied with the decision rendered by the President, he or she may request a hearing in executive session with the School Board. The request for hearing must be submitted in writing through the President's office

within ten (10) working days following receipt of the President's response. The appeal must include the original Complaint Investigation form, a copy of the written decision from the President, and a written statement as to the reasons for appeal. The hearing will be scheduled within thirty (30) working days of the request for the hearing. The parties involved will be notified in writing of the time and date of the scheduled hearing.

7. The School Board will render a decision in writing within ten (10) working days following the hearing.

#### **E. Prohibition against Retaliation**

Southeast Tech strictly prohibits and will discipline any individual who retaliates against any person who reports alleged harassment or who retaliates against any person who testifies, assists, or participates in any investigation, proceeding, or hearing related to a harassment complaint.

Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment. Retaliation is itself a violation of federal and state laws prohibiting discrimination and may lead to separate disciplinary action against an individual.

If any student who has filed a complaint or has testified, assisted or participated in the investigation of harassment believes that he or she has been retaliated against because of his or her participation, he or she should file a complaint following the same procedures set forth above.

#### **F. False Charges**

Charges found to have been intentionally dishonest or made maliciously without regard for truth may subject complainants to disciplinary action.

#### **G. Uncomfortable Situations**

Southeast Tech recognizes that not every uncomfortable situation constitutes harassment. Whether a particular action or incident is a personal, social relationship without a discriminatory educational effect requires a determination based on all the facts and surrounding circumstances. False accusations can have a serious detrimental effect on innocent parties.

#### **H. Discipline**

Any action taken by Southeast Tech pursuant to this policy will be consistent with requirements of applicable Southeast Tech policies. Southeast Tech will take disciplinary action it deems necessary and appropriate, including but not limited to, warning, suspension, or immediate discharge to end harassment and prevent its recurrence.

Legal References:

- Title VI of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972
- South Dakota Executive Order 81-08
- Title II of the Americans with Disabilities Act of 1990
- Section 504 of the Rehabilitation Act of 1973

Regulation		Board Action
approved:	03-22-04	33778
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