

POLICY: Non-Discrimination

Policy Number: I-11

Responsible for Policy: Human Resources

Approval Date: Fall 2016

Most recent review: Summer 2017

Policy Statement:

Finger Lakes Community College does not discriminate against any employee, applicant for employment, student or applicant for admission based on an individual's race, color, national origin, religion, creed, age, disability, sex, gender identification, gender expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, veteran status, domestic violence victim status, criminal conviction or any other category protected by law. The College adheres to all federal and state civil rights laws prohibiting discrimination in public institutions of higher education.

Inquiries regarding the application of Civil Rights may be directed to the Civil Rights Compliance Officer, Grace Loomis, Director of Human Resources, Room 1350, 585-785-1451, grace.loomis@flcc.edu or Title IX Co-Coordinators: Sarah Whiffen, Associate Vice President of Student Affairs, Room 2153, 585-785-1284, Sarah.Whiffen@flcc.edu or Catherine Burns, Human Resources Compliance Coordinator, Room 1341, 585-785-1466, Catherine.Burns@flcc.edu; at Finger Lakes Community College; 3325 Marvin Sands Drive, Canandaigua, NY 14424. Inquiries may also be directed to the United States Department of Education's Office of Civil Rights, 32 Old Slip 26th Floor, New York, NY 10005-2500; Tel. 646-428-3800; or email: ocr.newyork@ed.gov, or contact the NYS Division of Human Rights Offices <http://www.dhr.ny.gov/>, One Monroe Avenue, Suite 308, Rochester, NY 14607; Tel. 585-238-8250; or email InfoRochester@dhr.ny.gov.

Retaliation is prohibited against any person who files a charge of discrimination, participates in an OFCCP proceeding or otherwise opposes discrimination under state or federal law.

Reason for Policy This policy is in compliance with Federal and State anti-discrimination laws.

Applicability of the Policy The policy applies to all College employees and students. College employee matters will be resolved under the procedure described in the document; Procedures: Harassment and Discrimination Prevention Guidelines For Employees. Student conduct issues will be resolved under the procedure described in the FLCC Student Code of Conduct or Sexual Misconduct and Non-Discrimination Policy.

Definitions

Responsible Employee

A Responsible Employee is one who has the authority to take action to redress harassment, who has the duty to report discrimination or harassment to appropriate College officials, or an individual who a student could reasonably believe has this authority or responsibility. Most College employees are Responsible Employees, though there are some limited exceptions for reporting responsibilities related to Title IX; "Professional Counselors" and "Non Professional Counselors".

Jurisdiction

This policy applies to behaviors that take place on the campus, at College-sponsored events and may also apply off-campus and to actions online when the CRCO or a Title IX Co-Coordinator determines that the off-campus conduct affects a substantial College interest. Off-campus jurisdiction is when the behavior occurs in programs / events the College sponsors or when the downstream effects of purely off-campus conduct cause a discriminatory impact on campus, or it is foreseeable it could cause a discriminatory impact; but will not preclude an individual's rights under NYS Labor Section 201-d. A substantial College interest is defined to include:

- a) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- b) Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- c) Any situation that significantly impinges upon the rights, property or achievements of others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests of the College

Related Documents

- Title VII, Civil Rights Act of 1964
- Title VI, Civil Rights Act of 1964
- Title IX of the Educational Amendments of 1972 Civil Rights Restoration Act of 1988
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act (ADA) of 1990
- Federal and State anti-discrimination legislation
- NYS Human Rights Law
- NYS Labor Section 201-d
- FLCC Student Code of Conduct
- Sexual Misconduct and Non-Discrimination Policy for Students
- Procedures: Harassment and Discrimination Prevention Guidelines For Employees
- Formal Grievance Form; Charge of Discrimination
- Agreement Between Ontario Board of Supervisors, Finger Lakes Community College, And The Finger Lakes Community College Teaching Faculty Alliance
- Agreement by and between the County of Ontario and Finger Lakes Community College and CSEA, Local 1000 AFSCME, AFL-CIO
- Agreement Among Ontario County Board of Supervisors, Finger Lakes Community College Board of Trustees and Finger Lakes Community College Professional Association
- Agreement Between Ontario County Board of Supervisors, Finger Lakes Community College and Finger Lakes Community College - GRADE

Procedures: Harassment and Discrimination Prevention Guidelines for Employees

Responsible For: Human Resources

Applicable Scope

Finger Lakes Community College affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All processes below are subject to resolution using the FLCC's Investigation Resolution Process (IRP), as written in this document or in the Student Code of Conduct. When the responding party is a member of the College community, the IRP is applicable regardless of the status of the reporting party who may be a member or non-member of the campus community, including students, student organizations, faculty, administrators, staff, guests, or visitors.

Civil Right Compliance Officer (CRCO)

The Director of Human Resources serves as the College's CRCO. The Director of Community Standards and Counseling or designee and Human Resources Compliance Coordinator serve as the Title IX Co-Coordinators, who in addition to the CRCO, have responsibility to receive civil rights reports. The CRCO and Co-Coordinators oversee implementation of the College's nondiscrimination policy. The Title IX Co-Coordinators act with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by a Title IX Co-Coordinator, contact the Civil Rights Compliance Officer and/or the College President. To raise concerns regarding a potential conflict of interest with any other administrator involved in the investigation or resolution process, please contact a Title IX Co-Coordinator.

Inquiries about and reports regarding this policy and procedure may be made internally to:

Grace Loomis, Director of Human Resources
Civil Rights Compliance Officer (CRCO)
Human Resources Director
ADA / 504 Coordinator
Room 1350 585.785.1451
Grace.Loomis@flcc.edu

Catherine (Kate) Burns
Title IX Co-Coordinator
Human Resources Compliance Coordinator
Room 1341
585.785.1466
Catherine.Burns@flcc.edu

Sarah Whiffen

Title IX Co-Coordinator
Associate Vice President of Student Affairs
Room 2153
585.785.1284
Sarah.Whiffen@flcc.edu

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: 800.421.3481
Facsimile: 202.453.6012
TDD#: 877.521.2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

United States Department of Education's Office of Civil Rights
32 Old Slip 26th Floor,
New York, NY 10005-2500
Tel. 646.428.3800
ocr.newyork@ed.gov

Equal Employment Opportunity Commission (EEOC)
Contact: <http://www.eeoc.gov/contact/>

EEOC Field Office
6 Fountain Plaza, Suite 350
Buffalo, NY 14202
716.551.4441

New York State Division of Human Rights – Rochester
1 Monroe Square
259 Monroe Avenue, 3rd floor
Rochester, NY 14607
585.238.8250

Reporting Discrimination

Reports of discrimination, harassment and/or retaliation may be made using any of the following options:

- 1) Report directly to a Civil Right Compliance Officer (CRCO), Title IX Co-Coordinator, or office of campus safety.
- 2) Employees can report any situation to their supervisor, campus safety or local law enforcement. Students can also seek out employees or local law enforcement for support.

In an individual's capacity as a student, there is no time limitation on the filing of allegations involving students. However, the College will follow EEOC guidelines in regard to employee complaints.

According to the EEOC, the anti-discrimination laws give you a limited amount of time to file a charge of discrimination. In general, the timeline to file a charge is within 180 calendar days from the day the discrimination took place. The 180 calendar day filing deadline is extended to 300 calendar days if the New York State Division of Human Rights enforces a law that prohibits employment discrimination on the same basis. The rules are slightly different for age discrimination charges. For age discrimination, the filing deadline is extended to 300 days because there is a New York State law prohibiting age discrimination in employment and the state agency is enforcing that law. Time limits for filing a charge with EEOC generally will not be extended while one attempts to resolve a dispute through another forum such as an internal grievance procedure, a union grievance, arbitration or mediation before filing a charge with the EEOC. Other forums for resolution may be pursued at the same time as the processing of the EEOC charge.

All reports are acted upon promptly while every effort is made by the College to preserve the privacy of the reports. Additionally, all employees of the College are designated as Responsible Employees and will share a report with the CRCO or a Title IX Co-Coordinator promptly. Confidentiality and mandated reporting is addressed more specifically below. Reports of alleged misconduct or discrimination by a Title IX Co-Coordinator should be reported to the CRCO and/or College President. Reports of alleged misconduct or discrimination by the President should be reported to the CRCO who will inform the Board of Trustees.

Jurisdiction

This policy applies to behaviors that take place on the campus, at College-sponsored events and may also apply off-campus and to actions online when the CRCO or a Title IX Co-Coordinator determines that the off-campus conduct affects a substantial College interest. Off-campus jurisdiction is when the behavior occurs in programs / events the College sponsors or when the downstream effects of purely off-campus conduct cause a discriminatory impact on campus, or it is foreseeable it could cause a discriminatory impact; but will not preclude an individual's rights under NYS Labor Section 201-d. A substantial College interest is defined to include:

- e) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- f) Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- g) Any situation that significantly impinges upon the rights, property or achievements of others or significantly breaches the peace and/or causes social disorder; and/or
- h) Any situation that is detrimental to the educational interests of the College

Accommodation of Disabilities

Finger Lakes Community College is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA and ADAAA) and Section 504 of the Rehabilitation Act of 1973,

which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself. The Director of Human Resources has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any allegation of noncompliance.

Students with Disabilities

Finger Lakes Community College is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the College.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Disability Services Coordinator who coordinates services for students with disabilities. The Disability Services Coordinator reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

Employees with Disabilities

The College does not discriminate in any employment against qualified individuals with disabilities who, with or without reasonable accommodations, can perform the essential functions for the position that such individual holds or desires. The College will provide a reasonable accommodation to a qualified individual with a disability to help that individual perform the essential functions of the position. The College will also engage in interactive discussions with individuals with disabilities, upon request or upon notice of the potential need for an accommodation. Accommodation requests for employment shall be initiated or coordinated with the Office of Human Resources. The College will comply with all applicable laws which prohibit disability discrimination and provide for reasonable accommodation obligations.

Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. The College is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The College explicitly prohibits any form of harassment, defined as unwelcomed conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

The sections below describe the specific forms of legally prohibited harassment.

Section 1: Discriminatory and Bias-Related Harassment

Harassment constitutes a form of discrimination that is prohibited by any College policy as well as the law. The College will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by law.

When harassment rises to the level of creating a hostile environment, the College may impose sanctions on the harasser through application of the Investigation Resolution Process.

A hostile environment may be created by harassing verbal, written, graphic, or physical conduct that is severe, persistent, pervasive, and/or objectively offensive.

There may be times when offensive conduct is perceived yet does not rise to the level of creating a hostile environment, or is of a generic nature not on the basis of a protected status. The College will consider action geared toward addressing the reporting party's concerns.

For assistance with conflict resolution techniques, employees should contact the Director of Human Resources, and students should contact the Director of Community Standards and Counseling or designee.

Section 2: **Guidelines for the Prevention of Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of New York regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. In order to address the special environment of an academic community, these guidelines apply to employer, employees and students. Education, training and awareness of these types of harassment will be provided.

Sexual harassment is defined as:

- unwelcome,
- sexual, sex-based and/or gender-based,
- verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment is encouraged to report it immediately to the CRCO, a Title IX Co-Coordinator or campus safety.

Hostile Environment Sexual Harassment

A hostile environment is created when sexual harassment is: severe, or persistent or pervasive, and/or objectively offensive.

Quid Pro Quo Sexual Harassment

Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is

made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational development or performance.

Definitions under Title IX for the Prevention of Discrimination Based on Sex:

i. Consent:

Consent is a clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity. Consent is active, not passive. Requesting and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

Consent may be initially given but withdrawn at any time. When consent is withdrawn, sexual activity must stop. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.

Silence, in and of itself, cannot be interpreted as consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. Consent to any sexual act or prior consensual sexual activity between or with any party does not constitute consent to any other sexual act. Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the capacity to fully, knowingly choose to decide about participating in sexual activity, whether due to a disability that limits informed sexual decision-making, or because of impairment due to drugs or alcohol (whether such use is voluntary or involuntary), the lack of consciousness or being asleep, being involuntarily restrained, if any of the parties are under the age of 17, or otherwise cannot consent.

ii. Sex Discrimination:

All forms of sexual harassment, sexual assault, and other sexual violence by employees, students, or third parties against employees, students, or third parties. Students, employees, and third parties are prohibited from harassing others whether or not the harassment occurs on the College campus or whether it occurs during work hours. Sex discrimination can be carried out by other students, college employees, or third parties. All acts of sex discrimination, including sexual harassment and sexual violence, are prohibited by Title IX.

iii. Sexual Assault:

A physical sexual act or acts committed against another person without consent. Sexual assault is an extreme form of sexual harassment. Sexual assault includes what is commonly known as "rape" (including what is commonly called "date rape" and "acquaintance rape"), statutory rape and incest. For statutory rape, the age of consent in New York State is 17 years old.

iv. Sexual Violence:

Physical sexual acts perpetrated against a person's will or perpetrated where a person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

v. Dating Violence:

Any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the victim's statement and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship, regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. This definition does not include acts covered under domestic violence.

vi. Domestic Violence:

Any violent crime committed by a current or former spouse or intimate partner of the victim, a person sharing a child with the victim, or a person cohabitating with the victim as a spouse or intimate partner.

vii. Stalking:

Intentionally engaging in a course of conduct, directed at a specific person, which is likely to cause a reasonable person to fear for his or her safety or the safety of others or cause that person to suffer substantial emotional damage. Examples include, but are not limited to, two or more acts by which the stalker directly, indirectly, or through third parties follows, monitors, observes, surveils, threatens, or communicates about a person or interferes with his or her property.

viii. Sexual Misconduct

New York State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, FLCC has defined some categories of sex/gender discrimination as sexual misconduct in the Student Code of Conduct, the Sexual Misconduct and Non-Discrimination Policy for Students, and the document titled; Procedures: Harassment and Discrimination Prevention Guidelines For Employees.

ix. Gender Identity

Refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.

x. Sex assigned at birth:

Refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.

xi. Transgender:

Describes those individuals whose gender identity is different from the sex they were assigned at birth. A transgender male is someone who identifies as male but was assigned the sex of female at birth; a transgender female is someone who identifies as female but was assigned the sex of male at birth.

xii. Gender transition:

Refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

Retaliation

Adverse action against another person for reporting a violation or for participating in any way in the investigation or conduct process. Retaliation includes harassment and intimidation, including but not limited to violence, threats of violence, property destruction, adverse educational or employment consequences, and bullying.

Retaliation is also defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing an allegation or for assisting in providing information relevant to a claim of harassment is a serious violation of College policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the CRCO or a Title IX Co-Coordinator and will be promptly investigated. The College is prepared to assist individuals who fear that they may be subjected to retaliation.

Remedial Action

Upon notice of alleged discrimination, the College may implement initial remedial, responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such actions could include but are not limited to: no contact orders, providing education, counseling and/or medical services, student academic support, student living arrangement adjustments, student financial aid counseling, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

Finger Lakes Community College will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor upon a finding that they have engaged in harassing or discriminatory behavior or retaliation.

The College will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the College's ability to provide the accommodations or protective measures.

Reporting Requirements

All College employees (faculty, staff, and administrators) are obligated as Responsible Employees to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions related to Title IX.

A Responsible Employee is any employee who has the authority to take action to redress harassment, who has the duty to report discrimination or harassment to appropriate College officials, or an individual who a student could reasonably believe has this authority or responsibility. In short, this is most employees, though there are some limited exceptions for reporting responsibilities related to Title IX.

All College employees (faculty, staff, and administrators) are expected as Responsible Employees to report actual or suspected discrimination or harassment to a Title IX Co-Coordinator or the Civil Rights Compliance Officer (CRCO) immediately. This includes the reporting student'(s) or employee'(s) name (known as the "Reporting Party"), name of accused (known as the "Responding Party"), approximate date/time/location of incident *if known*, how information was shared with you (i.e. personal conversation, written, etc). Based on the report, the Reporting Party will be contacted by one of the Co-Coordinators or the CRCO. The Reporting Party does not have to participate in the process (informal or formal), but that does not preclude the Responsible Employee from making the report.

Under Title IX, some College employees may maintain the confidence of the reporting party if requested ie registered nurses in Student Health (Confidential Employees). They are permitted to offer options and advice without any obligation to inform an outside agency or campus official unless a reporting party has requested the information to be shared.

Student Services Counselors in the Office of Community Standards and Counseling and Campus Center Administrators are considered Semi-Confidential Employees and are required to report the incident but may withhold personal identifying information if requested by the reporting party.

Some activities may be exempt from a Responsible Employee's obligation to report. Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to a Title IX Co-Coordinator by employees, unless the reporting party clearly indicates that they wish a report to be made.

In cases indicating pattern (repeated reports or behaviors), predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the reporting party requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have allegations taken seriously by the College when reported, and to have those incidents investigated and properly resolved through these procedures.

a. Confidential Reporting under Title IX for students

Students who wish to report an incident to an on campus confidential source, may speak with Student Health Services.

Confidential Employees:

Janette Aruck R.N.
Director of Student Health Services
Phone: (585)785-1298
E-mail: Janette_Aruck@fcc.edu

Ruth A. Zimber, F.N.P.
Phone: (585)785-1298

Cherie DeWater, R.N.
Phone: (585)785-1298

A student or employee wishing to report an incident off campus in complete confidence may contact one of the following external agencies:

- Safe Harbors of the Finger Lakes
Hotlines: Seneca & Ontario Counties: 800.247.7273; Yates County: 315.536.2897
- Victim's Resource Center of the Finger Lakes
Hotline: 866.343.8808.
- More resources can also be found at <http://nyscasa.org/>. All of the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor.

b. Semi-Confidential Options under Title IX for students

There are some professionals on campus who are denoted as *counselors* and advocates for students. These individuals are not required to reveal personally identifiable information about a victim/survivor to the CRCO, Title IX Co-Coordinator, or anyone else on campus. They are required to report aggregate data to a CRCO, Title IX Co-Coordinator, including nature, date, time, and general location of the incident. These individuals include: Student Services Counselors, EOP counselor, Assistant Director of Academic Success and Access Programs and the Campus Center Directors at Wayne, Victor and Geneva.

Semi-Confidential Options for students

Teresa Daddis
Student Services Counselor, Community Standards & Counseling
Phone: 585-785-1455

Lisa Thomas
Assistant Director of Academic Success & Access Programs
585-785-1390

Nicole Siegworth
EOP Outreach Specialist
585-785-1637

Laila Pailiotti
Student Services Counselor, Community Standards & Counseling
585-785-1441

John Cromartie
Campus Center Director (Geneva)
315-789-6701 Ext. 6002

Donald Emirbayer
Interim Campus Center Director (Victor)
585-785-1114

Deborah Corsner
Interim Campus Center Director (Wayne)
315-331-9098 Ext. 305

c. Confidential Reporting for employees under Title IX

- An additional confidential resource for employees; the Employee Assistance Program (EAP) is available to help free of charge and can be seen on an emergency basis during normal business hours. Tel. 585-383-4478; email Helpforemployees.com. The EAP is a 3rd party, neutral service for employees seeking counseling and other resources.

Need to know:

Reporting still affords privacy to the reporter, and only a small group of officials who need to know will be informed. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve each party's rights and privacy.

Failure of a Responsible Employee, as described in this section, to report an incident or incidents of sex/gender harassment or discrimination based upon any protected category of which they become aware is a violation of College policy and can be subject to disciplinary action for failure to comply.

Federal Timely Warning Obligations

Parties reporting sexual misconduct should be aware that under the Clery Act, the College administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The College will ensure that a victim's name and other identifying information is not disclosed, while still providing

enough information for community members to make safety decisions in light of the potential danger.

False Allegations

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Amnesty for Student Reporting

The College community encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, students who are reporting parties or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that reporting parties choose to report to College officials, and that witnesses come forward to share what they know. To encourage reporting, the Student Code of Conduct and the Sexual Misconduct and Non-Discrimination Policy offers reporting student parties and witnesses amnesty from minor policy violations related to the incident.

Parental Notification (allegations involving students)

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The university may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act.

Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus safety regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student affairs, campus safety, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Resolution Processes

Student resolution processes are outlined in the **Student Code of Conduct** and the Sexual Misconduct and Non-Discrimination Policy for Students.

For employees, the following Investigation Resolution Process (pages 13-17) will be followed

EMPLOYEE INVESTIGATION RESOLUTION PROCESS FOR ALLEGATIONS OF HARASSMENT, SEXUAL MISCONDUCT AND OTHER FORMS OF DISCRIMINATION

Finger Lakes Community College will act on any allegation or notice of violation of the non-discrimination policy, that is received by the CRCO, a Title IX Co-Coordinator or a member of the administration, faculty, or other employee.

The procedures described below apply to all allegations of harassment or discrimination on the basis of protected class involving College employees. These procedures may also be used to address collateral misconduct occurring in conjunction with harassing or discriminatory conduct (e.g.: vandalism, physical abuse of another, etc.).

Overview

Upon notice to the CRCO or Title IX Co-Coordinator, this resolution process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the College will initiate an investigation that is thorough, reliable, impartial, prompt and equitable. The investigation and the subsequent resolution process determines whether the non-discrimination policy has been violated. If so, the College will promptly implement effective remedies designed to end the discrimination, prevent its recurrence and address its effects.

1. Investigation Resolution Process (IRP)

Allegations under the policy on nondiscrimination are resolved using the IRP.

The Civil Rights Compliance Officer and Title IX Co-Coordination will be properly trained to facilitate the IRP. This training will include, but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to all forms of harassment and discrimination allegations; the College's non-discrimination policy (including Sexual Misconduct); confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance.

2. Reporting

Any member of the College community who believes that the policy on non-discrimination has been violated should contact the CRCO or a Title IX Co-Coordinator.

All employees receiving reports of a potential violation of this policy are expected to promptly contact the CRCO or Title IX Co-Coordinator within 24 business hours of becoming aware of a report or incident. Specific information on any allegations received by any party will be reported to the CRCO or Title IX Co-Coordinator, and, subject to the College's obligation to redress violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, the College will give consideration to the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process. See page 19 to file a report. Reports can be made via email, mail, fax and will be reviewed for merit.

3. Preliminary Inquiry

Following receipt of notice or a report of a violation, the CRCO or Title IX Co-Coordinator¹ engages in a preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. The preliminary inquiry is typically 3-5 business days in duration. This inquiry may also serve to help the CRCO or Title IX Co-Coordinator to determine if the allegations evidence violence, threat, pattern, predation and/or weapon, in the event that the reporting party has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the CRCO or Title IX Co-Coordinator may respect a reporting party's request for no action, and will investigate only so far as necessary to determine appropriate remedies. As necessary, the College reserves the right to initiate resolution proceedings without a formal report or participation by the reporting party.

In cases where the reporting party wishes to proceed or the College determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the CRCO or Title IX Co-Coordinator will direct a formal investigation to commence and the allegation will be resolved through one of two processes discussed briefly here and in greater detail below:

- Conflict Resolution – typically used for less serious offenses and only when both parties agree to conflict resolution (Informal Resolution)
- Formal Resolution – a resolution of allegations

¹ If circumstances require, the President, CRCO, or Title IX Co-Coordinator may designate another person to oversee the process, should an allegation be made against the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

The process followed considers the preference of the parties, but is ultimately determined at the discretion of the CRCO or Title IX Co-Coordinator. Conflict Resolution may only occur if selected by all parties. If either party or both parties select Formal Resolution, or the CRCO or Title IX Co-Coordinator determines that Formal Resolution is appropriate, the allegation will be addressed using the Formal Resolution option.

The College aims to complete all investigations within a sixty (60) calendar day time period, which can be extended as necessary for appropriate cause by the CRCO or Title IX Co-Coordinator with notice to the parties as appropriate.

If, during the preliminary inquiry or at any point during the formal investigation, the CRCO or Title IX Co-Coordinator determines that there is no reasonable cause to believe that policy has been violated, the process will end unless the reporting party requests that the CRCO or Title IX Co-Coordinator makes an extraordinary determination to re-open the investigation or to forward the matter for a hearing. This decision lies in the sole discretion of the CRCO or Title IX Co-Coordinator.

4. Interim Remedies/Actions

The CRCO or Title IX Co-Coordinator may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the reporting party and the community and to prevent further violations.

These remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering work arrangements for employees
- Providing campus escorts
- Implementing contact limitations between the parties

The College may interim suspend an employee or organization pending the completion of the IRP, particularly when in the judgment of the CRCO or Title IX Co-Coordinator the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party whose behavior is in question.

The College may undertake a short delay in its investigation when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The College will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete.

The investigations will typically take the following steps, if not already completed (not necessarily in this order):

- Preliminary Inquiry will be conducted by CRCO or Title IX Co-Coordinator 10 business days of receipt of the report.
- Investigation begins if reasonable cause determined: 11th day, written notification to responding party, cc reporting party. If the responding party is the President, any reference to the President will be replaced by Board of Trustees.
- Formal Investigation: Complete within 60 days; if at any point no reasonable cause is determined, the process ends and will be communicated to both parties in writing
- Title IX Co-Coordinator or CRCO recommends a finding to Human Resources Officer, Associate Vice President or Appropriate Cabinet Member and will finalize the resolution following conclusion of the investigation.
- Typically, within ten (10) days of the close of an investigation the CRCO, Title IX Co-Coordinator or the investigator(s) will meet with both parties to explain the finding(s) of the investigation. Written findings will follow.
- Sanctions may be effective immediately depending whether there is an appeal, and the nature of the appeal.
- Requests for appeal should go to President of the College. When the responding party is a faculty or staff member of the College, the student will receive the same time frame to appeal allowed to the faculty or staff member per the faculty or staff member's labor contract provisions. When the responding party is a student, such appeals will be heard by the Academic Grievance Board and follow the procedures describe in under "Academic Grievances" section of the Student Code of Conduct or as outlined in the Sexual Misconduct and Non-Discrimination Policy for Students.
- Appeal request shared with other party; other party has 15 days to bring their own appeal.
- The CRCO or Title IX Co-Coordinator will provide written decision based on the appeal outcome to all parties within 10 business days of resolution of appeal.

All investigations will be thorough, reliable, impartial, prompt and equitable. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, as necessary.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other Investigation Resolution Process proceedings.

5. Employee Sanctions

The College is responsible for prompt, effective, remedial and equitable actions in response to a finding of harassment or discrimination. Because each situation will contain many variables, the College's response will be varied. Responsive actions for an employee who

has engaged in harassment, discrimination and/or retaliation may include

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*

6. Appeals

All requests for appeal consideration must be submitted in writing to the CRCO or Title IX Co-Coordinator within timelines provided by respective labor contracts. The President of the College will review the appeal and make a decision within timelines provided by respective labor contracts

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the CRCO or Title IX Co-Coordinator. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional responsive/corrective actions and/or suspension, expulsion and/or termination from the College.

7. Records

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept by a Title IX Coordinator indefinitely in the On Base system which securely stores all documents electronically while limiting access to the CRCO and Title IX Coordinator.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

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Finger Lakes Community College

CHARGE OF DISCRIMINATION

This form is to be used by students and employees to file a complaint of discrimination based on RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, SEXUAL ORIENTATION, VETERAN'S STATUS, AGE, DISABILITY, MARITAL STATUS, PARENTAL STATUS OR SEXUAL HARASSMENT / MISCONDUCT or GENDER IDENTITY.

CAMPUS_____

(PLEASE PRINT OR TYPE)

RECEIVED BY_____ TITLE _____ DATE _____

1. Name_____ Phone No._____

Campus Address_____

Status_____

(Faculty, Staff, Student)

Home Address_____

City_____ State_____ Zip Code_____

2. ALLEGED DISCRIMINATION IS BASED ON (please check all that apply):

Race Color Religion National Origin Sexual orientation Veteran's Status

Sex Age Disability Marital/Parental Status Sexual Harassment Gender Identity

3. Alleged Discrimination took place on or about: Month _____ Day _____
Year _____

Check if alleged discrimination is continuing Yes No

4. Respondent(s) Name(s) _____ Status _____
(Faculty, Staff, Student)

5. Please check the appropriate box(es):

I have filed an informal complaint on _____ Date _____

I elect to utilize the informal resolutions process

I elect to proceed immediately to file a formal complaint

6. Have you filed this charge with a federal, state or local government agency?

Yes No

If yes, with which agency? _____
When? _____

7. Have you instituted a suit or court action on this charge?

Yes No

If yes, with which court? _____ When?

Court address

Contact person _____

8. Describe briefly the act which occurred and your reason for concluding that it was discriminatory

(attach extra pages if necessary).

9. Relief Requested:

10. I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

(Print Name) _____ Signature: _____

Date _____

CRCO / Title IX Co-Coordinator (Print Name): _____

Signature: _____ Date _____

Related Documents

- FLCC Non-Discrimination Policy
- Title VII, Civil Rights Act of 1964
- Title VI, Civil Rights Act of 1964
- Title IX of the Educational Amendments of 1972 Civil Rights Restoration Act of 1988
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act (ADA) of 1990
- Federal and State anti-discrimination legislation
- NYS Human Rights Law
- NYS Labor Section 201-d
- FLCC Student Code of Conduct
- Procedures: Harassment and Discrimination Prevention Guidelines For Employees