

NASSAU COMMUNITY COLLEGE  
Garden City, New York

BOARD OF TRUSTEES' MINUTES

Meeting of September 15, 2014

The five hundred seventy-third meeting of the Board of Trustees was held on Monday, September 15, 2014 on the eleventh floor of the Administrative Tower.

The meeting was called to order by Chair Gardyn at 6:04 p.m. followed by a salute to the flag.

Present: Jorge L. Gardyn, Chair  
Kathy Weiss, Vice Chair  
Arnold W. Drucker, Secretary Pro Tem;  
John A. DeGrace, Wanda Jackson, Edward W. Powers

**Absent:** Mary A. Adams, Anthony W. Cornachio, Patrick Deegan, Student Trustee

Also in attendance: Kenneth Saunders, Maria Conzatti, Chuck Cutolo.

Chair Gardyn requested a motion that pursuant to Section 105 of the Open Meetings Law of the State of New York, the Board of Trustees shall enter Executive Session for the following purposes: 1) to discuss matters relating to collective bargaining involving the AFA; 2) to discuss matters involving litigation relating to the labor dispute with the AFA; and 3) to discuss matters leading to the appointment, promotion, demotion or removal of a particular person. Trustee Weiss moved the motion; seconded by Trustee Drucker. Motion carried 6-0.

Chair Gardyn resumed the open meeting at 7:40 p.m. followed by a salute to the flag.

Present: Jorge L. Gardyn, Chair  
Kathy Weiss, Vice Chair  
Arnold W. Drucker, Secretary Pro Tem;  
John A. DeGrace, Wanda Jackson, Edward W. Powers

**Absent:** Mary A. Adams, Anthony W. Cornachio, Patrick Deegan, Student Trustee

Also in attendance: Kenneth Saunders, Maria Conzatti, Donna Haugen, Chuck Cutolo.

Approval of Minutes

Chair Gardyn requested a motion to approve the minutes of June 17, 2014. Trustee Weiss moved the motion; seconded by Trustee Powers. Motion carried 6-0.

1. Expenditures

Trustee Weiss introduced the following resolutions:

- a) **RESOLVED**, THAT THE NCC BOARD OF TRUSTEES APPROVES THE PENDING COLLEGE PROCUREMENT AGREEMENT WITH GRAPHIC PAPER IN THE AMOUNT OF \$100,000.00 FOR

COPY PAPER FOR PRINTERS AND COPY MACHINES FOR USE BY THE CAMPUS COMMUNITY AND THE PRINT SHOP.

b) **RESOLVED**, THAT THE NASSAU COMMUNITY COLLEGE BOARD OF TRUSTEES APPROVES THE PENDING COLLEGE PROCUREMENT AGREEMENT WITH TECHNICAL TEMPERATURE IN THE AMOUNT OF \$120,000.00 FOR AN EXTERNAL CONTRACT TO PROVIDE THE EXPERTISE ON SPECIALIZED EQUIPMENT OF HVAC SYSTEMS WHEN THE IN-HOUSE EMPLOYEES CANNOT PERFORM THE WORK THEMSELVES. SERVICES WILL BE PROVIDED ON AN AS NEEDED BASIS.

c) **RESOLVED**, THAT THE NASSAU COMMUNITY COLLEGE BOARD OF TRUSTEES APPROVES THE PROFESSIONAL SERVICE CONTRACT FOR \$250,000.00 FOR INGERMAN SMITH TO ACT AS OUTSIDE COUNSEL IN LABOR RELATED LITIGATION, GRIEVANCES, ARBITRATIONS AND COLLECTIVE BARGAINING NEGOTIATIONS RELATING TO BOTH THE FULL-TIME AND PART-TIME FACULTY.

Chair Gardyn requested a motion. Trustee Drucker moved the motion; seconded by Trustee Weiss. Motion carried items (a – c) 6-0.

2. Trustee Jackson introduced the following resolution:

**BE IT RESOLVED** THAT THE NASSAU COMMUNITY COLLEGE BOARD OF TRUSTEES ADOPTS THE COLLEGE'S NEW SEXUAL HARASSMENT POLICY AS WRITTEN BY THE ACADEMIC SENATE AFFIRMATIVE ACTION COMMITTEE WITH INPUT FROM THE COLLEGE'S ADMINISTRATION AND AS APPROVED BY THE ACADEMIC SENATE. (ATTACHED)

Chair Gardyn requested a motion. Trustee Powers moved the motion; seconded by Trustee Jackson. Motion carried 6-0.

Chair Gardyn made a motion under Article IV section 3(f) of the Rules of Procedure to allow for the consideration of two donations that did not appear on the Calendar. Trustee Weiss seconded the motion. Motion carried 6-0.

3. Trustee DeGrace introduced the following resolutions:

**WHEREAS**, KING O'ROUKE AUTO GROUP OF SMITHTOWN, NEW YORK HAS DONATED OFFICE DESKS, OFFICE CHAIRS, GUEST CHAIRS AND WAITING ROOM CHAIRS TO NASSAU COMMUNITY COLLEGE, AND

**WHEREAS**, THE ESTIMATED VALUE OF THE DONATION IS SEVEN HUNDRED AND THIRTY DOLLARS (\$730), AND

**WHEREAS**, THE VICE PRESIDENT FOR FACILITIES MANAGEMENT HAS DETERMINED THAT THIS DONATION WILL PROVIDE THE COLLEGE WITH ITEMS THAT WILL BE USEFUL IN MEETING THE COLLEGE'S EQUIPMENT NEEDS AND GREATLY APPRECIATES THIS DONATION,

**RESOLVED**, THAT THE NASSAU COMMUNITY COLLEGE BOARD OF TRUSTEES AFFIRMS THE ACCEPTANCE OF THE DONATION OF THE OFFICE DESKS, OFFICE CHAIRS,

GUEST CHAIRS AND WAITING ROOM CHAIRS FROM KING O'ROUKE AUTO GROUP OF SMITHTOWN, NEW YORK.

Chair Gardyn requested a motion. Trustee Weiss moved the motion; seconded by Trustee Jackson. Motion carried 6-0.

4. Trustee DeGrace introduced the following resolution:

**WHEREAS**, SARTORIUS STEDIM NORTH AMERICA INC./SARTORIUS COPORATION INC. OF BOHEMIA, NEW YORK HAS DONATED STACKING CHAIRS TO NASSAU COMMUNITY COLLEGE, AND

**WHEREAS**, THE ESTIMATED VALUE OF THE DONATION IS TWO HUNDRED-NINETY-TWO DOLLARS (\$292), AND

**WHEREAS**, THE VICE PRESIDENT FOR FACILITIES MANAGEMENT HAS DETERMINED THAT THIS DONATION WILL PROVIDE THE COLLEGE WITH ITEMS THAT WILL BE USEFUL IN MEETING THE COLLEGE'S EQUIPMENT NEEDS AND GREATLY APPRECIATES THIS DONATION,

**RESOLVED**, THAT THE NASSAU COMMUNITY COLLEGE BOARD OF TRUSTEES AFFIRMS THE ACCEPTANCE OF THE DONATION OF THE STACKING CHAIRS FROM SARTORIUS STEDIM NORTH AMERICA INC./SARTORIUS CORPORATION INC. OF BOHEMIA, NEW YORK.

Chair Gardyn requested a motion. Trustee Weiss moved the motion; seconded by Trustee Jackson. Motion carried 6-0.

Chair Gardyn made a motion under Article IV section 3(f) of the Rules of Procedure to allow for the consideration of an item that does not appear on the Calendar. Trustee Weiss seconded the motion. Motion carried 6-0.

Article III, Section 1 (b) of the Rules of Procedure of the Board of Trustees states that the Chairperson, Vice Chairperson and Secretary shall be elected, by ballot, at the meeting of the Board of Trustees in September of each year. A majority vote of the total membership of the Board shall be necessary for election.

The Board of Trustees of Nassau Community College elected Jorge Gardyn as Chair, with a vote of 6-0; Kathy Weiss as Vice Chair with a vote of 6-0 vote; and Arnold Drucker as Secretary with a vote of 6-0.

Dr. Saunders reported on the following items:

1. Welcomed all back to the new academic year.
2. Recognized and congratulated the 30 CSEA employees who retired under the Nassau County separation agreement.
3. Fall enrollment is down 3.2%. The budget was projected for a 1% decrease. That coupled with other expenditures that were unanticipated at the time the budget was formulated means that NCC is looking at a deficit for the current fiscal year. That situation is going to be challenging. More details will be provided at the next Board meeting.

4. The NCC Foundation Board welcomes two new members who look forward to generating additional resources for the College.

Speakers

Phyllis Kurland, Student Personnel Services, reported on the success of the August Freshman Orientation. She thanked the 72 volunteers from the full time faculty, part time faculty, and administration, who volunteered their time to speak to the freshman students on how to be successful in the College classroom. She also thanked the Board on behalf of the Sexual Harassment Education Committee of the Affirmative Action Committee for approving the Sexual Harassment Policy.

Dr. Gardyn welcomed back the Board, faculty, administration, and students to another academic year.

Chair Gardyn announced the next Capital and Finance BOT Committee meeting is scheduled for Tuesday, October 14, 2014 at 5:00 p.m. followed by the Full Board meeting. The Board will open the public session between 6:15 and 6:30 p.m. and resume the public session approximately 7:30 p.m.

Chair Gardyn requested a motion to adjourn the meeting. Trustee Drucker moved the motion; seconded by Trustee DeGrace. Motion carried 6-0.

Meeting adjourned at 7:55 p.m.

Respectfully submitted,

Arnold Drucker  
Secretary

# **NASSAU COMMUNITY COLLEGE POLICY AGAINST SEXUAL HARASSMENT**

## **PART I. SCOPE, POLICY, AND DEFINITIONS**

### **I-A SCOPE**

This policy applies to all members of the Nassau Community College community (hereinafter “College” or “NCC”) and as such all community members may use the procedures set forth herein. However, volunteers and visitors to the College, including but not limited to vendors and service-providers, must abide by the guidelines laid out by this policy.

### **I-B POLICY**

Consistent with the College’s mission to establish and maintain a cooperative work and academic environment with mutual respect for all college students, faculty, and staff, it ensures that the dignity and worth of all members of the institutional community are respected. In keeping with this principle, Nassau Community College affirms its commitment to maintaining an environment free from all forms of exploitation, intimidation, or harassment, including sexual harassment.

Sexual Harassment is demeaning, offensive, illegal, and prohibited by Nassau Community College Policy. Sexual Harassment subverts the mission of the College and undermines the educational process. It creates an atmosphere that is not conducive to learning and productivity. Sexual Harassment will not be tolerated. This includes workplace as well as “peer to peer” (student to student) harassment.

Nassau Community College is committed to all provisions of Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and all other applicable human rights and equal opportunity laws. These laws prohibit 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 academic freedom is accompanied by a corresponding principle of responsibility.

### **I-C DEFINITIONS OF SEXUAL HARASSMENT**

Sexual harassment is defined under both Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Prohibited under this policy are:

1. “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, including sexual violence, when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.” (Title VII of the Civil Rights Act of 1964 and its amendments and 29 Code of Federal Regulations, Volume 4, §1604.11);

2. Harassment of students by any community members, by peer to peer and/or employee to employee (including supervisor to subordinate). Sexual harassment may also consist of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where grades or educational progress are made contingent upon submission to such conduct, or where the conduct has the purpose or effect of interfering with the individual's academic and/or work performance, or of creating an intimidating, hostile, or offensive educational and/or work environment. (Title IX of the Education Amendments of 1972);
3. Harassment in connection with all academic, educational, extracurricular, athletic, and other programs of the College is prohibited whether on college facilities, on a college van or bus, or during any other College sponsored off-campus activity;
4. Sexual violence is a form of sexual harassment and is strictly prohibited under law and under this policy. Sexual violence involves physical acts and/or sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to his/her age, use of drugs or alcohol, or due to a mental and/or physical disability whether permanent or temporary in nature. Sexual violence includes but is not limited to: rape, sexual assault, sexual battery, and sexual coercion; and
5. Sexual harassment can also include, but is not limited to, such actions as:
  - a. Sex-oriented humor or abuse that includes derogatory or dehumanizing gender references
  - b. Physical contact such as patting, pinching, or frequently and intentionally brushing against another's body.
  - c. Subtle or overt pressure for sexual activity.
  - d. Preferential treatment or suggestions of preferential treatment conditioned on submitting to sexual conduct (often referred to as "quid pro quo" harassment)
  - e. Use of e-mail, cell-phones, electronic messaging and/or computer dissemination of sexually oriented, sex-based communication with intent to harass, threaten or alarm another person.

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 the general responsibilities of all College employees to create a harassment free environment.

## **II-A COMPLAINANT RESOURCES**

### **1. Affirmative Action Officer**

The College's Affirmative Action Officer (hereafter "AAO") shall serve as the Title IX Coordinator and the Chief Investigative Officer for the purposes of pursuing informal and formal resolution of Complaints. The AAO is responsible for educating College personnel and students regarding their responsibilities and rights under this policy and under federal and state regulations. The AAO shall collaborate with all appropriate constituents, including the Academic Senate and its committees, in accordance with the College commitment to shared governance, labor agreements and federal standards for Title IX Coordinator. Appendix A details the specific responsibilities of the Affirmative Action Officer.

### **2. Designated Investigative Officer**

The College President shall appoint a member of the administration or faculty as a Designated Investigative Officer (DIO) to serve as called upon by the AAO or another member of the college community. When called upon, the DIO shall have the responsibilities of the AAO as it relates to hearing Complaints brought by students or college personnel, ensuring that Complainants and the accused are informed of their options under this policy, and conducting an investigation under the supervision of the AAO (except when the AAO, the College President, or a member of the Board of Trustees is the subject of investigation. Appendix A details the specific responsibilities of the Designated Investigative Officer.

### **3. Designated Sexual Harassment Counselors**

The AAO office shall maintain a list of qualified Designated Sexual Harassment Counselors (hereinafter referred to as the "List" and "Designated Counselors" or "DC" respectively). The Student Personnel Services chairperson, with the advice and consent of that Department's P & B Committee, shall submit the names of Student Personnel Services' full-time faculty with sexual harassment counseling credentials to the AAO. Other full-time faculty or Administrators who wish to serve in this capacity and who have the required credentials as determined by Student Personnel Services may be included on the List. Final approval of all appointees to the List rests with the College President in consultation with the AAO.

The College shall, as needed, provide sexual harassment training for the Designated Counselors.

The Designated Counselors:

- a. shall provide education and counseling support, as appropriate, to members of the college community seeking information and/or help with sexual harassment issues;
- b. may act as facilitators on behalf of the Complainant;
- c. shall inform Complainants of their options under the sexual harassment policy;
- d. shall offer supportive counseling;
- e. shall assist Complainants throughout their decision-making process and in the resolution of the Complainants' concerns;
- f. if so requested by the Complainants, shall accompany Complainants to meetings arranged by the AAO or DIO;
- g. shall submit a Situation Report of all alleged incidents of sexual harassment to the AAO.

### **4. Reporting Responsibilities of Employees**

To facilitate the reporting of sexual harassment Complaints and eliminate alleged harassment as soon as

possible, the College recognizes that training needs to be provided to certain College employees likely to witness or receive reports of sexual harassment and sexual violence. The College will offer such training to faculty, public safety employees, Department Chairs, College administrators, counselors, College attorneys, health personnel, and CSEA supervisors.

Such training will ensure that the above-referenced employees:

- a. know how to direct the report of harassment to the appropriate College officials; and
- b. have practical information about how to identify potential and/or alleged sexual harassment and violence

To the extent permitted by law, these individuals must report all allegations, reports and incidents of sexual harassment that come to their attention by filing a Situation Report with the AAO. All such reports must be filed no later than forty-five (45) working days from the date the Complaint was received or such incident(s) came to their attention. However, in allegations involving actual or threatened physical violence, the reporting employees listed just above in IIA(e) must file the report with Public Safety promptly upon hearing of the alleged incident.

## **II-B THIRD PARTY COMPLAINTS**

Any College employee, other than those mentioned above in IIA(e), who reasonably believes that sexual harassment may have occurred may report it to the AAO or DIO. Additionally, any persons not members of the College Community who reasonably believe that sexual harassment has occurred may report it to the AAO, DIO, or Public Safety.

## **II-C REPORTING CIRCUMSTANCES**

Three reporting circumstances exist: Circumstance 1, where the Complainant wishes to remain anonymous and will not go forward with a Complaint; Circumstance 2, where the Complainant wishes to seek a remedy/resolution to the Complaint; and Circumstance 3, where there is no active Complainant but the College has become aware of an alleged or credible possibility of an incident of sexual harassment.

1. Circumstance 1: The Complainant wishes to remain anonymous and will not file a Complaint.

Where the Complainant is a College employee or student, the AAO, DIO or DC must explain to the Complainant at the first meeting his/her rights and options under this Policy as well as the Time Limitations for filing a Complaint under this Policy. If the Complainant still does not wish to file a Complaint, the AAO, DIO, or DC will file a Situation Report, which will be filed and maintained by the AAO. If the Complainant has met with other individuals having "Reporting Responsibilities" (section IIAe above), that individual will advise the Complainant to the extent outlined there. The employee with "Reporting Responsibility" will file a Situation Report with the AAO.

2. Circumstance 2: The Complainant wishes to file a Complaint.

Where the Complainant is a College employee or Student and has decided to file a Complaint for a Stage 1,2 or 3 procedure, the AAO, DIO or DC must explain to the Complainant at the first meeting her/his rights and options under this policy, the time limitations for filing a Complaint, and the Complaint procedure under this Policy. If the Complainant has not met with the AAO, DIO or a DC but has met with another individual with "Reporting Responsibilities" (section IIAe above), that individual will advise the Complainant and direct the Complainant to the AAO to file a formal Complaint as well as file a Situation Report with the AAO.



3. Circumstance 3:

If the AAO, DIO or DC becomes aware of a credible anonymous allegation of sexual harassment, sexual violence or a threat of such harassment or sexual violence, a Situation Report must be filed and the AAO must institute an investigation.

## **II-D COMPLAINT AND INFORMATIONAL FORMS**

The College has developed the documents listed below in order to prevent, investigate and resolve incidents of sexual harassment within the College community:

1. Situation Reports: A Situation Report is a written document that describes a set of circumstances reported to the AAO or DIO involving allegations of sexual harassment. Filed with the Affirmative Action Officer, it will be maintained in the Affirmative Action Office for a minimum of six (6) years. Situation Reports cannot, in the absence of a Complaint, be used to initiate disciplinary action. However, in the event a formal proceeding is initiated such report(s) may become part of an active case. The AAO will use his/her judgment as to whether or not to notify the Department Chair of a Situation Report. The AAO will notify the person in question at the appropriate time as determined by the AAO's judgment. That person has the option to submit a written rebuttal within ten days and have that document attached to the Situation Report.
2. Complaint Form: A Complaint Form must be completed to formally institute a Stage 1, 2 and 3 proceeding. All Complaints must be signed by the Complainant and the AAO or DIO and dated. Complaint forms are to be filled out in the Affirmative Action office in the presence of the Affirmative Action Officer, and the original is kept in that Office.

## **II-E TIME LIMITATIONS**

College Employees have forty-five (45) working days from the last alleged incident of sexual harassment to make a Complaint hereunder. Students have forty-five (45) working days from the last alleged incident of sexual harassment or forty-five (45) working days from the last official date to submit grades to the Registrar to make a Complaint hereunder.

The Time Limitation (for Employees and Students) is deemed tolled (suspended) on the first day the Complainant speaks to any of the individuals listed in this Policy under II-A for five (5) working days. After that the forty-five (45) day time limit commences to run again except when the Complainant is obtaining on-going counseling from a DC. When the Complainant is receiving on-going counseling from a DC, the Time Limitation to institute a Complaint under Part III is tolled (suspended) for ten (10) working days from the date the Complainant first reported the incident to the DC and then commences to run again.

## **II-F CONFIDENTIALITY**

The Designated Counselors, those with "Reporting Responsibilities (II-A(d)), AAO and DIO are not obligated to elicit names or include names in the Situation Report where the Complainant has requested anonymity. If names are known, the reporting employee will consider the Complainant's wishes as to whether or not to include them in the report. However, where the allegation alleges sexual violence or the threat of sexual violence, then the Situation Report must include names where these are known.

Every possible effort will be made to maintain the confidentiality of the Complainant and Respondent. However, absolute confidentiality cannot be guaranteed.

## **PART III. COMPLAINT AND RESOLUTION PROCEDURES**

Part III of this policy sets out the Complaint procedure for the enforcement of this policy. There are two types of procedures: Informal and Formal. The latter is comprised of three stages. Allegations involving sexual assault cannot be resolved using Stage 1 or Stage 2, but must commence at Stage 3.

### **III-A INFORMAL**

There are instances where the Complainant does not wish to file a Complaint or seek a formal resolution but prefers to informally resolve the problem.

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 alleges sexual assault. Such cases are automatically the subject of a Stage 3 procedure. The College will pursue a Stage 3 investigation and procedure even when the Complainant chooses to pursue other legal remedies and/or where other criminal agencies are involved.

### **III-D RESOLUTION PROCEDURES**

#### **III-D.1 STAGE 1: Conciliation**

Most Complaints are best resolved by the use of Stage 1 and the College urges all Complainants, whenever feasible, to use this stage. While it is referred to as Conciliation, this procedure and its outcome are considered official. During Stage 1 the Complainant must meet with the DC and file with the AAO a signed Complaint outlining the harassment allegations (where there already exists a Situation Report on the incident the DC will append the Complaint to that Situation Report).

At this stage, the Complainant may decide, among other options, to resolve the situation individually, or

to request that the DC speak to the Respondent on his/her behalf, and/or to request that the DC accompany him/her to meeting(s) with the Respondent. The AAO will be informed of the outcome of that meeting(s) and will add that resolution to the Situation Report. The resolution of a Stage 1 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 of sexual harassment 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.

At any time before the meeting the Complainant may decide to terminate such a meeting and proceed to Stage 2 or 3.

### **III-D.2 STAGE 2: Mediation**

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:

- a. A review of all applicable materials, including any past Situation Reports concerning the Respondent. Parties may choose to provide materials to the Investigator;
- b. Interviews with any known witnesses, including witnesses provided by the parties to the proceeding; and
- c. Interview with the Complainant and Respondent. Complainant and Respondent may choose to have up to two (2) individuals of their choice (including attorneys and 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 union representatives and attorneys will each be afforded the opportunity to see all the evidence, including but not limited to, documentation of the investigation, all written, oral and audio or video recordings collected by the AAO or DIO during the course of his/her investigation. Parties must be given the opportunity to respond to that evidence.

All fact-finding investigations shall be consistent with the Equal Employment Opportunity Commission’s and the Department of Education’s guidelines involving allegations of Sexual Harassment. All evidence must be maintained and preserved.

At all stages of the investigation, both the Complainant and the Respondent may be accompanied by up to two (2) observers, including attorneys and union representatives, who can represent the Complainants and Respondent at their option.

The Investigator will maintain the confidentiality of all Parties involved to the extent feasible.

The investigation must be completed within forty-five (45) working days from the date of the formal Complaint unless one of the parties to the Complaint is either a student or faculty and the Complaint was filed in a manner that the investigation would have to wholly or partly be conducted during a College break. Any such break will toll (suspend) the time for the 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, the investigator has seven (7) working days to write a report and send it to the College President. That report must include:

- d. 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;
- e. A recommendation for a negotiated resolution if appropriate; and/or
- f. 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.

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.

#### **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 disciplinary procedures under the appropriate collective bargaining agreement. For all others, the imposition of sanctions shall be in accordance with disciplinary procedures under the applicable College policy.

Sanctions may include, *but are not limited to*:

- Verbal warning
- Written Reprimand

- Probation
  - May include restriction of campus activities, counseling, community service, and monitoring of behavior for a period of time.
- Suspension
  - From school or work for a time period no less than five (5) consecutive business days, and no more than two (2) consecutive academic semesters
- Termination/Expulsion
  - Complete and permanent removal from the college community.

### **III-D.5: PETITION FOR APPEAL**

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 has ten (10) business days to grant or deny a petition for appeal. The President's decision to grant the petition for appeal shall be based on reasonable justification, which may include, but is not limited to:

- Lack of fairness and/or due process during the Complaint and investigative process
- The availability of new evidence that was not available during the Affirmative Action Officer's investigation

If the President denies the petition for appeal, he/she shall notify both parties.

The Chair of the Board of Trustees (or Board Personnel/Affirmative Action Committee as stated in III-D5 above) shall substitute for the College President if the Complaint is against that President or a member of the Board of Trustees in this section and in section III-D5.2 below.

#### **III-D 5.2: APPEAL PROCESS**

If the President grants a petition for appeal, he will convene the Sexual Harassment Appeal Board and notify both parties.

The Sexual Harassment Appeal Board shall:

Interview the Affirmative Action Officer, review the petition, review the Affirmative Action Officer's investigation reports, and may interview witnesses. Both parties have the right to submit a written statement to the Appeal Board.

The Sexual Harassment Appeal Board may overturn the Affirmative Action Officer's decision or do one of the following:

- Reduce the severity of the sanction
- Increase the severity of the sanction

- Uphold the Affirmative Action Officer's decisions

The Sexual Harassment Appeal Board has ten (10) business days to review the case and to render a decision. If the deadline is not met, the Affirmative Action Officer's decision shall be final.

### **III-D 5.3: THE SEXUAL HARASSMENT APPEAL BOARD**

There shall be a three-person Sexual Harassment Appeal Board, one member to be selected by the College Administration, one member selected by the appropriate Union, and both shall choose a third member. If a student is a respondent or Complainant, the third member shall be chosen from the Sexual Harassment Education Subcommittee of the Academic Senate Affirmative Action Committee. The Appeal Board members plus alternates will serve for a staggered two year term. All Appeal Board members are required to go through training provided by the NCC administration at the beginning of his/her two year term, and cannot serve on the Appeal Board without completing this required training.

### **III-D 5.4: OPTIONS FOLLOWING APPEAL BOARD ACTION**

In the event that one of the parties does not accept the Appeal Board's decision, the following options for recourse are available:

- a. In the case of a student or a non-bargaining unit employee, a Complaint can be filed with an appropriate federal, state and/or county agency or agencies; such as, the Equal Employment Opportunity Commission, New York State Division of Human Rights, United States Commission on Civil Rights, or Nassau County Commission on Human Rights.
- b. In the case of a College employee, a grievance can be filed in accordance with the appropriate Collective Bargaining Agreement.

## **PART IV. MISCELLANEOUS PROVISIONS**

### **IV-A OTHER REMEDIES**

Nothing herein prevents a Complainant from filing a Complaint with the appropriate local, state or federal agency. In the event that the allegation concerns a criminal act, the Complainant may (if he/she has not done so already) file a criminal Complaint with the appropriate local, state or federal authorities. Such Complaint may be filed by the Complainant at any time and does not need to await a resolution of the college proceedings described in this policy.

### **IV-B FRIVOLOUS OR MALICIOUS CHARGES**

This policy shall not be used to bring frivolous or malicious charges against students or employees. Disciplinary action under the Student Code of Conduct or the appropriate personnel policies concerning personal misconduct may be taken against any person bringing a charge of sexual harassment in bad faith.

### **IV-C RETENTION OF DOCUMENTS**

In accordance with the requirements of the State of New York Archives and Records Administration, the Affirmative Action Officer must retain the records acquired during the investigation (regardless of outcome) for up to six (6) years from the termination of the investigation.

### **IV-D RETALIATION PROHIBITED**

No one presenting a Complaint or allegation of sexual harassment or testifying in such a proceeding and/or investigation may be subject to reprisal or retaliation of any kind. Violations are subject to the appropriate disciplinary action.

#### **IV-E NOTICES**

All notices referred to in this policy shall be in writing and delivered via the U.S Postal Service with the exception of the petition for appeal (III D5), which must be hand delivered to the Affirmative Action Officer and signed for by the AAO or his office designee.

#### **IV-F INTERPRETATION OF POLICY**

This policy shall be interpreted to comply with all applicable federal, State and local laws and regulations.

#### **APPENDIX A**

##### **I. Investigative Functions and Duties of the Affirmative Action Officer**

1. Receiving and or making Situation Reports and Complaints and maintaining these records on file;
2. Hearing Complaints brought by students or employees of the College;
3. Ensuring that Complainants and Respondents are informed of their rights and options under this Policy;
4. Mediating between the parties;
5. Facilitating the filing of Complaints;
6. Conducting an investigation subsequent to the filing;
7. Maintaining time logs of the investigations;
8. Reporting the findings to the President of the College;
9. Collecting statistics on sexual harassment incidents;
10. Preparing an annual report for the College community that shall include statistics, educational initiatives, overall monitoring efforts, and other activities. The report will be made available to the President's Cabinet, Academic Senate Executive Committee, the Academic Senate Affirmative Action Committee, and all other interested parties. This report will maintain the confidentiality of all parties;
11. Maintaining a list of approved Designated Sexual Harassment Counselors;
12. Educating College personnel regarding their responsibilities and rights under this policy and under federal regulations, and working with the Academic Senate Affirmative Action Committee to educate and inform the College community about sexual harassment policies and issues;
13. Handling Complaints, investigating, and following the procedures of this Policy should the subject of a Complaint of sexual harassment be the College President or a member of the College Board of Trustees.

##### **II. Investigative Functions and Duties of the DIO**

1. Hearing Complaints brought by students or employees of the College
2. Ensuring that Complainants are informed of their options under this policy;
3. Mediating between the parties;
4. Facilitating the filing of Complaints;

5. Conducting an investigation subsequent to the filing;
6. Maintaining time logs and reporting thereon to the AAO; and
7. Reporting the findings to the College President.

The DIO shall be appropriately trained to carry out these duties.

#### **APPENDIX B**

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 regardless of any other remedies sought and implemented.

Approved by the Affirmative Action Committee on April 20, 2014;  
Submitted to the Academic Senate at the May 13, 2014 meeting;  
Approved by the College Board of Trustees, September 15, 2014.