DISCRIMINATION, HARASSMENT, AND RETALIATION POLICY

NIAGARA COUNTY COMMUNITY COLLEGE

DISCRIMINATION, HARASSMENT, AND RETALIATION POLICY

The College strives to create and maintain a work environment in which people are treated with dignity, decency and respect. The environment of the College should be characterized by mutual trust and the absence of intimidation, oppression and exploitation. Employees should be able to work and learn in a safe, yet stimulating atmosphere. The accomplishment of this goal is essential to the mission of the College. For that reason, the College will not tolerate unlawful discrimination or harassment of any kind. Through enforcement of this policy and by education of employees, the College will seek to prevent, correct and discipline behavior that violates this policy.

All employees, regardless of their positions, are covered by and are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. This policy applies to applicants for employment, as well as interns, whether paid or unpaid. This policy also applies to anyone who is, or is employed by, a contractor, subcontractor, vendor, consultant, or anyone providing services in our workplace. These individuals include persons commonly referred to as independent contractors, gig workers, and temporary workers. Also included are persons providing equipment repair, cleaning services, or any other services through a contract with the College. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension or termination of employment.

A. Discrimination is Strictly Prohibited

The College is committed to maintaining a workplace free of unlawful harassment. The College strictly prohibits and does not tolerate unlawful harassment against employees, students, interns, whether paid or unpaid, independent contractors, or any other covered persons because of race, color, religion, creed, national origin, ancestry, sex, gender, gender identity or expression (including status as a transgender individual), age, sexual orientation (including actual or perceived heterosexuality, homosexuality, bisexuality, and asexuality), physical or mental disability (including gender dysphoria and similar gender-related conditions), citizenship, genetic information or predisposing genetic characteristics, marital status, familial status, domestic violence victim status, military status, including past, current, or prospective service in the uniformed services, or any other characteristic protected under applicable federal, New York, or local law.

This policy applies to all terms and conditions of employment with the College, including, but not limited to: hiring, training, promotion, discipline, compensation, benefits, and termination of employment.

B. Sexual Harassment is Strictly Prohibited

One form of harassment prohibited by this policy is sexual harassment. Sexual harassment is unlawful, violates College policy, subjects the College and the harasser to potential liability, constitutes employee misconduct, and will not be tolerated. Appropriate sanctions and/or disciplinary action (up to and including termination) will be enforced against individuals

engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue.

Sexual harassment is a form of gender-based discrimination and includes harassment on the basis of sex, sexual orientation, sex stereotypes, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender. The gender spectrum is nuanced, but the three most common ways people identify are cisgender, transgender, and non-binary. A cisgender person is someone whose gender aligns with the sex they were assigned at birth. Generally, this gender will align with the binary of male or female. A transgender person is someone whose gender is different than the sex they were assigned at birth. A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside the gender binary. Some may identify as transgender, but not all do. Respecting an individual's gender identity is a necessary first step in establishing a safe workplace.

Sexual harassment includes unwelcome conduct which is either of a sexual nature or directed at an individual because of his or her sex, when:

- Such conduct is made either explicitly or implicitly a term or condition of employment;
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment.

Sexual harassment in the form of "hostile environment" harassment consists of words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Hostile environment harassment also consists of unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the workplace which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient's job performance.

Harassment need not be severe or pervasive to be illegal. Employees should not feel discouraged from reporting harassment because they do not believe it is "bad enough." All employees will have access to a complaint form to report harassment and file complaints; however, use of the form is not required to make a report. An employee or covered individual who prefers not to report harassment to their manager or employer, may instead report the harassment to the New York State Division of Human Rights and/or the United States Equal Employment Opportunity Commission. Managers and supervisors are under an obligation to report any complaint of harassment that they receive, observe, or otherwise become aware of.

Sexual harassment in the form of "quid pro quo" harassment occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment, or any other term, condition, or privilege of employment.

Sexual harassment can occur between males and females, or between persons of the same sex. Sexual harassment that occurs because the target is transgender is also unlawful. An individual's intent cannot serve as a defense to harassment or discrimination.

Sexual harassment is prohibited not only at the workplace but also while off-premises, at College-sponsored events, or remotely via calls, texts, emails, or social media. Conduct does not have to be directed at an individual for it to be sexually harassment (for example, overheard comments can qualify).

The following describes some of the types of acts that may be unlawful sexual harassment:

- Unwanted sexual advances, propositions, or other sexual comments, such as:
    - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion, or other job benefits or detriments;
    - Subtle or obvious pressure for unwelcome sexual activities;
    - Sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience that rise above the level of petty slights and trivial inconveniences; or
    - Repeated requests for dates or romantic gestures, including gift-giving.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Physical acts of a sexual nature, such as:
    - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body, or poking another employee's body;
    - Rape, sexual battery, molestation, or attempts to commit these assaults.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or status of being transgender, such as:
    - Interfering with, destroying, or damaging a person's workstation, tools, or equipment, or otherwise interfering with the individual's ability to perform the job;
    - Sabotaging an individual's work; or
    - Bullying, yelling, or name-calling.
    - Sex stereotyping – when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.

C. Other Unlawful Harassment is Strictly Prohibited

The College policy prohibiting harassment applies equally to harassment based on race, color, religion, creed, national origin, ancestry, age, physical or mental disability, citizenship, genetic information or predisposing genetic characteristics, marital status, familial status, domestic violence victim status, military status, including past, current, or prospective service in the uniformed services, or any other characteristic protected by applicable law. Such harassment often takes a similar form to sexual harassment and includes harassment that is:

- Verbal (e.g., epithets, derogatory statements, slurs, derogatory comments or jokes, or obscene language).
- Physical (e.g., assault or inappropriate physical contact).
- Visual (e.g., displaying derogatory posters, cartoons, or drawings or making derogatory gestures).
- Online (e.g., derogatory statements in any e-mail or through any social media platform).

This list is illustrative only, and not exhaustive. No form of harassment will be tolerated, including, but not limited to, any harassment that denigrates or shows hostility towards an individual; has the purpose or effect of creating an intimidating, hostile, or offensive work environment; has the purpose or effect of unreasonably interfering with an individual's work performance; or otherwise adversely affects an individual's employment opportunities.

Harassment can occur while off-premises, at College-sponsored events, or remotely over calls, texts, emails, or social media. Conduct does not have to be directed at an individual for it to be harassment (for example, overheard comments can qualify).

D. Reporting Requirements

All administrators in with supervisory duties, who receive a report or information about, observe, or suspect any potential discrimination, harassment, or other violation of this policy, must immediately report it to the Assistant Vice President of Human Resources. A supervisor who fails to make such a report or otherwise knowingly allows discriminatory, harassing, or retaliatory behavior to continue will be subject to disciplinary action, up to and including termination of employment.

Any employee witnessing harassment as a bystander is also required to report it to Human Resources. There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help.

1. A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;

2. A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;

3. A bystander can record or take notes on the harassment incident to benefit a future investigation;

4. A bystander might check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and

5. If a bystander feels safe, they can confront the harassers and name the behavior as inappropriate. When confronting harassment, physically assaulting an individual is never an appropriate response.

Though not exhaustive, and dependent on the circumstances, the guidelines above can serve as a brief guide of how to react when witnessing harassment in the workplace. Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it.

The College will investigate any report or complaint of discrimination, harassment, or other violation of this policy that it receives. Investigations will be conducted in a prompt and timely manner, and will be confidential to the extent possible. The College will take prompt and appropriate corrective action whenever it determines that harassment or another violation of this policy has occurred.

E. Complaint and Investigation Procedure

Preventing unlawful discrimination and harassment is everyone's responsibility. The College cannot prevent or remedy harassment unless it knows about it. Again, anyone who witnesses, becomes aware of, or is subjected to behavior that may constitute discrimination or harassment or otherwise violates this policy is required to immediately report such behavior to his or her supervisor or the Assistant Vice President of Human Resources. All complaints of sexual harassment will be investigated.

Reports of discrimination, harassment, or any other violation of this policy should be made in writing, though verbal reports will be accepted. A Complaint Form for the submission of reports of discrimination, harassment, or any other violation of this policy is included at the end of this Handbook, and all personnel are encouraged to use this Form. If the report is verbal, the complainant will be asked to complete a written Complaint Form. If he or she declines, the College may prepare a Complaint Form based on the verbal report.

All persons involved, including complainants, witnesses, and accused individuals, will be accorded due process, as outlined below. While the process may vary from case to case depending on the circumstances, an investigation of a report made under this policy will generally include the following steps:

- Upon receipt of a report of harassment or other violation of this policy, the College will conduct an immediate review of the allegations and take any appropriate interim action.
- Relevant documents and electronic communications will be collected and reviewed.

- Interview the complainant, witnesses, and accused.
- Create confidential written documentation of the investigation.
- Notify the complainant(s) and accused individual(s) that the investigation has concluded and any other relevant information where appropriate.
- Implement any corrective action.

All employees are required to cooperate fully with any investigation conducted under this policy.

F. Retaliation is Strictly Prohibited

The College strictly prohibits and does not tolerate any retaliation against an individual because he or she has in good faith (1) made a complaint of, reported, or opposed discrimination or harassment, either internally or with any government agency, or encouraged another to do so; or (2) testified or assisted in an investigation or proceeding involving discrimination or harassment under the Human Rights Law or other anti-discrimination law. Such retaliation is unlawful and contrary to College policy. An individual is protected from retaliation if he or she had a good faith belief that the practice complained of was unlawful, even if it ultimately does not rise to the level of a legal violation. These protections do not apply, however, to any person making an intentionally false charge of discrimination or harassment or providing intentionally false information in connection with an investigation under this policy.

Retaliation consists of adverse action taken against the individual because he or she engaged in any of the protected activities described above. The action need not be job-related or occur in the workplace. Unlawful retaliation can be any action, more than trivial, that would have the effect of dissuading a reasonable worker from engaging in any protected conduct.

Examples of retaliation may include, but are not limited to:

- Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable shifts;
- Publicly releasing personnel files;
- Refusing to provide a reference or providing an unwarranted negative reference;
- Labeling an employee as "difficult" and excluding them from projects to avoid "drama";
- Undermining an individual's immigration status; or
- Reducing work responsibilities, passing over for a promotion, or moving an individual's desk to a less desirable office location.

An adverse employment action is not retaliatory simply because it occurs after the protected activity in question. Employees continue to be subject to all job requirements and disciplinary rules after having engaged in protected activity. In order to make a claim of retaliation, the individual must be able to prove that the adverse action was retaliatory.

G. Sexual Harassment: Statutory Provisions, Redress Rights, and Adjudication Forums

Sex harassment and discrimination is unlawful pursuant to the New York Human Rights Law § 296.1 (codified as N.Y. Executive Law, Article 15), and the federal Civil Rights Act of 1964, Title VII (codified as 42 U.S.C. § 2000e et seq.).

The Human Rights Law applies to all employers in New York State with respect to discrimination and sexual harassment and protects employees, paid or unpaid interns, and non-employees, regardless of immigration status. A complaint alleging a violation of the Human Rights Law may be filed with either the Division of Human Rights (DHR) or in New York State Supreme Court. Complaints of sexual harassment filed with DHR may be submitted any time **within three years** of the harassment. If an individual does not file a complaint with DHR, they can bring a lawsuit directly in state court under the Human Rights Law, **within three years** of the alleged sexual harassment.

Go to dhr.ny.gov/complaint for more information about filing a complaint with DHR. The website has a digital complaint process that can be completed on your computer or mobile device from start to finish. The website has a complaint form that can be downloaded, filled out, and mailed to DHR as well as a form that can be submitted online. The website also contains contact information for DHR's regional offices across New York State.

Employees may also call the DHR sexual harassment hotline at **1(800) HARASS3** for more information about filing a sexual harassment complaint. This hotline can also provide you with a referral to a volunteer attorney experienced in sexual harassment matters who can provide you with limited free assistance and counsel over the phone.

Title VII of the Civil Rights Act of 1964 applies to private employers with at least 15 employees. A complaint alleging a violation of Title VII may be filed with the Equal Employment Opportunity Commission (EEOC). If the EEOC determines that there is reasonable cause to believe that harassment occurred, it will issue a Right to Sue letter permitting the complainant to file a complaint in federal court. The EEOC does not hold hearings or award relief, but may pursue cases in federal court on behalf of a complainant. Additional information about EEOC can be found at www.eeoc.gov. If sexual harassment is found to have occurred, federal courts may award appropriate relief. The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov

There may also be applicable local laws that protect individuals from sexual harassment. An individual may contact the county, city, town, or village in which they live to determine whether such a local law exists.

The remedies available to victims of discrimination or sexual harassment vary depending on the circumstances and forum involved, but may include requiring the defendant(s) to take action to stop the harassment, or redress the damage caused, including reinstatement/instatement to a job, payment of monetary damages (e.g., back pay, out-of-pocket expenses), compensatory damages, punitive damages in certain circumstances, reasonable attorneys' fees, and civil fines.

If the discrimination or harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. Redress can be sought by contacting the local police department.

A. Administration of Policy

This policy is intended to comply with and implement New York law regarding sexual harassment policies (Labor Law § 201-g) and any accompanying regulations. To the extent that this policy is inconsistent therewith, the law and applicable regulations will apply.

NIAGARA COUNTY COMMUNITY COLLEGE
OFFICIAL COMPLAINT FORM

If you believe that you have been subject to unlawful harassment or retaliation, you are strongly encouraged to complete this form and submit it to the College's Assistant Vice President of Human Resources or any other senior officer. Please complete all aspects of this form in as much detail as possible. In particular, you are encouraged to include your name and contact information, as anonymous complaints may be very difficult, if not impossible, to adequately investigate.

The College prohibits retaliation of any kind against an individual for making a complaint in good faith.

Please use additional sheets of paper if necessary.

Your Name: _____

Your Phone: _____ Your Email: _____

Your Title/Position: _____ Your Supervisor: _____

Name and title of any alleged harasser or retaliator: _____

_____

_____

Relationship of any alleged harasser or retaliator to you:

☐ Supervisor ☐ Subordinate ☐ Co-Worker ☐ Other _____

Details of the harassment or retaliation. Please include as much detail as possible, including what happened, a description of the incident(s) complained of, how it is affecting you and your work, and your reasons for believing that the conduct is sexual or other harassment or retaliation.

_____

Date(s) of harassment or retaliation: _____

Is the harassment or retaliation continuing? ☐ Yes ☐ No Explain: _____

List the names and contact information of each witness or individual who may have information related to your complaint or who are otherwise involved:

Identify any documents or other evidence that you believe substantiates your complaint of harassment or retaliation. Attach any relevant documents and evidence.

_____

_____

_____

_____

_____

The last question is optional, but may assist in the investigation.

Have you previously complained or provided information (verbal or written) about harassment or retaliation at the College? If yes, when and to whom did you complain or provide information?

_____

_____

_____

_____

_____

_____

I certify that I have read (or have had read to me) the foregoing complaint and know the contents of this complaint; and that the foregoing is true and correct, based on my current knowledge, information, and belief.

Signature_____ **Date**_____