

## Clinton Community College Policy and Procedure

Subject	Date	Number
Policy Against Unlawful Discrimination or Harassment and Procedure for Investigation and Resolution of Allegations of Unlawful Discrimination/Harassment	08/16/2016	

### Policy:

Clinton Community College (the College) believes in the dignity of the individual and recognizes the rights of all people to equal employment and/or educational opportunities free of unlawful discrimination. In this regard, Clinton Community College is committed to a policy of protecting and safeguarding the rights and opportunities of all people to seek, obtain and hold employment and/or educational opportunities without being subject to harassment or unlawful discrimination in the workplace.

Clinton Community College (the College) complies with the spirit and intent of all applicable federal and state laws and regulations prohibiting discrimination, including Title VII of the [Civil Rights Act of 1964](#) as amended by the Equal Employment Opportunity Act of 1972, [Title IX of the Education Amendments of 1972](#), the Americans with [Disabilities Act \(ADA\)](#), [Section 504 of the Rehabilitation Act of 1973](#), the [Vietnam Era Veterans' Readjustment Assistance Act \(VEVRAA\)](#), as well as the [New York State Human Rights Act](#).

It is the policy of the College to provide equal opportunity in education and employment for all qualified persons; to prohibit illegal discrimination based on age, race, religion, color, national origin, sex, sexual orientation, gender identity, transgender status, familial status, pregnancy, pre-disposing genetic characteristics, military status, domestic violence victim status, disability, or criminal conviction; and to promote the full realization of equal education and employment opportunity through affirmative action. It is the intent of the College to comply with the spirit of Federal and State regulations relating to the affirmative action obligations toward all protected classes, not only because the regulations are law, but also because they prescribe morally just actions.

This policy governs all college educational and employment policies, practices and actions, including but not limited to, recruitment employment, enrollment, rate of pay or other compensation, advancement, upgrading, promotion, financial aid, demotion, renewal, non-renewal, termination, dismissal, transfer, layoff, leave, training, employee's benefits, grading and program access. The policy prohibits discrimination and harassment, including sexual harassment and sexual violence.

The College expects that all judgments about and actions toward students and employees will be based on their qualifications, abilities and performance. Attitudes, practices, and preferences of individuals that are essentially personal in nature, such as private expression or sexual orientation, are unrelated to performance and provide no basis for judgment.

It shall be a violation of this policy to dismiss, discharge, expel, penalize, discipline, harass, adversely alter academic grades or otherwise discriminate against any student, faculty or staff member because he/she has opposed any discriminatory practices, filed an internal or external complaint/grievance, testified, or assisted in

any proceeding, in accordance with this Equal Education and Employment Opportunity Policy.

This policy requires each contractor, supplier, union, public agency, or other cooperative agent to support this policy by complying with all applicable State and Federal equal employment opportunity laws and regulations.

Responsibility and authority for the dissemination and implementation of this policy lies ultimately with the President of the college with assistance from the Director of Human Resources, the Title IX Coordinator, and the Affirmative Action Advisory Committee which shall consist of representatives from the campus faculty, staff and students. Practically, the responsibility and authority to act affirmatively to provide equality of opportunity in education and employment lies with all who are in decision making positions within the college. It is the intent of the college to commit appropriate resources and create a supportive atmosphere for the practical responsibility and authority to be exercised.

This Complaint Procedure for the Review of Allegations of Unlawful Discrimination provides a mechanism through which the College may identify, respond to, and prevent incidents of illegal 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, if appropriate. 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, faculty, staff, and 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.

These measures are intended to balance the rights of those bringing complaints of discrimination, harassment, and retaliation (the "Complainant") with those against whom claims are brought (the "Respondent"). This procedure is administered by the Director of Human Resources, who reports to the College President.

This procedure may be used by any College student or employee, as well as by third-parties who are participating in a College-sponsored program or affiliated activity. Employee grievance procedures established through negotiated contracts, academic grievance review committees, student disciplinary grievance boards, and any other procedures defined by contract will continue to operate as before. This procedure does not in any way deprive a Complainant of the right to file with outside enforcement agencies, such as the New York State Division of Human Rights, the Equal Employment Opportunity Commission, and the Office for Civil Rights of the United States Department of Education. Contact information for these agencies is listed in Appendix B.

A complainant is not required to pursue the College procedure before filing a complaint with the appropriate State or Federal agency, and the Complainant may file such a complaint at any time during the process. However, after filing with one of these outside enforcement agencies, or upon the initiation of litigation, the complaint shall be referred to the campus Director of Human Resources or Title IX Coordinator.

#### **Jurisdiction of the Director of Human Resources and Title IX Coordinator**

Complaints of illegal discrimination should be made to the Director of Human Resources, and/or, in the case of sex discrimination, the Title IX Coordinator. Complaints or concerns that are reported to a College administrator, manager, or supervisor concerning an act of discrimination or harassment or acts of discrimination or harassment that administrators, managers, or supervisors observe or become aware of shall be immediately referred to the Director of Human Resources or Title IX Coordinator. Complaints may also be made directly to the Director of Human Resources or Title IX Coordinator by anyone who experiences, observes, or becomes aware of discrimination or harassment. The Director of Human Resources or Title IX Coordinator will also receive initial

inquiries, reports, and requests for consultation. The Director of Human Resources or Title IX Coordinator will respond as appropriate in a timely manner.

The College, through the Director of Human Resources or Title IX Coordinator, reserves the right to pursue any complaint of harassment about which it becomes aware. Based on information received, the Director of Human Resources or Title IX Coordinator may exercise their discretion and initiate a complaint on behalf of the College community, regardless of complainant cooperation or involvement.

In addition, the Director of Human Resources or Title IX Coordinator may determine that a specific complaint of unlawful discrimination or harassment is of such a serious or potentially criminal nature that the investigative steps outlined in the process should be accelerated or eliminated. Such a circumstance will be communicated to the President or Officer-in-Charge (or designee) for appropriate action, including the initiation of disciplinary action. If the Respondent is a student, the referral will be to the Student Conduct Office.

The Director of Human Resources, or in instances involving sexual violence, the Title IX Coordinator, is available to assist in preparing the complaint. The Title IX Coordinator will ensure that complainants are aware of their Title IX rights and available resources on and off-campus, and the right, if any, to file a complaint with local law enforcement. Interim measures for students may include, but are not limited to, information about how to obtain counseling and academic assistance in the event of sexual assault, and steps to take if the accused individual lives on campus and/or attends class with the complainant. Such interim measures are available whether or not there is a formal complaint.

Clinton Community College will comply with law enforcement requests for cooperation and such cooperation may require the campus to temporarily suspend the fact-finding aspect of an 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 the evidence gathering process. The College will implement appropriate interim steps during the law enforcement agency's investigation period to provide for the safety of the victim(s) and the campus community.

Employees with Title IX compliance responsibilities and/or employees who have the authority to take action to redress the harassment must report any complaints to the Title IX Coordinator. (See Sexual Harassment and Sexual Misconduct Policy and Reporting Procedure for a list of those with compliance responsibilities.)

### **Prohibition against Retaliation**

Anyone who participates in the procedure has the right to do so without fear of or actual retaliation. It will be made clear to all parties that retaliation against an employee, a student, or a third party who has filed a discrimination complaint, or against any witness or other participant in this process, will result in appropriate sanctions or disciplinary action as covered by College policies or applicable collective bargaining agreements. These sanctions will be invoked for retaliation regardless of the merits of the original complaint.

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. Participants who experience retaliation should contact the campus Director of Human Resources or Title IX Coordinator.

## **Confidentiality**

To the extent practicable or allowable by law, all aspects of the complaint and investigation conducted in accordance with these procedures will be confidential. All affected parties shall cooperate fully in the investigation and shall maintain and preserve the confidentiality of the investigation.

No party shall employ audio or video taping devices during any portion of the procedures detailed hereafter.

## **Definitions and Prohibited Acts and Behaviors:**

**Harassment on the Basis of Protected Characteristic(s) 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 educational institution's programs or activities.

**"Prohibited Behavior"** While it is impossible to list all of the possible forms of unlawful harassment, the following is a list of *examples* of conduct that may constitute harassment:

- Using slurs or derogatory terms based on race, color, creed, religion, national origin, disability, familial status, pregnancy, predisposing genetic characteristics, age, sexual orientation, arrest record, and veteran or marital status
- Telling derogatory jokes or stories based on race, color, creed, religion, national origin, disability, familial status, pregnancy, predisposing genetic characteristics, age, sexual orientation, arrest record, and veteran or marital status
- Displaying graffiti or other derogatory or insulting writings based on race, color, creed, religion, national origin, disability, familial status, pregnancy, predisposing genetic characteristics, age, sexual orientation, arrest record, and veteran or marital status
- Making degrading comments about a person and/or his or her appearance based on race, color, creed, religion, national origin, disability, familial status, pregnancy, predisposing genetic characteristics, age, sexual orientation, arrest record, and veteran or marital status
- Demeaning or criticizing an individual because of his or her race, color, creed, religion, national origin, disability, familial status, pregnancy, predisposing genetic characteristics, age, sexual orientation, arrest record, and veteran or marital status
- Sabotaging, damaging, or interfering with an individual's work because of that individual's race, color, creed, religion, national origin, disability, familial status, pregnancy, predisposing genetic characteristics, age, sexual orientation, arrest record, and veteran or marital status
- Threatening or intimidating an individual because of his or her race, color, creed, religion, national origin, disability, familial status, pregnancy, predisposing genetic characteristics, age, sexual orientation, arrest record, and veteran or marital status

**Sex Discrimination** – behaviors and actions that deny or limit a person's ability to benefit from, and/or fully participate in the educational programs or activities or employment opportunities because of a person's sex. This includes but is not limited to sexual harassment, sexual assault, sexual violence by employees, students, or third parties. Employees should report sexual harassment that they observe or become aware of to the Title IX coordinator.

**Sexual assault** is defined as a physical sexual act or acts committed against a person's will and consent or when a person 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 New York State Penal Law, which shall be the guiding reference in determining if alleged conduct is consistent with the definition of sexual assault. Please refer to the College's

**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 educational institution's program.

**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.

**Sexual Violence** - physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent.

For complaints regarding sexual harassment, assault or sexual misconduct, please refer to the College's Policy Against Sexual Harassment and Sexual Misconduct

**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.

### **Procedure:**

For complaints regarding sexual harassment, assault or sexual misconduct, please refer to the College's Policy Against Sexual Harassment and Sexual Misconduct

### **Complaint Consultation and Review**

Any Clinton Community College student or employee, or any third party may consult with the Director of Human Resources or Title IX Coordinator regarding potential discrimination or harassment. This initial contact may occur by telephone, e-mail, or in person--the latter being preferred. The Director of Human Resources or Title IX Coordinator will assist the individual in understanding the nature of the incident, the complaint process, resources available to the individual, and other options to resolve the issue. The individual need not take any further action.

It is the responsibility of the Director of Human Resources or Title IX Coordinator to respond to all such inquiries, reports, and requests as promptly 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. Interim measures will not disproportionately impact the complainant. Interim measures for students may include, but are not limited to, information about how to obtain counseling and academic assistance in the event of sexual assault, and steps to take if the accused individual lives on campus and/or attends class with the complainant. Interim measures involving employees in collective bargaining units should be determined in consultation with Human Resources.

Complaints or concerns that are reported to an administrator, manager or supervisor, concerning an act of discrimination or harassment, or acts of discrimination or harassment that administrators, managers, or supervisors observe or become aware of, shall be immediately referred to the Director of Human Resources or Title IX Coordinator. Employees with Title IX compliance responsibilities and/or employees who have the authority to take action to redress the harassment, must report any complaints to the Title IX Coordinator. Employees who observe or become aware of sex discrimination, including sexual harassment and sexual violence, should report this information to the campus Title IX Coordinator. Complaints may also be made directly to the Director of Human Resources or Title IX Coordinator by anyone who experiences, observes, or becomes aware of discrimination or harassment.

#### **Investigation and Resolution of Informal Complaints**

The individual may elect to have the matter resolved informally, if appropriate. In seeking an informal resolution, the Director of Human Resources or Title IX Coordinator shall review all relevant information and interview Complainant, Respondent, and pertinent witnesses. The Director of Human Resources or Title IX Coordinator will take all reasonable steps to complete the inquiry in a timely manner. If the Director of Human Resources or Title IX Coordinator can find a resolution satisfactory to both the Complainant and the Respondent within 24 calendar days from the filing of the complaint, the Director of Human Resources or Title IX Coordinator will send a written notice to that effect to both parties, including the terms of agreement, signed and dated by all parties, with a written report to the President. The matter will be closed.

The complainant will not be required to resolve the problem directly with the respondent in cases of sex discrimination.

If the Director of Human Resources or Title IX Coordinator is unable to resolve the complaint to the mutual satisfaction of the complainant and respondent within 24 calendar days from the filing of the informal complaint, the officer will so notify the complainant, with a written report to the President. The Director of Human Resources or Title IX Coordinator will again advise the complainant of her or his right to proceed with a formal complaint.

Additionally, the Director of Human Resources or Title IX Coordinator will also have the discretion to reasonably extend the deadline if an investigation is deemed complex.

The College may take interim measures to protect the parties during the investigation process. Interim measures will not disproportionately impact the complainant. Interim measures involving employees in collective bargaining units should be determined in consultation with the respective bargaining unit President.

Complaints of sexual violence will not be resolved by using mediation, but instead must be referred immediately to the campus Title IX Coordinator.

At any time in this process, the Complainant may elect to sign a formal complaint, as long as it is within the 180-day time limit. (See "Time Limits" above.)

If the individual decides to do so, a complaint form should be signed. The complaint form contained in Appendix C must be used. The Complainant will receive a copy of the complaint form signed and dated by the Director of Human Resources or Title IX Coordinator (or designee), as will the Respondent.

An individual may refuse to reduce a complaint to writing. However, notwithstanding that refusal, there may be a continuing obligation on the part of the campus to investigate the verbal complaint to the best of its ability and proceed with any action that is warranted. Although in some instances verbal complaints may be acted upon, the procedures set forth here rest upon the submission of a written complaint that will enable a full and fair investigation of the facts.

### **Formal Complaints**

A formal complaint shall contain:

1. The name, local and permanent address(es), telephone number(s), and status (faculty, staff, student, third party) of the complainant.
2. A statement of facts explaining what happened and what the complainant believes constituted the unlawful discriminatory acts in sufficient detail to give each Respondent reasonable notice of what is claimed against him/her. The statement should include the date, approximate time and place where the alleged acts of unlawful discrimination or harassment 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.
3. The name(s), address(es) and telephone number(s) of the respondent(s), i.e., the person(s) claimed to have committed the act(s) of unlawful discrimination.
4. Identification of the status of the persons charged whether faculty, staff, or student.
5. 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, or complaint procedure. If an external complaint has been filed, the statement should indicate the name of the department or agency with which the information was filed and its address.
6. A description of any corrective or remedial action that the complainant would like to see taken.
7. Such other or supplemental information as may be requested.
8. Signature of complainant and the date complaint signed.

### **Investigation of Formal Complaints**

If there is a formal complaint filed, or if the Director of Human Resources or Title IX Coordinator determines that the matter deserves further examination, s/he will immediately begin an investigation. The Director of Human Resources and/or Title IX Coordinator will take all reasonable steps necessary to complete the investigation and file a written report with the President (or designee) within twenty four (24) calendar days after receipt of the complaint. If such is not possible, the President (or designee) may extend this deadline for a reasonable period of time. Both the Complainant and the Respondent will receive notification from the Director of Human Resources or Title IX Coordinator regarding the basis for this extension.

The Director of Human Resources or Title IX Coordinator, consulting with the President, may decide to designate an alternate investigator or team of investigators. This may occur, for example, if there are repeated complaints against a respondent; if the respondent is a particularly high-profile member of the college community; or other

circumstances. The designee may take the form of a tri-partite panel (with one member designated by the complainant, one by the respondent, and a third by the first two members). In all cases where investigations are referred to a designee or designees, the Director of Human Resources or Title IX Coordinator will train the designees on relevant regulations (e.g., Title IX requirements) and investigation techniques.

The investigation shall consist of:

- Reviewing statements of and interviewing both Complainant and Respondent;
- Reviewing all College records that concern the complaint;
- Interviewing witnesses;
- Reviewing other relevant material and evidence.

Both the Complainant and the Respondent(s) shall be entitled to submit written statements or other relevant and material evidence and to provide rebuttal to the written record compiled. Complainant has the right to request alternative arrangements if the complainant does not want to be in the same room as the accused. These alternative arrangements must be consistent with the rights of the accused, and must enable both parties and the panel to hear each other during any hearing.

In reaching findings, the Director of Human Resources or Title IX Coordinator (or designee(s)) will evaluate the conduct alleged to have been discriminatory by considering the totality of the circumstances, including the nature, frequency, intensity, context, and duration of the conduct. Although repeated incidents would create a strong claim of discrimination, a serious isolated incident can present sufficient grounds for corrective action. The burden of proof in cases of sex discrimination is preponderance of the evidence.

**Failure to Cooperate:** If the Respondent refuses to cooperate and/or respond in a timely manner, the Director of Human Resources or Title IX Coordinator may terminate any further processing of the complaint and refer the matter to the President (or designee). Failure to cooperate meaningfully in a review of a complaint of discrimination may be grounds for discipline.

**Inaction by Complainant:** If at any time during an investigation of discrimination other than sexual violence, a Complainant declines to cooperate with the Director of Human Resources, or if the Director of Human Resources determines that the Complainant no longer wishes to pursue her/his complaint, the matter may be considered closed, with appropriate notification. In cases of sex discrimination, including sexual violence, the College may pursue the investigation even if the Complainant declines cooperation.

If legal counsel is retained by a Complainant or Respondent, that counsel may not participate or be present at any meeting convened by the Director of Human Resources or Title IX Coordinator. Respondents and Complainants are expected to communicate with the Director of Human Resources or Title IX Coordinator directly, not through legal counsel or other intermediaries.

### **Resolution of Formal Complaint**

The Director of Human Resources or Title IX Coordinator shall make every reasonable effort to resolve the matter informally in any form that is acceptable to the parties and to the College. Resolution may take the form of:

- Letters exchanged between the parties through the Director of Human Resources or Title IX Coordinator, including any apology from the Respondent;
- A meeting with the supervisor of the Complainant or Respondent;
- Mandated trainings in the areas of discrimination for the Respondent or the departmental unit;

- A verbal warning to the Respondent issued after consultation with Human Resources and in accordance with any applicable collective bargaining agreements;
- A written warning to the Respondent issued after consultation with Human Resources and in accordance with any applicable collective bargaining agreements.

This list is not exhaustive and other forms of resolution may be appropriate.

When there is a signed, formal complaint, and after a full investigation, if the Director of Human Resources or Title IX Coordinator cannot negotiate a resolution agreeable to both the Respondent and Complainant, the Director of Human Resources or Title IX Coordinator will issue a report to all parties and to the President.

The Director of Human Resources' or Title IX Coordinator's determination may be that:

1. The complaint was not substantiated. If the Director of Human Resources or Title IX Coordinator determines that there is insufficient credible evidence to support the allegation of discrimination, the complaint shall be dismissed and the College shall take no further action.
2. The complaint was substantiated.
  - a. For Respondents who are students, the Director of Human Resources or Title IX Coordinator may determine that sufficient information exists to refer the matter to the Office of Student Affairs for review and appropriate action under the student conduct code.
  - b. For Respondents who are employees (including student employees) not in a collective bargaining unit, in consultation with Human Resources, the Director of Human Resources or Title IX Coordinator may recommend to the President that s/he take such administrative action as deemed appropriate under authority as the chief administrative officer of the College, including but not limited to termination, demotion, reassignment, suspension, reprimand, or training.
  - c. For Respondents who are employees in collective bargaining units, the Director of Human Resources or Title IX Coordinator may determine that sufficient information exists to recommend disciplinary action to the President. The President may then refer the matter for appropriate action under the applicable bargaining agreement. Corrective action may include, but is not limited to: reprimand, mandatory counseling, written counseling, probation, suspension, termination of employment, or non-renewal of contract.

Within ten working days from the Director of Human Resources' or Title IX Coordinator's recommendation, the President will issue a written statement indicating what action will be taken. For cases of sexual assault, the notice will include the sanctions given. The statement will be sent to the Complainant, the Respondent, and the Director of Human Resources or Title IX Coordinator. The President's decision will be final for the purposes of this discrimination procedure.

If the President is the Respondent, the Chair of the Board of Trustees or her/his designee shall issue a written statement indicating what action the Chair of the Board of Trustees proposes to take. The Chancellor's decision shall be final for the purposes of this discrimination procedure.

If the Director of Human Resources or Title IX Coordinator is the Respondent, the President's designee will investigate the allegation.

If the Complainant is dissatisfied with the President's or Chancellor's decision, the Complainant may elect to file a complaint with one or more State and Federal agencies. The Title IX Coordinator will provide general information on State and Federal guidelines and laws, as well as names and addresses of various enforcement agencies.

**Contact Information**

Director of Human Resources and Title IX Coordinator  
Sarah Potter  
Moore Building Room 225  
[Sarah.Potter@Clinton.edu](mailto:Sarah.Potter@Clinton.edu)  
(518) 562-4137

**History:**

Policy Adopted:  
Revised: August 16, 2016

**Distribution:**

All holders of Clinton Community College Policy and Procedures Manual

Director of Human Resources			
Executive Responsible for Procedure	Date	President's Staff Member's Approval	Date
President's Approval			Date