

Policy & Planning Committee Meeting

January 12, 2016

John DeGrace, Chair

Donna Tuman

Arnold Drucker

Jorge L. Gardyn, Ex-Officio

Craig Wright, College Liaisons

All Trustees are invited to participate

Agenda

1. Approval of the October 13, 2015 Minutes
2. Sexual Harassment Policy **(copy attached with additions and revisions)**

Meeting opened the meeting at _____ p.m.

1. Approval of the October 13, 2015 Minutes

Chair: Do I have a motion to approve the minutes of October 13, 2015?

Trustee: _____ I make a motion that the minutes be approved.

Chair: Do I have a second? Seconded by Trustee _____.

Chair: Is there any discussion? *(If so, the discussion proceeds.)* If not, all in favor say “aye,” all opposed say, “nay.” Any abstentions?

Motion carried – For _____ Against _____ Abstain _____

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

WHEREAS, THE COLLEGE’S ACADEMIC SENATE APPROVED SUCH REVISIONS ON NOVEMBER 24, 2015; AND

WHEREAS, THE NEW COLLEGE-WIDE SEXUAL HARASSMENT POLICY BRINGS THE COLLEGE INTO FURTHER COMPLIANCE WITH FEDERAL AND STATE LAWS, RULES AND REGULATIONS, NOW THEREFORE,

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.

Chair: Do I have a motion to consider this item?

Trustee: _____ I make a motion.

Chair: Do I have a second. Seconded by **Trustee** _____.

Chair: Is there any discussion? All in favor say "aye," all opposed say "nay." Any abstentions?

Motion carried – For: _____ Against: _____ Abstain: _____

Chair: Are there any other items for the Committee’s consideration? If there are none, is there a motion to adjourn?

Chair: Is there a motion to adjourn?

Trustee _____ I make a motion to adjourn.

Trustee _____ I second the motion.

Motion carried – For _____ Against _____ Abstain _____

Meeting adjourned at _____ p.m.

For submission to the Academic Senate November 24, 2015

New language is in italics; deleted language is in strikethrough

NASSAU COMMUNITY COLLEGE
SEXUAL HARASSMENT/SEXUAL VIOLENCE POLICY

Policy Statement

The Policy of Nassau Community College (NCC) is that all forms of Sexual Harassment, whether it involves students or employees, should be corrected early and firmly in the interest of maintaining a barrier-free working and learning environment.

Sexual Harassment, like other forms of harassment on the basis of color, race, religion, gender, national origin, and disability, is recognized by County, State and Federal regulations to be against the law. Recent interpretations of Title IX of the Educational Amendments similarly delineate Sexual Harassment as discriminatory and unlawful.

This policy prohibits all forms of sexual misconduct. This broad term includes, but is not limited to, acts of sexual harassment, sexual violence, sexual coercion, sexual threats or intimidations, domestic violence, dating violence, sexual assault, stalking, and cyber-stalking. Refer to Section I-C (“Definitions of Sexual Harassment and Sexual Violence”), as well as to the College’s Annual Security Report, for a complete list of definitions and prohibited acts.

In keeping with our basic philosophy and certain existing laws and regulations, Nassau Community College has, in addition to its legal responsibility, a moral commitment to the protection of the human and civil rights of all NCC employees and students.

**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 AND SEXUAL VIOLENCE

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 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.

4- 5. *Sexual violence is a form of sexual harassment and is strictly prohibited under law and under this policy. Sexual violence involves physical 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, sexual threat, domestic violence, dating violence, stalking or cyberstalking of a sexual nature. , ~~and~~*

a. Affirmative consent is 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 create 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.

- 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 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

All faculty, Public Safety employees, department chairs, administrators, counselors, attorneys, health personnel, CSEA staff and student aides in the Title IX, Student Personnel Services, and Health offices, and CSEA supervisors have reporting responsibilities with regard to allegations of sexual harassment and sexual violence. At the first instance of disclosure by a possible Complainant to any of these individuals, the following information shall be presented to that Complainant: "You have the right to make a report to Campus Security, local law enforcement, and/or State Police, or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution."

~~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 will provide training to these employees. 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. understand their reporting responsibilities;~~

~~b. know how to direct the report of harassment to the appropriate College officials; and~~

~~c. have practical information about how to identify potential and/or alleged sexual harassment and sexual violence~~

To the extent permitted by law and SUNY policy, these individuals must report all allegations, reports and incidents of sexual harassment/sexual violence 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 (not including New York State licensed counselors, pastoral counselors, licensed social workers, licensed health center employees) listed just above in Section II-A(e 4) must file the report with Public Safety promptly upon hearing of the alleged incident. See Appendix D for a full description of reporting responsibilities of different classes of employees.

II-B THIRD PARTY COMPLAINTS

Any College employee, other than those mentioned above in II-A(4), 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 II-A(4) 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 II-A(4) 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(4d)), 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.

[See Appendix D for a full explanation of the College's policy on confidentiality.](#)

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:

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 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~~ *advisors of their choice*, including attorneys and union representatives, who can represent the Complainant 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, 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 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 educational programs and efforts, 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.
- For students found responsible for sexual assault, sanctions shall consist of the following:
 - Suspension with additional requirement, or
 - Expulsion

III-D.5: PETITION FOR APPEAL

The Respondent and the Complainant can appeal the Affirmative Action Officer's determination. Requests for an appeal shall be made in writing to the Appeal Board within seven (7) business days of receipt of the AAO's findings, and must also be hand-delivered to the Affirmative Action Officer.

~~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 petition for appeal. The President's *Appeal Board'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-filing* and investigative process
- The availability of new evidence that was not available during the Affirmative Action Officer's investigation

If the President *Appeal Board* denies the petition for appeal, ~~he/she shall notify both parties~~ *both parties will be notified of this determination.*

~~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 *Appeal Board* if the Complaint is against that the 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 *Appeal Board* grants a petition for appeal *proceedings*, ~~he~~ *the Appeal Board, through an individual selected to convene the Board's proceedings,* will *notify both parties of the time and date when the appeal will be heard* ~~convene the Sexual Harassment Appeal Board and notify both parties.~~ *The Complainant and the Respondent may choose to have up to two (2) advisors of their choice (including attorneys and/or union representatives) present during his or her appearance before the Appeal Board.*

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. *All actions undertaken by the Appeal Board shall be fair and impartial.*

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 *members* 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. *No individual with a conflict of interest will sit on the Appeal Board.*

III-D 5.4: OPTIONS FOLLOWING APPEAL BOARD ACTION

In the event that one of the parties ~~does not accept~~ *is not satisfied with* 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~~ U.S. Department of Education, Office for 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 POLICY FOR ALCOHOL AND/OR DRUG USE AMNESTY IN SEXUAL AND INTERPERSONAL VIOLENCE CASES

The health and safety of every student at the State University of New York and its State-operated and community colleges is of utmost importance. Nassau Community College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to College officials or law enforcement will not be subject to the College's Code of Conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

IV-~~F~~ 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-~~G~~ 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~~ *In the event* the subject of a Complaint of sexual harassment ~~be is~~ the College President ~~or a member of the College Board of Trustees,~~ *the AAO shall refer the matter, via a Situation Report, to the Chair of the Board of Trustees. If the subject of a Complaint is a member of the Board of Trustees ("BOT"), the AAO will refer the Complainant to the appropriate State or Federal agency, and shall submit a Situation Report to the Chair of the BOT (or to the Vice Chair or Secretary of the BOT, if the Chair is the subject of a Complaint).*

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.
8. *In the event the subject of a Complaint of sexual harassment is the Affirmative Action Officer, the DIO will refer the matter to the College President, via a Situation Report.*

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.

APPENDIX D

Confidentiality and Reporting Protocol

If a crime of sexual misconduct has occurred, including dating violence, domestic violence, sexual assault, or stalking, the College encourages accurate and prompt reporting of these crimes to the campus police or State and local law enforcement agencies. However, it can be difficult for a victim to come forward after such an event, and there are several options available for students who wish to maintain confidentiality while getting the support they need. Different employees on campus have different abilities to maintain a victim's confidentiality, as described below. (Please note that the following confidentiality responsibilities shall apply to reports of sexual harassment, as well as to reports of sexual assault, dating violence, domestic violence, and stalking.)

1) **Privileged Communications:** Some employees are required to maintain near complete confidentiality; talking to them is sometimes referred to as "privileged communication". Individuals falling into this category are listed below and are not required to report any information about an incident to the Title IX Coordinator without the reporting individual's permission:

- o Professional, licensed counselors and pastoral counselors who provide mental-health counseling to members of the school community (and including those who act in that role under the supervision of a licensed counselor).
- o Licensed healthcare providers.

2) **No Personally Identifying Information:** Other employees may talk to a victim in confidence, and generally only report to the College that an incident occurred without revealing any personally identifying information. Disclosures to these employees will not trigger a College investigation into an incident against the reporting individual's wishes. Employees/volunteers falling into this category are listed below:

- o Individuals who work or volunteer in the Student Personnel Services offices.
- o the Designated Counselors under this Sexual Harassment Policy.
- o Health center employees and volunteers (other than licensed healthcare providers), including front desk staff and students working in the Center.

• The employees listed above can generally talk to a victim without revealing any personally identifying information about an incident to the College's Title IX Coordinator. A victim can seek assistance and support from these individuals without triggering a College investigation that could reveal the victim's identity or that the victim has disclosed the incident. While maintaining a victim's confidentiality, these individuals or their office should report the nature, date, time, and general location of an incident to the Title IX Coordinator. Before reporting any information to the Title IX Coordinator, these individuals will consult with the victim to ensure that the victim does not wish them to share any personally identifying details with the Title IX Coordinator.

• A victim who speaks to a professional or non-professional counselor or advocate must understand that, if the victim wants to maintain confidentiality, the College will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the accused. Even so, these counselors and advocates will still assist the victim in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations.

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 chairs,
- Administrators,
- Women’s center employees, and
- CSEA supervisors.

- When a Reporting Individual tells a Responsible Employee about an incident of sexual harassment/violence, the Reporting Individual has the right to expect the College to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.
- A Responsible Employee must report to the Title IX Coordinator all relevant details about the alleged sexual harassment/violence shared by the Reporting Individual and that the College will need to determine what happened – including the names of the victim and accused, any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. To the extent possible, information reported to a Responsible Employee will be shared only with people responsible for handling the College’s response to the report.
- A Responsible Employee should not share information with law enforcement without the victim’s consent or unless the victim has also reported the incident to law enforcement.
- Before a reporting individual reveals any information to a Responsible Employee, the employee should ensure that the reporting individual understands the employee’s reporting obligations – and, if the reporting individual wants to maintain confidentiality – direct him or her to confidential resources. If the reporting individual wants to tell the Responsible Employee what happened but also maintain confidentiality, the employee should tell the reporting individual that the College will consider the request, but cannot guarantee that the College will be able to honor it, and that “Even Nassau Community College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.” In reporting the details of the incident to the Title IX Coordinator, the Responsible Employee will also inform the Title IX Coordinator of the reporting individual’s request for confidentiality. Responsible Employees will not pressure reporting individuals to request confidentiality, but will honor and support their wishes, including for the College to fully investigate an incident. By the same token, responsible employees will not pressure reporting individuals to make full reports if they are not ready.

4) How to address reporting individual’s Request for Confidentiality:

- If a reporting individual discloses an incident to a Responsible Employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the College must weigh that request against the College’s obligation to provide a safe, non-discriminatory environment for all students, including the victim. To make this determination, the following factors will be considered:
 - Whether the accused has a history of violent behavior or is a repeat offender;
 - Whether the incident represents escalation, such as a situation that previously involved sustained stalking,
 - the increased risk that the accused will commit additional acts of violence;

- o Whether the accused used a weapon or force;
- o Whether the reporting individual is a minor; and
- o 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.
- If the College honors the request for confidentiality, a victim must understand that the College's ability to meaningfully investigate the incident and pursue disciplinary action against the accused may be limited.
- Although rare, there are times when the College may not be able to honor a reporting individual's request for confidentiality in order to provide a safe, non-discriminatory environment for all students. If the College determines that it must move forward with the investigation, the reporting individual or victim/survivor will be notified and the College will take immediate action as necessary to protect and assist them.

ADDRESSES OF OTHER AGENCIES

Equal Employment Opportunity Commission
New York District Office
33 Whitehall Street, 5th Floor
New York, NY 10004

Nassau County Commission on Human Rights
240 Old Country Road, 6th Floor, Suite 606
Mineola, NY 11501

New York State Division of Human Rights
175 Fulton Avenue
Hempstead, NY 11550

U.S. Department of Education, Office for Civil Rights
Lyndon Baines Johnson, Department of Education Bldg.
400 Maryland Avenue, SW
Washington, DC 20202-1100

**NASSAU COMMUNITY COLLEGE POLICY
AGAINST
SEXUAL HARASSMENT/SEXUAL VIOLENCE**

~~Approved by the College Board of Trustees, September 15, 2014.~~
Approved by the Affirmative Action Committee on September 17, 2015
Approved by the Academic Senate on xxxxxxxxxxxxxx
Approved by the Nassau Community College Board of Trustees on xxxxxxxxxxxxxx

| As of September, 2015 this document has been revised to ensure compliance with federal and New York State law