

**Corning Community College
Board Policy and Administrative Procedures**

Effective Date: October 2, 2015	RBOT Resolution #4050-15 Equal Employment and Educational Opportunity Policy
Issue/amendment date: October 1, 2015	Author: Human Resources Office
References: RBOT Policy Manual, Personnel Policies Handbook for Non-Union Employees, PECCC Agreement, College Catalog, College website	Rescinds: RBOT Resolutions #3968-15, #3843-14, #3566-13, and #3567-13

Policy Statement

Corning Community College (“the College”) declares and affirms a policy of equal employment and equal educational opportunity. The College will make all decisions regarding admissions and the entire educational process of its students (including all educational programs and activities) and the recruitment, hiring, promotion, and other terms and conditions of employment without discrimination on the basis of race, color, age, religion, national origin, disability, sex, sexual orientation, or other protected characteristics which cannot be lawfully used as the basis for employment or educational decisions.

Through its policies and programs, the College undertakes to comply fully with all applicable federal, state and local laws relating to equal employment and equal educational opportunity. These laws include the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Title IX of the Educational Amendments of 1972, Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972, and the New York State Human Rights Law. These laws prohibit discrimination and harassment, including sexual harassment and sexual violence, and place an affirmative obligation on the College to maintain a work and study environment free from discriminatory harassment, intimidation, ridicule, and insult.

The College is committed to maintaining an educational and work environment that is free of any harassment and to fostering positive business and personal conduct so that everyone, including students, employees, and visitors, is treated with respect and dignity in a non-discriminatory environment.

Summary

Harassment on the basis of the above protected characteristics constitutes unlawful discrimination. The College will take steps to prevent discrimination and harassment, to prevent the recurrence of discrimination and harassment, and to remedy its discriminatory effects on the victim(s) and others. Sex discrimination includes sexual harassment, sexual assault, and sexual violence.

This policy applies to all members of the campus community, individuals doing business with the College, and any persons utilizing campus facilities. A procedure for handling complaints under this policy has been established and is available at: https://www.corning-cc.edu/sites/default/files/EEEE_Policy_March_2015.pdf. This procedure may be used by students, employees, or any third party participating in a College sponsored program or affiliated activity. Employee grievance procedures established through College policy or collective bargaining agreements, student disciplinary procedures, or any other internal grievance/complaint procedure will continue to operate as before.

The President of the College has ultimate responsibility for equal opportunity and has assigned responsibility for the administration of the College's policy to the Director of Human Resources (the "Director"), who also serves as the College's Title IX Coordinator. The Director administers the Equal Employment and Educational Opportunity Complaint Procedure, coordinates the activities of the Equal Opportunity Committee, and is responsible for the maintenance of all necessary records needed to comply with federal and state laws governing equal employment and educational opportunity. One or more deputy coordinators may be appointed to assist the Director in his/her Title IX Coordinator duties; a complete list of these deputy coordinators is available from the Director.

To ensure that the complaint procedure processes are fair, the Director or his/her designee serves as an impartial party who is responsible for:

- ensuring that the procedure is carried out properly
- ensuring that the rights of both complainant and respondent are protected and that both parties have an equal opportunity to present relevant witnesses and other evidence
- advising and providing information to the complainant and respondent, including information on counseling and victim services available both on and off campus
- investigating complaints
- requesting access to pertinent documents
- maintaining a record of each case.

The Director may receive initial inquiries, reports, and requests for consultation and counseling on an informal basis. Assistance will be available whether or not a formal complaint is under consideration or even possible. It is the responsibility of the Director to respond to all such inquiries, reports, and requests as soon as possible and in a manner appropriate to the particular circumstances. This response may include interim measures to protect the parties during the investigation process. Such interim measures will not disproportionately impact the complainant.

Individuals who believe that they have been harassed or otherwise discriminated against in violation of this policy should contact the Director. Responsible employees who observe or become aware of incidents of discrimination and harassment, including sexual harassment, sexual assault, and sexual violence, are obligated to report this information to the Director. A "responsible employee" is an employee with the authority to take action to redress the harassment/discrimination, who has the duty to report harassment or any other misconduct by students or employees to appropriate college officials, or an individual who a student or

employee could reasonably believe has this authority or responsibility. In the event that the Director is alleged to have discriminated against an individual in violation of this policy, the incident should be reported directly to the President's Office.

Inquiries regarding the application of Title IX and other laws, regulations, and policies prohibiting discrimination and harassment may be directed to:

R. Nannette Nicholas
Director of Human Resources
Title IX Coordinator
1 Academic Drive
Corning, NY 14830
(607) 962-9444
nicholas@corning-cc.edu

-OR-

U.S. Department of Education's
Office for Civil Rights
32 Old Slip, 26th Floor
New York, NY 10005-2500
(646) 428-3800
OCR.NewYork@ed.gov

Definitions

Harassment on the Basis of Protected Characteristics Other Than Sex/Gender - harassment based on race, color, age, religion, national origin, disability, sexual orientation, or other protected characteristics is oral, written, graphic or physical conduct relating to an individual's protected characteristics that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the College's programs or activities.

Sex Discrimination* – behaviors and actions that deny or limit an individual's ability to benefit from and/or fully participate in the educational programs or activities or employment opportunities because of an individual's sex. Under Title IX, discrimination on the basis of sex can include sexual harassment, rape, and sexual assault, and sexual violence, both on and off campus, by employees, students, or third parties. Employees and students should report sexual harassment that they observe or become aware of to the Title IX Coordinator.

Sexual Harassment in the Educational Setting – unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student denies or limits, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the College's programs.

Sexual Harassment in the Employment Setting – unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature when any of the following occurs:

- Submission to such conduct is made a term or condition of an individual's continued employment, promotion, or other condition of employment
- Submission to or rejection of such conduct is used as a basis for employment decisions affecting an employee or job applicant
- Such conduct is intended to interfere, or results in interference, with an employee's work performance, or creates an intimidating, hostile, or offensive work environment (hostile environment harassment).

Sexual Assault* is defined as a physical sexual act or acts committed against an individual's will and consent or when an individual is incapable of giving active consent, incapable of appraising the nature of the conduct, or incapable of declining participation in, or communicating unwillingness to engage in, a sexual act or acts. Sexual assault is an extreme form of sexual harassment. Sexual assault includes what is commonly known as "rape," whether forcible or non-forcible, "date rape," and "acquaintance rape." Nothing contained in this definition shall be construed to limit, or conflict with the sex offenses enumerated in Article 130 of the NYS Penal Law, which shall be the guiding reference in determining if the alleged conduct is consistent with the definition of sexual assault.

Sexual Violence,* as that term is used in this document and prior U.S. Office for Civil Rights guidance, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (as defined within this policy). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence could involve students, College employees, third parties or a combination. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX and the College's Equal Employment and Educational Opportunity Policy.

Affirmative Consent is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create a clear permission regarding willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required 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 or can no longer be given, sexual activity must stop.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

Hostile Environment Sexual Harassment – examples include:

- Sexual innuendos, sexually suggestive comments, offensive language, sexually oriented kidding or teasing, gestures, practical jokes, etc.
- Displays of sexually suggestive pictures, magazines, or other objects
- Any other conduct that ridicules or humiliates an individual because of his/her gender.

Non-Sexual Hostile Environment Harassment - The same general principles that apply to hostile environment sexual harassment also apply to harassment on the basis of other factors, such as race, color, age, religion, national origin, disability, sexual orientation, or other protected characteristics. Examples of non-sexual hostile environment harassment include:

- Transfer, demotion, or termination of employees on the basis of race, color, age, religion, national origin, disability, gender, sexual orientation, or other protected characteristics.
- Interference in or denial of opportunities for educational success on the basis of race, color, age, religion, national origin, disability, gender, sexual orientation, or other protected characteristics.
- Unwelcome, offensive, or demeaning comments, slurs, language, jokes, or gestures related to or referring to an individual's race, color, age, religion, national origin, disability, gender, sexual orientation, or other protected characteristics.
- The presence of books, magazines, pictures, or other objects that may be reasonably construed as offensive or demeaning based on race, color, age, religion, national origin, disability, gender, sexual orientation, or other protected characteristics in the workplace where other students or employees may see or find them.
- Creating or contributing to an intimidating, hostile, or offensive working environment on the basis of race, color, age, religion, national origin, disability, gender, sexual orientation, or other protected characteristics.

Preponderance of the Evidence – the standard of proof in sexual harassment and sexual assault cases which asks whether it is “more likely than not” that the sexual harassment or sexual violence occurred. If the evidence presented meets this standard, then the accused should be found responsible.

*For additional information and resources regarding sexual assault and sexual violence, please refer to the College’s Response Policy for Sexual Violence and Other Misconduct, available at: www.corning-cc.edu/sexualviolence.

Warning! If you are reading a printed copy of this document, you may not have the current information. Please refer to the College website or the Regional Board of Trustees Policy Manual, available on the Office of the President’s web page, for the latest version of this policy.