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Procedure for {B 4 – Policy Against Unlawful Discrimination, Harassment and Sexual Harassment}

It is the policy of Midway College to maintain a work and academic environment that is free of sexual harassment and discriminatory actions based on race, color, religion, national or ethnic origin, marital status, sex, age, disability, or any other category protected by law. Unlawful discrimination and sexual harassment by officers, managers, faculty, supervisors, employees, students, advisors, vendors, and contractors will not be tolerated. This policy and procedures are applicable and available to faculty, staff, students, and any third parties with a relationship, contractual or otherwise, to Midway College.

Further, any retaliation against an individual who has complained about sexual harassment or unlawful discrimination, or retaliation against individual for cooperating with an investigation of a complaint of sexual harassment or unlawful discrimination, is similarly unlawful and will not be tolerated.

Persons who violate this policy will be subject to disciplinary action up to and including termination of employment, expulsions and/or termination of the contractual relationship.

I. DEFINITIONS OF UNLAWFUL DISCRIMINATION, HARASSMENT AND SEXUAL HARASSMENT

A. **UNLAWFUL DISCRIMINATION**—Unlawful discrimination is strictly prohibited by the College and will not be tolerated. Treating an employee or student differently in the terms or conditions of his or her employment or education on the basis of the employee's or student's race, color, religion, national or ethnic origin, marital status, sex, age, disability, or any other category protected by law constitutes unlawful discrimination.

B. **HARASSMENT**—Harassment is any action, oral or written expression, repeated or persistent series of actions, or expressions that are reasonably perceived as creating an intimidating, offensive, hostile or demeaning educational, employment or College living environment for a student or College employee. A hostile environment is one that interferes with an individual's ability to participate in all and any aspects of academic, professional or residential life.

C. **SEXUAL HARASSMENT**—Sexual harassment is a form of harassment and sex discrimination that is illegal under both federal and state law and is strictly prohibited by the College. Unwelcome sexual advances, requests for sexual favors and other physical or verbal conduct of a sexual nature constitute sexual harassment when:

Submission to such advances, requests or conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement or participation in College programs or activities, or is used as a basis for employment or academic decisions affecting the individual; or

Rejection of such advances, requests or conduct affects a term or condition of an individual's employment or academic advancement or participation in College programs or activities, or is used as a basis for employment or academic decisions affecting the individual; or

Such conduct has the purpose or effect of unreasonably interfering with an individual's work, academic performance, education, or participation in College programs or activities, or of creating an intimidating, hostile work or academic environment.



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Sexual harassment refers to behavior that is not welcome and occurs in a variety of situation which share a common element: the inappropriate introduction of sexual activities or comments into the work or academic environment. Harassing conduct need not be motivated by sexual desire in order to constitute unlawful sexual harassment.

Depending upon the circumstances and how they impact the workplace or academic environment, examples of sexual harassment include but are not limited to such conduct as the following: verbal conduct such as verbal abuse, insults, jokes, sexual innuendoes, offensive remarks about another person's clothing or body; physical conduct such as leering or ogling, obscene gestures, inappropriate touching, fondling or kissing, and coerced sexual contact; repeated unwanted social invitations, sexual flirtations, advances, propositions or unwanted requests for sexual favors; threatened, attempted, or completed physical sexual assault; indecent exposure; displaying or distributing sexually explicit drawings, pictures, or written materials; romantic involvement (even if consensual) between supervisors and subordinates that impacts the workplace and/or other individuals in areas such as assignments, advancements and benefits; romantic involvement (even if consensual) between supervisors and students they supervise that impacts the academic environment and/or other students in areas such as assignments, grades and academic benefits; and any of the above types of behavior carried out through any electronic medium, including but not limited to emails, websites, chat rooms, and text messages.

Sexual harassment can be perpetrated upon members of the opposite gender or one's own gender. Occasional compliments of a socially acceptable nature do not normally constitute sexual harassment. Similarly, depending upon the circumstances (including the nature of course materials or the context of an action), not all verbal or physical conduct will be considered sexual in nature. See IV. EDUCATIONAL SETTING.

II. RETALIATION

It is a violation of this policy to retaliate against a person who has complained about discrimination or harassment, or for assisting, participating or cooperating in an investigation or grievance of a complaint hereunder.

III. WRONGFUL ALLEGATIONS

It is a violation of this policy to bring a knowingly false complaint under this policy. However, failure to prove a claim of sexual harassment does not alone constitute proof of a false and/or malicious accusation.

IV. EDUCATIONAL SETTING

The academic setting is distinct in the workplace, and the College will maintain and encourage academic freedom. Academic curriculum and pedagogical goals that serve legitimate and reasonable educational purposes do not, in and of themselves, constitute sexual harassment or other unlawful discrimination. Those participating in the educational setting bear a responsibility to balance their professional academic responsibilities and academic freedoms with a consideration of the reasonable sensitivities of other participants. Nothing contained in this policy shall be construed to limit the legitimate and reasonable academic responsibilities and academic freedoms of the College's professional educators.

V. PROCEDURES FOR ADDRESSING COMPLAINTS OF UNLAWFUL DISCRIMINATION, HARASSMENT AND SEXUAL HARASSMENT

Anyone who believes he/she has been subjected to discrimination or harassment in violation of this policy should immediately report those concerns to the Director of Human Resources, the Director of Student Affairs, instructor, chair, dean or any other member of the administration with whom you feel comfortable in making such a report. No one is required to make a complaint to the person who is the subject of the complaint. The report must be in writing. If the initial report is oral, the person to whom the report was made shall inform the complainant of the right to file a



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written complaint through these procedures. There is no established time frame for filing a complaint; however individuals are urged to file a complaint as soon as possible after the alleged event or offending act or behavior.

It is the responsibility of all students and employees to bring to the College's attention any indication of sexual harassment and to report promptly any act or event that is believed to be a violation of this policy so that the matter can be investigated promptly and appropriate corrective action taken, if warranted. Complaints or reports shall be directed to the Director of Human Resources, 11 Pinkerton Hall, 512 E. Stephens St., Midway, KY 40347, 859.846.5408.

If a College employee (faculty, staff or student employee) believes that she or he has been sexually harassed within the scope of his or her employment activities by an individual who is not a College employee or student, the College employee should report the alleged sexual harassment to her or his supervisor or to the Director of Human Resources.

If a College student believes that she or he has been sexually harassed on campus by an individual who is not a College employee or student, the student should report the alleged sexual harassment to the Director of Human Resources, an instructor, chair, dean or any other member of the administration with whom the student feels comfortable.

The Director of Human Resources or her/his designee is responsible for accepting and processing discrimination and harassment complaints under the College's Policy Against Unlawful Discrimination, Harassment and Sexual Harassment. Instructors, chairs, deans, supervisors and other members of the administration should notify the Director of Human Resources when they receive or otherwise become aware of complaints. To the extent permissible all complaints shall be treated confidentially and will be investigated by the College in an impartial, prompt, and responsible manner.

Each complaint of discrimination or harassment must be evaluated on a case-by-case basis impartially with reference to the pertinent circumstances. If appropriate, a complaint may be resolved informally. Informal resolutions may be reached by direct communication between the individuals involved or with the help of mediation of a third party. However, such a strategy may be inappropriate when the conduct is severe or when the person responsible for the alleged behavior holds a position of authority. At either Complainant's or Respondent's request any complaint will be removed from an informal resolution process to a formal investigation.

Other complaints will be conducted as formal investigations, including but not necessarily limited to interviews of the Complainant, the Respondent, and witnesses, and review of documents. The rights of both parties are considered in conducting the investigation. Both parties have the right to present witnesses and other evidence on his/her behalf. Both the complainant and the respondent will be notified of the outcome of the investigation and the basis for the decision either orally or in writing. Absent extraordinary circumstances, the investigation will be completed and the parties notified of the results within 15 working days from the date the written complaint is received by the Director of Human Resources. In the event of extraordinary circumstances (to be defined by the Director of Human Resources but to include but not limited to situations with a large number of witnesses or evidence to review, non-cooperation from one or more parties or witnesses), the Complainant and Respondent shall be informed in writing of the need for an extension of time to complete the investigation not to exceed an additional 15 working days, the reasons for an extension of time, and the amount of time needed. In determining whether conduct constitutes a violation of the College's Policy Against Unlawful Discrimination, Harassment and Sexual Harassment, College officials will look at the record as a whole and at all of the circumstances of the situation. The Director of Human Resources or her/his designee, shall conduct the impartial formal investigation and make recommendations for



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appropriate corrective action and discipline as necessary to the Director of Student Affairs where the Respondent is a student and to the Provost where the Respondent is an employee or a third party who is not an employee or student of the College. Either the Director of Student Affairs or the Provost shall decide appropriate corrective action and discipline as necessary. If a violation of this policy is found, Midway will take steps to prevent further harassment and/or discrimination.

If the College determines that a third party has sexually harassed a student on campus or a College employee within the scope of her or his employment, the College will take corrective action. However, individuals who are not students or employees of the College are not subject to discipline under the College's internal processes.

Members of the College community are also advised that behavior that does not rise to the level of harassment or discrimination may nonetheless be unprofessional, inappropriate or disruptive in the workplace, classroom, or residence halls and could warrant appropriate corrective action and discipline.

Members of the College community are expected to cooperate in investigations by designated College officials of alleged discrimination or harassment.

Student complaints of harassment by other students may also be covered by certain provisions of Code of Student Conduct contained in the Midway College Student Handbook, and may be referred to the Director of Student Affairs or the Student Judiciary Board for final resolution and disciplinary action, if warranted. More complete information concerning the student judicial process, rights of the student who is the subject of the complaint, rights of the student bringing forward the complaint, and possible sanctions can be found in the Code of Student Conduct section of the Midway College Student Handbook.

VI. CONFIDENTIALITY

The College will make reasonable efforts to keep all information relating to complaints under this policy confidential on a need-to-know basis, to the extent consistent with the College's legal obligations, its need to investigate allegations, and its need to take corrective and/or disciplinary actions. All participants in the grievance process or any investigation of any allegation hereunder shall respect the confidentiality of the process and violation of confidentiality on a need-to-know basis is a violation of this policy.

VII. CORRECTIVE AND/OR DISCIPLINARY ACTION

In the event that the investigation reveals that unlawful discrimination, harassment, sexual harassment, or other inappropriate or unprofessional conduct (even if not unlawful) has occurred, further action will be taken, including corrective and/or disciplinary action, up to and including termination or expulsion in accordance with appropriate College procedures (for students see Midway College Student Handbook; for staff see Midway College Policies and Procedures, Section B15; for faculty see Midway College Policies and Procedures, Section F7 and Faculty Handbook). If a violation of this policy is found, Midway will take steps to prevent further harassment and/or discrimination.

VIII. STATE AND FEDERAL AGENCIES

In addition to the above, employees or students who believe they may have been subjected to unlawful discrimination, harassment, or sexual harassment, may file a formal complaint with government agencies. Using the College's complaint process does not prohibit an employee or student from filing a complaint with these agencies.

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U. S. Department of Education
Office for Civil Rights
Philadelphia Office
100 Penn Square East, Suite 515
The Wanamaker Building
Philadelphia, PA 19104-3326
(215) 596-6787
TDD: (215) 596-6794

Kentucky Commission on Human Rights
332 W. Broadway, 7th Floor
Louisville, KY 40202
Phone: (502) 595-4024
Toll-free: (800) 292-5566
TDD: (502) 595-4084

U.S. Equal Employment Opportunity Commission
1801 L. Street, N.W.
Washington, D.C. 20507
(800) 669-4000

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COMPLAINT FORM

Report Filed By: _____ Date _____

Report Filed With: _____

Type of Harassment _____

Allegation: _____

Date of Incident: _____ Time _____ a.m. OR p.m.

Location: Building _____

Room No _____

Other Location _____

Names of persons who may verify the allegations or provide additional information:

Describe Incident: _____
