



**POLICY 2200**

**SEXUAL HARASSMENT AND SEXUAL VIOLENCE**

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**Area of Administrative Responsibility:** Affirmative Action

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**PURPOSE**

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 laws and regulations to be against the law.

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 Policy Part I, sub-part A (“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.

**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. Further, volunteers and visitors to the College, including but not limited to vendors and service-providers, shall be subject to protections of, and must abide by the guidelines laid out by this policy.

**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, Article 15 of the New York State Executive Law, 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

promptly corrected in accordance with the policy and procedures set forth herein in the interest of maintaining a barrier-free working and learning environment. Sexual harassment constitutes employee misconduct. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action.

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.

## **PART I. DEFINITIONS AND CONSENSUAL RELATIONSHIPS**

### **A. Definitions of Sexual Harassment and Sexual Violence**

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.
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.
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, grabbing, or frequently and intentionally brushing against another's body.
  - c. Unwanted sexual advances or propositions, such as subtle or overt pressure for sexual activity, requests for sexual favors accompanied by implied or overt threats concerning the employee's job performance evaluation, a promotion or other job benefits.
  - d. Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile work environment.
  - e. Preferential treatment or suggestions of preferential treatment conditioned on submitting to sexual conduct (often referred to as "quid pro quo" harassment).

- f. 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, including unlawful dissemination or publication of an intimate image (referred to as “revenge porn”), in violation of New York Penal Law §245.15. (See Appendix D for additional information).
  - g. Displaying sexually demeaning or pornographic pictures, posters, calendars, graffiti, objects, promotional, reading or other materials in the workplace. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
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 coercion, sexual threat, domestic violence, dating violence, stalking or cyberstalking with intent to sexually harass;
- 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.
    - i. 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.
    - ii. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
    - iii. Consent may be initially given but withdrawn at any time.
    - iv. 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.
    - v. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
    - vi. 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 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.

## B. Consensual Relationships

Romantic and sexual relationships between College employees and students when there is a current supervisory or instructional relationship or other professional responsibility create a power imbalance. Such a relationship may damage the credibility or reputation of the student, employee, the department, the Campus and College as a whole and may expose individuals or the Institution to legal action and liability.

### 1. Definitions

- a. **College employees:** the term “College employees” shall also include College consultants or volunteers who have a professional responsibility to students.
- b. **Professional Responsibility:** having a professional responsibility to a student means having a job-related duty that can impact a student’s educational or professional career, and having decision-making authority that may impact student learning, student life or student welfare.

In addition, an NCC Public Safety Officer shall be deemed to have a professional responsibility at any time that they are on duty, or when the officer is directly involved in an ongoing investigation in which the student is a target, witness, person of interest or subject of an investigation, criminal matter, inquiry, or campus administrative action, or when the officer is involved in an open case or action in which the student or employee is either the complainant/respondent or potential complainant/respondent.

A health care professional working in a campus student health services center shall not commence a romantic relationship with a student for whom they are providing direct care. In addition, such health care provider shall not provide direct care to a

student with whom they have had or are having a consensual romantic relationship (unless it is an emergency and no other health care provider is available on campus).

- c. **Romantic Relationship:** an intimate, sexual and/or any other type of amorous encounter or relationship, whether casual or serious, short-term or long-term. Such a relationship exists in a marriage, a domestic partnership, or outside the marriage or domestic partnership between two persons who have a sexual union or who engage in a romantic partnering or courtship that may or may not have been consummated sexually.
  - d. **Student:** An individual whose primary relationship to the campus is in their role as a matriculated or non-matriculated student. Status begins at payment of deposit to enroll or equivalent and continues through completion of all academic requirements and graduation. This applies regardless of the age of the student and age of the College employee.
  - e. **Supervisory Relationship:** A relationship in which a College employee has the authority to make, recommend, or impact decisions regarding hiring, termination, appointment, reappointment, promotion, assignment of duties, evaluation, or changes in compensation or benefits for another individual.
2. **Romantic Relationships among Employees**

Entering into sexual or romantic relationships between College employees is prohibited, when there is an existing supervisory, evaluative or other institutional relationship creating an authority imbalance; unless the relationship is disclosed and supervisory, evaluative or institutional relationship is terminated.

In the event of a new sexual or romantic relationship entered into between College employees where there is a supervisory or reporting relationship, each employee shall inform their Supervisor/Department Head as well as the College Title IX Coordinator (AAO), so that appropriate action can be taken to change the reporting structure and ensure that alternate supervisory roles are put into place.

Allowance shall be made for pre-existing relationships or marriages, provided that the relationship is reported to the Supervisor/Department Head and to the College Title IX Coordinator, and that alternative supervisory relationships are established.

3. **Romantic Relationships among Employees and Students**

Entering into sexual or romantic relationships between College employees and students is prohibited when there exists a current instructional, professional or supervisory relationship between the employee and a student.

In the event of a pre-existing relationship, employees shall be required to recuse themselves from any evaluation of the student and from any activity or decision that may affect the student.

Employees found to be in violation with the Consensual Relationships portion of this Policy shall be subject to progressive discipline in accordance with their collective bargaining agreements.

**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.

**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**

- a. The College President shall appoint a member of the administration 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.
- b. **Dean of Students, Deputy Title IX Coordinator.** In the event of "student against student" Sexual Harassment complaints, such complaints may be investigated either by the AAO, or by the Dean of Students' Office, who shall serve as the DIO. Dean of Students or designee shall report his/her findings and recommendations to the Affirmative Action Office for approval. The Dean of Students Title IX Coordinators will receive annual training.

**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.

## **B. Reporting Responsibilities of Employees**

1. 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.
2. At the first instance of disclosure of sexual violence by a possible Student-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 Public Safety Department, local law enforcement, and/or State Police, or choose not to report; to report the incident to Nassau Community College; to be protected by the College from retaliation for reporting an incident; and to receive assistance and resources from the College."*
3. To facilitate the reporting of sexual harassment complaints and eliminate alleged harassment as soon as possible, the College will provide training to all employees. 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.
4. To the extent permitted by law, Individuals with Reporting Responsibilities 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) business 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 policy item II(B)(1) must file the report with Public Safety promptly upon hearing of the alleged incident. See Appendix C for a full description of reporting responsibilities of different classes of employees.

**C. Supervisory Responsibilities and Duty to Report Sexual Harassment in the Workplace**

1. All College employees who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring are urged to report such suspected sexual harassment to the AAO. **College employees with supervisory or managerial responsibilities must make a report to the AAO within 5 (five) business days after learning of the suspected harassment.** In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.
2. At the College, the following individuals have supervisory responsibilities: Department Chairs, Deans and Assistant Deans, Directors, Coordinators, Assistant/Associate Vice Presidents, and any other individual holding a position which includes supervisory and oversight responsibilities over other employees.
3. This policy item II(C) applies to reporting of sexual harassment where the victim is a College employee, vendor, or 3<sup>rd</sup> party. For Reporting Responsibilities where the victim/complainant is a College student, refer to policy item II(B), above, as well as Appendix C.

**PART III. COMPLAINT FORMS, TIME LIMITATIONS, CONFIDENTIALITY**

**A. Third Party Complaints**

Any College employee, other than those mentioned above in policy item II(B)(1), 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.

**B. 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 does not wish to file a formal 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” (policy item II(B)(1) 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” (policy item II(B)(1) 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:** Anonymous complainant.

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. Anonymous Complaints may be filed through the College’s Title IX website by filling out and submitting the Anonymous Complaint Form.

## C. **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 signed in the Affirmative Action Office in the presence of the Affirmative Action Officer, and the original is kept in that Office.\*

Complaint Forms are available in the Affirmative Action Office. The forms are also available on the College website, [www.ncc.edu](http://www.ncc.edu), and can be accessed from the “AAO/Title IX” link on the bottom right hand side of the homepage.

\* Students enrolled in online classes only, when filing a Complaint concerning incidents taking place online, and relating to their online courses, may fill out and submit the Complaint Form through the College’s Title IX website, and the requirement to sign the form in the presence of the Affirmative Action Officer shall be waived.

#### **D. Time Limitations**

1. Employee-Complainants have forty-five (45) business days from the last alleged incident of sexual harassment to make a Complaint hereunder. Student-Complainants have forty-five (45) business days from the last alleged incident of sexual harassment or forty-five (45) business days from the last official date to submit grades to the Registrar to make a Complaint hereunder.
2. 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) business days. After that the forty-five (45) business 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 IV (“Complaint and Resolution Procedures”) is tolled (suspended) for ten (10) business days from the date the Complainant first reported the incident to the DC and then commences to run again.

#### **E. Confidentiality**

1. The Designated Counselors, those with “Reporting Responsibilities” (policy item II(B)(1)), 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.
2. Every possible effort will be made to maintain the confidentiality of the Complainant and Respondent. However, absolute confidentiality cannot be guaranteed.
3. See Appendix C for a full explanation of the College’s policy on confidentiality.

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

Part IV 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.

#### **A. Informal Resolution**

1. 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.

2. 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 III(B)(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.
3. 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.
4. The use of an Informal Resolution does not preclude the Complainant from seeking further redress under IV(B), “Formal Resolution”, provided a formal Complaint is made within the Time Limitation prescribed in III(D), “Time Limitations”.

## **B. Formal Resolution**

**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.

**Initiating a Complaint.** A signed Complaint form must be filed with the AAO or DIO in a timely manner (as prescribed hereunder in III(D), “Time Limitations”). 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.

### **1. STAGE 1: Conciliation**

- a. 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).
- b. 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.
- c. Any subsequent investigation of 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.
- d. At any time before the meeting the Complainant may decide to terminate such a meeting and proceed to Stage 2 (Mediation) or 3 (Formal Hearing).

**2. STAGE 2: Mediation**

- a. 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.
- b. 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.
- c. 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.
- d. 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.

**3. STAGE 3: Formal Hearing**

- a. 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) business days of receipt of the signed Complaint from the Complainant, the Respondent shall be notified that the Complaint has been filed. Within one (1) business 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.
- b. Within ten (10) business 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:
  - i. A review of all applicable materials, including any past Situation Reports concerning the Respondent. Parties may choose to provide materials to the Investigator;
  - ii. Interviews with any known witnesses, including witnesses provided by the parties to the proceeding; and
  - iii. Interview with the Complainant and Respondent. Complainant and Respondent may choose to have up to two (2) 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.

- c. The Respondent and Complainant and their advisors 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.
- d. 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.
- e. At all stages of the investigation, both the Complainant and the Respondent may be accompanied by up to two (2) advisors of their choice, including attorneys and union representatives, who can represent the Complainant and Respondent at their option.
- f. The Investigator will maintain the confidentiality of all Parties involved to the extent feasible.
- g. The investigation must be completed within forty-five (45) business 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.
- h. 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) business days to report his or her findings to the College President. That report must include:
  - i. 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;
  - ii. A recommendation for a negotiated resolution if appropriate; and/or
  - iii. imposing of the sanction if warranted, which may include a recommendation for further disciplinary action.
- i. 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.
- j. After the case is finalized (which shall include the resolution or any appeal), a summary of the report shall be incorporated into the letter sent to the Respondent and placed in his/her personnel file or if the Respondent is a student, to the student's file.

#### 4. Sanctions

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

- a. 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.
- b. Sanctions may include, *but are not limited to*:
  - i. Verbal warning.
  - ii. Written Reprimand.
  - iii. Probation: this may include educational programs and efforts, restriction of campus activities, counseling, community service, and monitoring of behavior for a period of time.
  - iv. 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.
  - v. Termination/Expulsion: complete and permanent removal from the college community.
  - vi. For students found responsible for sexual assault, sanctions shall consist of the following: Suspension with additional requirements, or expulsion.

#### 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 attention of the Appeal Board, and must be received in the Affirmative Action Office within seven (7) business days of receipt of the AAO's findings.

##### a. Appeal Justifications

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

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

If the Appeal Board denies the petition for appeal, both parties will be notified of this determination.

**b. Appeal Process**

- i. If the Appeal Board grants a petition for appeal proceedings, the Appeal Board, through an individual selected to convene the Board's proceedings, will notify both parties, in writing, of the date, time and location where the appeal will be heard. 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/her appearance before the Appeal Board.
- ii. The Sexual Harassment Appeal Board shall:
  1. 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.
  2. 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.

**c. 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. If a potential conflict of interest is reported concerning a member of the Appeal Board, the Affirmative Action Officer shall make a determination concerning whether the conflict of interest exists and precludes the member from hearing the Appeal. The AAO's decision concerning this matter shall be final.

**d. Options Following Appeal Board Action**

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

- i. 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, U.S. Department of Education, Office for Civil Rights, or Nassau County Commission on Human Rights.

- ii. In the case of a College employee, a grievance can be filed in accordance with the appropriate Collective Bargaining Agreement.

## **PART V. LEGAL PROTECTIONS AND EXTERNAL REMEDIES**

### **A. Applicable Laws**

Sexual harassment and sexual assault is not only prohibited by Nassau Community College policy, but is also prohibited by state, federal, and, where applicable, local law.

1. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.: sexual harassment is a form of sex discrimination which violates Title VII of the federal Civil Rights Act. Title VII applies to employers with 15 or more employees, including state and local governments.
2. Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et. seq.: Title IX is a federal law which prohibits discrimination based on sex, including sexual harassment and sexual assault in education programs and activities. All public and private elementary and secondary schools, school districts and colleges and universities receiving Federal funds must comply with Title IX.
3. “Enough Is Enough” legislation, N.Y. Education Law, art. 129-B, signed into law in 2015, requires all colleges and universities in New York to adopt a set of comprehensive procedures and guidelines related to domestic violence, dating violence, stalking and sexual assault, to ensure the safety of all students attending colleges in the state of New York.
4. The Human Rights Law (HRL), N.Y. Executive Law, art. 15, § 290 et seq., applies to employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees regardless of immigration status.
5. New York State Penal Law §245.15: signed into law in July 2019, creates a new crime of “Unlawful Dissemination or Publication of an Intimate Image”, making unauthorized sharing of sexually-intimate images a class A misdemeanor, and also creating a private right of action (civil lawsuits) for victims of this crime to obtain monetary damages and civil injunctions.

### **B. External Remedies**

Aside from the internal complaint and disciplinary process at Nassau Community College, complainants may also choose to pursue legal remedies with the following governmental entities at any time.

1. **New York State Division of Human Rights (DHR)**
  - a. A complaint alleging violation of the New York State Human Rights Law may be filed either with DHR or in New York State Supreme Court. Complaints with DHR may be filed any time within one year of the harassment. If an individual did not

file at DHR, they can sue directly in state court under the HRL, within three years of the alleged discrimination. An individual may not file with DHR if they have already filed a HRL complaint in state court.

- b. Filing an internal complaint with Nassau Community College does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment. You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR. DHR will investigate your complaint and determine whether there is probable cause to believe that discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees and civil fines.
  - c. Contact Information: (888) 392-3644 or [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint)
- 2. United States Equal Employment Opportunity Commission (EEOC)**
- a. The EEOC enforces federal anti-discrimination laws. An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court. The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred.
  - b. Contact Information: 800-669-4000 (1-800-669-6820 (TTY)); [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov)
  - c. If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the complainant's right to proceed in federal court.
- 3. Nassau County Human Rights Commission**
- a. Employees who work in Nassau County may file complaints of sexual harassment with the Commission on Human Rights.
  - b. Contact Information: 516-571-3662 or
  - c. <https://www.nassaucountyny.gov/414/Human-Rights-Commission>
- 4. Local Police Department**

If the harassment involves a criminal act, contact the local police department. A criminal complaint may be filed at any time and do not need to await a resolution of the college proceedings described in this policy.

**PART VI. MISCELLANEOUS PROVISIONS****A. 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.

**B. 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 three (3) years after the date of final determination of the investigation. However, in accordance with the Record Retention and Disposition Schedule CO-2, records may be maintained beyond the minimum three-year retention period for use in establishing patterns of complaints and for investigating and resolving future complaints.

**C. 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.

**D. 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.

**E. Interpretation of Policy**

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

**APPENDIX A****A. 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, , the Academic Senate's Diversity, Equity and Inclusion 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. In the event the subject of a Complaint of sexual harassment is the College President, 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 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).

**B. 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 and Sexual Violence Distribution: This Policy will be distributed either in hard copy or electronically, to all employees on an annual basis, to new faculty and staff upon start of employment, and 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

**Confidentiality and Reporting Protocol When the Reporting Individual and/or Complainant is a College Student**

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 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 student-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.)

**A. 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:

1. 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).
2. Licensed healthcare providers.

**B. No Personally Identifying Information**

Other employees may talk to a student-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:

1. Individuals who work or volunteer in the Student Personnel Services offices;
2. the Designated Counselors under this Sexual Harassment Policy;
3. 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 student-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 student-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.

C. **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:

1. All faculty, except for those listed in Appendix C, Section B(2) above;
2. Public Safety employees;
3. Department chairs;
4. Administrators;
5. Women’s Center employees; and
6. 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.*

**D. How to address reporting individual’s Request for Confidentiality**

1. 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:
  - a. Whether the accused has a history of violent behavior or is a repeat offender;
  - b. Whether the incident represents escalation, such as a situation that previously involved sustained stalking,
  - c. the increased risk that the accused will commit additional acts of violence;
  - d. Whether the accused used a weapon or force;
  - e. Whether the reporting individual is a minor; and
  - f. 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.
2. 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.
3. 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 will be notified and the College will take immediate action as necessary to protect and assist them.

**APPENDIX D****Distribution of Nonconsensual Pornography**

It is a violation of Policy 2200, “Sexual Harassment and Sexual Violence”, to knowingly distribute a sexually graphic image of another person without their consent. Images include still photographs and videos.

Sexually graphic images show an unclothed or exposed intimate part of the other person, meaning the naked genitals, pubic area, anus or female nipple of the person, or depict the other person engaging in sexual conduct.

Consent means “affirmative consent,” as defined in Part I, Section 1(A)(5)(a) of this Policy 2200.

Distribution refers to the sharing of images originally obtained without consent through the use of hidden cameras, hacking phones, or other recording devices, as well as images obtained with the consent of the depicted person, but distributed without the permission of the person depicted in the images. A person’s consent to the taking of a sexually graphic image is not consent to the distribution of that image.

This prohibition does not apply to the report of unlawful conduct, dissemination within the lawful and common practices of law enforcement, legal proceedings, or medical treatment, or the voluntary distribution of a sexually graphic image made for a legitimate public purpose.