

## Corning Community College Administrative Procedure

<b>Issue/Amendment Date:</b> September 2016	<b>Equal Employment and Educational Opportunity Complaint Procedure</b>
<b>Author:</b> Human Resources Office	<b>Administrative Procedure #2014-02</b>

This Procedure provides a mechanism through which the College may identify, respond to, and prevent incidents of bullying and illegal discrimination. The College recognizes and accepts its responsibility in this regard and believes that the establishment of this internal, non-adversarial complaint process will benefit students, employees, and College administration, permitting investigation and resolution of problems without resorting to the frequently expensive and time consuming procedures of state and federal enforcement agencies or courts.

All members of the College community, including students, should realize that a charge of discrimination is a serious matter that may impact the education or careers of individuals or the College as a whole. For that reason, the College is obligated to investigate all discrimination charges, regardless of whether the victim/complainant chooses to proceed with either an informal or formal resolution, and make every effort to keep the complainants and respondents informed throughout the course of an investigation. The proceedings of any investigation are held confidential to the extent possible.

Although this complaint procedure does not in any way deprive an individual of the right to file a complaint with outside agencies (such as the NYS Division of Human Rights, the Equal Employment Opportunity Commission, or the Office for Civil Rights of the U.S. Department of Education), it is to the benefit of all parties involved that such cases be addressed promptly and fairly using whatever administrative means are available to avoid the personal and institutional stress which can occur in a public hearing. Consequently, this complaint procedure may not be used if the same complaint has been filed with a State or Federal agency or if a grievance has been filed under any current College policy of collective bargaining agreement or any other internal grievance procedure, **unless the complaint is one of sex discrimination (including sexual harassment, sexual assault, and sexual violence)**. Any investigation or review underway will terminate without conclusion if a complaint (other than one of sex discrimination) is filed elsewhere.

### **Please Note:**

- This procedure, as well as the student conduct process (available at: <https://www.corning-cc.edu/student-code-conduct>), may be used for complaints under the College's Anti-Bullying Policy (available at: <https://www.corning-cc.edu/public-safety/policies>).

- During any portion of the complaint procedure, the use of audio or video taping devices by any party is prohibited.
- The standard applied to this process is a preponderance of evidence standard (i.e., the evidence must demonstrate that it is more likely than not that the conduct occurred).

### **Retaliation**

Retaliation against any individual for filing a complaint or for assisting or participating in the investigation of a complaint is strictly prohibited and may result in disciplinary action. Retaliation is an adverse action taken against an individual as a result of complaining about unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third party witness. Complainants or participants who experience retaliation should contact the Director of Human Resources/Title IX Coordinator (the “Director”).

### **Informal Resolution**

Although in rare instances verbal complaints may be acted upon, the procedures set forth herein rely upon the submission of a written complaint to initiate a full and fair investigation of the facts. IT IS THE RESPONSIBILITY OF THE COMPLAINANT TO ENSURE THAT HIS/HER COMPLAINT IS FILED WITHIN THE 90 CALENDAR DAY PERIOD THAT IS APPLICABLE UNDER STEP 1 OF THE INFORMAL RESOLUTION SECTION OF THIS PROCEDURE.

1. Complaints or concerns that are reported to an administrator, director, or supervisor concerning an act of discrimination or harassment, or acts of discrimination or harassment that administrators, directors, or supervisors observe or become aware of must be immediately referred to the Director of Human Resources/Title IX Coordinator. Complaints may also be made directly to the Director by anyone who experiences, observes, or becomes aware of discrimination or harassment.

Employees must file a written complaint with the Director within 90 calendar days following the alleged discriminatory act or the date on which the complainant first knew or reasonably should have known of such act. All such complaints must be submitted on a form provided by the College. Students must file a written complaint within 90 calendar days following the alleged discriminatory act or 90 calendar days after a final grade is received or the semester during which the discriminatory act occurred, if that date is later. If a complaint of sexual harassment or sexual violence is filed more than 90 calendar days following the alleged act, the complainant will still be offered all appropriate victim support services and resources, including interim measures to protect the parties. In addition, the matter may be referred for appropriate employee or student disciplinary action.

2. The written complaint should include the following information:

- The complainant's name, address, telephone number(s), email address, and status (student, employee, third party)
- A statement of the facts explaining what happened and what the complainant believes constituted the bullying or unlawful discriminatory acts in sufficient detail to give the respondent(s) reasonable notice of what is claimed against him/her. The statement should include the date, approximate time, and place where the alleged act(s) of bullying or unlawful discrimination occurred. If the acts occurred on more than one date, the statement should also include the last date on which the acts occurred, as well as detailed information about the prior acts. The names of any potential witnesses should be provided.
- The name(s), address(es), telephone number(s), status(es) of the respondent(s), i.e., the person(s) claimed to have committed the act(s) of bullying or unlawful discrimination.
- A statement indicating whether or not the complainant has filed or reported information concerning the incidents referred to in the complaint with a non-campus official or agency under any other complaint procedure. If an external complaint has been filed, the statement should indicate the name and address of the department or agency with which the information was filed.
- A description of any corrective or remedial action that the complainant would like to see taken.
- Signature of the complainant and the date the complaint was signed.

The Director is available to assist individuals in preparing complaints.

*Title IX Complaints:* The Director and/or his/her designee(s) will ensure that complainants are aware of their Title IX rights and available resources (both on- and off-campus), and the right, if any, to file a complaint with local law enforcement. The College will comply with law enforcement requests for cooperation and such cooperation may require the College to temporarily suspend the fact-finding aspect of a complaint investigation while the law enforcement agency is in the process of gathering evidence. The College will resume its Title IX investigation as soon as it is notified by the law enforcement agency that it has completed its evidence gathering process.

3. The Director and/or his/her designee(s) will attempt to resolve the complaint informally to the mutual satisfaction of the parties. The Director or his/her designee will review all relevant information and interview pertinent witnesses. For Title IX complaints, a preponderance of evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred) will be used.

If a mutually agreeable solution is achieved within 24 calendar days of the date the complaint was filed, the complaint is closed and the file is completed. Both the complainant and the respondent receive a copy of a brief concluding statement. Complaint records will be kept in a secure file in the Director's office.

If a mutually acceptable solution is not possible at the informal stage, either party may choose to move to the formal procedure. The Director and/or his/her designee will assist the complainant and respondent through the formal resolution process.

### **Formal Resolution**

Either party may make a written request to the Director to have the matter reviewed by an Equal Opportunity Committee. Such written request must be received by the Director within 10 calendar days of the date that any informal resolution was rendered.

1. The Committee is coordinated by the Director or his/her designee and will be composed of three members of the College community who are appointed by the President, excluding the Director, who is not eligible to serve. If the President is the respondent, then the committee members will be appointed by the Chairperson of the Regional Board of Trustees of Corning Community College. The Committee members will be appointed within 10 calendar days of the date the Director receives the written request to have the matter reviewed by an Equal Opportunity Committee.

The Equal Opportunity Committee is charged with determining the validity of the complaint, as to whether the charges are grounded, ungrounded, or false. The Committee is not responsible for recommending penalties. The President of the College is ultimately responsible for taking action on any complaints of discrimination.

2. The Committee will hold closed meetings to review all relevant information, interview pertinent witnesses, and, at their discretion, hear testimony from and bring together the complainant and the respondent. Both the complainant and the respondent will have the opportunity to present to the subcommittee their respective accounts and positions and to review all other information presented. Both the complainant and the respondent will be entitled to submit written statements or other relevant and material evidence and to provide rebuttal statements to the written record compiled by the Committee. Should the Committee decide to bring the complainant and the respondent together in a hearing, the complainant has the right to request alternative arrangements to avoid being in the same room as the respondent. Any alternative arrangements must enable both parties to hear each other during such joint hearing.

3. The Committee will communicate its written opinion on the validity of the complaint to the complainant, the respondent, the Director, and the President of the College within 24 calendar days of the receipt of the written complaint from the Director. If the President is the respondent, the written opinion will be communicated to the Chairperson of the Regional Board of Trustees of Corning Community College.

4. Within 15 calendar days of the receipt of the Committee's opinion, the President will submit a written decision to the complainant, the respondent, and the Director, indicating what action, if any, he/she will take. If the President determines the complaint was substantiated, such action may consist of:

- If the respondent is a student: suspension or expulsion from the College and/or eviction from Perry Hall (if applicable).
- If the respondent is an employee (including student employees): disciplinary action which may include, but is not limited to, termination, demotion, reassignment, suspension, reprimand, or training, consistent with the provisions of any applicable collective bargaining agreement. Disciplinary decisions may be contested by employing the appropriate grievance procedure.
- If the respondent is a third party: issuance of a persona non grata letter.

The action of the President will be final. If the President is the respondent, the Chairperson of the Regional Board of Trustees will issue a written decision indicating what action, if any, he/she will take. The Chairperson's decision will be final.

**Note:** All of the time limits specified in either the informal or formal resolution stage of this complaint procedure may be extended upon written notification from the Director of Human Resources/Title IX Coordinator or his/her designee(s) to the respondent and the complainant.

5. If the complainant is dissatisfied with the President's (or Chairperson's) decision on a discrimination complaint, he/she may elect to file a complaint with one or more state and federal agencies.

*Warning! If you are reading a printed copy of this document, you may not have the current information. Please go to the College website for the latest version of this procedure.*