

THE CITADEL
The Military College of South Carolina
171 Moultrie Street
Charleston, SC 29409

MEMORANDUM
NUMBER 2-027

10 March 2021

DISCRIMINATION POLICY

1. PURPOSE

The Citadel has zero tolerance for any form of discrimination. Discrimination is demeaning, degrading and devalues individuals and can result in a negative impact in the workplace. All members of The Citadel community, guests and visitors are entitled to a positive environment free of any type of discrimination, harassment or intimidation and are expected to conduct themselves in a manner that does not infringe on the rights of others. With this in mind, The Citadel prohibits harassment and discrimination as defined in this policy and will respond to and resolve reports in a prompt manner.¹

This policy is intended to comply with Title VII of the Civil Rights Act of 1964 ("Title VII"), which specifically lists groups or categories of individuals that are protected under this law. These protected classes are race, religion, color, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age (age 40 and above) or genetic information. The purpose of this memorandum is to define and establish the policy on discrimination, provide definitions of discrimination, explain procedures for reporting and investigating complaints of discrimination, and to provide resources and recourse for those who allege discriminatory harassment as defined herein in compliance with Title VII.

Anyone who is subjected to conduct that creates an intimidating or hostile environment, regardless if the conduct is based on a protected class as defined further in this policy, shall report the conduct to Human Resources. If Human Resources determines that the conduct alleged to be creating an intimidating or hostile environment is not based on a protected class as defined above, the report may be referred for remediation according to the relevant policy.

¹ Sex-based harassment is also prohibited by Title IX of the Education Amendments of 1972. The Citadel will evaluate reports of sexual harassment first under the provisions of Title IX. If Title IX does not apply to the complaint, The Citadel will apply this policy and procedure to resolve the complaint. See The Citadel's "[Title IX Grievance Policy](#)" for more information on the application of Title IX pursuant to regulations promulgated by the Department of Education in August, 2020..

2. REFERENCES

[29 USC 206, et. seq., 621, et. seq., 791, et. seq.](#)

[42 USC Section 2000e, et. seq., 12102, et. seq.](#)

[Executive Order 11246](#)

[S.C. Code Ann. 1-13-10, et. seq.](#)

3. DEFINITIONS

- A. Discrimination – occurs when an adverse employment action is taken and is based upon a protected class. Discrimination may occur in several forms, such as:
1. Disparate Treatment - when a person, or a group of people are treated less favorably than another person or group of people on the basis of a protected class.
 2. Disparate Impact - when a Citadel policy, practice or decision is based on neutral factors that have an adverse impact on a protected class.
- B. Harassment – (1) Unwelcome, protected class-based physical, non-verbal or verbal conduct that (2) is sufficiently severe, persistent or pervasive that (3) it unreasonably interferes with, denies, or limits and individual's ability to participate in or benefit from The Citadel's education and employment programs and activities.

Examples of possible discrimination/harassment include, but are not limited to the following:

1. Conduct that explicitly or implicitly affects an individual's or group's employment or academic achievement; unreasonably interferes with an individual's work performance or learning ability; and/or creates an intimidating, hostile or offensive work, or academic environment when that person belongs to a protected class;
2. Verbal behaviors or comments, slurs, jokes, recordings, and personal references or use of negative terms used to identify someone in a protected class;
3. Non-verbal, offensive, graphic communication (i.e. obscene hand or finger gestures), bullying, demeaning, insulting, intimidating, or suggestive written material, email, posters, graffiti, cartoons, other electronically transmitted messages or use of social media which are directed at someone because of a protected class;

4. Physical conduct directed at a person that is a) non-sexual in nature, but has the effect of creating an intimidating, hostile, offensive work environment, or unreasonably interferes with a person's work or academic environment based on a protected class or b) sexual in nature and unwelcome (sexual harassment.)

C. Special Definitions Related to Sexual Harassment

For purposes of sex-based harassment, the behavior constitutes a violation of this policy if based on power differentials (quid pro quo) or the creation of a hostile environment.

1. Quid Pro Quo - occurs when employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors.
2. Hostile Work Environment - occurs when the conduct at issue is sufficiently severe or pervasive that it creates an intimidating, abusive or offensive environment regarding employment or academic decisions for a person in a protected class. A single instance of discrimination may be sufficient to create a hostile work environment.

D. Sexual Harassment - This definition is intended to include acts that could constitute acts of sexual assault, dating violence, domestic violence and/or stalking as defined below.

E. Sexual Assault - is comprised of two offenses: Non-Consensual Sexual Penetration and Non-Consensual Sexual Contact as further defined below.

1. Non-Consensual Sexual Penetration - Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
2. Non-Consensual Sexual Contact - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. Private body parts for purposes of this Policy are breast, buttocks, and groin.

F. Incest - For purposes of this Policy, incest means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. In South Carolina, this includes sexual contact between persons who are brothers and sisters, parents, and children, including stepparents, stepchildren, and adopted persons, as well as aunts/uncles with nieces/nephews and between grandparents and grandchildren.

G. Statutory Rape - Statutory rape means sexual intercourse with a person who is under the statutory age of consent, which in South Carolina is 16 years of age.

H. Domestic Violence - A felony or misdemeanor crime of violence committed

1. by a current or former spouse or intimate partner of the victim.
2. by a person with whom the victim shares a child in common.
3. by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner.
4. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
5. by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

According to Section 16 of Title 18 of the United States Code, the term "crime of violence" means

1. an offense under South Carolina State law that has as an element of use, attempted use, or threatened use of physical force against the person or property of another, or
2. any other offense that is a felony in South Carolina and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

I. Dating Violence - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting Party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

J. Stalking - Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

For the purposes of this definition—

1. Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third Parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- K. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- L. Retaliation - Retaliation is any attempt to seek retribution against an individual or group of individuals involved in making a good faith report, filing a Complaint, participating in a disciplinary process, or opposing in a reasonable manner an action believed to constitute a violation of this policy. Retaliation can take many forms, including abuse or violence, threats, coercion, and intimidation. Actions in response to a good faith report or response under this policy are considered retaliatory if they have a materially adverse effect on the working, academic or Citadel controlled environment of an individual or if they hinder or prevent the individual from effectively carrying out their responsibilities. Any individual or group of individuals can engage in retaliation and will be held accountable under this policy.

Allegations of Retaliation may be resolved prior to an allegation of protected class harassment or discrimination.

- M. Consent - Voluntary, informed, uncoerced agreement through words and/or actions freely given, which a reasonable person would interpret as a willingness to participate in mutually agreed-upon sexual acts. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate.

Indications that consent is not present include:

1. when physical force is used or there is a reasonable belief of the threat of physical force, including when one person overcomes the physical limitations of another person.
2. when coercion is present. Coercion means the improper use of pressure to compel another individual to initiate or continue sexual activity against the individual's will. Coercion may include intimidation, manipulation, and/or blackmail. Words or conduct may constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether to engage in sexual activity.
3. when a person is incapable of making an intentional decision to participate in a sexual act, which could include instances in which the person is in a state of incapacitation, which could be permanent or temporary. Evaluations of capacity will be viewed in hindsight using a reasonable person standard.

Important points regarding consent include:

1. Consent to one act does not constitute consent to another act.
2. Consent on a prior occasion does not constitute consent on a subsequent occasion.
3. The existence of a prior or current relationship does not, in itself, constitute consent.
4. Consent can be withdrawn or modified at any time.
5. Consent is not implicit in a person's manner of dress.
6. Accepting a meal, a gift, or an invitation for a date does not imply or constitute consent.
7. A person's lack of verbal or physical resistance or submission resulting from the use or threat of force does not constitute consent.
8. Silence and passivity do not necessarily constitute consent.
9. Initiation by someone who a reasonable person knows or should have known to be deemed incapacitated is not consent.
10. A person's consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.

A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation when a person is incapacitated or not of legal age.

A person who is asleep or unconscious is considered incapacitated and unable to consent. Additionally, a person may be incapacitated due to a temporary or permanent mental or physical disability.

In the context of this policy, incapacitation is the state in which a person's perception or judgment is so impaired that he or she lacks the cognitive capacity to make or act on conscious decisions. The use of drugs or alcohol can cause incapacitation, which is a state beyond mere intoxication. An individual who is incapacitated is unable to consent to a sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where a person knows or ought reasonably to have understood that the individual is incapacitated, constitutes Sexual Misconduct and is a violation of this Policy.

4. POLICY

Discrimination and harassment are prohibited at The Citadel. The Citadel does not tolerate any form of discrimination or harassment by any person affiliated with The Citadel or engaging with The Citadel for a period of time (delivery drivers, external

workers, etc.). This prohibition applies on or off campus including Citadel athletic events, internships, volunteer sites and other Citadel sponsored events and programs. The Citadel also will not tolerate discrimination or harassment of its employees, cadets or students by non-Citadel personnel while engaging in Citadel sponsored or supported programs.

This policy applies to employees, cadets, students, contractors or vendors impacted by discrimination.

Cadets impacted by discrimination by another cadet should follow the cadet discipline guidelines as outlined in the [Blue Book](#).

A. Reporting

Individuals experiencing discrimination or harassment should report it immediately. There are several ways to report and individuals can choose the entity that works best for their situation. Reporting can occur as follows:

1. Chief Diversity Officer
2. Title IX Coordinator
3. Immediate supervisor/Department/Division Head
4. Vice President/Dean
5. Ombudsperson (for guidance on reporting or how to report not actual reporting)
6. Via the [Discrimination Complaint Form](#).

B. Retaliation

The Citadel WILL NOT TOLERATE retaliation against any cadet, student, faculty or staff member who in good faith makes a report of possible non-compliance with, or violation of, any law, regulation, or Citadel policy. It is The Citadel's policy to fully support the protection of anyone submitting a good faith allegation from any form of retaliation including negative actions such as dismissal, suspension, and other threats or the withholding of positive actions such as promotion or pay increases in accordance with S.C. Code Ann. Section 8-27-10, et. seq.

C. Process

This outlines what generally happens when a report of discrimination or harassment is submitted. These steps are not in chronological order and they do not all have to be taken in order for a complaint to be thoroughly processed. Each occasion for complaint is different. The Citadel will use its discretion to ensure all cases are handled appropriately.

1. Form is submitted to the Chief Diversity Officer (CDO).
2. Form is reviewed by CDO and the employee² making the complaint is contacted if the form was not submitted in person to answer any questions regarding the complaint.
3. VP/Dean is alerted of complaint filing and ensuing investigation (unless they are named in complaint).
4. Interim measures are taken, if necessary.
5. Neutral investigators are assigned.
6. Accused is notified in writing of the allegations.
7. Investigator³(s) meet with both parties, separately, and any witnesses and review any evidence provided or obtained.* If the allegation is of an act of sexual assault, dating violence, domestic violence, or stalking, the Complainant and Respondent will each be permitted to have an advisor of their choosing at any meeting or proceeding in which they are required to be present. An advisor may be anyone, including legal counsel. An advisor may counsel, advise, and support their party but may not disrupt any meeting or proceeding nor may they ask questions of the investigators or speak for their party. Investigations will normally be concluded within 60 business days, the process will be transparent to the accuser and the accused, and the major timeframes for the investigation may be extended for good cause and with written notice.
8. Investigators make a determination of policy violation based upon the evidence and create a written report submitted to CDO and Chief HR Officer.
9. VP/Dean is notified of outcome and sanction is determined if necessary.
10. The Complainant and Respondent will be notified in writing of the investigation outcome and the finding. For allegations of sexual assault, dating violence, domestic violence and stalking, the written outcome will also include the rationale for the decision, the associated sanction and the process by which certain parties may grieve as applicable under the State Employee Grievances Procedures Act or under faculty or contractual appeal processes (see Grievance Rights section below). HR may include additional recommended

² If the person is a CGC student Memo 3-107 applies. Cadet Students should refer to the [Title IX Grievance Policy](#) and contact the Title IX Coordinator.

³ Any person investigating or resolving complaints of sexual assault, dating violence, domestic violence or stalking shall be annually trained in how to conduct an investigation that protects the safety or persons and promotes accountability in accordance with the VAWA amendments to the Clery Act.

action items, which may include, but are not limited to: (a) a directive to stop any ongoing discriminatory, harassing and/or retaliatory behavior/practices; (b) disciplinary or other corrective action be taken against the Respondent and/or others; (c) relief be granted to the Complainant, such as accommodations, reinstatement, hiring, reassignment, promotion, training, back pay or other compensation and/or benefits (specific remedies shall be fact-specific to each complaint); and/or (d) other proactive measures, such as targeted training or education.

The Citadel retains discretion to conduct an administrative review into allegations of harassment or discriminatory conduct, in absence of a formal complaint. In determining whether to initiate an administrative review of allegations harassment or discrimination, The Citadel will consider all known information, including: (1) the nature and the severity of the allegations; (2) whether the allegations are amenable to resolution through other channels, such as human resources intervention; (3) the history of prior complaints regarding the same individuals, department and/or area; (4) the expressed wishes, if known, of the affected individual(s); and (5) any other pertinent information.

Administrative reviews will include interviewing witnesses and reviewing pertinent documents and will normally be concluded within 60 business days. This timeframe may be extended for good cause and any recommended action items will be presented to the College's Legal Counsel. The same level of confidentiality applicable in complaint investigations will apply to administrative reviews.

D. Grievance Rights

The State Employee Grievance Procedure Act requires that The Citadel establish a grievance procedure for all covered employees. As provided for in the Act, grievances or appeals shall include: terminations, suspensions, involuntary reassignments, and demotions. Any employee who believes that the status of his/her employment with the institution has been changed in violation of law and/or college requirements may seek a grievance or appeal, as outlined in the [Grievance Policy](#).

5. COMPLIANCE

Where discrimination or harassment is found to have occurred, The Citadel will respond accordingly and take appropriate disciplinary action against those found to be responsible pursuant to this policy. Dependent upon the severity of the infraction The Citadel will follow its Progressive Discipline Policy to impose sanctions. Retaliation protection continues for the complainant.

6. NOTES

A. Dates of Official Enactment and Amendments:

Approved by the President on 24 February, 2021.

B. Responsible Department:

Department of Human Resources

C. Responsible Official:

Chief Diversity Officer

D. Cross References:

[Memo 2-024 Title IX Grievance Policy](#)

7. RESCISSION

N/A

8. REVIEW

This policy shall be reviewed on a biennial basis or as required by law.

FOR THE PRESIDENT:

//signed//
GLENN M. WALTERS
General, USMC (Retired)
President

OFFICIAL