



## **POLICY 2400**

### **ANTI-BULLYING AND ANTI-STALKING**

**Policy Category:** Administration

**Area of Administrative Responsibility:** Affirmative Action

**Board of Trustees Approval Date:** June 12, 2018

**Effective Date:** June 13, 2018

**Amendment History:**

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## **PURPOSE**

Nassau Community College is committed to maintaining the highest standard of behavior where every member of the College community conducts himself or herself in a manner that demonstrates a proper regard for the rights and welfare of others. Therefore, this Anti-Bullying and Anti-Stalking Policy seeks to promote civility and respect, educate the College community about bullying, and clarify disciplinary action that may result from inappropriate conduct.

Bullying, stalking and related behaviors can foster a climate of fear and disrespect which seriously impairs the physical and psychological health of its victims. Moreover, these behaviors create conditions that negatively affect any learning and working environment. Thus, mental, physical and/or emotional intimidation and/or bullying will not be tolerated.

## **SCOPE**

This policy shall apply and be binding on all College employees. It shall be used to address complaints of bullying and stalking (as defined herein) perpetrated by College employees against other College employees, against College students or against third parties (i.e., vendors, consultants, etc.).

Volunteers and visitors to the College, including service providers and vendors, must abide by the requirements set out by this policy.

This policy shall not apply to acts of bullying and stalking committed by College students. All such actions and complaints shall be investigated and resolved pursuant to the College's Student Code of Conduct for complaints involving bullying or stalking, or pursuant to the College's Sexual Harassment and Sexual Violence Response Policy for stalking complaints related to sexual harassment, dating violence, domestic violence or sexual assault.

## DEFINITIONS

- A. **Bullying:** The aggressive and hostile acts of an individual or group of individuals which are intended to humiliate, mentally or physically injure or intimidate, and/or control another individual or group of individuals.
1. To constitute bullying, as defined hereunder, the reported act(s) must create a working and/or learning environment that a reasonable person would find intimidating, hostile or offensive.
  2. Such aggressive and hostile acts can occur as a single, severe incident or repeated incidents, and may manifest in one or more of the following forms, which include but are not limited to:
    - a. **Physical Bullying** which includes pushing, shoving, kicking, poking, and/or tripping another; assaulting or threatening a physical assault; damaging a person's work area or personal property; and/or damaging or destroying a person's work product.
    - b. **Verbal/Written Bullying** which includes ridiculing, insulting or maligning a person, either verbally or in writing; addressing abusive, threatening, derogatory or offensive remarks to a person; writing inappropriate communication that results in public humiliation and creates a hostile work environment.
    - c. **Nonverbal Bullying** which includes pointing, staring, laughing or making faces at an individual, directing threatening gestures toward a person or invading an individual's personal safe space (intimate distance is established as 0-4 feet) after being asked to move or step away.
  3. Bullying shall not include circumstances wherein:
    - a. A supervisor or any person with supervisory authority reports and/or documents an employee's unsatisfactory job performance and the potential consequences for such performance.
    - b. A faculty member, administrator, or staff reasonably advises a student of unsatisfactory academic work and the potential for course failure or dismissal from the program, or a faculty member is enforcing classroom management.
    - c. A faculty member, administrator or staff advises, alerts, and warns in writing or verbally a student of inappropriate behavior that may result in disciplinary proceedings.

- d. Minor snubs, irritations and isolated incidents that occur (unless rising to a serious level, such level to be determined following a complaint through the investigatory process) do not constitute actionable bullying herein.
4. **Cyber-bullying:** Engaging in bullying behavior by using any electronic medium, including, but not limited to, the Internet, social media, interactive and digital technologies, or mobile phones. Cyber-bullying is strictly prohibited whether or not such action occurs on College property, if there is a nexus between the cyber-bullying and the involved individuals' College attendance and/or employment.
- B. **Stalking:** Stalking of a non-sexual nature is prohibited by this policy. Stalking is defined as a pattern of repeated and unwanted attention, harassment, contact, or any other action 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. Stalking includes, but is not limited to, conduct in which the accused directly, indirectly, or through third parties, follows, telephones or initiates communication or contact with, monitors, or observes the Complainant whereby the accused was previously clearly informed by Complainant to cease such conduct.
- Stalking complaints relating to sexual harassment, dating violence, domestic violence or sexual assault must be filed and will be investigated under the College's Sexual Harassment and Sexual Violence Policy.
- C. **Complainant or Victim:** Individual making a report of bullying or stalking behavior(s) committed against him/her.
  - D. **Respondent or Accused:** Individual accused of bullying or stalking in violation of this policy.
  - E. **Reporting Individual:** Individual reporting an act of bullying or stalking committed against a third party.

## POLICY

- A. Bullying, stalking and related behaviors are demeaning, offensive and prohibited by Nassau Community College policy. All forms of bullying and stalking should be corrected early, and addressed in a timely manner in accordance with this policy in order to maintain a safe working and learning environment.
- B. Bullying and stalking, including all physical, verbal or written acts as defined above, are strictly prohibited on any College property; at any College function, event or activity; or through the use of any electronic or digital technology, whether or not such act occurs on College property as long as there is a nexus between the behavior and the involved individuals' College affiliation, attendance and/or employment.
- C. This policy does not prohibit the Complainant from filing a complaint with the appropriate local, state, or federal authorities/agencies (See Section J below). It is further understood that:
  1. Filing a complaint externally will not prohibit the College from conducting an internal investigation.

2. Complaints filed under this policy will not preclude the advancement of charges under other policies, i.e. policies prohibiting discrimination and bias, sexual harassment, etc.
- D. Nassau Community College is committed to the principle of academic freedom and the right to freedom of speech, and this policy shall not be interpreted as interfering with this principle and this right.
- E. Reporting and Investigating Allegations of Bullying and Stalking:
1. Complaints alleging bullying or stalking by College employees perpetrated against other employees, students, or third parties (such as service providers) should be reported immediately to the Office of Public Safety and/or the Affirmative Action Office.
  2. The Respondent shall be considered "not responsible" until a finding of responsibility is made pursuant to the provisions of this policy. However, in the event the Respondent presents a continuing threat to the health and safety of the College community, or if the complaint rises to the level of criminal behavior, he/she will be subject to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and College policies.
  3. The College will conduct an investigation that is fair, impartial and conducted by individuals without a conflict of interest, and which provides both the Complainant and the Respondent a meaningful opportunity to be heard. During this process, both the Complainant and the Respondent shall have the following rights:
    - a. To have the College's investigation process run concurrently with a criminal justice investigation and proceeding if one is underway, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten (10) days except when law enforcement specifically requests and justifies a longer delay.
    - b. To review available evidence in the case file, or otherwise in the possession or control of the College, and relevant to the case, and to offer evidence on their behalf.
    - c. To each be accompanied by an advisor of choice who may assist and advise the Complainant and the Respondent throughout the investigation process.
    - d. To be notified, in writing, concerning the outcome of the investigation, including sanctions imposed, if any, within the time frames listed in Section G, below.
  4. Allegations of bullying or stalking will be investigated by the Office of Affirmative Action, or by another designated investigator appointed by the President, where appropriate.
  5. The Affirmative Action Officer ("AAO") or designated investigator shall investigate and report his or her findings to the College President. If it is determined that there is a violation of this policy, the Affirmative Action Officer will recommend appropriate sanctions to the President. The President shall either approve the recommended sanctions, or direct that alternate sanctions (or no sanctions) be imposed. The President

then shall refer the case along with his/her recommendations to the appropriate person to be handled pursuant to the respective collective bargaining agreement, or, in the case of an employee who is not a member of a bargaining unit, to his/her supervisor.

**F. Confidentiality:**

1. Every possible effort will be made to maintain the confidentiality of the Complainant and Respondent. However, absolute confidentiality cannot be guaranteed. If a Reporting Individual and/or the Complainant discloses an incident to the Affirmative Action Officer or designee regarding bullying or stalking, but wishes to maintain confidentiality or does not consent to initiating an investigation, the AAO must weigh the request against the College's obligation to provide a safe, non-threatening environment for all members of the College community.
2. The College will seek consent from Reporting Individuals/Complainants prior to conducting an investigation. Declining to consent to an investigation will be honored unless the College determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the Reporting Individual, Complainant or other members of the College community. Honoring such a request for confidentiality may limit the College's ability to meaningfully investigate and take disciplinary action against an accused individual.
3. Factors used to determine whether to honor a request for confidentiality include, but are not limited to:
  - a. Whether the accused has a history of similar behavior or is a repeat offender;
  - b. Whether the incident represents escalation in inappropriate conduct on behalf of the accused from previously noted behavior;
  - c. The increased risk that the accused will commit additional acts of bullying or stalking;
  - 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 available information reveals a pattern of perpetration at a given location or by a particular group.
4. If the College determines that an investigation is required, it shall notify the Reporting Individual and/or Complainant and take immediate action as necessary to protect and assist them.

**G. Time Limitations:**

1. All College employees have forty-five (45) business days (or the number of days reflected in their collective bargaining agreement, whichever is longer) from the alleged bullying or stalking incident to make a complaint hereunder.
2. Students have forty-five (45) business days from the last date of class to file a complaint against a College employee regarding the alleged bullying or stalking incident.

3. Both the Complainant and the Respondent shall be advised with respect to the status of the complaint/investigation within thirty (30) business days of the day that the complaint is filed. The matter shall be resolved within ninety (90) business days of filing the complaint.

**H. Restorative and Educational Activities:**

1. This policy not only defines an investigative and disciplinary process for bullying and stalking offenses, but is also intended to educate the College community regarding the need to prevent bullying and to promote civility and respect, and seeks to provide restorative and educational methods to prevent future inappropriate conduct.
2. The following restorative methods may be used by the College to accomplish the goals of this policy:
  - a. An opportunity for a mediation session as defined by the collective bargaining agreement under which the Respondent serves, or, for those not covered by a collective bargaining agreement, through means devised by the Affirmative Action Officer and the immediate supervisor of the Respondent.
  - b. On-Campus seminars/workshops provided by the Affirmative Action Office, the Campus Safety Committee and the Educational Initiatives subcommittee of the Affirmative Action Committee. All seminars/workshops shall be approved by the Affirmative Action Office.

**I. Education/Prevention:**

1. This policy shall be disseminated through inclusion in employee materials, informational videos, the NCC Daily Planner, and on the College's website.
2. This policy shall be communicated via the following: new faculty orientation, new staff orientation and new student orientation.
3. This policy shall be communicated electronically on an annual basis to all members of the Campus community.
4. The Affirmative Action Office shall at opportune times facilitate anti-bullying training for all College employees, including faculty and staff.
5. The Educational Initiatives subcommittee of the Affirmative Action Committee shall facilitate anti-bullying workshops and seminars to provide awareness for the Campus community.

**J. Other Remedies:**

Nothing contained herein shall prohibit or limit any right, remedy or cause of action provided under any other College policy, or any local, state or federal ordinance, law or regulation, including, but not limited to, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1964 or the Americans With Disabilities Act of 1990, or subsequent adopted amendments of these Acts. 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.

**K. Frivolous or Malicious Charges:**

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

**L. 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) not less than six (6) years from the termination of the investigation.

**M. Retaliation Prohibited:**

No one presenting in good faith a complaint or allegation of bullying or stalking or testifying in such a proceeding and/or investigation should be subject to reprisal or retaliation of any kind. Violations are subject to the appropriate disciplinary action.

## **ENFORCEMENT**

Violation of this policy will result in disciplinary action as follows:

- A. Employees who are part of a bargaining unit will be subject to disciplinary action brought under their respective collective bargaining agreement.
- B. Employees who are not members of a bargaining unit will be subject to discipline by their supervisor.
- C. Third parties who fail to abide by this policy will be dealt with as appropriate under the circumstances.