

Davis Applied Technology College: A Utah College of Applied Technology Campus Anti-Harassment/Discrimination Policy

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Board Approval: 22 April 2004

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1. Purpose

The purpose of the Davis Applied Technology College: a Utah College of Applied Technology College Campus (College Campus) Anti-Harassment/Discrimination Policy is to create an environment that is supportive of the College Campus objectives, partners, students and employees by striving to create and maintain a campus environment in which people are treated with dignity, decency and respect. Maintaining a campus free from sex discrimination or sexual harassment, including sexual violence is important for all students and employees. The environment of the College Campus should be characterized by mutual trust and the absence of intimidation, oppression and exploitation. Employees and students should be able to work and learn in a safe yet stimulating atmosphere. The accomplishment of this goal is essential to the mission of the College Campus and the College Campus is committed to this objective through enforcement of this policy and through awareness of employees. The College Campus seeks to prevent, correct and discipline behavior that violates this Policy.

2. References

2.1. Family Educational Rights and Privacy Act (FERPA).

2.2. Titles IV, VI and VII of the 1964 Civil Rights Act

2.3. Title IX of the Education Amendments of 1972.

2.4. Violence Against Women Reauthorization Act of 2013

2.5. Utah Code Annotated, Section 34A-5-106, Utah Anti-discrimination Act.

2.6. Utah Code Annotated, Section, 62A-4a-403, Reporting Requirements

2.7. Utah Code Annotated Section 63-2, Government Records Access and Management Act (GRAMA).

3. Definitions

3.1. Sexual Harassment – Unwelcome sexual advances, requests for sexual favors, 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 a student's academic success, or a person's participation in an activity or service; (2) submission to or rejection of such conduct is used as the basis for affecting employment or academic decisions, or participation in an activity or service; or (3) such conduct interferes with employment or academic performance, or creates an intimidating, hostile, or offensive working or learning environment.

3.2. Professional Discussion - The free and open discussion of issues or theories relating to sexuality or gender in a professional setting, when appropriate to subject matter, will be presumed not to constitute sexual harassment even if it offends or embarrasses an individual, unless other factors are

involved. Such factors include targeting the discussion to an individual or carrying out the discussion in terms that are both patently unnecessary and gratuitously offensive.

3.3. Employer Retaliation – Adverse employment actions taken against any employee who rejects, protests, or complains about harassment. Retaliation may include disciplining, changing work assignments, providing inaccurate work information to, or refusing to cooperate or discuss work-related matters with any employee because that employee has complained about or resisted harassment, discrimination or retaliation. This may also apply to any witnesses who provide information or testimony in the investigation of a complaint.

4. Policy

4.1. No individual may engage in conduct that constitutes unlawful harassment or discrimination as defined under applicable law or policy. This prohibition pertains to, but is not limited to, any illegal or unwelcome act or omission that is based on race, color, creed, religion, national origin, sex, age, disability, or other legally protected category. It also pertains to conduct in violation of other applicable state or federal law, or regulation, or internal policy.

4.2. Violators shall be subject to disciplinary action including termination or referral for criminal prosecution where appropriate.

4.3. Any employee who has reason to believe that a child has been subjected to sexual abuse, or physical abuse, shall immediately notify a designated complaint officer, Title IX officer, or law enforcement agency.

4.4. College Campus employees with supervisory responsibility who know, or have reason to know, of a harassment or discrimination violation must take immediate action to correct the situation.

4.5. The initial notice of complaint or inquiry may be submitted either orally or in writing. Anonymous complaints will be taken seriously and investigated.

4.6. Claims of Sexual Harassment – A claim under this policy may be based on the conduct of any employee of the College Campus. Any person who believes that there is or has been an act of sexual harassment or retaliation has an obligation to report it immediately. Individuals who believe they are victims, or are witness to such acts, may utilize one or more of the following:

4.6.1. Seek advice from a designated complaint officer / Title IX officer, which is the Director of Human Resources (593-2393) or Human Resources Specialist (593-2326).

4.6.2. Seek to resolve issue(s) directly with the accused.

4.6.3. Seek to resolve issue(s) through supervisory personnel.

4.6.4. Notify a DATC Vice President or the Campus President

4.6.5. File a complaint with the appropriate external agency.

4.6.1.1. False Claims - An employee who knowingly and intentionally files a false or misleading complaint under this policy may be subject to disciplinary action. However, if after investigation, a claim is found to be unsubstantiated, this does not necessarily mean the claim was false. So long as the employee provides true and accurate information it is not considered a false claim.

4.7. Retaliation – Retaliation against any person who has filed a complaint, testified, assisted or participated in any manner in an investigative proceeding or hearing is prohibited. Individuals found guilty of retaliation may face disciplinary action, up to and including termination.

4.8. Records - Records of harassment or discrimination complaints are to be maintained by the Human Resource Office as required by law and regulation. The records will be kept in a separate and confidential file as required by the applicable law and regulation. Information gathered, developed and documented in an investigation will be regarded as a “protected” record.

4.9. Outside Reporting Procedures - Nothing in this policy shall prohibit a person from filing an employment discrimination claim directly with the appropriate external agency.

4.10. Education and Training - Training programs will include: confirmation that the institution prohibits these offenses; the definition of the offenses in the applicable jurisdiction; the definition of consent, with reference to sexual offenses; “safe and positive” options for bystander intervention an individual may take to prevent harm or intervene; and how to recognize the signs of abusive behavior and how to avoid potential attacks.

4.10.1. New Hires - As part of the new hire orientation, the harassment policy and procedures will be reviewed with new employees, and they will be given a copy of the College Campus harassment policy and sign a statement that they have received and understand it. This training will provide primary prevention and identify programs that promote awareness of rape, domestic violence, dating violence, sexual assault, and stalking.

4.10.2. Ongoing Employee Training - All employees should be reminded at least annually about the College Campus anti-harassment policy and reporting procedures.

4.10.3. Management Training - Department Directors and Supervisors should receive annual training in applying anti-harassment policy and procedures, including effective investigation procedures, effective listening procedures, safety and confidentiality, Employee Assistance Program referral procedures, and sensitivity to employee fears of embarrassment, blame, and retaliation.

4.11. Circumstances – Conduct alleged to be sexual harassment will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context, and duration of the questioned behavior. Although repeated occurrences generally create a stronger claim, a single occurrence may constitute sexual harassment. Sexually-related conduct may form the basis of a sexual harassment claim if a reasonable person would consider it sufficiently severe or pervasive to interfere with employment or academic performance. Sexual harassment issues may range from concerns or complaints and will be investigated and handled at the appropriate level.

4.12. Confidentiality – The confidentiality of all parties involved in a sexual harassment complaint shall be strictly respected insofar as it does not interfere with the obligation to investigate allegations of misconduct and to take corrective action or as otherwise provided by law.

4.13. Employee Retaliation – An employee accused of harassment or inappropriate sexual conduct is prohibited from contacting the victim in relation to the alleged conduct or in any way attempting to prevent the victim from pursuing the harassment or inappropriate sexual conduct complaint. The accused employee shall not question, coerce, intimidate, retaliate or communicate in any way during the investigation with the person who has filed a report, except that of job required interaction. Communication that must occur due to an employment or work necessity shall be done professionally

and courteously and shall be limited to the purpose of accomplishing the task and shall be limited in content to the task. Any action of this sort will subject the employee to disciplinary action up to and including termination, regardless of the outcome of the harassment complaint.

4.13.1. Employer Retaliation – Adverse employment actions taken against any employee who rejects, protests, or complains about harassment is prohibited. This includes retaliation against the complainant as well as any witnesses who provide information or testimony in the investigation of a complaint.

4.14. Consensual Relationships – Romantic or sexual relationships between a supervisor and an employee are prohibited. If a supervisor and employee choose to have a consensual relationship, immediate steps must be taken to modify reporting responsibility. Employees in this situation should contact the Director of Human Resources.

4.14.1. Fraternalization – Romantic, amorous, or sexual relationships between an employee and College Campus students are discouraged. When an employee's job duties place them in a position of authority over students, such as Faculty, Student Services, Financial Aid, Marketing & Public Relations, or campus supervisory positions, they are prohibited from having amorous relationships with students, due to the imbalance of power that exists. Should a complaint of sexual harassment be filed, the party with the greater authority may not be able to use perceived mutual consent as the sole defense if the relationship is considered "unwelcome" by the party filing the complaint.

4.14.2. Employees must exercise care and discretion when developing and carrying on personal friendships and social connections with students. Certain social interactions may be appropriate such as attending weddings, funerals, and other significant personal events. However, employees must recognize their behavior and conduct outside of work could potentially impact their ability to perform their job functions. Personal interaction with students must always be considered in context with maintaining professional boundaries and do not interfere with the performance of required job duties.