



POLICY 2300

ANTI-DISCRIMINATION and COMPLAINT PROCEDURE

Policy Category: Administration

Area of Administrative Responsibility: Affirmative Action

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PURPOSE

The purpose of this Policy is to ensure that Nassau Community College's commitment to diversity and pluralism of values and beliefs are protected, and that all students, faculty, employees and staff are able to work and study in an environment that is free from bias, discrimination and harassment. The Policy assures that the College is in full compliance with relevant federal and state laws which prohibit discrimination and harassment, including, but not limited to: Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, national origin, or sex; the Age Discrimination in Employment Act of 1967, which prohibits discrimination in employment based on age for individuals who are 40 or older; Americans with Disabilities Act of 1990 and its amendments; Rehabilitation Act; and the New York State Human Rights Law. The policy provides a mechanism for filing complaints of discrimination with the College and assures that all parties involved are afforded due process.

SCOPE

This policy applies and is binding on all College employees and students. It shall be used to address complaints of discrimination and harassment (as defined herein) perpetrated by College employees against other College employees, against College students or against third parties (i.e.,

vendors, consultants, etc.). It shall also be used to address complaints of discrimination and harassment perpetrated by College students against other students, employees or third parties.

Volunteers and visitors to the College, including but not limited to vendors and service-providers, must abide by the requirements set out by this policy.

DEFINITIONS

A. **Discrimination:** The unjust or prejudicial treatment of an individual or a group of people because of their race, color, age (40 or over), gender, sexual orientation, disability, national origin, religion, physical or mental disability, gender identity or expression, predisposing genetic characteristics, pregnancy status, marital or familial status, domestic violence victim status, military status, or because of the individual or group's participation in the discrimination complaint process in the workplace or within the educational environment.

1. **Discriminatory harassment:** improper conduct toward a particular individual or groups of individuals on the basis of one or more characteristics identified above, which is sufficiently severe or pervasive and therefore has the purpose and/or effect of (1) creating an intimidating, hostile or offensive work or educational environment for the individual or group involved, or (2) unreasonably interfering with the work or educational experience in any College program or activity.
2. **Disparate Treatment** (also referred to as "intentional discrimination"): treating someone differently than other similarly situated individuals are treated because of the individual's protected class status, as defined above.
3. **Adverse Impact** or **Disparate Impact** (also referred to as "unintentional discrimination"): rules, practices and procedures which are designed to be neutral but have a discriminatory effect on a protected group.

B. **Bias Incident:** conduct, speech, images or expression demonstrating conscious or unconscious bias, directed at a person or a group based on such person or group's actual or perceived race, color, national origin, ancestry, age, religion, religious practice, gender, gender identity or expression, sexual orientation, disability, or other social identities or characteristics.

Bias Incidents may include, but are not limited to:

- Verbal abuse where racial, sexist, or other epithets are used
- Graffiti containing racist, sexist or other derogatory terms
- Distribution of discriminatory literature

C. **Hate Crimes:** a bias incident or an act of discrimination which constitutes criminal activity. A person commits a hate crime when he or she commits a specified offence and either: 1) selects the victim because of the victim's perceived or actual social identity or characteristic; or 2) intentionally commits the offense because of their belief or perception regarding the victim's social identity or characteristic. A specified offense includes, but is not limited to: assault, menacing, reckless endangerment, strangulation, murder, stalking, criminal trespass,

criminal sexual acts, sexual abuse, unlawful imprisonment, kidnapping, coercion, burglary, arson, larceny, criminal mischief, robbery, harassment, and aggravated harassment.

- D. **CDO:** Chief Diversity Officer, College employee who receives and investigates complaints of discrimination at the College.
- E. **Designated Investigative Officer:** a College employee designated by the CDO, or by the College President to conduct an investigation into allegations of discrimination, including, but not limited to the Dean of Students or his/her designee.
- F. **Complainant:** individual filing a complaint of bias or discrimination committed against him/her.
- G. **Respondent:** individual accused of bias or discrimination in violation of this policy.

POLICY

Nassau Community College is an equal opportunity employer. In compliance with Federal laws, the College does not discriminate in the hiring or promotion, terms and conditions of employment, or in its educational programs based on race, color, religion, sex, sexual orientation, national origin, age, disability, pregnancy, or genetic information. Furthermore, in compliance with the New York State Human Rights Law, the College does not discriminate based on domestic violence victim status, familial or marital status, gender identity or expression. Nassau Community College is committed to maintaining an environment in which all students, faculty, staff, volunteers and visitors can work and learn together free from all forms of discrimination, harassment, exploitation and intimidation. It is the policy of Nassau Community College to ensure equal treatment without discrimination or harassment especially on the basis of belonging to any of the protected groups listed above.

This policy is in no way intended to infringe upon Academic Freedom or Freedom of Speech, but rather to ensure that all members of the College community are able to participate fully in business, academic or work-related endeavors and activities at NCC without being subjected to discrimination, harassment, or intimidation.

A. Prohibited Conduct:

1. Discrimination, discriminatory harassment and bias incidents are a threat to the academic learning and working environment at NCC, and are strictly prohibited.
2. Retaliation against an employee, student, or any participant in the investigatory process resulting from a complaint of discrimination or bias is strictly prohibited.

B. Filing a Complaint:

1. Discrimination, discriminatory harassment, bias incidents and hate crimes may be reported to the CDO, Dean of Students Office, or Department of Public Safety.

2. Whenever a reported incident may constitute a hate crime, the College's Department of Public Safety will promptly report the incident to the Nassau County Police Department.
3. Allegations of discrimination will be investigated by the CDO or designee; by the Dean of Students or designee where both the complainant and the respondent are students; or by another Designated Investigative Officer ("DIO") appointed by the College President, where appropriate.
4. Complaint Forms are available in the Office of Equity, Inclusion, and Affirmative Action, on the College Affirmative Action Office's website, and are accessible through the NCC Portal.
5. While this policy shall be used to address complaints of discrimination based on sex, gender, gender identity or expression, and sexual orientation, it is not intended to address allegations of sexual harassment. Sexual harassment and sexual violence complaints shall be addressed under College Policy 2200 ("Sexual Harassment and Sexual Violence").

C. Supervisory Responsibility: Complaints of bias or discrimination that are reported to or acts and conduct that is observed by a College employee with supervisory or managerial responsibilities should be promptly referred to the CDO for appropriate action. All other College employees are also encouraged to make such reports to their supervisor, or the CDO.

D. Statute of Limitation

1. Complaints of discrimination and bias incidents may be made on campus up to forty-five (45) business days after the date of the alleged incident. Student-Complainants shall have forty-five (45) business days from the bias or discrimination incident or forty-five (45) business days from the last day of class to make a complaint hereunder. Anyone deciding to make a complaint beyond that time frame will be referred by the CDO to the Regional Office of the Equal Employment Opportunity Commission, New York State Division of Human Rights or the U.S. Department of Education's Office for Civil Rights (OCR).
2. Both the Complainant and the Respondent shall be advised with respect to the status of the investigation within twenty (20) business days of the day that the complaint is filed. The CDO/DIO shall have no more than ninety (90) business days of a complaint being filed to conclude his/her investigation.

E. Investigation: The investigatory process is guided by the need to balance the remedy of unlawful discrimination and harassment with principles of fairness and due process.

1. The College will conduct an investigation that is fair, impartial, conducted by individuals without a conflict of interest, and which provides both the Complainant and the Respondent a meaningful opportunity to be heard.

2. Privacy will be maintained by the College throughout the investigatory process to the greatest extent possible. Records of conversations with parties or witnesses will not be released, unless required by law or court order.
3. The respondent is entitled to due process, including knowledge of the specific allegations against him/her and an opportunity to respond. No presumption of wrongdoing will be made absent factual evidence.
4. Complainants and respondents may choose to be accompanied by a person of their choice during the investigative process; the College requests that these individuals maintain privacy and not impede or interfere with the investigator's ability to conduct a thorough investigation.
5. For employees who are members of a bargaining unit, disciplinary and/or grievance proceedings will be conducted in accordance with applicable collective bargaining agreements ("CBA").
6. **Evidence Standard.** The standard of proof in determining whether the complained of actions constitute prohibited discrimination or rise to the level of constituting a bias incident will be the "preponderance of the evidence" standard. This means that the investigator must determine whether it is "more likely than not" that the alleged discriminatory conduct or practice occurred. If the answer is "yes", then the complaint will be substantiated. In making this determination, the investigator will consider relevant laws and College policies, the documentation and information obtained from the complainant, respondent and third party witnesses, and the severity and frequency of the alleged act(s).

F. Potential Resolutions of a Complaint.

1. **Mediation** – Prior to conducting or concluding a formal investigation, the CDO/DIO may offer the Complainant an opportunity for mediation. Both parties must agree to participate in the mediation process. Throughout the mediation process, the CDO or another designated investigator shall give the parties an opportunity to come together in order to resolve the issues giving rise to the complaint without a formal investigatory process.
2. **Withdrawal of Complaint** – The Complainant may elect to withdraw the complaint before the investigation is concluded. In this case, the investigation shall be terminated and the complaint file shall be confidentially retained in the CDO's files for five (5) years.
3. **Completed Investigation** - If following the conclusion of the investigation the CDO/DIO makes a finding of discrimination in violation of this policy, the CDO/DIO shall submit a summary report to the College President. The summary shall include: recommendations on how to remedy the situation and prevent future incidents, as well as recommended disciplinary sanctions, as appropriate. Upon the President's authorization, the CDO/DIO shall notify both parties, in writing, of the results of the

investigation, and shall also implement the recommended remedies and sanctions, if any.

ENFORCEMENT

A. Remedies and sanctions

1. For employees found to have violated this policy by engaging in prohibited discrimination or harassment, sanctions/remedies shall include one or more of the following. Sanctions shall be based on the severity of the conduct in question:
 - a. Verbal Warning.
 - b. Censure or Written Reprimand
 - c. Sensitivity training
 - d. Referral to receive private psychotherapy or counseling as a condition of continued employment
 - e. Reassignment
 - f. Suspension without pay or loss of leave entitlements
 - g. Termination
2. For employees covered by collective bargaining agreements, the issuance of sanctions, as well as any grievance or appeal proceedings, shall be in accordance with disciplinary and grievance procedures under the appropriate CBA.
3. Students found to have violated this policy may be subject to the following sanctions, depending on the severity of the conduct in question:
 - a. Referral to the Dean of Students for disciplinary action under the Student Code of Student Conduct.
 - b. Sensitivity training
 - c. Community service
 - d. Placement on Social Probation
 - e. Suspension
 - f. Expulsion
4. Hate crimes
 - a. Students convicted of committing a hate crime on campus or at a College sponsored off-campus event shall be subject to expulsion.
 - b. Employees convicted of committing a hate crime on campus or at a College sponsored off-campus event shall be subject to termination of employment.

B. Conflicts of Interest and Special Complaints

1. The Chief Diversity Officer shall receive information concerning factors which could influence an objective evaluation of the evidence. In the event that a conflict arises,

the College will take necessary measures to ensure that the investigation is thorough and impartial. This may include reassignment of the investigation to another DIO or to an external agency.

2. Complaints of discrimination filed against the CDO shall be made directly to the President and investigated by the College General Counsel.
3. Complaints of discrimination made against the President: The CDO shall refer the complaint to the Chair of the Board of Trustees.
4. Complaints of discrimination made against a member of the NCC Board of Trustees: the CDO shall refer the complainant to the appropriate external agencies, such as the New York State Division of Human Rights, the EEOC or U.S. Department of Education's Office for Civil Rights. The CDO shall also notify the Chair of the Board of Trustees of the complaint.

C. Retaliation Prohibited. No individual bringing a good faith complaint of discrimination or bias may be subject to reprisal or retaliation of any kind. If a party feels that any punitive action has been taken against them as a result of filing a complaint or participating in a complaint investigation, this allegation will be investigated separately, and violators shall be subject to appropriate disciplinary action.

D. External Resolution. At any point during the investigation, the Complainant reserves the right to file a complaint with one of the following state or federal agencies: EEOC, U.S. Department of Education's Office for Civil Rights, or the New York State Division of Human Rights. Upon notification that an external complaint has been filed prior to the resolution of the internal investigation process, the CDO shall suspend the College's investigation

1. United States Equal Employment Opportunity Commission (EEOC): 800-669-4000 (800-669-6820 (TTY)); www.eeoc.gov or via email at info@eeoc.gov
2. U.S. Department of Education's Office for Civil Rights: New York Office Telephone: 646-428-3900 (1-800-877-8839 TTD)
3. New York State Division of Human Rights (DHR): 888-392-3644 or dhr.ny.gov/complaint