



# **Non-Discrimination Sexual Harassment Response and Prevention Policy**

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**Policy Statement:**

Niagara County Community College does not discriminate against any employee, applicant for employment, intern, whether paid or unpaid, contractor, student, or applicant for admission based on an individual’s race, color, national origin, religion, creed, age, disability, sex, gender identification, gender expression, sexual orientation, self-identified or perceived sex, the status of being transgender, familial status, pregnancy, predisposing genetic characteristics, military status, veteran status, domestic violence victim status, criminal conviction or any other category protected by law. The College adheres to all federal and state laws prohibiting discrimination and sexual harassment in public institutions of higher education.

The College prohibits conduct by any employee or a student that disrupts or interferes with another’s work performance or educational experience, or that creates an intimidating, offensive, or hostile work or educational environment due to discrimination based on protected status or sexual harassment. In keeping with this goal, the College is committed to educate employees in the recognition and prevention of workplace and educational discrimination and sexual harassment. Improper conduct may violate the College’s policy, when it is more serious than petty slights or trivial inconveniences.

**Applicability of Policy:**

This policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business with the College, regardless of immigration status, students and applicants for admission. Students who are only employed with the College as student assistants or work study, or who are interns inside and outside the College as a part of their course study, will be categorized as students.

\*There will be instances of sexual harassment as defined by Title IX and its implementing regulations when a report of sexual harassment will be deferred to the College’s Title IX Grievance

Policy. The final rule on Title IX effective August 14, 2020 determined the Title IX Grievance Policy should be applied when the sex based conduct reported meets the threshold of severe AND pervasive AND objectively offense. Quid pro quo harassment and Clery Act / VAWA offenses which also may fall under the Title IX Grievance Policy are NOT evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because these types of misconduct are sufficiently serious to deprive a person of equal educational access. Jurisdiction for Title IX is to address conduct that takes place in a school's education program or activity, for which the conduct occurred in the United States and for a current student or employee. The Non-Discrimination and Sexual Harassment Response and Prevention Policy includes expanded jurisdiction and a different threshold to establish sexual harassment, and all forms of harassment or discrimination.

**Supervisory Responsibility:**

Supervisory personnel are responsible for maintaining a work environment that is free from discrimination and sexual harassment. In order to assure compliance with this policy, supervisors are required to promptly report to the Civil Rights Compliance Officer or Deputy Title IX Coordinator any complaint of discrimination or sexual harassment that they receive, or any discrimination or harassment that they observe, suspect, or become aware of. Supervisors may be subject to disciplinary action, up to and including termination, for failing to report suspected discrimination or sexual harassment, or knowingly permitting such conduct to continue in the workplace. Supervisors will also be subject to discipline for engaging in any retaliation against a person who makes a complaint of discrimination or sexual harassment, or who assists, participates, or testifies in any investigation or proceeding related to such complaint.

**Complaint and Investigation Procedure:**

Any complaints made under this policy where the accused party is not a student shall be promptly and thoroughly investigated in accordance with the procedures set forth in the attached Procedures: Sexual Harassment & Discrimination Prevention for Employees and Students, unless the conduct meets the definition of sexual harassment under the College's Title IX Policy and Procedures in which case will follow the grievance procedures outlined in that policy. Complaints may be made verbally or by completing the attached Discrimination/Sexual Harassment Complaint Form. If a student is the accused Responding Party, complaints shall be resolved under the procedures described in the NCCC Student Code of Conduct, Sexual Misconduct and Non-Discrimination Policy or the College's Title IX Grievance Policy.

**Prohibition Against Retaliation:**

Retaliation against any individual covered by this policy who, in good faith, brings a written or verbal complaint of discrimination or sexual harassment, or who assists, participates, or testifies in any investigation or proceeding related to such complaint, regardless of whether or not the alleged harassment rises to the level of a violation of this policy or the law, is strictly prohibited. Such retaliation is unlawful under federal, state, and (where applicable) local law, and NCCC will not tolerate or permit adverse treatment of individuals because they report discrimination or sexual harassment or provide information related to such complaints. Adverse treatment includes being discharged, disciplined, discriminated against, or any action that could discourage an individual from coming forward to make or support a claim of discrimination or sexual

harassment. Participants who experience retaliation should contact the Deputy Title IX Coordinators or CIVIL RIGHT COMPLIANCE OFFICER, and may file a complaint pursuant to the accompanying Procedures.

The New York State Human Rights Law protects any individual who has engaged in “protected activity”. Protected activity occurs when a person has

- Made a complaint of discrimination or sexual harassment, either internally or with any anti-discrimination agency;
- Testified or assisted in a proceeding involving sexual harassment or discrimination under the Human Rights Law or other anti-discrimination law;
- Opposed sexual harassment or discrimination by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- Reported that another employee has been sexually harassed; or
- Encouraged a fellow employee to report harassment.

Any individual who participates in the procedure may do so without fear of retaliation. Violations of this prohibition may result in disciplinary action up to and including dismissal from employment. However, this retaliation provision is not intended to protect persons making intentionally false charges of discrimination or sexual harassment.

## **I. Sexual Harassment Prevention**

This policy places special attention on the prohibition of sexual harassment in the workplace and academic environment. Sexual harassment is a form of workplace discrimination that is unlawful under Title VII of the Civil Rights Act of 1964, as amended, and the New York State Human Rights Law which forbids harassment and discrimination in employment, housing, education, credit and access to public accommodations.

Sexual harassment is prohibited and will not be tolerated at NCCC. The College has implemented measures to address and prevent sexual harassment and is taking additional affirmative steps to increase awareness of, and sensitivity to, all forms of sexual harassment in order to maintain a workplace and learning environment free of its harmful effects. Sexual harassment is considered a form of employee and student misconduct which may lead to disciplinary action, up to and including termination or dismissal. Harassers may also be individually subject to liability. Employees of every level who engage in sexual harassment, including supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.

All employees and students have a legal right to a workplace and a campus free from sexual harassment, and employees and students can enforce this right by filing a complaint internally with the College in accordance with the attached Procedures: Sexual Harassment & Discrimination Prevention for Employees and Students or with a government agency, or in court under federal or state anti-discrimination laws, as detailed in the attached Procedures under “Legal Protections & External Remedies”. Conduct that meets the definition of sexual harassment under the Title IX Grievance Policy will be investigated and decided under that policy.

**NYS Definition of Sexual Harassment:**

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of employment or academic benefit; or
- Submission to or rejection of the conduct is used as the basis for an employment or academic decision affecting the person rejecting or submitting to the conduct; or
- The conduct has the purpose or effect of unreasonably interfering with an affected person's work or academic performance, or creating an intimidating, hostile or offensive work or learning environment, even if the reporting individual is not the intended target of the sexual harassment.

A sexually harassing hostile environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job or academic performance. Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment.

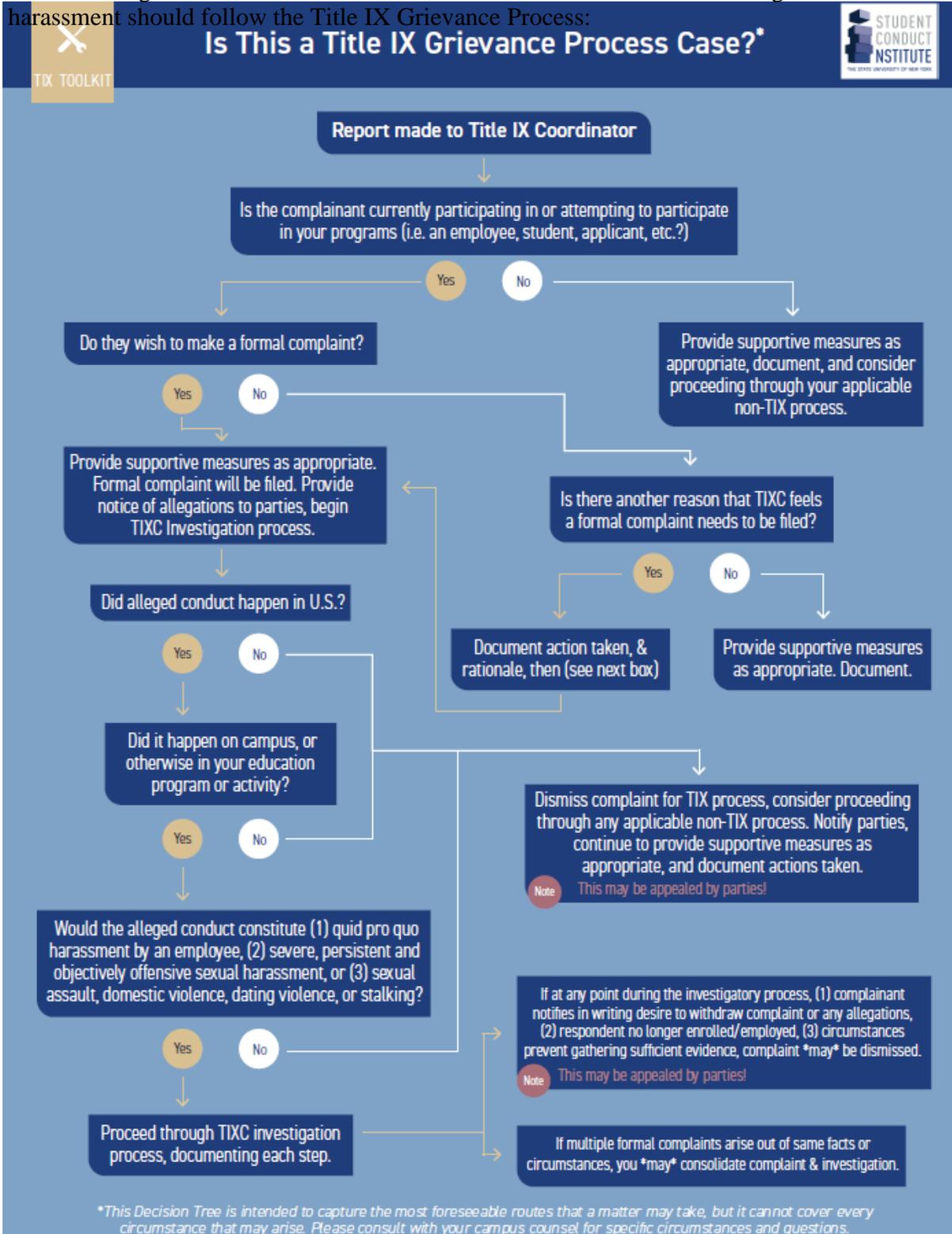
Title IX Definition of Sexual Harassment (parts of this definition may overlap NYS's definition for more information go to: <https://www.niagaracc.suny.edu/wp-content/uploads/2020/08/NCCCTitle-IX-Policy.pdf>)

Sexual harassment" under Title IX is now more narrowly defined to include (1) *quid pro quo*; (2) "unwelcome conduct" of a sexual nature that a reasonable person would find "so severe, pervasive, and objectively offensive" that it effectively denies someone equal access to an education program; or (3) sexual assault, dating violence, domestic violence or stalking.

In order to defer to the Title IX Grievance Policy, the conduct must have occurred:

- In the United States
- Reporting Party must be a current student or employee of the College.
- Occurs in the school's education program or activity.

The following Decision Tree will be followed to determine whether the allegations of sexual harassment should follow the Title IX Grievance Process:



**Examples of Sexual Harassment (some or all of these examples may fall under the College's Title IX policy):**

- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against, or poking another person's body;
- Unwanted sexual advances or propositions, such as:
  - Subtle or obvious pressure for unwelcome sexual activities.
  - Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications, such as:
  - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on computers or cell phones and sharing such displays while in the workplace or classroom.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender, such as:
  - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform his or her job or academic duties;
  - Sabotaging an individual's work;
  - Bullying, yelling, name-calling.

For the purposes of the **Title IX Grievance Policy**, "covered sexual harassment" will follow the grievance procedures outside of this policy under the Title IX Grievance Policy, includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
  - a. Conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship;
  - b. Requests for sexual favors accompanied by implied or overt threats concerning a target's job performance evaluation, a promotion or other job benefits or detriments, a favorable grade or academic opportunity, or other educational benefit or detriment;

2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;
3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
  - a. Rape, sexual battery, molestation or attempts to commit these assaults.
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York domestic or family violence laws or 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 NY.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria, or conduct that does not occur in the United States, or where a Reporting Party is not active within the College or doesn't occur within the school's education program or activity, may still be prohibited under the Code of Conduct/ Non Discrimination and Sexual Harassment Prevention and Response Policy.

Such behavior can constitute sexual harassment regardless of the sex, gender, sexual orientation, self-identified or perceived sex, gender expression, status of being transgender, or gender identity of any of the persons involved. The law protects students, employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor. Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

## **Contract Bids:**

Bidders on state contracts must certify under penalty of perjury that they have a sexual harassment prevention policy and annual training.

## **Accommodation of Disabilities**

Niagara County Community College is committed to full compliance with the Americans With Disabilities Act of 1990, the ADA Amendments Act of 2008 (ADAAA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and ADAAA, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADAAA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself. This includes major bodily functions, including, but not limited to, functions of the immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Chief Human Resources Officer has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any allegation of noncompliance, or designation of an investigator.

### Students with Disabilities

Niagara County Community College is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the College.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Accessibility Services Coordinator that coordinates services for students with disabilities. The Accessibility Services Coordinator reviews documentation provided by the student and, in consultation with the student, via an interactive process, determines which academic adjustments/accommodations are appropriate to the student's particular needs and academic programs.

### Employees with Disabilities

The College does not discriminate in any employment against qualified individuals with disabilities who, with or without reasonable accommodations, can perform the essential functions for the position that such individual holds or desires. The College will provide a reasonable accommodation to a qualified individual with a disability to help that individual perform the essential functions of the position. The College will also engage in interactive discussions with individuals with disabilities, upon request or upon notice of the potential need for an accommodation. Accommodation requests for employment shall be initiated or coordinated with the Office of Human Resources. The College will comply with all applicable laws which prohibit disability discrimination and provide for reasonable accommodation obligations.

## **Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. The College is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The College explicitly prohibits any form of harassment, defined as unwelcomed conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

Harassment constitutes a form of discrimination that is prohibited by any College policy as well as the law. The College will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by law.

A hostile environment may be created by harassing verbal, written, graphic, or physical conduct based on a protected characteristic that is more serious than petty slights or trivial inconveniences. When harassment rises to the level of creating a hostile environment, the College may impose sanctions on the harasser through application of the Investigation Resolution Process.

There may be times when offensive conduct is perceived yet does not rise to the level of creating a hostile environment, or is of a generic nature not on the basis of a protected status. The College will consider action geared toward addressing the reporting party's concerns.

For assistance with conflict resolution techniques, employees should contact the CIVIL RIGHT COMPLIANCE OFFICER, Deputy Title IX Coordinator and students should contact the Vice President of Student Services

Inquiries regarding the application of Civil Rights may be directed to the Title IX Coordinator Catherine Brown, Assistant Vice President of Human Resources, A-264, 716-614-5951, [cbrown@niagaracc.suny.edu](mailto:cbrown@niagaracc.suny.edu) or Deputy Title IX Coordinator Students: Julia Pitman, Vice President of Student Services, A-172, 716-614-6241, [jpitman@niagaracc.suny.edu](mailto:jpitman@niagaracc.suny.edu) Amanda Haseley, Deputy Title IX Coordinator Athletics, H-168 716-614-6271, [ahaseley@niagaracc.suny.edu](mailto:ahaseley@niagaracc.suny.edu), or designee at Niagara County Community College; 3111 Saunders Settlement Road, Sanborn, NY 14132.

Inquiries may also be directed to the United States Department of Education's Office of Civil Rights, 32 Old Slip 26<sup>th</sup> Floor, New York, NY 10005-2500; Tel. 646- 428-3800; or email: [ocr.newyork@ed.gov](mailto:ocr.newyork@ed.gov), or contact the NYS Division of Human Rights Offices <http://www.dhr.ny.gov/>, 65 Court St #506, Buffalo, NY 14202; Tel. (716) 847-7632; or email [InfoBuffalo@dhr.ny.gov](mailto:InfoBuffalo@dhr.ny.gov).

## **Jurisdiction**

This policy applies to behaviors that take place on the campus, at College-sponsored events and may also apply off-campus and to actions online when the CIVIL RIGHT COMPLIANCE OFFICER or a Deputy Title IX Coordinator determines that the off-campus conduct affects a substantial College interest. Off-campus jurisdiction applies when the behavior occurs in

programs / events the College sponsors or when the downstream effects of purely off-campus conduct cause a discriminatory impact on campus, or it is foreseeable it could cause a discriminatory impact; but will not preclude an individual's rights under N.Y. Labor Law § 201-d . A substantial College interest is defined to include:

- a) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- b) Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- c) Any situation that significantly impinges upon the rights, property or achievements of others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests of the College

### **Disciplinary Action**

Discriminatory conduct and sexual harassment are forms of employee misconduct. Any employee or official who is found to have violated this policy will be subject to disciplinary action, up to and including termination of employment. Any vendor, supplier, visitor, customer, or other non-employee who violates this policy will be subject to remedial action, to the extent that the College is empowered to take such action.

### **Related Documents**

- Title VII, Civil Rights Act of 1964
- Title IX of the Educational Amendments of 1972
- Title IX Grievance Policy
- Civil Rights Restoration Act of 1988
- SUNY Sexual Harassment Response and Prevention Statement
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act (ADA) of 1990
- Federal and State anti-discrimination legislation
- N.Y. Human Rights Law
- N.Y. Labor Law § 201-d
- NCCC Student Code of Conduct
- Sexual Misconduct and Non-Discrimination Policy for Students
- Procedures: Discrimination & Sexual Harassment Prevention For Employees and Students
- Discrimination/Sexual Harassment Complaint Form
- Collective Bargaining Agreement between, Niagara County Community College, and The Niagara County Community College Faculty Teaching Association
- Collective Bargaining Agreement between Niagara County Community College, and NCC Educational Support Personnel Association NYSUT/NY,
- Collective Bargaining Agreement between Niagara County Community College, and Technical Services Personnel Association, NYSUT/NY,
- Collective Bargaining Agreement between, Niagara County Community College, and Adjunct

**Procedure: I-11**

**Applicable Scope**

Niagara County Community College affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All processes below are subject to resolution using the NCCC's Investigation Resolution Process (IRP), as written in this document or in the Student Code of Conduct or Sexual Misconduct and Non-Discrimination Policy for Students.

When the Responding Party is an employee of the College, the IRP is applicable regardless of the status of the Reporting Party who may be a member or non-member of the campus community, including students, student organizations, faculty, administrators, staff, guests, or visitors.

**Civil Right Compliance Officer**

The Assistant Vice President of Human resources serves as the College's CIVIL RIGHT COMPLIANCE OFFICER and Title IX Coordinator. The Vice President of Student Services and the Director of Athletics serve as the Deputy Title IX Coordinators or designee serves as an Investigator. In addition to the CIVIL RIGHT COMPLIANCE OFFICER, the Co-Coordinators and Investigator have the responsibility to receive civil rights reports and complaints of discrimination and sexual harassment. The CIVIL RIGHT COMPLIANCE OFFICER, Co-Coordinators oversee implementation of the College's Non- Discrimination and Sexual Harassment Response and Prevention Policy and the Title IX Grievance Policy. The Deputy Title IX Coordinators / Investigators act with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by a Deputy Title IX Coordinator / Investigator, contact the Civil Rights Compliance Officer and/or the College President. To raise concerns regarding a potential conflict of interest with any other administrator involved in the investigation or resolution process, please contact a Deputy Title IX Coordinator.

Inquiries about and reports regarding this policy and procedure may be made internally to:

Catherine Brown, Assistant Vice President of Human Resources  
Civil Rights Compliance Officer, Title IX Coordinator  
ADA / 504 Employee  
Coordinator  
A-264, 716-614-5951  
[cbrown@niagaracc.suny.edu](mailto:cbrown@niagaracc.suny.edu)

Julia Pitman, Vice President of Student Services  
Deputy Title IX Coordinator  
A-161, 716.614.6241  
[jpitman@niagaracc.suny.edu](mailto:jpitman@niagaracc.suny.edu)

Amanda Haseley, Director of Athletics  
Deputy Title IX Coordinator  
H-168, 716.614.6271  
[ahaseley@niagaracc.suny.edu](mailto:ahaseley@niagaracc.suny.edu)

Inquiries may be made externally to (see also Legal Protections & External Remedies, below):

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: 800.421.3481  
Facsimile: 202.453.6012  
TDD#: 877.521.2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

United States Department of Education's Office of Civil Rights  
32 Old Slip 26<sup>th</sup> Floor,  
New York, NY 10005-2500  
Tel. 646.428.3800  
[ocr.newyork@ed.gov](mailto:ocr.newyork@ed.gov)

Equal Employment Opportunity Commission (EEOC)  
Contact: <http://www.eeoc.gov/contact/>

EEOC Field Office  
6 Fountain Plaza, Suite 350  
Buffalo, NY 14202  
716.551.4441

New York State Division of Human Rights – Buffalo  
65 Court St #506,  
Buffalo, NY 14202  
716.847.7632

## **Definitions**

### Responsible Employee

A Responsible Employee is one who has the authority to take action to redress harassment, who has the duty to report discrimination or harassment to appropriate College officials, or an individual who a student could reasonably believe has this authority or responsibility. Most College employees are Responsible Employees, though there are some limited exceptions for reporting responsibilities for; “Professional Counselors” and “Non Professional Counselors.”

### Standard of Evidence

The standard of evidence used to determine responsibility is a preponderance of evidence which means more likely than not. This burden of proof is different than beyond a reasonable doubt, which is a more stringent standard that is applicable to civil and criminal procedures. The technical rules of evidence used in civil and criminal proceedings do not apply to the Non-Discrimination and Sexual Harassment Response and Prevention Policy.

#### Hostile Environment Sexual Harassment

A hostile environment is created when sexual harassment is more serious than petty slights or trivial inconveniences

#### Quid Pro Quo Sexual Harassment

Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational development or performance.

#### Affirmative Consent

Affirmative Consent is defined as a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions created clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression. For a complete definition go to:

[https://www.niagaracc.suny.edu/wp-content/uploads/2019/10/rights\\_and\\_responsibilities.pdf](https://www.niagaracc.suny.edu/wp-content/uploads/2019/10/rights_and_responsibilities.pdf)

#### Sex Discrimination

All forms of sexual harassment, sexual assault, and other sexual violence by employees, students, or third parties against employees, students, or third parties. Students, employees, and third parties are prohibited from harassing others whether or not the harassment occurs on the College campus or whether it occurs during work hours. Sex discrimination can be carried out by other students, college employees, or third parties. All acts of sex discrimination, including sexual harassment and sexual violence, are prohibited.

#### Sexual Assault

A physical sexual act or acts committed against another person without consent. Rape is an extreme form of sexual harassment and may fall under the Title IX Grievance Policy when it meets the jurisdictional requirements. Sexual assault includes what is commonly known as "rape" (including what is commonly called "date rape" and "acquaintance rape"), statutory rape and incest. For statutory rape, the age of consent in New York State is 17 years old.

#### Sexual Violence

Physical sexual acts perpetrated against a person's will or perpetrated where a person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual Violence may fall under the Title IX Grievance Policy when it meets the jurisdictional

requirements

### Dating Violence

Any act of 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 victim's statement and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship, regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. Dating violence may fall under the Title IX Grievance Policy when it meets the jurisdictional requirements. This definition does not include acts covered under domestic violence.

### Domestic Violence

Any violent crime committed by a current or former spouse or intimate partner of the victim, a person sharing a child with the victim, or a person cohabitating with the victim as a spouse or intimate partner. Domestic Violence may fall under the Title IX Grievance Policy when it meets the jurisdictional requirements.

### Stalking

Intentionally engaging in a course of conduct, directed at a specific person, which is likely to cause a reasonable person to fear for his or her safety or the safety of others or cause that person to suffer substantial emotional damage. Examples include, but are not limited to, two or more acts by which the stalker directly, indirectly, or through third parties follows, monitors, observes, surveils, threatens, or communicates about a person or interferes with his or her property. Stalking may fall under the Title IX Grievance Policy when it meets the jurisdictional requirements.

### Sexual Misconduct

New York State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, NCCC has defined some categories of sex/gender discrimination as sexual misconduct in the Student Code of Conduct, the Sexual Misconduct and Non-Discrimination Policy for Students, and the document titled; Discrimination and Harassment Policy. Sexual Misconduct may fall under the Title IX Grievance Policy when it meets the jurisdictional requirements.

### Gender Identity

Refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.

### Sex Assigned at Birth

Refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.

### Transgender

Describes those individuals whose gender identity is different from the sex they were assigned at birth. A transgender male is someone who identifies as male but was assigned the sex of female at birth; a transgender female is someone who identifies as female but was assigned the sex of male at birth.

### Gender Transition

Refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth.

During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

## **Reporting Discrimination or Sexual Harassment**

Reports of discrimination, harassment (including sexual harassment) and/or retaliation may be made using the following options:

- 1) Individuals may report directly to a Civil Rights Compliance Officer, Title IX Coordinator, or Title IX Investigator verbally or by using the attached Discrimination/Sexual Harassment Complaint Form
- 2) Employees may report any situation to their supervisor. Students may also make reports to employees.
- 3) Submitting a complaint to external governmental agencies or courts as described below under “Legal Protections & External Remedies”.
- 4) If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, or other extreme conduct that may constitute a crime, employees or students may also report to campus safety or local law enforcement.

Complaints may be made verbally or by completing the attached Discrimination/Sexual Harassment Complaint Form. All reports and complaints shall be acted upon promptly while making every effort to preserve the confidentiality of the reports, and the due process rights of all parties. Additionally, all employees of the College are designated as Responsible Employees and will share a report with the CIVIL RIGHT COMPLIANCE OFFICER/ Title IX Coordinator or a Deputy Title IX Coordinator promptly. Confidentiality and mandated reporting is addressed more specifically below. Reports of alleged misconduct or discrimination by a Title IX official should be reported to the CIVIL RIGHT COMPLIANCE OFFICER and/or College President. Reports of alleged misconduct or discrimination by the President should be reported to the CIVIL RIGHT COMPLIANCE OFFICER who will inform the Board of Trustees.

### **Remedial Action**

The College may implement initial remedial, responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such actions could include but are not limited to: no contact orders, providing education, counseling and/or medical services, student academic support, student living arrangement adjustments, student financial aid counseling, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

Niagara County Community College will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor upon a finding that they have engaged in harassing or discriminatory behavior or retaliation.

The College will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the College’s ability to provide the accommodations or protective measures.

### **I. Reporting Requirements**

All College employees (faculty, staff, and administrators) are obligated as Responsible

Employees to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions.

A Responsible Employee is any employee who has the authority to take action to redress harassment, who has the duty to report discrimination or harassment to appropriate College officials, or an individual who a student could reasonably believe has this authority or responsibility. In short, this is most employees, though there are some limited exceptions for reporting responsibilities.

All College employees (faculty, staff, and administrators) are expected as Responsible Employees to report actual or suspected discrimination or harassment to the Title IX Coordinator / Deputy Title IX Coordinator/ Investigator or the Civil Rights Compliance Officer immediately. This includes the reporting student'(s) or employee'(s) name (known as the "Reporting Party"), name of accused (known as the "Responding Party"), approximate date/time/location of incident *if known*, how information was shared with you (i.e. personal conversation, written, etc). Based on the report, the Reporting Party will be contacted by one of the Title IX officials. The Reporting Party does not have to participate in the process (informal or formal), but that does not preclude the Responsible Employee from making the report. Some College employees may maintain the confidence of the reporting party if requested i.e. Mental Health Counselors in the Wellness Center (Confidential Employees). They are permitted to offer options and advice without any obligation to inform an outside agency or campus official unless a reporting party has requested the information to be shared.

Licensed Mental Health Counselors in the Wellness Center, and are required to report the incident but may withhold personal identifying information if requested by the reporting party.

Some activities may be exempt from a Responsible Employee's obligation to report. Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such as marches or speak-outs do not provide notice that must be reported to a Title IX official by employees, unless the reporting party clearly indicates that they wish a report to be made.

In cases indicating pattern (repeated reports or behaviors), predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the reporting party requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have allegations taken seriously by the College when reported, and to have those incidents investigated and properly resolved through these procedures.

## **A. Confidential Reporting for Students**

Students who wish to report an incident to an on campus confidential source, may speak with the Wellness Center.

Confidential Employees:

Mental Health Counselors within the Wellness Center.

Wellness Center

<https://www.niagaracc.suny.edu/wellness/>

Phone: 716-614-6275

Fax: 716-614-6817

Location: C-122

A student or employee wishing to report an incident off campus in complete confidence may contact one of the following external agencies:

- YWCA  
(Need to add information do not have in home office)
  - More resources can also be found at <http://nyscasa.org/> or <https://www.suny.edu/violence-response/>
  - All of the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor.

## **Semi-Confidential Options for Students**

There are some professionals on campus who are denoted as *semi-confidential (privacy)* for students. These individuals are not required to reveal personally identifiable information about a victim/survivor to the Deputy Title IX Coordinator, or anyone else on campus. They are required to report aggregate data to a, Deputy Title IX Coordinator, including nature, date, time, and general location of the incident. These individuals include: Wellness Center Supervisor of College Nursing, Vice President of Student Services, Director of Athletics and Director of Housing.

## **Confidential Resource for Employees**

A confidential resource for employees; the Employee Assistance Program (EAP) is available to help free of charge and is available 24/7. Tel. 800-252-4555 or Web. HigherEdEAP.com. The EAP is a 3<sup>rd</sup> party, neutral service for employees seeking counseling and other resources.

## **Need to know**

A Responsible Employee who makes a report still affords privacy to the Reporting Party, as only a small group of officials who need to know will be informed. Information will be shared as necessary with investigators, witnesses and the Responding Party. The circle of people with this knowledge will be kept as tight as possible to preserve each party's rights and privacy.

Failure of a Responsible Employee, as described in this section, to report an incident or incidents of sexual harassment or discrimination based upon any protected category of which they become aware is a violation of College policy and such Responsible Person may be subject to disciplinary action for failure to comply.

### **Federal Timely Warning Obligations**

Parties reporting sexual misconduct should be aware that under the Clery Act, College administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The College will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **False Allegations**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

### **Amnesty for Student Reporting**

The College community encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, students who are reporting parties or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that reporting parties choose to report to College officials, and that witnesses come forward to share what they know. To encourage reporting, the Student Code of Conduct and the Sexual Misconduct and Non-Discrimination Policy offers reporting student parties and witnesses amnesty from minor policy violations related to the incident.

### **Parental Notification (allegations involving students)**

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The college may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act.

## **Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus police regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student services, public safety, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

**EMPLOYEE INVESTIGATION RESOLUTION PROCESS (IRP) FOR ALLEGATIONS OF DISCRIMINATION, DISCRIMINATORY HARASSMENT, SEXUAL HARASSMENT AND/OR SEXUAL MISCONDUCT As defined in this policy:**

The following Investigation Resolution Process will be followed when an employee is the Responding Party under this policy. Niagara County Community College will act promptly on any allegation or notice of violation of the Non-Discrimination and Sexual Harassment Response and Prevention Policy that is received by the CIVIL RIGHT COMPLIANCE OFFICER, a Deputy Title IX Coordinator or a member of the administration, faculty, or other employee.

The procedures described below apply to allegations of sexual harassment or discrimination on the basis of protected class involving College employees, interns, paid or unpaid, or contractors, regardless of immigration status unless they fit the narrow definition of Title IX under the Title IX Grievance Process. These procedures may also be used to address collateral misconduct occurring in conjunction with harassing or discriminatory conduct (e.g., vandalism, physical abuse of another, etc.).

**Overview**

Upon notice to the CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator, this resolution process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the Non-Discrimination and Sexual Harassment Response and Prevention Policy has been violated, or whether the Title IX Grievance Policy applies. If reasonable cause is determined the College will initiate an investigation that is thorough, reliable, impartial, prompt and equitable. The investigation and the subsequent resolution process determines whether the Non-Discrimination and Sexual Harassment Response and Prevention Policy has been violated. If so, the College will promptly implement effective remedies designed to end the discrimination, prevent its recurrence and address its effects.

Allegations pursuant to the policy prohibiting discrimination and sexual harassment are resolved using the Investigation Resolution Process (IRP). The Civil Rights Compliance Officer and Deputy Title IX Coordinators / Investigators shall be properly trained to facilitate the IRP. This training will include, but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to all forms of harassment and discrimination allegations; the College's Non-Discrimination and Sexual Harassment Response and Prevention Policy (including Sexual Misconduct); confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance.

## **Reporting of Complaints**

Any member of the College community who believes that the policy on non-discrimination and sexual harassment prevention has been violated should contact the CIVIL RIGHT COMPLIANCE OFFICER, Title IX Coordinator or a Deputy Title IX Coordinator.

Complaints of discrimination or sexual harassment may be made verbally or by using the attached Discrimination/Sexual Harassment Complaint Form. Supervisors and all Responsible Employees are **required** to promptly report any complaint of discrimination or sexual harassment that they receive, or any discrimination or harassment that they observe, suspect, or become aware of, to the CIVIL RIGHT COMPLIANCE OFFICER or a Deputy Title IX Coordinator.

Employees or individuals covered by this policy who believe they have been a victim of discrimination or sexual harassment may also seek assistance in other available forums, as explained below in the section on “Legal Protections.”

All employees having knowledge of or receiving reports of a potential violation of this policy are expected to promptly contact the CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator / Investigators within 24 hours of becoming aware of a report or incident. Subject to the College’s obligation to redress violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, the College will give consideration to the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process. Reports can be made in person, via email, mail, fax, and will be promptly and thoroughly investigated. Investigations will be completed as soon as possible after receiving notice of the complaint.

## **Preliminary Inquiry**

Following receipt of notice or a report of a violation, the CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator engages in a prompt preliminary inquiry to determine if there is reasonable cause to believe the Non-Discrimination and Sexual Harassment Response and Prevention Policy has been violated. This inquiry may also serve to help the CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator to determine if the allegations evidence violence, threat, pattern, predation and/or weapon, in the event that the Reporting Party has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator / Investigator may respect a Reporting Party’s request for no action, and will investigate only so far as necessary to determine appropriate remedies. As necessary, the College reserves the right to initiate resolution proceedings without

a formal report or participation by the reporting party.

There may be times when following the receipt of a report, the CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator determines the conduct, as reported, does not fall under the jurisdiction of this policy and does or not require the proceedings outlined below. In these cases, the reported conduct will be referred to an employee's supervisor and appropriate Cabinet member to determine next steps.

In cases where the Reporting Party wishes to proceed or the College determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator will direct a formal investigation to commence and the allegation will be resolved through one of two processes discussed briefly here and in greater detail below:

- Conflict Resolution – typically used for less serious offenses and only when both parties agree to conflict resolution (Informal Resolution)
- Formal Resolution – a resolution of allegations

The preference of the parties involved is considered, but is ultimately determined at the discretion of the CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator / Investigator. Conflict Resolution may only occur if selected by all parties. Conflict Resolution may include recommendations made to an employee's supervisor by the Title CIVIL RIGHT COMPLIANCE OFFICER or Title IX Coordinator to implement strategies, policies or processes to avoid future similar circumstances where an additional report, or repeated behavior could be avoided. Conflict Resolution could also include coaching by the College's Chief Diversity Officer or topical training for the College, department or individuals involved.

If either party or both parties select Formal Resolution, or the CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator determines that Formal Resolution is appropriate, the allegation will be addressed using the Formal Resolution option.

If, during the preliminary inquiry or at any point during the formal investigation, the CIVIL RIGHT COMPLIANCE OFFICER, Deputy Title IX Coordinator or Investigator determines that there is no reasonable cause to believe that policy has been violated, the process will end unless the reporting party requests that the CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator / Investigator makes an extraordinary determination to re- open the investigation or to forward the matter for a hearing. This decision lies in the sole discretion of the CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator / Investigator.

## **Supportive Measures**

The CIVIL RIGHT COMPLIANCE OFFICER, Deputy Title IX Coordinator or Investigator may provide interim remedies to both parties intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the reporting party and the community and to prevent further violations.

These measures may include, but are not limited to:

- Implementing contact limitations between the parties
- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering work arrangements for employees
- Providing campus escorts

The College may interim suspend an employee or organization pending the completion of the IRP, particularly when in the judgment of the CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party whose behavior is in question. Interim suspensions of employees shall be implemented in accordance with any applicable Collective Bargaining Agreement or Conditions of Employment Handbook

## **Investigation Process**

The investigations will typically take the following steps, if not already completed (not necessarily in this order):

- While initial complaints may be made verbally, the individual receiving a verbal complaint should encourage the employee to complete the written Discrimination/Sexual Harassment Complaint Form. If the employee refuses, a Complaint Form should be completed by the individual receiving the complaint based on, and accurately reflecting, the verbal report.
- Preliminary Inquiry will be immediately conducted by CIVIL RIGHT COMPLIANCE OFFICER or Title IX Co- Coordinator, and will be completed as soon as possible.
- Formal Investigation begins if reasonable cause is determined: Written notification will be forwarded to Responding Party, copied to the Reporting Party. If the Responding Party is the President, any reference to the President will be replaced by Board of Trustees.
- The Formal Investigation will be timely conducted and completed as soon as possible. If at any point no reasonable cause is determined, the process ends and will be

communicated to both parties in writing.

- Deputy Title IX Coordinator, Investigator or CIVIL RIGHT COMPLIANCE OFFICER recommends findings and possible remedies based on current best practice and / or precedent to the Human Resources Officer, Assistant Vice President of Student Services who will finalize the resolution following conclusion of the investigation.
- Typically, within ten (10) days of the close of an investigation the Assistant Vice President, CIVIL RIGHT COMPLIANCE OFFICER, Title IX Coordinator, Deputy Title IX Coordinator or Investigator(s) will meet with both parties to explain the finding(s) of the investigation.
- Sanctions or disciplinary action shall be promptly implemented. Where applicable, such sanctions or discipline shall be pursued in accordance with the Collective Bargaining Agreement or Conditions of Employment Handbook covering the affected employee. Disciplinary action may be stayed pending an appeal under this procedure.
- All requests for appeal must be submitted to President of the College, and will be processed in accordance with the appeal process detailed below.□

All investigations will be thorough, reliable, impartial, prompt and equitable. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, as necessary. If documents, emails or phone records are relevant to the investigation, steps will be taken to preserve them.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other Investigation Resolution Process proceedings.

The College may undertake a short delay in its investigation when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The College will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete.

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## **Employee Sanctions**

The College is responsible for prompt, effective, remedial and equitable actions in response to a finding of sexual harassment, discrimination, or retaliation. Because each situation will contain many variables, the College's response will be varied. Responsive actions for an employee who has engaged in sexual harassment, discrimination and/or retaliation may include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*

- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other appropriate remedies*

Any applicable provisions in Collective Bargaining Agreements or Conditions of Employment Handbook shall apply to the imposition of formal disciplinary measures.

### **Appeals**

Appeals of formal disciplinary sanctions imposed upon employees who are covered by a Collective Bargaining Agreement or Conditions of Employment Handbook with the College shall be made in accordance with the discipline procedure set forth in the applicable agreement or handbook. For all other matters, written appeals, including any supporting documentation, must be submitted to and received by the College President of the party's notice of the investigation findings. Appeals may be submitted by both the Reporting and Responding Party within the timeframes set forth herein. Upon receipt of an appeal, notification that an appeal has been submitted shall be provided to the opposing Reporting or Responding Party.

The College President shall issue a determination within the timeframes set forth in the applicable Collective Bargaining Agreement or Conditions of Employment Handbook, or of receipt of the appeal(s) if no Collective Bargaining Agreement applies.

If any component of the appeal procedure set forth herein conflicts with a disciplinary procedure set forth in an applicable Collective Bargaining Agreement, the Collective Bargaining Agreement shall govern the process.

All Responding Parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Assistant Vice President of Human Resources, Vice President of Student Services, CIVIL RIGHT COMPLIANCE OFFICER or Deputy Title IX Coordinator / Investigator. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional responsive/corrective actions, up to and including expulsion and/or termination.

### **Records**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept by a Title IX Coordinator / Investigator electronically in accordance with record retention requirements while limiting access to the CIVIL RIGHT COMPLIANCE OFFICER and Deputy Title IX Coordinator / Investigator.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

## **Legal Protections and External Remedies**

Discrimination and sexual harassment are not only prohibited by NCCC but are also prohibited by state, federal, and, where applicable, local law. Aside from NCCC's internal process, employees may also choose to pursue legal remedies with the following governmental entities:

### **New York State Division of Human Rights (DHR)**

– The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to discrimination and sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the HRL may be filed with either DHR or in New York State Supreme Court. Complaints with DHR may be filed, at no cost, any time within one year of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged discrimination or sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court. Complaining internally to Niagara County does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment. You do not need an attorney to file a complaint with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that discrimination or sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination or sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the discrimination or harassment, or redress the damage caused, including monetary damages, attorney's fees and civil fines.

DHR's contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458; (718) 741-8400; [www.dhr.ny.gov](http://www.dhr.ny.gov). Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint, to obtain a downloadable complaint form, or to obtain contact information for DHR's regional offices across New York State.

**The United States Equal Employment Opportunity Commission (EEOC) –**

The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint, at no cost, with the EEOC anytime within 300 days from the discrimination or harassment. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court. The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination or harassment is found to have occurred.

An employee alleging discrimination or harassment at work may file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov). If an individual filed a complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

**Local Protections –**

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists.

**Local Police Department –**

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. You may wish to contact the local police department.



Niagara County Community College  
DISCRIMINATION / SEXUAL HARASSMENT COMPLAINT FORM

This form is to be used by students and employees to file a complaint of sexual harassment or discrimination in the workplace or academic setting. To ensure that all complaints are managed appropriately, effectively, and in accordance with College policy, complaints should be documented using this form.

CAMPUS \_\_\_\_\_

(PLEASE PRINT OR TYPE)

DATE \_\_\_\_\_

1. Name of Complainant: \_\_\_\_\_

Phone No. \_\_\_\_\_

Status/Job Title \_\_\_\_\_

(Faculty, Staff, Student)

Home Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

2. Name(s) of individual(s) engaging in alleged discrimination or sexual harassment:

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Status (Faculty/Staff/Student): \_\_\_\_\_

Job Title: \_\_\_\_\_

Relationship to you (supervisor; subordinate; co-worker; professor/instructor; other):

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3. Please describe the specific incident of discrimination or sexual harassment alleged, and, if applicable, how you believe it is affecting you, your work, or your academic experience. Describe each incident separately, including dates, times and locations. If you cannot remember exact dates, times or locations, please provide approximations. Use additional pages if necessary and attach any relevant documents or evidence.

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4. Check if alleged discrimination is continuing? Yes  No

5. Are there others who may have witnessed this alleged discrimination or sexual harassment? If so, please provide their name(s).

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6. Are there others who may have experienced similar alleged discrimination or sexual harassment by the individual named above? If so, please provide their name(s).

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7. Did you tell anyone about your experience after the alleged incident(s)? If yes, please provide their names.

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8. Did you speak to the individual named in this report about the alleged discrimination or sexual harassment? If yes, what was his or her response?

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9. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

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10. Please check the appropriate box(es):

- I elect to utilize the informal resolutions process
- I elect to proceed immediately to file a formal complaint

11. Have you filed this charge with a federal, state or local government agency?

Yes  No

If yes, with which agency? \_\_\_\_\_

When? \_\_\_\_\_

12. Have you instituted a suit or court action on this charge?

Yes  No

If yes, with which court? \_\_\_\_\_

When? \_\_\_\_\_

Court address \_\_\_\_\_

\_\_\_\_\_

Contact person \_\_\_\_\_

13. Relief Requested:

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**I attest that the information I have provided is a true and accurate description of my complaint and that I have not willfully or deliberately made false statements. I understand that NCCC prohibits any individual from retaliating against me for filing a complaint and that I am to notify my supervisor, Civil Right Compliance Officer, or Deputy Title IX Coordinator, if I believe that I am a victim of retaliation.**

(Print Name) \_\_\_\_\_ Signature: \_\_\_\_\_ Date \_\_\_\_

Signature of Person Receiving Complaint:

\_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

