

Policy & Planning Committee Meeting

January 12, 2016

Agenda

1.

2. Sexual Harassment Policy

WHEREAS, THE ACADEMIC SENATE AFFIRMATIVE ACTION COMMITTEE APPROVED REVISIONS TO THE COLLEGE'S SEXUAL HARASSMENT POLICY ON NOVEMBER 5, 2015; AND

For submission to the Academic Senate November 24, 2015

discrimination on the basis of sex in employment and within educational programs. Any discrimination and/or sexual harassment hereunder are violations of this Policy.

It is the policy of Nassau Community College that all forms of sexual harassment should be corrected early and firmly in the interest of maintaining a barrier-free working and learning environment. All violations hereunder will be corrected in a timely manner and in accordance with the policy and procedures set forth herein.

NCC is committed to the principle of academic freedom and this policy shall not be interpreted as interfering with that freedom, understanding that the principle of academ

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

b. Sexual Assault is defined as any type of sexual contact or behavior that occurs by force or without consent of the recipient of unwanted sexual activity, such as the offenses of rape, fondling, incest, or statutory rape. It includes sexual acts against people who are unable to consent either due to age or a lack of capacity.

c. Domestic Violence is a pattern of abusive behavior that is used by an individual to gain or maintain power or control over their intimate partner or family member. Domestic violence can include, but is not limited to disorderly conduct, harassment, sexual misconduct, forcible touching, sexual abuse, assault, strangulation, etc., when such an act creates a substantial risk of physical or emotional harm and is committed by a family member.

d. Dating Violence is defined as a crime of violence committed by a person who is or has been in a social relationship or a romantic or intimate nature with the victim.

e. Stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other actions of a sexual nature directed at a specific person that would cause a reasonable person to (1) fear for his or her safety or the safety of others, or (2) suffer substantial emotional distress.

Sexual harassment may consist of repeated actions or may arise from a single incident if sufficiently severe. What constitutes sexual harassment under this policy will be decided on a case-by-case basis and depends on the specific facts and the context in which the conduct occurs. Some conduct may be inappropriate, unprofessional and/or subject to disciplinary action, but might not fall under the definition of sexual harassment. The specific action taken, if any, depends on the nature and gravity of the reported conduct.

I-D CONSENSUAL RELATIONSHIPS

Consenting romantic and sexual relationships between a College employee and student or between two College employees, including supervisor-employee relationships, while not expressly forbidden, are discouraged. These relationships carry an inherent risk when they occur between instructor and student or between supervisor and subordinate due to the perceived or actual inequality of power and influence between the participants. As such, it is incumbent upon those with authority not to abuse, nor to seem to abuse, the power with which they are entrusted. Individuals engaging in such conduct understand they risk opening themselves up to a charge of sexual harassment.

PART II. FUNCTIONS AND DUTIES OF EMPLOYEES

Part II of this policy sets out the functions and duties of employees designated to receive Complaints, handle investigations, counsel Complainants and seek resolution along with

Where the Complainant has discussed the matter with the AAO, DIO or DC or any College community member with “Reporting Responsibilities,” that individual will proceed as required in II-C.1. Where a Situation Report is filed it may not be used as the basis for any further disciplinary action or investigation and may not be put into a personnel and/or student file.

The Complainant and/or Respondent are not obligated to further inform the above-referenced third parties of a resolution, if any, to the alleged Complaint.

The use of an Informal Resolution does not preclude the Complainant from seeking further redress under III-B provided a formal Complaint is made within the Time Limitation prescribed in II-E.

III-B FORMAL

Three stages

This policy provides for three stages for the resolution of allegations of sexual harassment:

Stage 1: Conciliation

Stage 2: Mediation

Stage 3: Formal Hearing

III-C INITIATING A COMPLAINT

A signed Complaint form must be filed with the AAO or DIO in a timely manner (as prescribed hereunder in II-E “Time Limits”).

Complainants have the option of initiating Stage 1, 2 or 3 procedures except where the Complaint alleg

Mediation is conducted by either the AAO or DIO (to be selected by the Complainant). The AAO or DIO shall attempt to facilitate/mediate a resolution of the alleged incident through meetings with all parties. The Respondent has the option of asking for a representative of his/her bargaining unit to attend any meetings as an observer.

The Complainant and Respondent need not meet together unless both parties agree. All parties will be given the opportunity to fully respond to all allegations. Every effort shall be made to ensure confidentiality. The Complainant and the Respondent may each be accompanied by up to two (2) observers.

The AAO will be informed of the outcome of the meeting(s) and will add that resolution to the Situation Report. The resolution of a Stage 2 Complaint (including the Situation Report) will not be sent to a college employee's personnel file or to a Student file nor be the basis for any further discipline arising from the Complaint.

Any subsequent investigation of a sexual harassment Complaint involving the same Respondent may take into consideration information gathered from the first incident provided the subsequent incident occurs no more than six (6) years following the first incident.

III-D.3 STAGE 3: Formal Hearing

Formal Stage 3 Complaints shall be filed on a signed, written and dated Complaint form provided by the AAO or DIO and signed in the presence of the AAO or DIO. Within seven (7) working days of receipt of the signed Complaint from the Complainant, the Respondent shall be notified that the Complaint has been filed. Within one working day of receipt of the signed Complaint from the Complainant, his/her Chair or Supervisor and the Respondent's union where applicable will be advised of the pending Complaint.

Within ten (10) working days from the receipt of the Signed Complaint the AAO or DIO (hereinafter known as "Investigator") will conduct a formal investigation, which will include but not be limited to:

1. A review of all applicable materials, including any past Situation Reports concerning the Respondent. Parties may choose to provide materials to the Investigator;
2. Interviews with any known witnesses, including witnesses provided by the parties to the proceeding; and
3. Interview with the Complainant and Respondent. Complainant and Respondent may choose to have up to two (2) ~~individuals~~ *advisors* of their choice (including attorneys and/or union representatives) present during such interviews. Every opportunity will be provided to Complainant to present evidence to prove that it was "more likely than not" that the harassment occurred. Every opportunity will be provided to the Respondent to present exculpatory evidence.

The Respondent and Complainant and their *advisors* ~~union representatives and attorneys~~ will each be afforded the opportunity to see all the evidence in the case file, including but not limited to, documentation of the investigation, all written, oral and audio or video recordings collected by the AAO or DIO during

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investigation's completion. The time for its completion will begin to run again on the first day the College is officially back in session.

Upon conclusion of the investigation, where there is a determination by preponderance of the evidence that the Respondent violated the Sexual Harassment Policy, the AAO shall offer the Complainant the opportunity to make an impact statement which the AAO will consider when determining the appropriate sanctions. After listening to or reviewing (if submitted in writing) the impact statement, the investigator has seven (7) working days to ~~write a report and send it~~ his or her findings to the College President. That report must include:

1. A finding of whether the allegations were warranted or not applying a preponderance of the evidence (“more likely than not”) standard that sexual harassment or violence occurred;
2. A recommendation for a negotiated resolution if appropriate; and/or
3. imposing of the sanction if warranted, which may include a recommendation for further disciplinary action.

~~On the same day the written report is sent to the College President it will be sent to all parties.~~

Following the President's review and approval of the Report, the AAO will notify the Complainant and the Respondent, in writing, concerning the outcome of the investigation, including the rationale for the decision, and sanctions imposed, if any.

~~A summary of the report shall be sent to the Respondent's personnel file or if a student to the student's file once it is finalized after Presidential action and/or resolution of any appeal.~~

After the case is finalized (which shall include the resolution or any appeal), a summary of the report shall be incorporated into the letter ~~be sent to the~~ Respondent and placed in his/her ~~Respondent's~~ personnel file or if a the Respondent is a student, to the student's file ~~once it is finalized after Presidential action and/or resolution of any appeal.~~

III-D.4: SANCTIONS

In the event the Affirmative Action Officer (or DIO) renders a finding that imposes sanctions, as stated above, then the issuance of sanctions shall be in accordance with the following procedure:

For employees covered by collective bargaining agreements, the issuance of sanctions shall be in accordance with

~~Either party may bring a petition for an appeal of the decision made by the Affirmative Action Officer within seven (7) business days. A Petition for Appeal shall be made in writing to the College President and shall be hand delivered to the Affirmative Action Officer. If the Complaint is against the College President or a member of the Board of Trustees, the Petition for Appeal will be made to the Chair of the Board of Trustees (or to the Chair of the Board Personnel/Affirmative Action Committee if the respondent is the Chair of the Board of Trustees) and hand delivered to the Affirmative Action Officer.~~

III-D 5.1: APPEAL JUSTIFICATIONS

The President *Appeal Board* has ten (10) business days to grant or deny a petit

III-D 5.4: OPTIONS FOLLOWING APPEAL BOARD ACTION

In the event that one of the parties does not accept *is not satisfied with*

Nassau Community College Policy Against Sexual Harassment Brochure: This brochure will be distributed to all new faculty and staff, and electronically to incoming students at the start of each semester. Hard copies will also be made available in the offices of the Chair of Student Personnel Services, the Women's Center, Student Activities, Designated Counselors, Departmental Chairs, Public Safety, Academic Advisement, and the College Library.

APPENDIX C

Individuals who file a Complaint with the College do not lose their right to pursue other remedies with the New York State Division of Human Rights, the Office for Civil Rights, Nassau County Commission on Human Rights or the Nassau County Police Department. In addition, sexual harassment may also rise to the level of a criminal offense as defined in Article 130 of the New York State Penal Code, and offenders may be subject to criminal prosecution reg

disability, health or mental health services, and changes to working or course schedules. A victim who at first requests confidentiality may later decide to file a formal complaint with the College or report the incident to local law enforcement, and thus have the incident fully investigated. These counselors and advocates will provide the victim with assistance if the victim wishes to do so.

3) **Responsible Employees:** These employees are required to report all the details of an incident (including the identities of both the victim and accused) to the Title IX coordinator. A report to these employees (called “Responsible Employees”) constitutes a report to the College—and generally obligates the College to investigate the incident and take appropriate steps to address the situation. A “Responsible Employee” is a College employee who has the authority to redress sexual harassment/violence, who has the duty to report incidents of sexual harassment/violence or other student misconduct, or who a student could reasonably believe has this authority or duty. Individuals falling into this category are listed below:

- All faculty except for those listed in Appendix D no. 2 above
- Public Safety employees,
- Department chair,

- Whether the accused used a weapon or force;
 - Whether the reporting individual is a minor; and
 - Whether the College possesses other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.
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- If the College honors the request for confidentiality, a victim must understand that the College's ability to meaningfully