

**NEW COLLEGE OF FLORIDA
REGULATIONS MANUAL**

CHAPTER 3 - Administrative Affairs

3-4018 Sexual Discrimination / Harassment

The College shall actively promote a community in which diversity is valued. The College is committed to promoting an environment free from discrimination and harassment based on race, color, religion, age, disability, sex, sexual orientation, gender expression, gender identity, national origin, marital status, veteran status or any other protected characteristic under the law. This regulation pertains specifically to discrimination and harassment based on gender.

This regulation applies to all employees and students of NCF. It also covers harassment involving patrons, vendors, and other individuals with whom employees or students of the College have interaction as a condition of their employment or educational experience.

(1) Definitions

(a) Sexual discrimination, as defined by Title IX of the Education Amendments, includes:

1. Sexual assault: An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting (UCR) program. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Further definitions under this paragraph include the following:
 - a. Rape is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - b. Fondling is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - c. Incest is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - d. Statutory Rape is defined as sexual intercourse with a person who is under the statutory age of consent.
2. Domestic violence: Violence committed by a current or former spouse, co-parent or person similarly situated.
3. Dating violence: Violence committed by a person who is or has been in a social relationship of an intimate or romantic nature with the victim.

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4. **Stalking:** Conduct directed at a specific person that could cause a reasonable person to fear for the person's safety or safety of others or suffer substantial emotional distress. Where stalking occurs on the basis of sex, it will be resolved under this section. Stalking which is not on the basis of sex will be resolved under the applicable process, such as the student code of conduct and/or employee code of conduct.
 5. **Sexual Harassment:** Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:
 - a. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or educational experience;
 - b. Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting that individual; or
 - c. Unwelcome conduct determined by a reasonable person to be so pervasive, severe, and objectively offensive that it has the purpose or effect of unreasonably interfering with an individual's work or academic performance or limiting participation in College programs by creating an intimidating, hostile, or offensive working or educational environment.
 - d. Sexual harassment does not include verbal expression or written material that is relevant and appropriately related to the subject matter of a course/curriculum or to an employee's duties. This policy is not intended to abridge academic freedom or the College's educational mission, nor the first amendment rights to freedom of expression of any student or employee.
- (b) **Consent:** An understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. The lack of a negative response is not consent. An individual incapacitated by alcohol and/or drugs, whether voluntarily or involuntarily consumed, may not give consent. Effective consent also may not be given by minors or the mentally disabled.
- (2) It is the policy of New College of Florida to take immediate and corrective action to eliminate harassment or discrimination, prevent their recurrence and address their effects.
- (3) **Prohibited Conduct.** The following actions are prohibited:
- (a) Sexual discrimination/harassment by or between any faculty member, staff member or student, including individuals of the same sex;
 - (b) Sexual discrimination/harassment by any faculty member, staff member or student against any individual who is not a faculty member, staff member or student while assigned to duties or academic programs of the College regardless of their work location;

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- (c) Sexual discrimination/harassment by any vendor or individual external to the College against any faculty member, staff member or student during the transaction of business with the College;
 - (d) Discrimination/harassment may include displays or circulation of written or electronic materials or pictures degrading on the basis of gender, and verbal abuse or insults directed at or made in the presence of an individual on the basis of gender;
 - (e) Retaliation by any faculty member, staff member or student against any individual who, in good faith, has made any allegation of discrimination or sexual harassment, or who has testified, assisted, or participated in any way in any investigation, proceeding, or hearing conducted under this policy or any federal or state law;
 - (f) Knowingly making false accusations or allegations of discrimination or sexual harassment, or making false statements in any inquiry or investigation of alleged discrimination or sexual harassment.
- (4) Potential Participants. Potential participants in a Title IX sexual harassment situation include, but are not limited to:
- (a) Faculty – student
 - (b) faculty assistant--student
 - (c) supervisory staff--subordinate staff
 - (d) staff—faculty
 - (e) staff – staff
 - (f) staff--student
 - (g) student—student
 - (h) faculty – staff
 - (i) patrons, vendors or other individuals that interact with members of the campus
- (5) New College of Florida recognizes that not every advance or action of a sexual nature constitutes harassment. Whether a particular action or incident constitutes harassment depends on an examination of all available and relevant facts and circumstances. Such facts and circumstances may include the degree to which the conduct affected one or more student’s education, the type, frequency, and duration of the conduct, and the identity of and relationship between the two parties. Examples of prohibited conduct may include, but are not limited to the following when they meet the definitions of sexual misconduct or harassment, as listed above:

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- (a) Displaying or telling of sexually oriented or discriminatory jokes, statements, photographs, drawings, computer images, web sites, videos, slides, graphics, calendars, cartoons, e-mails or other communications;
 - (b) Making sexually explicit or discriminatory gestures or sounds based upon gender;
 - (c) Making actual or implied promises of an employment or educational opportunity or benefit in exchange for sexual activity;
 - (d) Making actual or implied threats to impede or interfere with employment or educational opportunities or benefits for failing to agree to or engage in sexual activity;
 - (e) Inappropriate and unwelcome touching, including but not limited to, patting, fondling, pinching, attempted or actual kissing;
 - (f) Requesting or coercing sexual intercourse or sexual favors;
 - (g) Attempting to or actually engaging in a sexual assault;
 - (h) Continuing to ask someone for a date after being told "no;"
 - (i) Continuing any of the conduct listed in the above examples after being told or being otherwise made aware that the conduct is unwelcome;
 - (j) Retaliation by any faculty member, staff member or student against any individual who, in good faith, has made any allegation of discrimination/harassment, or who has testified, assisted, or participated in any way in any investigation, proceeding, or hearing conducted under this regulation or any federal or state law;
 - (k) Knowingly making false accusations or allegations of discrimination/harassment, or making false statements in any inquiry or investigation of alleged discrimination/harassment;
 - (l) Prohibited conduct does not include verbal expression or written material that is relevant and appropriately related to the subject matter of a College course/curriculum or to an employee's duties.
- (6) Consensual Amorous or Sexual Relationships. New College of Florida strives to create and maintain a professional, collegial environment for work and study. Professional and collegial relationships are based on mutual respect and trust. When persons in positions of unequal power engage in amorous or sexual relationships they should be aware that they may be at risk of being accused of sexual harassment, either during the relationship or after the relationship ends, or being accused of having a conflict of interest. For additional information concerning conflicts of interest please refer to Ch. 112, Part III, Florida Statutes, the applicable collective bargaining agreement, and State of Florida Board of Education and College rules.

The College recognizes that consensual, amorous or sexual relationships between two people of unequal position or power (e.g., between a supervising staff member and a subordinate staff member,

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faculty member and student, or staff member and student) may become exploitative or lead to charges of sexual harassment. Accordingly, the College encourages its staff, faculty and students to refrain from such relationships.

- (7) Reporting Discrimination or Sexual Harassment. If you believe you have been discriminated against or sexually harassed, you may:
- (a) Tell your supervisor or another higher level administrator or the head of the department in which you are enrolled or employed, of the offensive behavior; and/or
 - (b) Contact the Assistant Vice President of Human Resources (if a faculty or staff member), the Dean of Students (if a student), the General Counsel, the Chief Audit Executive/Chief Compliance Officer or any other management individual with whom you may feel comfortable discussing the matter;
 - (c) Contact the Title IX Coordinator and/or Deputy Title IX Coordinator;
 - (d) Report online using the NCF Sexual Violence Reporting Form.
- (8) Procedures for Internal Handling of Complaints or Allegations of Discrimination or Sexual Harassment.
- (a) Authority to Investigate. When the College receives notice of conduct which appears to be discrimination or harassment, it will promptly investigate the allegation in a fair, expeditious, and equitable manner.
 - (b) If the College knows about possible sexual harassment or sexual violence, the Title IX Coordinator or its designee shall promptly investigate to determine what occurred and then take appropriate steps to resolve the situation even if no complaint has been filed. In the event that no complaint has been filed, the investigator shall follow the same procedures for formal investigations except that there will be no complainant.
 - (c) Filing of Complaints. The following persons may file complaints or allegations of sexual harassment:
 - 1. Any person protected under section (3) who believes that he/she has been sexually harassed.
 - 2. On behalf of any person protected under section (3), any person having knowledge of instances of sexual harassment of such protected person by any student, faculty or staff member, or vendor, or individual external to the College during the transaction of business with the College.
 - 3. Any faculty or staff member, who is in a supervisory position, and who is aware of possible instances of sexual harassment by any student, faculty or staff member.

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- (d) **Mandatory Reporting of Alleged Sexual Discrimination.** All employees, faculty and staff, must promptly report incidents of sexual/gender assault to the Title IX Coordinator or its designee. However:
1. Faculty and Residence Assistants may initially omit personally identifiable information about those involved in the report. However, these employees may be required to provide further detail if required by the Title IX Coordinator or its designee.
 2. Counselors and other confidential employees maintain their professional discretion regarding whether to report based on the best interest(s) of the reporting party.
- (e) **Review of Complaints of Alleged Sexual Harassment.** Complaints of alleged sexual harassment shall be reviewed by the Title IX Coordinator or its designee to determine if an investigation is required. If the Title IX Coordinator or its designee determines to conduct a Title IX investigation, the complaint shall be investigated and resolved in accordance with appropriate procedures. If a complaint does not indicate a Title IX issue, it will be referred to any applicable policies and procedures as needed.
- (f) **Timeframe.** The Title IX Coordinator or its designee shall render a decision within sixty (60) calendar days of initiating the investigative process. In certain situations, the facts and circumstances may require a longer investigative process for good cause. In the event that an investigation cannot be completed within sixty (60) calendar days, the Title IX Coordinator or its designee will notify the parties in writing.
- (g) **Grievance and Investigation Procedures**
1. Any person who wishes to file a formal complaint of discrimination or harassment may do so by submitting a complaint to the Title IX Coordinator or its designee, the Assistant Vice President of Human Resources, the Dean of Student Affairs, the General Counsel, or the Chief Audit Executive/Chief Compliance Officer. The complaint should include, at minimum, the following:
 - a. A detailed description of the alleged discriminatory conduct or incident(s), sexual harassment, sexual misconduct or sexual violence including dates, times, locations, etc.;
 - b. Names of any witnesses to the alleged violation; and
 - c. Any documentation in support of the allegation(s).
 2. The Title IX Coordinator or its designee may assist the complainant in preparation of the complaint, identifying witnesses and clarifying the relief sought by the complainant. The complainant may also submit additional information and evidence at any time during the investigation.

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3. In cases of sexual assault, dating violence, domestic violence or stalking, students and employees will be provided with written explanations of their rights and options. This will include information on how to preserve evidence; options to report or not report to law enforcement; and court orders that the student or staff member may be able to obtain for protection.
4. Prior to the outcome of responsibility, the Title IX Coordinator, in coordination with other departments and College personnel as necessary, impose interim measures. Interim measures are non-disciplinary supportive measures designed to restore or preserve equal access to education, protect safety, or deter sexual harassment. Supportive measures are available regardless of whether a formal complaint is filed, and offered without a fee. Supportive measures do not unreasonably burden any other person.
 - a. Altering the complainant's or respondent's work or academic environment;
 - b. Conducting workshops on discrimination or harassment for the unit, division, or department;
 - c. Meeting with the respondent and his or her supervisor to discuss ways in which the behavior about which the complaint has been brought can be changed;
 - d. Reassigning or transferring one or more of the parties to another course, advisor, work location or reporting relationship;
 - e. Moving students to different rooms in the residence halls or to different halls;
 - f. Transferring students or faculty to different course sections;
 - g. Assigning alternate advisors, mentors, supervisors, or evaluators and providing academic support services such as tutoring;
 - h. Issuing an informal, verbal reprimand;
 - i. Providing counseling and medical services;
 - j. Providing an escort to ensure that the complainant can move safely between classes and activities;
 - k. Arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's record;

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1. Issuing “no contact” orders;
 - m. Suspending an employee with pay pending investigation.
5. Remedial Action
- a. If a Respondent is found responsible, the institution will provide remedies to a Complainant, designed to:
 - i. Prevent serious and immediate harm to the complainant or others;
 - ii. Prevent retaliation against the complainant, respondent and/or witnesses;
 - iii. End discriminatory or harassing behavior and prevent its recurrence; and
 - iv. Provide appropriate training in issues related to discrimination.
 - b. Unlike supportive interim measures, remedies may be punitive or disciplinary in nature against the Respondent.
 - c. The complainant and respondent shall be informed of any remedial action taken by the College.
6. Confidentiality
- a. The confidentiality and privacy of all parties involved during the investigative process will be maintained to the fullest extent possible.
 - b. The Title IX Coordinator may disclose confidential information to the complainant, the respondent, potential witnesses, appropriate supervisors and administrators and other College officials or agents, SUS officials, state and federal agencies, and the courts as necessary in order to:
 - (1) Give the respondent fair notice of the charges;
 - (2) Conduct a prompt, thorough and impartial investigation; and
 - (3) Take any appropriate remedial or disciplinary actions.
 - c. If a complainant insists that his or her name or other identifiable information not be disclosed to the respondent, the College will inform the complainant that its ability to

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respond may be limited. Additionally, the College may still respond by taking steps to protect the overall campus environment.

7. Each complaint will be promptly investigated to determine what occurred.
8. Investigation Procedures
 - a. The parties have the right to an adequate, reliable, and impartial investigation; a right to an equal opportunity to identify witnesses and supporting evidence; and a right to appeal the College's final decision. The parties will be notified of the time frame for the investigation, the outcome of the investigation, and their rights to appeal.
 - b. The Title IX Coordinator or its designee may investigate a complaint. The investigator shall:
 - i. Consult with the complainant to review the complaint, clarify the allegations, discuss desired outcomes from the investigation, and obtain detailed information about the allegation(s);
 - ii. Inform the respondent of the complaint, summarize the allegation(s) to be investigated, and provide respondent with a written Notice of the Complaint that includes a summary of the allegations of the complaint;
 - iii. Collect and review written documents related to the complaint, interview the complainant and respondent, identify and interview witnesses, and collect other such evidence as may be relevant to the investigation.
 - c. The respondent shall be given an opportunity to respond to the allegation(s) during interviews with the investigator and may submit a written response, names of witnesses and documentary evidence at the interview or at any time during the investigation.
 - d. The complainant may provide names of witnesses and additional materials at any time during the investigation.
 - e. Both complainant and respondent have the right to have an attorney or non-attorney advisor present during interviews with the investigator, at their own expense. Attorneys and advisors may be present only to advise the parties. If a party will be represented by counsel during the investigative process, the party shall provide advance notice to the Title IX Coordinator five (5) business days before any scheduled interview.

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9. Upon completion of the investigative process, both parties will receive a copy of the Investigative Report:
 - a. Present the contentions of the parties;
 - b. Summarize the general testimony of witnesses;
 - c. If appropriate, recommend disciplinary and/or remedial action.

10. Live Hearing
 - a. If there are reasonable grounds to proceed to a disciplinary hearing, a live hearing will be scheduled.
 - b. During this live hearing, advisors may cross examine parties on the parties' behalf. No party is permitted to directly cross examine the other.
 - c. Once a decision has been reached, the parties will receive simultaneous written notification of the outcome and information as to how to file an appeal.

11. Appeals
 - a. If neither party appeals the outcome, the report will constitute the final College decision.
 - b. If either party disputes the outcome of responsibility, he or she may appeal to the Title IX Coordinator within ten (10) business days. The appeal shall identify the specific findings that the appellant disputes and an explanation of the reasons each finding is disputed.
 - c. The appeal must be based on evidence that:
 - i. The investigation was not conducted in compliance with the procedures and the non-compliance materially affected the outcome of the investigation;
 - ii. Bias on part of the Title IX Coordinator and/or investigator(s) and/or panel members;
 - iii. The findings were not based on the preponderance of the credible evidence; or
 - iv. The appellant has discovered new evidence, not previously available, which would have materially affected the outcome of the investigation.

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- d. The appeal must be a written statement setting forth with particularity the basis for the appeal.
- e. Upon receipt of the appeal, the Title IX Coordinator shall appoint an Appeals Committee or Hearing Officer to consider the appeal and submit a report. The non-appealing party will be provided a copy of the appeal and may respond to the appeal.
- f. No member of the Committee, nor the Hearing Officer, shall be a member of the original complainant's or respondent's department or work unit.
- g. The Committee or Hearing Officer shall review the written appeal and determine if there are sufficient grounds for appeal. If the appeal is sufficient, the Committee or Hearing officer shall:
 - i. Read and review the Investigatory Report;
 - ii. Examine the evidence and documentation obtained through the investigation and hearing; and
 - iii. Determine if the appellant's basis for appeal has been established and issue a decision. The Committee or Hearing Officer shall deliver its written decision to the President, appellant, and non-appealing party within twenty (20) business days of appointment.

12. Disciplinary Action

- a. Any employee or student found to be responsible for violating this policy will be subject to disciplinary actions in accordance with College regulations, collective bargaining agreements or the Student Code of Conduct, as appropriate. Such action may range from counseling to termination of employment or academic dismissal, and may include such other forms of disciplinary action as appropriate.
- b. Any employee or student in a supervisory capacity who has actual knowledge by direct observation or by receipt of a complaint of discrimination or harassment involving any of those employees whom he or she supervises, and who does not promptly report verbally or in writing the complaint to the Assistant Vice President of Human Resources, the Dean of Students, the General Counsel, and/or the Chief Audit Executive/Chief Compliance Officer as appropriate, will be subject to disciplinary actions in accordance with College regulations, bargaining agreements or the Student Code of Conduct, as appropriate. Such action may range from counseling to termination of employment or academic dismissal, and may include such other forms of disciplinary action as appropriate.

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- c. If after completion of the investigation, any finding of discrimination is made, a record of the complete findings will be placed in the offending employee's personnel file. If no finding of discrimination/harassment on any charge or complaint is made, no record of the charge or complaint will be placed in the employee's personnel file unless the employee requests in writing that the record of the completed investigation be placed in the employee's personnel file.
- (9) Procedures External to New College of Florida. Complaints of alleged sexual harassment may also be filed with the following external agencies:
- (a) U.S. Equal Employment Opportunity Commission, Tampa, 1-800-669-4000
 - (b) U.S. Department of Education, Office for Civil Rights, Atlanta, 404-974-9406
 - (c) Office of Federal Contracts Compliance Programs, Orlando, 407-648-6181
 - (d) Florida Commission on Human Relations, Tallahassee, 850-488-7082
- (10) The College prohibits retaliation against anyone who makes a complaint of harassment or discrimination based upon an honest perception of the events, or for cooperating in the investigation of a complaint. No hardship, no loss of benefit, and no penalty may be imposed on an individual as punishment for:
- (a) Filing or responding to a bona fide complaint of discrimination or harassment;
 - (b) Appearing as a witness in the investigation of a complaint; or
 - (c) Serving as an investigator.

Retaliation or attempted retaliation is a violation of this Regulation and anyone who does so will be subject to disciplinary actions up to and including termination or dismissal in accordance with College regulations, bargaining agreements or the Student Code of Conduct.

Authority: Article IX, Sec. 7, Fla. Constitution; 34 CFR Part 106; Fla. Board of Governors Regulations 1.001 and 6.0105

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