



**OFFICE OF HUMAN RESOURCES
OFFICE OF RISK MANAGEMENT
POLICY and PROCEDURE**

Department:
Policy:
Number:

Finance and Administration
Equal Opportunity, Harassment, and Nondiscrimination
103

Equal Opportunity, Harassment, and Nondiscrimination Policy

Northeast Iowa Community College (NICC) affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. Northeast Iowa Community College reserves the right to act on incidents occurring on-campus or off-campus when the off-campus conduct could have an on-campus impact or impact on the educational mission of Northeast Iowa Community College.

The Executive Director for Risk Management and the Executive Director of Human Resources are jointly responsible for the College's policy on equal opportunity, harassment, and nondiscrimination. The Executive Director of Risk Management serves as the College's Title IX Coordinator, Equity, Affirmative Action, ADA and 504 Coordinator for students. The Executive Director of Human Resources serves as the Equity, Affirmative Action, ADA Coordinator for employees. The Executive Director for Risk Management and the Executive Director of Human Resources oversee the College's compliance within these areas.

Reports of discrimination, harassment and/or retaliation should be made to the Title IX Coordinator, Equity/AA Coordinator, or to one of the deputies promptly, but there is no time limitation on the filing of complaint, as long as the accused individual remains subject to the NICC's jurisdiction. The names and contact information for the coordinator and deputies can be found on p. 2 of this policy. References to the *Title IX/Equity/AA Coordinators* in this policy and in the accompanying procedure are meant to refer to both the Executive Director for Risk Management and the Executive Director of Human Resources. The coordinator assigned oversight of a complaint will be determined both by the circumstances of the complaint and the individuals involved in the complaint.

All reports are acted upon promptly while every effort is made by the College to preserve the privacy of reports. Anonymous reports may also be filed online, using the reporting form posted online at www.nicc.edu/titleix. Reporting is addressed more specifically on p. 7, Section 7, below. Reports of discrimination by the Executive Director for Risk Management or by the Executive Director of Human Resources should be reported to the Vice President for Finance and Administration at 800-728-2256, x202 or dahmsd@nicc.edu.

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 Title IX/Equity/AA Coordinator determines that the off-campus conduct affects a substantial college interest. A substantial college interest is defined to include:

- a) Any action that constitutes criminal offense as defined by federal or Iowa law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law committed in the municipality where the College is located;
- b) Any situation where it appears that the accused individual 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 self or 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.

Any online postings or other electronic communication by students including cyber-bullying, cyber-stalking, cyber-harassment, and other similar activities occurring completely outside of the College's control (not on college networks, websites or between college email accounts) will only be subject to this policy when those online behaviors can be shown to cause a substantial on-campus disruption. Otherwise, such communications are considered speech protected by the 1st Amendment.

Off-campus discriminatory or harassing speech by employees may be regulated by the College only when such speech is made in an employee's official or work-related capacity.

Inquiries about this policy and procedure and initial reporting of complaints may be made internally to:

TITLE	NAME/CONTACT INFORMATION:
Title IX Coordinator Equity/Affirmative Action (Students) ADA/504 Coordinator (Students)	Kelly McMahon Executive Director for Risk Management Peosta Campus, 215B 800.728.7367, ext. 477 mcmahonke@nicc.edu
Equity/Affirmative Action (Employees) ADA Coordinator (Employees)	Connie Kuennen Executive Director of Human Resources Calmar Campus, Administration, 108 800.728.2256, ext. 300 kuennenc@nicc.edu
Title IX Deputy	Chris Woodson Dean of Student Development Calmar Campus, Student Center, 160 800.728.2256, ext. 263 woodsonc@nicc.edu
Title IX Deputy	Sharon Lyons Human Resources Coordinator Peosta Campus, 217 800.728.7367, ext. 183 lyonssh@nicc.edu

Inquiries may be made externally to:

Iowa Civil Rights Commission

Filing deadline: 180 days from violation

Iowa Civil Rights Commission
Grimes State Office Building
400 E. 14th Street
Des Moines, IA 50319-1004
515-281-4121, 1-800-457-4416
Fax 515-242-5840
www.state.ia.us/government/crc/

United State Equal Employment Opportunity Commission (EEOC)

Filing deadline: 180 days from violation. This deadline is extended to 300 days from violation if the violation is also covered by unlawful discrimination laws in the State in which the violation is alleged to have occurred.

Chicago District Office
500 West Madison Street,
Suite 2800
Chicago, Illinois 60661
800-669-4000
312-886-1168—Fax
800-669-6820—TTY
www.eeoc.gov

Milwaukee District Office
Reuss Federal Plaza
310 West Wisconsin Avenue,
Suite 800
Milwaukee, WI 53203-2292
800-669-4000
414-297-4133—Fax
800-669-6820—TTY
www.eeoc.gov

Office of Civil Rights, U.S. Department of Education

Filing deadline: 180 days from violation

Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-1100
202-245-6800 or 800-421-3481
202-245-6840—Fax
877-521-2172—TTY
OCR@ed.gov
www.ed.gov/ocr

Office for Civil Rights/Chicago
U.S. Department of Education
Citigroup Center
500 W. Madison Street
Suite 1475
Chicago, IL 60661
312-730-1560
312-730-1576—Fax
312-730-1609—TTY
877-521-2172—TTY

1. Policy on Nondiscrimination

It is the policy of Northeast Iowa Community College not to discriminate on the basis of race, color, national origin, sex, disability, age (employment), sexual orientation, gender identity, creed, religion, and actual or potential parental, family or marital status in its programs, activities, or employment practices as required by the Iowa Code §§ 216.6 and 216.9, Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d and 2000e), the Equal Pay Act of 1973 (29 U.S.C. § 206, et seq.), Title IX (Educational Amendments, 20 U.S.C. §§ 1681 – 1688), Section 504 (Rehabilitation Act of 1973, 29 U.S.C. § 794), and Title II of the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.).

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational, employment, and/or social access, benefits and/or opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above is in violation of the college policy on nondiscrimination. When brought to the attention of the College, any such discrimination will be appropriately remedied by the College according to the procedures below.

2. Policy on Accommodation of Disabilities

NICC is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA) 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 he or she has 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 Executive Director of Risk Management has been designated as the ADA/504 Coordinator for students and is responsible for coordinating efforts to comply with these disability laws, including investigation of any complaint alleging noncompliance. The Executive Director for Human Resources has been designated the ADA Coordinator for employees.

a. Students with Disabilities

NICC 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 in Calmar or Peosta who coordinates services for students with disabilities. The 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.

b. Employees with Disabilities

Pursuant to the ADA, NICC will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing to the Executive Director of Human Resources and provide appropriate documentation. The Human Resources staff will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

3. Policy on Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. NICC's harassment policy 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 sections below describe the specific forms of legally prohibited harassment that are also prohibited under college policy.

i. Discriminatory and Bias-Related Harassment

Harassment constitutes a form of discrimination that is prohibited by law. NICC will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, NICC may also impose sanctions on the harasser. NICC's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent, pervasive, and objectively offensive that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.

Offensive conduct and/or harassment that does not rise to the level of discrimination or that is of a generic nature not on the basis of a protected status may not result in the imposition of discipline under NICC policy, but will be addressed through civil confrontation, remedial actions, education and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact the Executive Director of Human Resources and students should contact the Dean of Student Development.

NICC condemns and will not tolerate discriminatory harassment against any employee, student, visitor, or guest on the basis of any status protected by college policy or law.

b. Sexual Harassment

Both the Equal Employment Opportunity Commission and the State of Iowa regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. The College has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual harassment is:

- unwelcome, sexual or gender-based verbal, written, online and/or physical conduct. Anyone experiencing sexual harassment in any college program is encouraged to report it immediately to the Title IX/Equity/AA Coordinator, deputy, or another administrator.

Sexual harassment creates a hostile environment, and may be disciplined when it is:

- sufficiently severe, persistent/pervasive and objectively offensive that it:
 - has the effect of unreasonably interfering with, denying or limiting employment opportunities or the ability to participate in or benefit from the college's educational, social and/or residential program, and is
 - based on power differentials (*quid pro quo*), the creation of a hostile environment or retaliation.

POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student or supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship may also be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of the supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift a party out of being supervised or evaluated by someone with whom they have established a consensual relationship. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

c. Sexual Misconduct

State law defines various violent and/or non-consensual sexual acts as crimes. Additionally, NICC has defined categories of sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, NICC considers non-consensual sexual intercourse violations to be the most serious, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees.

However, NICC reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other gender-based offenses, including intimate partner or relationship (dating and/or domestic) violence, non-consensual sexual contact and stalking based on the facts and circumstances of the particular complaint. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. Violations include:

i. Sexual Harassment (as defined in section b above)

ii. Non-Consensual Sexual Intercourse

Defined as:

- any sexual penetration or intercourse (anal, oral or vaginal)

- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

iii. Non-Consensual Sexual Contact

Defined as:

- any intentional sexual touching
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

iv. Sexual Exploitation

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed)
- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent)
- Prostitution
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection, and further includes administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent

v. Consent

Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. It is not an excuse that the individual responding party of sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

Age of Consent under Iowa Law: Under the laws of the State of Iowa, the age of consent is defined as follows:

Children Under 14: A person commits the crime of sexual abuse by engaging in a sex act (intercourse, anal or oral sex, or genital touching) with a child under the age of 14.

Children Under 16: Under Iowa’s laws, a person also commits sexual abuse by engaging in a sex act with a child age 14 or 15 when:

- the defendant and the child are related or live in the same household
- the defendant is in a position of authority over the child and coerces the child into participating, or
- the defendant is four or more years older than the child.

The “Romeo and Juliet” exception. Under Iowa’s “Romeo and Juliet” exception, a teenager who engages in consensual sexual activity with a 14 or 15-year-old is not subject to criminal prosecution so long as he/she is less than four years older than his/her partner.

(Iowa Code §§ 702.17, 709.3, 709.4.)

4. Other Civil Rights Offenses, When the Act is Based upon the Status of a Protected Class

- Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class
- Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a protected class
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a protected class
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the NICC community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the hazing policy) on the basis of actual or perceived membership in a protected class; hazing is also illegal under Iowa law and prohibited by NICC policy

- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class
- Violence between those in an intimate relationship to each other on the basis of actual or perceived membership in a protected class (this includes romantic relationships, dating, domestic and/or relationship violence as well as any act that constitutes “domestic abuse” under Iowa Code § 236.2
- Stalking defined as a course of conduct directed at a specific person on the basis of actual or perceived membership in a protected class that is unwelcome and would cause a reasonable person to feel fear
- Any other college rules, when a violation is motivated by the actual or perceived membership of the victim on the basis of sex or gender or in a protected class, may be pursued using this policy and process.

Sanctions for the above-listed “Other Civil Rights Behaviors” behaviors range from reprimand up through and including expulsion (students) or termination of employment (employees).

5. Retaliation

Retaliation is 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 a complaint, or for assisting in providing information relevant to a claim of harassment is a serious violation of NICC policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to one of the Title IX/Equity/AA Coordinators or deputies or to a member of the faculty or staff and will be promptly investigated. NICC is prepared to take swift and appropriate steps to protect individuals who fear that they may be subjected to retaliation.

6. Remedial Action

NICC will implement initial remedial and 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 counseling and/or medial services, academic support, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

NICC will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. Deliberately false and/or malicious accusations of harassment, as opposed to complaints which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action.

7. Confidentiality and Reporting of Offenses under This Policy

NICC officials, depending on their roles at the college have varying reporting responsibilities and abilities to maintain confidentiality. In order to make informed choices, individuals should be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless you have requested information to be shared. Other resources exist for you to report crimes and policy violations and these resources will take action when you report victimization to them. Most resources on campus fall in the middle of these two extremes; neither the College, nor the law, requires them to divulge private information that

is shared with them, except in rare circumstances. The following describes the three reporting options at NICC:

a. Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with one of these individuals on campus:

CALMAR CAMPUS

Randi Burns

Counselor
Student Center, 159
800.728.2256, ext. 378
burnsra@nicc.edu

PEOSTA CAMPUS

Kathy Davis

Counselor
Main Building, 216G
800.728.7367, ext. 215
davisk@nicc.edu

who will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor or dependent adult. Campus counselors are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client.

Off campus confidential resources include rape crisis counselors, domestic violence resources, and local or state assistance agencies. A comprehensive list of resources local to NICC campus and Center locations can be found at www.nicc.edu/titleix under the heading 'Support Resources'.

b. Private Reporting

Those seeking to report misconduct may seek advice from certain resources who are not required initially to tell anyone else your private, personally identifiable information unless there is a pattern of abuse, cause for fear for your safety or the safety of others. These resources include employees without supervisory responsibility or remedial authority to address discrimination, harassment, retaliation and/or sexual misconduct, such as non-supervisory faculty members and support staff, advisors to student organizations, career services staff, admissions officers, student activities personnel, and many others.

If you or a reporting party are unsure of someone's duties and ability to maintain privacy, ask them before talking to them. They will be able to explain and help a reporting party to make decisions about who is in the best position to help. All these resources are instructed to share incident reports with their supervisors, but they do not share any personally identifiable information about the report unless the reporting party gives permission, except in the rare event that the incident reveals a need to protect the reporting party and/or other members of the community. If personally identifiable information is shared, it will be shared with as few people as possible and all efforts will be made to protect privacy to the greatest possible extent.

c. Formal Reporting Options

Individuals bringing a complaint are encouraged to speak to one of the individuals listed on p. 2 of this policy. Complaints may also be brought to any NICC administrative personnel. Additionally, individuals may file an *Incident of Concern* report at www.nicc.edu/titleix.

Individuals bringing a complaint have the right and can expect to have complaints taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures. Formal reporting still affords privacy to the reporter and only a small group of officials who need to know will be told. 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 the rights and privacy of a party bringing a complaint. Additionally, safe and anonymous reports, which do not trigger investigations, can be made by victims and/or third parties by using the *Incident of Concern* report at www.nicc.edu/titleix.

8. Federal Timely Warning Obligations

Victims of sexual misconduct should be aware that NICC 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 make every effort to 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

EQUITY COMPLAINT PROCEDURE FOR RESOLVING COMPLAINTS OF HARASSMENT, SEXUAL MISCONDUCT, AND OTHER FORMS OF DISCRIMINATION

Northeast Iowa Community College (NICC) will act on any formal or informal complaint or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination, that is received by the Title IX/Equity/AA Coordinator, one of the deputies, or a member of the administration.

The procedures described below will apply to all complaints involving students, staff, or faculty members with the exception that unionized or other categorized employees will be subject to the terms of their respective collective bargaining agreements to the extent those agreements do not conflict with federal or state compliance obligations. Redress and requests for responsive actions for complaints brought involving non-members of the community will follow the procedures below dependent on the individuals involved. The determination of which procedure to follow will be made by the Title IX/Equity/AA Coordinator.

1. Filing a complaint

Any student, staff or faculty member, guest or visitor who believes that the policy on Equal Opportunity, Harassment and Nondiscrimination has been violated should contact a Title IX/Equity/AA Coordinator or Deputy. It is also possible for employees to notify a supervisor or for students to notify an advisor or faculty member. The NICC website also includes an *Incident of Concern* form at www.nicc.edu/titleix which may serve to initiate a complaint.

All employees receiving reports of a potential violation of college policy are expected to promptly contact a Title IX/Equity/AA Coordinator or Deputy within 48 hours of becoming aware of a report or incident. All initial contacts will be treated with the maximum possible privacy. Specific information on any complaints received by any party will be reported to a Title IX/Equity/AA Coordinator or Deputy, but, subject to the obligation to redress violations, every effort will be made to maintain the privacy of those initiating a report of a complaint. In all cases, the College will give consideration to the party bringing a complaint with respect to how the complaint is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when an alleged victim chooses not to initiate or participate in a formal complaint.

2. Complaint Intake

Following receipt of notice or a complaint, the Title IX/Equity/AA Coordinator or Deputy will promptly assign a member of the Title IX or Equity Team to work as advisor to the person who reported the complaint. Normally within two business days, an initial determination is made whether a policy violation may have occurred and/or whether conflict resolution might be appropriate. If the complaint does not appear to allege a policy violation or if conflict resolution is desired by the party bringing a complaint, and appears appropriate given the nature of the alleged behavior, then the complaint does not proceed to investigation.

A full investigation will necessarily be pursued if there is evidence of a pattern of misconduct or a perceived threat of further harm to the community or any of its members. The College aims to complete all investigations within a 60 business day time period, which can be extended as necessary for appropriate cause by the Title IX/Equity/AA Coordinator with notice to the parties.

3. Interim Remedies

If, in the judgment of the Title IX/Equity/AA Coordinator (or designee), the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the accused individual or the ongoing activity of a student organization whose behavior is in question, the Title IX/Equity/AA Coordinator (or designee) may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, to redress harm to the alleged victim and the community and to prevent further violations. These remedies may include referral to counseling and health services education, altering work arrangements for employees, providing campus escorts, implementing contact limitations between the parties, offering adjustments to academic deadlines, course schedules, and other appropriate remedies.

The College may interim suspend a student, employee, or organization pending the completion of the investigation and procedures. In all cases in which an interim suspension is imposed, the student, employee, or student organization will be given the opportunity to meet with the Title IX/Equity/AA Coordinator (or designee) prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX/Equity/AA Coordinator (or designee) has sole discretion to implement or stay an interim suspension under the policy on Equal Opportunity, Harassment and Nondiscrimination, and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to college campus/facilities/events. As determined by the Title IX/Equity/AA Coordinator (or designee) this restriction includes classes and/or all other college activities or privileges for which the student or employee might otherwise be eligible. At the discretion of the Title IX/Equity/AA Coordinator (or designee) alternative coursework options may be pursued to ensure as minimal an impact as possible on the accused student.

4. Investigation and Sanctions for Complaints Involving Faculty and Staff

If a party bringing a complaint wishes to pursue a formal complaint or if the College, based on an alleged policy violation involving a member of the faculty or staff of NICC, the Title IX/Equity/AA Coordinator will appoint a Title IX or Equity Team investigator to conduct the investigation, usually within two business days of determining that the complaint should proceed. Investigation of complaints brought directly by those alleging harm should be completed expeditiously, normally within 10 business days of notice to the Title IX/Equity/AA Coordinator. Investigation may take longer when initial complaints fail to provide direct first-hand information. The College may undertake a short delay (3-10 days) to allow evidence collection when criminal charges on the basis of the same behaviors that invoke this process are being investigated. College action will not be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. All investigations will be thorough, reliable, and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence, and identifying sources of expert information, if necessary.

a. Investigation Process

- i. **Purpose of Investigation:** The purpose of the investigation is to evaluate the allegations of discrimination/harassment, formulate a response that addresses the facts as they are determined, and follow up to ensure that the necessary steps are completed.

- ii. **Method of investigation:** Depending on the facts of the case, an investigation may range along a continuum from a one-to-one conversation with the accused with an agreement as to further interactions to an inquiry with several witness interviews. During the investigation, the investigator may interview the parties, witnesses who have first-hand knowledge of the events, and gather relevant documents. After analyzing all the information, the investigator will prepare a case report with findings and present the report to the Title IX/Equity/AA Coordinator. Prior to the release of the case report, the Title IX/Equity/AA Coordinator or designee will review the report and discuss with the investigator any procedural issues, the specific findings, and necessary actions steps.

After this review, the Title IX/Equity/AA Coordinator will determine whether sanctions will be administered and whether specific action steps will be implemented by the college and/or the parties. Following the decision on sanctions and action steps, the Title IX/Equity/AA Coordinator will issue the final case to the parties. The decision issued by the Title IX/Equity/AA Coordinator is final. In every case, a record must be made of the allegations, investigation, and action(s) taken.
- iii. **Presence of support persons:** The complainant and the accused may each have a support person present during any applicable investigation meeting or disciplinary proceeding as an outcome of the investigation. Although the support person may be present, they may not interject during the meeting, nor will they be provided with documentation during the meeting.
- vi. **Time period for resolution of an allegation:** Investigations should be concluded within a reasonable timeframe from the date a report is made.
- vii. **Preponderance of the evidence:** *More likely than not* is the standard used when investigating and resolving any equity, sex or gender-based reports and allegations of discrimination or harassment.
- viii. **Possible outcomes:**
 1. An investigation may result in one of the following findings:
 - a. A determination that there is sufficient evidence to indicate a violation of college policy.
 - b. A determination that there is insufficient evidence to indicate a violation of college policy.
 - c. A determination that there is no evidence to indicate a violation of college policy.
 - d. A determination that inappropriate behavior has occurred.
 - e. A determination that there is sufficient evidence to indicate that an allegation is false.
 2. When the outcome is a finding of sufficient evidence, a finding that the allegations were false, a finding of inappropriate behavior, or a finding that another policy violation has occurred, the College will take necessary action steps to correct the behavior. A false allegation finding will be made when an individual has intentionally reported information or incidents that they knew, when they made the allegation, were untrue.
 3. The department must take prompt remedial action consistent with the severity of the offense, if any, and all applicable college rules and regulations. The necessary action steps for the department to take will be provided by the Title IX/Equity/AA Coordinator to the appropriate administrator who is responsible for implementation.
- ix. **Concluding the investigation:** At the conclusion of the investigation, the investigator will inform the appropriate unit or higher-level administrator, complainant, and accused of the outcome.

- x. **Written report of findings:** The investigator, under the direction of the Title IX/Equity/AA Coordinator will prepare a written summary of the findings of the investigation in the Maxient database.

b. Employee Sanctions

When discrimination/harassment is found, steps will be taken to ensure that the behavior is stopped promptly. Sanctions for an employee who has engaged in harassment, discrimination and/or retaliation include warning, required counseling, demotion, suspension with pay, suspension without pay, and termination in accordance with established college policy, bargaining agreements, and procedures. A member of the Human Resources staff will monitor corrective action to ensure compliance.

c. Failure by Employee to Complete Sanctions/Comply with Responsive Actions

All responding parties are expected to comply with conduct sanctions/responsive/corrective actions within the time frame specified by the Title IX/Equity/AA Coordinator. Failure to follow through on conduct sanctions/responsive/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or termination from the College. A sanction will only be lifted when compliance is achieved to the satisfaction of the Title IX/Equity/AA Coordinator.

d. Confidentiality

The college recognizes the importance of confidentiality. To the extent possible, information received in connection with the filing, investigation, and resolution of allegations will be treated as confidential except when necessary to conduct an appropriate investigation, to provide assistance and resources to complainants, to perform other appropriate college functions, or when required to do so by law. When requests for confidentiality arise, they will be evaluated by the Title IX/Equity/AA Coordinator. All individuals involved in the process should observe the same standard of discretion and respect for everyone involved in the process.

e. Retaliation

The college will not tolerate retaliation in any form against any individual who makes an allegation, files a report, serves as a witness, assists a complainant, or participates in an investigation of discrimination/harassment. College policy and state and federal law prohibit retaliation against an individual for reporting discrimination/harassment, or for participating in an investigation. Retaliation is a serious violation that can subject the offender to discipline, up to and including termination of employment and/or student status, independent of the merits of the underlying allegation. Allegations of retaliation should be directed to the Title IX/Equity/AA Coordinator.

5. Investigation and Sanctions for Complaints Involving Students.

Investigations and sanctions for violation of the NICC policy on Equal Opportunity, Harassment and Nondiscrimination that involve students will follow the NICC Student Conduct Code. The Code may be accessed on the NICC website at:

<https://www.nicc.edu/aboutnicc/studentandconsumerinformation/studentcodeofconduct/>

6. Alternative Complaint Resolution.

If any of the alternative complaint resolution processes described below is utilized, the outcome of the process and the rationale for the decision will be provided to the parties in writing by the Title IX/Equity/AA Coordinator.

a. Conflict Resolution Process.

Conflict resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal hearing process to resolve conflicts. The Title IX/Equity/AA Coordinator will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, a Title IX or Equity Team member will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not typically the outcome of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX/Equity/AA Coordinator will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

Conflict resolution will not be the primary resolution mechanism used to address complaints of sexual misconduct or violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Title IX/Equity/AA Coordinator believe that it could be beneficial. It is not necessary to pursue conflict resolution first in order to make a formal complaint, and anyone participating in conflict resolution can stop that process at any time and request a formal hearing.

b. Admission of Responsibility

Resolution without a formal presentation of evidence by the investigator(s) to the Title IX/Equity/AA Coordinator can be pursued for any behavior that falls within the policy on Equal Opportunity, Harassment and Nondiscrimination, at any time during the process. The Title IX/Equity/AA Coordinator will provide written notification of a complaint to any member of the college community who is accused of an offense of harassment, discrimination, or retaliation. The Title IX/Equity/AA Coordinator, together with the investigator(s), will meet with the responding individual to explain the finding(s) of the investigation. Once informed, the responding party may choose to admit responsibility for all or part of the alleged policy violations at any point in the process. If so, the Title IX/Equity/AA Coordinator will render a finding that the individual is in violation of college policy for the admitted conduct.

For admitted violations, the appropriate Title IX/Equity/AA Coordinator will determine an appropriate sanction or responsive action. The Title IX/Equity/AA Coordinator will implement it, and act promptly and effectively to remedy the effects of the admitted conduct upon the victim and the community.

c. Withdrawal or Resignation While Charges Pending

Students: The College does not permit a student to withdraw if that student has a complaint pending for violation of the policy on Equal Opportunity, Harassment and Nondiscrimination, or for charges under the Code of Student Conduct. Should a student decide to leave and not participate in the investigation and/or hearing, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to the college unless all sanctions have been satisfied.

Employees: Should an employee resign while charges are pending, the records of the Title IX/Equity/AA Coordinator will reflect that status, as will College responses to any future inquiries regarding employment references for that individual. The Title IX/Equity/AA Coordinator will act to promptly and effectively remedy the effects of the conduct upon the victim and the community.

7. Statements of Rights for Involved Parties

a. Statement of the Rights of a Party Bringing a Complaint

- To be treated with respect by college officials.
- To take advantage of campus support resources.
- To experience a safe living, educational and work environment.
- To have an advisor during this process.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To receive amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
- To be free from retaliation.
- To have complaints heard in substantial accordance with these procedures.
- To full participation of the injured party in any hearing process whether the injured party is serving as the party bringing a complaint or the College is serving as party bringing a complaint.
- To be informed in writing of the outcome/resolution of the complaint, sanctions where permissible, and the rationale for the outcome where permissible.
- Refer to law enforcement and have assistance.
- Housing and living accommodations.
- To have access to no-contact.

b. Statement of the Rights of the Responding Party

- To be treated with respect by college officials.
- To take advantage of campus support resources.
- To have an advisor during this process.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To have complaints heard in substantial accordance with these procedures.
- To be informed of the outcome/resolution of the complaint and the rationale for the outcome, in writing.

8. Revision

These policies and procedures will be reviewed and updated annually by the Title IX/Equity/AA Coordinator. The Title IX/Equity/AA Coordinator may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party. However, the Title IX/Equity/AA Coordinator may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of its implementation will apply. Policy in effect at the time of the offense will apply even if the policy is changed subsequently, unless the parties consent to be bound by the current policy.

This policy and procedure were approved by the NICC President's Cabinet on December 16, 2015 and implemented on that date.

Human Resources and Risk Management Policy #103—Equal Opportunity, Harassment, and Nondiscrimination Policy

and

Human Resources Procedure #103—Equity Complaint Procedure for Resolving Complaints of Harassment, Sexual Misconduct, and Other Forms Of Discrimination

APPROVED: *Kelly McMahon*
Executive Director for Risk Management

DATE: 10/26/2018

DATES OF REVIEW/REVISION: August 12, 2016, October 26, 2018

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