

SJSU Research Foundation Discrimination, Harassment, and Retaliation Prevention Policy

Human Resources

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1.0 Purpose

SJSU Research Foundation (Research Foundation) is an equal opportunity employer and, in accordance with applicable law, is committed to providing a work environment that is free of unlawful discrimination, harassment, and retaliation for its employees, applicants for employment, individuals providing services in the workplace pursuant to a contract, unpaid interns, volunteers, and others involved in its operations. This document is intended to further these goals by providing information about Research Foundation's policies prohibiting unlawful discrimination, harassment, retaliation, Title IX violations (sexual misconduct, dating and domestic violence, and stalking) and describes the procedure for addressing such conduct by employees and third parties.

2.0 Responsibility

Any Research Foundation employee or any other third party who knows or has reason to know of allegations or acts that violate this policy should promptly inform their area or department manager, director, or senior director of Human Resources or his/her designee. Research Foundation Human Resources will be responsible for the implementation of and compliance with this policy. In instances where concerns or complaints involve Human Resources department staff, those concerns or complaints may be directed to the executive director of the organization or his or her designee.

3.0 Scope

The Research Foundation's *Discrimination, Harassment, and Retaliation Prevention Policy* applies to all persons involved in the operation of the Research Foundation. In keeping with this commitment, this policy prohibits all such unlawful conduct directed at Research Foundation employees, applicants, individuals providing services in the workplace pursuant to a contract, unpaid interns, volunteers, and others involved in its operations by managers, supervisors, co-workers, or others. It also prohibits unlawful harassment of students by individuals associated with the Research Foundation, including teachers, coaches, counselors and peer advisors. Visitors to and workers employed by the San José State University, by other auxiliaries, or by other public or private organizations engaged in business with the Research Foundation are expected to comply with this policy.

4.0 Definitions

This table provides definitions for special terms, acronyms, and abbreviations used in this policy.

| Term, Acronym, or Abbreviation | Description |
|--------------------------------|---|
| Adverse Action | Means an employment action that has a substantial and material adverse effect on the complainant's employment or ability to participate in the Research Foundation program or activity. Examples of Adverse Actions include termination, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making employment decisions, failure to make employment recommendations impartially, adversely affecting working conditions or otherwise denying any employment benefit. Minor or trivial actions or conduct, not reasonably likely to do more than anger or upset a complainant, does not constitute an adverse action. |
| Complainant | An individual who is eligible to file a complaint to report a violation of this policy. It also includes any person who is reported to have experienced a violation of this policy in cases where some other person has made a report on that person's behalf. A complainant may also be referred to as a party to the complaint. |
| Protected Status | Includes actual or perceived race, religion, religious creed (including religious dress and religious grooming), color, national origin, ancestry, citizenship, physical disability, mental disability, age, medical condition (cancer and genetic characteristics), genetic information, marital status (including registered domestic partnership status), sex, gender, gender identity, gender expression, sex stereotyping, sexual orientation, pregnancy (including perceived pregnancy, childbirth, lactation and related medical conditions), family care or medical leave status, military caregiver status, military status, veteran status, status as a victim of domestic violence, sexual assault or stalking, enrollment in a public assistance program, or any other status protected by federal, state, or local laws. |
| Third Party | Means a person other than an employee. Examples include employees of CSU, volunteers, independent contractors, visitors, vendors, and their employees, employees of other auxiliaries, applicants, students, unpaid interns, and volunteers. |

5.0 Policy

The Research Foundation is committed to maintaining an inclusive community that values diversity and fosters tolerance and mutual respect. The Research Foundation provides equal opportunity for all persons regardless of their actual or perceived protected status, including their actual or perceived race, religion, religious creed (including religious dress

and religious grooming), color, national origin, ancestry, citizenship, age, physical disability, mental disability, medical condition (cancer and genetic characteristics), genetic information, marital status (including registered domestic partnership status), sex, gender, gender identity, gender expression, age, sexual orientation, sex stereotyping, pregnancy (including childbirth, lactation and related medical conditions), military and veteran status or any other status protected by federal, state or local laws. This policy extends to all employment practices, including recruitment, hiring, promotion, training, compensation, benefits, transfer, separation, and other terms, conditions, or privileges of employment. It also includes accommodations, advantages, facilities, privileges and services for all members of the organization.

The Research Foundation prohibits harassment of any kind, including sexual harassment, sexual misconduct, dating and domestic violence, stalking, and bullying. Such behavior violates Research Foundation policy and may also violate state or federal law.

5.1 Prohibited Conduct

Conduct prohibited by this policy, includes, but is not limited to:

- Discrimination, including harassment, because of any protected status
- Retaliation against an individual for exercising his or her rights under this policy or rights under federal or state law, opposing discrimination or harassment because of a protected status, or for participating in any manner in any related investigation or proceeding
- Dating and domestic violence, and stalking
- Sexual misconduct of any kind, which includes sexual activity engaged in without affirmative consent
- Employees from entering into a consensual dating/sexual relationship with any employee, student, unpaid intern, or volunteer, over whom s/he exercises direct or otherwise significant administrative, evaluative, or supervisory authority
- Any other conduct that violates federal or state laws prohibiting discrimination, harassment, or retaliation.

5.2 Discrimination

The Research Foundation strives to be free of all forms of unlawful discrimination, including unlawful harassment, because of a protected status. It is Research Foundation policy that no person shall be excluded from participation in, or be denied the benefits of, any Research Foundation program or activity because of any protected status. Discrimination means adverse action taken against an employee or third party by the Research Foundation because of the individual's inclusion in a protected status.

5.3 Harassment

The Research Foundation is committed to providing a work environment that is free of unlawful harassment. Unlawful harassment means unwelcome conduct because of an individual's protected status. This may occur where:

- Submission to, or rejection of, the conduct is made a term or condition of an individual's employment or education

- Submission to or rejection of the conduct by the individual is used as the basis or threatened to be used as the basis for employment or educational decisions affecting the individual
- The conduct is sufficiently severe or pervasive that its effect, whether or not intended, could be considered by a reasonable person, and is in fact considered by the complainant as intimidating, hostile or offensive work or education environment

Unlawful harassment includes, but is not limited to, verbal harassment (e.g. epithets, derogatory comments, or slurs), physical harassment (e.g. assault, impeding or blocking movement or any physical interference with normal work or movement), and visual forms of harassment (e.g. derogatory posters, cartoons, drawings, symbols, or gestures).

Employee should not confuse unlawful harassment with job related supervision. Supervisors have the right and responsibility to define the job that they want an employee to perform, as well as the manner in which an employee must perform that job. Close supervision of an employee (including, but not limited to, counseling and warnings about job performance, inappropriate conduct, or other performance issues) is not considered to be an example of unlawful harassment.

5.4 Sexual Harassment

The Research Foundation prohibits unlawful sexual harassment of all persons involved in its operations including employees, applicants for employment, individuals providing services in the workplace pursuant to a contract, unpaid interns or volunteers by anyone involved in the Research Foundation's operations including supervisory and non-supervisory employees and third parties, such as vendors.

Sexual harassment is defined as harassment based on sex or conduct of a sexual nature, and includes harassment based on sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity or gender expression. Sexually harassing conduct in particular may include all of these prohibited actions, as well as other unwelcome conduct, such as requests for sexual favors, conversation containing sexual comments, and other unwelcome sexual advances. Sexually harassing conduct can be by a person of either the same or opposite sex. Sexually harassing conduct need not be motivated by sexual desire to be a violation of this policy.

Examples of unlawful sexual harassment prohibited by this policy include, but are not limited to the following:

- Unwanted sexual advances
- Offer(s) of an employment benefit (such as a raise, promotion or assistance with one's career) in exchange for sexual favors, or threatening an employment detriment (such as termination, demotion or disciplinary action) for an employee's failure to engage in sexual activity
- Visual conduct, such as leering, making sexual gestures, or displaying sexually suggestive objects, pictures, cartoons or posters
- Verbal sexual advances, propositions, requests, or comments
- Transmission of sexually related text-messages, videos or messages via social media
- Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, or suggestive or obscene letters, notes or invitations

- Physical conduct, such as touching, assault, or impeding or blocking movement
- Physical or verbal abuse concerning an individual's actual sex or the perception of the individual's sex
- Verbal abuse concerning a person's characteristics such as vocal pitch, facial hair or the size or shape of a person's body, including remarks that a male is too feminine or a woman is too masculine

It is unlawful for males to sexually harass females or other males, and for females to sexually harass males or other females. Additionally, under California law, employees may be held personally liable for sexually harassing conduct that violates the California Fair Employment and Housing Act (FEHA).

5.5 Sexual Misconduct

All sexual activity between individuals involved in the operations of the Research Foundation must be based on affirmative consent. Engaging in any sexual activity without first obtaining affirmative consent to the specific activity constitutes sexual misconduct and is a violation of this policy, whether or not the conduct violates any civil or criminal law.

Sexual misconduct is a form of sexual harassment and may create a hostile work environment that adversely affects access to or participation in the Research Foundation programs and activities. The Research Foundation prohibits all such conduct whether or not it also amounts to sexual harassment.

Sexual activity includes but is not limited to kissing, touching intimate body parts, fondling, intercourse, penetration of any body part, and oral sex.

Affirmative consent means an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other participant(s) to engage in the sexual activity. Lack of protest or resistance does not mean affirmative consent, nor does silence mean affirmative consent. Affirmative consent must be voluntary, and given without coercion, force, threats, or intimidation.

The existence of a dating or social relationship between those involved, or the fact of past sexual activities between them, should never by itself be assumed to be an indicator of affirmative consent. A request for someone to use a condom or birth control does not, in and of itself, constitute affirmative consent.

Affirmative consent can be withdrawn or revoked at any time. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity. Consent given to sexual activity on one occasion does not consent on another occasion. There must always be mutual and affirmative consent to engage in sexual activity. Consent must be ongoing throughout a sexual activity and can be revoked at any time, including after penetration. Once consent is withdrawn or revoked, the sexual activity must stop immediately.

Affirmative consent cannot be given by a person who is incapacitated. A person is incapacitated if she or he lacks the physical and/or mental ability to make informed, rational decisions.

Whether an intoxicated person (as a result of using alcohol or other drugs) is incapacitated depends on the extent to which the alcohol or other drugs impact the person's decision-making ability, awareness of consequences, and ability to make informed judgments. A

person's own intoxication or incapacitation from drugs or alcohol does not diminish that person's responsibility to obtain affirmative consent before engaging in sexual activity.

A person with a medical or mental disability may also lack the capacity to give consent.

Sexual activity with a minor (a person under 18 years old) is not and cannot be consensual.

It shall not be a valid excuse that a person affirmatively consented to the sexual activity if the other person knew or reasonably should have known that the person was unable to consent to the sexual activity under any of the following circumstances:

- The person was asleep or unconscious
- The person was incapacitated due to the influence of drugs, alcohol or medication, so that the person could not understand the fact, nature, or extent of the sexual activity
- The person was unable to communicate due to a mental or physical condition

It shall not be a valid excuse that the other person believed that the person consented to the sexual activity under either of the following circumstances:

- The respondent's belief in affirmative consent arose from the intoxication or recklessness of the respondent
- The respondent did not take reasonable steps, in the circumstances known to the respondent at the time, to ascertain whether the person affirmatively consented

5.6 Consensual Relationships

Consensual relationship means a sexual or romantic relationship between two persons who voluntarily enter into such a relationship. While sexual and/or romantic relationships between members of the Research Foundation community may begin as consensual, they may evolve into situations that lead to discrimination, harassment, retaliation, sexual misconduct, dating or domestic violence, or stalking subject to this policy.

A Research Foundation employee shall not enter into a consensual relationship with an employee over whom she or he exercises or influences direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority. In the event such a relationship already exists prior to the effective date of this policy, the Research Foundation will develop a procedure to reassign such authority to avoid violations of this policy.

5.7 Dating and Domestic Violence, and Stalking

The Research Foundation prohibits dating and domestic violence and stalking. Dating violence is abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim.

Domestic violence is abuse committed against someone who is a current or former spouse; current or former cohabitant; someone with whom the respondent has a child or had a dating or engagement relationship; or a person similarly situated under California domestic or family violence law.

Abuse means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself or another. Abuse does not include non-physical, emotional distress or injury.

Stalking means engaging in a repeated course of conduct directed at a specific person (when based on gender or sex) that would cause a person to fear for his or her safety or another's safety or to suffer substantial emotional distress. Course of conduct includes, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, or means follows, monitors, threatens or communicates to or about a person, or interferes with a person's property.

5.8 Retaliation

Retaliation against a person for exercising any rights under this policy or for opposing discrimination or harassment because of a protected status, sexual misconduct, dating or domestic violence, or stalking, or for participating in any manner in any policy-related investigation or proceeding is prohibited. Retaliation means an adverse action has been taken against the person because she or he has or is believed to have:

- Filed or participated in the making of a complaint to a federal or state enforcement or administrative agency, or the Research Foundation, for conduct that violates this policy
- Participated in or cooperated with an internal investigation, federal or state enforcement agency that is conducting an investigation of the Research Foundation regarding alleged unlawful activity
- Testified as a party, witness or accused regarding alleged unlawful activity
- Provided informal notice to the Research Foundation regarding alleged unlawful activity

Retaliation is itself a violation of this policy and is a serious offense. Complaints regarding allegation of reprisal should be immediately brought to the attention of Research Foundation Human Resources. Complaints alleging retaliation can also be brought to the Research Foundation's executive director.

5.9 Reasonable Accommodations

The Research Foundation will provide reasonable accommodations to qualified individuals with a disability in accordance with federal and state guidelines, unless to do so would cause undue business hardship. Reasonable accommodations will be determined by Research Foundation Human Resources following an interactive process with those involved to identify the nature and extent of the restrictions and the appropriate accommodation. More information on reasonable accommodation can be found at: <https://www.eeoc.gov/policy/docs/accommodation.html>.

5.10 Training

All employees will receive training on how to prevent discrimination, harassment, retaliation, sexual misconduct, dating and domestic violence, and stalking and to encourage reporting of such conduct. Supervisory employees will go through two hours of interactive sexual harassment training within six months of the employee's assignment to a supervisory position and every two years thereafter as required by California law.

6.0 Complaint Procedure

Employees, applicants, interns, volunteers, and students who believe that he or she has been harassed, discriminated against, or subjected to retaliation in violation of the foregoing policies, or who is aware of such behavior against others should report all incidents of harassment, discrimination or retaliation. An individual is not required to wait

for the conduct to be repeated or to worsen before making a report. Any incident of unlawful harassment, discrimination or retaliation by any Research Foundation employee or any other person, should be reported promptly to the employee's supervisor or manager and/or to Human Resources. An employee, intern, volunteer, or student may contact Human Resources directly and is not required to complain first to his or her supervisor. Supervisors and managers who receive complaints of misconduct must immediately report such complaints to Human Resources.

All complaints of unlawful discrimination, harassment, and retaliation are taken seriously, and are promptly, thoroughly, and objectively investigated. If the Research Foundation begins an investigation, it will endeavor to keep the investigation confidential to the extent possible, including the names of complaining employees and witnesses. An investigation will include interviews of individuals who might have information pertaining to the alleged conduct.

When the investigation has been completed, the Research Foundation will communicate the summary of the investigation to the complainant, to the alleged accused and, if appropriate, to others who are directly involved. If a complaint of a violation of this policy is substantiated, appropriate disciplinary action, up to and including termination of employment, will be taken. Both the rights of the alleged accused and the complainant will be considered in any investigation and subsequent action.

7.0 Required Forms

This table contains a list of forms and special tools referenced in this document.

| Form | Description of Use |
|--|--|
| Complaint Form | This form may be used to file a claim. |
| Acknowledgement and Receipt of Discrimination, Harassment, and Retaliation Prevention Policy | Written confirmation that the policy has been received, reviewed, and understood. The completed form must be submitted to HR after reviewing the policy. |

8.0 References and Related Information

In addition to the Research Foundation's internal complaint procedure, employees may also contact either Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH) to report unlawful discrimination, harassment, and retaliation. The EEOC and the DFEH serve as neutral fact-finders and will attempt to assist the parties to voluntarily resolve their disputes. They will accept and investigate charges of unlawful discrimination or harassment at no charge to the complaining party. For more information, please go to:

Equal Employment Opportunity Commission (EEOC) <https://www.eeoc.gov/>

California Department of Fair Employment & Housing (DFEH) <http://www.dfeh.ca.gov/>

If CSU employees are involved CSU Executive Order 1096 may apply. The executive order can be accessed at <https://www.calstate.edu/eo/EO-1096-rev-6-23-15.html>.

9.0 Record Retention

All documents and records are maintained in accordance with SJSU Research Foundation *Record Retention* requirements.

| Record | Retention |
|--|--|
| <i>Discrimination, Harassment, and Retaliation Prevention Policy</i> | This document is effective until further revised or updated. Outdated or revised documents will be maintained in accordance with Research Foundation Record Retention requirements. The Research Foundation will maintain the signed original and electronic copies of the approved policy and all updates and replacements. |
| Complaint Form | This document can be found at: www.sjsu.edu/researchfoundation/resources/forms/index.php |

SJSU Research Foundation

ACKNOWLEDGEMENT & RECEIPT

OF

Discrimination, Harassment, and Retaliation Prevention Policy

I acknowledge that I have received, read, and that I understand the Research Foundation's *Discrimination, Harassment and Retaliation Prevention Policy*. I agree to abide by and be bound by the rules, provisions and standards set forth in this policy.

I further acknowledge that the Research Foundation reserves the right to revise, delete and add to the provisions of the *Discrimination, Harassment and Retaliation Prevention Policy* at any time, and I will be provided notice of the change.

Employee Signature

Print Name

Date

[TO BE PLACED IN EMPLOYEE'S PERSONNEL FILE]