Central Community College affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the Central  $u u \mu v ] š C \qquad EqualPOppertunity$ , Harassment, and Nondiscrimination Policy and Procedure. The Policy and Procedure

# EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION FOR ALL FACULTY, STUDENTS, EMPLOYEES, AND THIRD-PARTIES

ATIXA 2020 ATIXA 2020 MODEL POLICY AND PROCEDURE USE AND ADAPTATION IS PERMITTED THROUGH A LIMITED LICENSE TO CENTRAL COMMUNITY COLLEGE. ALL OTHER RIGHTS RESERVED. © 2020. ATIXA POLICY & PROCEDURES : Equal Opportunity, Harassment, and Nondiscrimination Policy

# 1. Glossary

- Advisor means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- Complainant means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- Complaint (formal) means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the Central Community College investigate the allegation.
- Confidential Resource means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority

evidence, and compiling this information into an investigation report and file of directly related evidence.

Mandated Reporter means an employee of the Central Community College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation

# 2. Rationale for Policy

Central Community College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Central Community College has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. Central Community College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

# 3. Applicable Scope

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using Central Community College [ •^ Mocess A \_as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the Central Community College community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Central Community College community. This community includes, but is not limited to, students,<sup>1</sup> student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

# 4. Title IX Coordinator

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procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator , contact Central Community College

#### Title IX Team Members

Lauren Saughter Lead Title IX Investigator Hearing Panel/Decision Maker

Michelle Lubken Title IX Investigator, Advisor Hearing Panel/Decision Maker

Gerald Dunn Title IX Investigator, Advisor Hearing Panel/Decision Maker

Kelly Christensen Title IX Investigator, Advisor Hearing Panel/Decision Maker Jason Davis Title IX Investigator, Advisor Hearing Panel/Decision Maker

Lenore Koliha Title IX Investigator, Advisor Hearing Panel/Decision Maker

Beverly Lahlum-Taylor Title IX Investigator, Advisor Hearing Panel/Decision Maker

Sean Griffin Title IX Investigator, Advisor Hearing Panel/Decision Maker

Central Community College has determined that the following administrators are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Team members listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of Central Community College.

Jerry Wallace Hastings Campus President jerrywallace@cccneb.edu 402-461-2400 Dr. Kathy Fuchser Columbus Campus President <u>kathyfuchser@cccneb.edu</u> 402-562-1211

Candace Walton Vice President for Innovation and Instruction Joel King

A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the Central Community College investigate the allegation(s).

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly and that a formal complaint is desired.

# 8. Supportive Measures

Central Community College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the Central Community College [• µ šrjogram or activity, including measures designed to protect the safety of all parties or the Central Community College § educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Central Community College will inform the Complainant, in writing, that they may file a formal complaint with Central Community College either at that time or in the future, if they have not done so already. The Title IX Coordinator or designee works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

Central Community College will maintain the privacy of the supportive measures, provided that privacy does not impair Central Community College [• ] o ] š Ç š } CE } Å ] š Z Qan & A Community College will act to ensure as minimal an academic impact on the parties as possible. Central Community College will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program (EAP)
- Referral to community-based service providers
- < Visa and immigration assistance
- < Student financial aid counseling
- < Education to the community or community subgroup(s)
- < Altering campus housing assignment(s)
- < Altering work arrangements for employees or student-employees
- < Safety planning
- Providing campus safety escorts
- < Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- C Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- < Timely Warnings

- Class schedule modifications, withdrawals, or leaves of absence
- <

10. Promptness

In addition, Central Community College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Central Community College property and/or events.

All vendors serving Central Community College through third-party contracts are subject to the policies and procedures of their employers or to these policies and procedures to which their employer has agreed to be bound by their contracts.

13. Time Limir4 792 reWhBT/F(r4)25(na3(hnqd)5(4(t)26(pqna3(hr-9(oBTi))5(nqg0.00000912 0 612 792 reWhBT/F3 11

College email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by Central Community College  $v \circ \zeta A Z v \circ \mu Z \circ \omega Z = 0$   $v \circ u = v v u = 0$ 

# 15. Nondiscrimination Policy:

Central Community College adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education.

Central Community College does not discriminate against any employee, applicant for employment, or student:

- · Race,
- Religion,
- · Hearing status,
- · Personal appearance,
- · Color,
- · Sex,
- Pregnancy,
- · Political affiliation,
- · Source of income,
- · Place of business,
- · Residence,
- · Religion,
- · Creed,
- Ethnicity,
- · National origin (including ancestry),
- · Otizenship status,
- Physical or mental disability (including perceived disability),
- · Age,
- · Marital status,
- · Family responsibilities,
- · Sexual orientation,
- · Gender identity,
- · Gender expression,
- Veteran or military status (including disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran),
- · Predisposing genetic characteristics,
- · Domestic violence victim status,
- or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities.

Therefore, any member of Central Community College community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of Central Community College  $u u \mu v ] \check{s} \bigcup P \mu \bullet \check{s} \bigcup \mathcal{E} \mathring{A} ] \bullet ] \check{s} \odot \mathcal{E} v \check{s} Z \bullet ] \bullet \} (\check{s} Z \check{s} \% \mathscr{E} \bullet ] v [\bullet \check{s} \mu \text{ protected classes listed above is in violation of Central Community College policy on nondiscrimination.$ 

When brought to the attention of the Central Community College, any such discrimination will be promptly and fairly addressed and remedied by the Central Community College according to the [the appropriate] grievance process described below.

16.

The Director of Disability Services reviews documentation provided by the student and, in consultation

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an

education program or activity.4

- 3) Sexual assault, defined as:
  - a) Sex Offenses, Forcible:
    - i) Any sexual act directed against another person,
    - ii) without the consent of the Complainant,
    - iii) including instances in which the Complainant is incapable of giving consent.
  - b) Forcible Rape:
    - i) Penetration,
    - ii) no matter how slight,
    - iii) of the vagina or anus with any body part or object, or
    - iv) oral penetration by a sex organ of another person,
    - v) without the consent of the Complainant.
  - c) Forcible Sodomy:
    - i) Oral or anal sexual intercourse with another person,
    - ii) forcibly,
    - iii) v I}OE P ]v∙š šZ š ‰-o00Ense(nsu[anly),Ád]roo ~v}v
    - iv) v }š ( } Œ ] o Ç } Œ P ] v š šZ ‰ Œ } v [• Á] o o ] v ] v š v ] incapable of giving consent because of age<sup>5</sup> or because of temporary or permanent mental or physical incapacity.
  - d) Sexual Assault with an Object:
    - i) The use of an object or instrument to penetrate,
    - ii) however slightly,
    - iii) the genital or anal opening of the body of another person,
    - iv) forcibly,
    - v) v I}OE P]v•ššZš‰-dOEnsejnosu[anly)Á]oo~v}v
    - vi) or not forcibly or against the ‰ CE } v [ Á ] o o ] v ] v š v ] v Á Z ] Z š Z is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - e) Forcible Fondling:
    - i) The touching of the private body parts of another person (buttocks, groin, breasts),
    - ii) for the purpose of sexual gratification,
    - iii) forcibly,
    - iv) v l}OE P ]v•š šZ š ‰-dOEnse(msu[anly),Á]oo ~v}v
    - v) } CE v } š (} CE ] o Ç } CE P ] v š š Z ‰ CE } v [• Á] o o ] v ] v š v is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - f) Sex Offenses, Non-forcible:
    - i) Incest:

<sup>&</sup>lt;sup>4</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same } CE •]u]o CE ] CE µu•š v • ~^]v šZ • šZ }u‰o ]v vš\_•U]v oµ]vP šZ }vš Æš ]v ÁZ]Z šZ oo P ]v] vš }µCE (

that may be evidenced.

<sup>&</sup>lt;sup>5</sup> Per Nebraska state law.

- 1) Non-forcible sexual intercourse,
- 2) between persons who are related to each other,
- 3) within the degrees wherein marriage is prohibited by Nebraska law.
- ii) Statutory Rape:
  - 1) Non-forcible sexual intercourse,
  - 2) with a person who is under the statutory age of consent of 16 years old, per Nebraska law.
- 4) Dating Violence, defined as:
  - a. violence

threatens, or communicate • \$ } CE }  $\mu \$$  ‰ CE • } v U } CE ] v \$ CE • Property.

- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

# Consensual Relationship Policy:

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may 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 their 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.

This type of relationship includes Resident Advisors (RAs) and students over whom the RA has direct responsibility. While no relationships are prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under Title IX, based on the circumstances of the allegation.

Central Community College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy. Specific sanction information is below.

# Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation
- dZ OE •‰}v]vP ‰ OEšÇ[•]•]‰o]v OEÇZ]•š}OEÇ
- < Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the Hearing Panel/Decision-maker
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the reporting party and the community
- The impact on the parties

The sanctions will be implemented as soon as is feasible. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by outside authorities.

Student Sanctions:

The following are the usual sanctions that may be imposed:

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campus for any reason or to attend College-sponsored events. This sanction will be noted																
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c. Force, Coercion, Consent, and Incapacitation<sup>6</sup>

As used in the offenses above, the following definitions and understandings apply:

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Slence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is <u>unreasonable</u> pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

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. Reasonable reciprocation can be implied. For example, if

<sup>6</sup> The state definition of consent is:

<sup>(</sup>a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;

<sup>(</sup>b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and

<sup>(</sup>c) A victim need not resist verbally or physically where it would be useless or futile to do so. Neb. Rev. Stat. §28-318(8).

which is applicable to criminal prosecutions for sex offenses in Nebraska but may differ from the definition used on campus to address policy violations.

someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

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 intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the Central Community College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>7</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even • C V P V = U C W C S (S Z V P V) = U C W S (S Z V P V) = U C S (S Z V P V) = }μš•] }(d]šo /yÁZvšZ š]• • μ‰}všZ }u‰o]vinnasš[• šµo}

- o Repeated and/or severe
- o Aggressive behavior
- o Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
- o That is not speech or conduct otherwise protected by the First Amendment.

Violation of any other Central Community College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

#### 18. Retaliation

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Central Community College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for Central Community College or any member of Central Community College [• community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## 19. Mandated Reporting

All Central Community College employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at Central Community College for a Complainant or third-party (including parents/guardians when appropriate):

#### a. Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors
- · Off-campus (non-employees):
  - o Licensed professional counselors and other medical providers
  - o Local rape crisis counselors
  - o Domestic violence resources
  - o Local or state assistance agencies
  - o Clergy/Chaplains
  - o Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors and/ or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Central Community College employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

## b. Anonymous Notice

Mandated Reporter [• CE CE  $(\mu)$  CE Š}  $(\mu \circ \circ \zeta)$  •  $\circ$   $\circ$  v (} CE u Š] v U v o  $\mu$  ] v when making a report to the Title IX Coordinator.

Anonymous notice will be investigated by Central Community College to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice typically limits Central Community College [• ] o ] š Ç š } ] v À • š ] P š U Œ and provide remedies, depending on what information is shared.

# c. Mandated Reporters and Formal Notice/Complaints

All employees of Central Community College (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share <u>all</u> details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects  $CE \cdot CE Z U \} CE \mathring{s} A \lor \mathring{s} \cdot \mu Z \cdot A d I r speak-\check{s}uZs dcEnptPpZo\check{s}ide notiCE thZt \}$ must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from Central Community College.

Supportive measures may be offered as the result of such disclosures without formal Central Community College action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of Central Community College policy and can be subject to disciplinary action for failure to comply.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

#### 20. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX

The Title IX Coordinator has ultimate discretion over whether the Central Community College proceeds

Central Community College Á ] o o  $v \bullet \mu CE$  šZš  $u \& o ] v v š[\bullet v u v ] šZ CE ] v š] not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.$ 

## 22. False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under Central Community College policy.

# 23. Amnesty for Complainants and Witnesses

Central Community College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Central Community College officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Central Community College community that Complainants choose to report misconduct to Central Community College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Central Community College maintains a policy of offering parties and witnesses amnesty from minor policy violations t such as underage consumption of alcohol or the use of illicit drugs t related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug

INTERIM RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION (PROCESS "A")

#### 1. Overview

Central Community College will act on any formal or informal notice/complaint of violation of the policy on Equal Opportunity, , CE ••u všU v E }v ]• CE ]u ]v š] }v ~^šZ W }o ] Ç\_• šZ š ]• Coordinator<sup>9</sup> } CE vÇ }šZ CE K((] ] o Á]šZ µšZ }CE ]šÇ Ç ‰ ‰ oÇ ]vP šZ • ‰ CE

The procedures below apply <u>only</u> to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members.

The procedures below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using these same grievance procedures, clarifying which policies above are applicable. While the effect of the Title IX regulations can be confusing, these grievance procedures apply to all policies above.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through

3. Initial Assessment

a. Violence Risk Assessment

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE Team/College Counselor as a part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;

Central Community College <u>may</u> dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the Central Community College; or
- 3) Specific circumstances prevent Central Community College from gathering evidence sufficient to

Central Community College may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

## i. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators.

The parties are expected to provide timely notice to the Title IX Coordinator and Investigators if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

As a public entity, Central Community College fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, Central Community College will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-

- Goals of the parties;
  Adequate resources to invest in Alternate Resolution (time, staff, etc.)

Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in informal resolution or Alternate Resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices]
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)

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- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- < Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors (who are College employees), and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: https://www.cccneb.edu/what-is-title-ix

### 8. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator Á]oo ‰ Œ } À] Á Œ ] šš v v } š] } (šZ ] v À • š] P š] } v v oc the Respondent upon commencement of the Formal Grievance Process. This facilitates the Z • ‰ } v v š [• ] o]šÇ š} ‰ Œ ‰ Œ (} Œ šZ ] v š AŒ v Åsdr v Åsdr

The NOIA will include:

- < A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Central Community College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about Central Community College [ policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that Central Community College [ Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- C Detail on how the party may request disability accommodations during the interview process,
- A link to the Central Community College

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official College CE } CE • U } CE • U } CE u ] o Cěntraš ZomritunitQEGs Jeget issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### 9. Resolution Timeline

Central Community College will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

### 10. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation, using a team of two Investigators, usually within two (2) business days of determining that an investigation should proceed.

### 11. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigators, and Decision-makers may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Central Community College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

# 13. Delays in the Investigation Process and Interactions with Law Enforcement

Central Community College may undertake a short delay in its investigation (several days to a fETQont

Provide each interviewed party and witness an opportunity to review and verify the Investigator [• š Œ v • Œ] ‰ š } ( š Z̄ce/testinoon & from the respective interviews and meetings within 7 business days of the meeting.

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witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

superseding all other campus activities.

- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-makers and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decisionmaker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing u Ç Z o ] v š Z ] Œ • v }UŒ Á ] ššvZ • ‰ Œ Š Ç [ u ] v Ç v v Ç • š š u v prior to the hearing will not be considered by the Decision-makers. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the College will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-makers about the matter, unless they have been provided already.
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-makers will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

onebnfdrening Martuaesthat the y cannot bring mobile phones/ devices into the hearing.

Hearings for possible

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator such as the Title IX Coordinator or designee. The hearing facilitator may attend to: logistics of rooms for various parties/ witnesses as they wait; flow of parties/ witnesses in and out of the hearing space; ensuring recording and/ or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

### 28. Investigator Presents the Final Investigation Report

The Investigators will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-makers and the parties (through their Advisors). The Investigators will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-makers should ask the Investigators their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

## 29. Testimony and Questioning

Once the Investigators present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-makers and then by the parties through their Advisor •  $\sim ^ - CE/E^{-} \cdot u ] v = X$ 

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may explore arguments regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious, or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

# 30. Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-makers may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-makers must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The Decision-maker(s) may not draw any inference <u>solely</u> (CE } u ‰ CE š Ç [• } CE Á ] š v ••[• • v hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

/( %  $CE Š C [• Å]• CE } (Z ] CE Cepteral Cosinity multiply Callegge [Å] Š Z Š Š Z]• Z CE µ o • of decorum for the hearing, the Central Community College may require the party to use a different Advisor. If a Central Community College-provided A refuses to comply with the rules of decorum, the Central Community College may provide that party with a different Advisor to conduct cross-examination on behalf of that party.$ 

## 31. Recording Hearings

Hearings (but not deliberations) are recorded by Central Community College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-makers, the parties, their Advisors, and appropriate administrators of Central Community College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

## 32. Deliberation, Decision-making, and Standard of Proof

The Decision-makers will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

The Notice of Outcome will also include information on when the results are considered by Central Community College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

34. Statement of the Rights of the Parties (See Appendix B)

35. Sanctions

and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Central Community College. [insert transcript notation here if applicable].

*« Expulsion:* 

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matterilland
- (C) The Title IX Coordinator, Investigators, or Decision-makers had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Decision Maker and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Decision Maker will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and the original Decision-makers.

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-makers will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal Decision Maker to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Decision Maker and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigators and/or original Decision-makers, as necessary, who will submit their responses in 5 business days, which will be either defined and to the Appeal Decision and appeal at this time. If so, the approved is the approved of the party who initially requested an appeal, the Investigators and/or original Decision-makers, as necessary, who will submit their responses in 5 business days, which will be either defined appeal appeal at the appeal defined appeal at the appeal of the approved.

Neither party mas3ty ma445.65 504.94240 G[(da)4(ys)3(, )] TJETQq0.00000912 0 612 792 reW\* nQq0.000009 0 1 72 G[()

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

Central Community College may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

## c. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-maker to substitute their judgment for that
  of the original Decision-makers merely because they disagree with the finding and/or
  sanction(s).
- The Appeal Decision Maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigators and/or Decision-makers for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be cured by the original Decisionmakers (as in cases of bias), the appeal may order a new hearing with a new Decision-makers.
- The results of a remand to a Decision-makers cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to Central Community College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to

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#### APPENDIX A: POLICY EXAMPLES

Some examples of possible sexual harassment include:

- An instructor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually-oriented jokes and pictures around campus via
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penis. This caused them considerable emb

next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

Examples of Retaliation:

- Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student- š Z o š [• ‰ o wtchoutPa lěg]tumate justification.
- A student from Organization A participates in a sexual misconduct investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

## APPENDIX B: STATEMENT OF RIGHTS OF THE PARTIES

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to Central Community College officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- C The right to be treated with respect by Central Community College officials.
- The right to have Central Community College policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by Central Community College officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
- The right to be informed by Central Community College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by Central Community College authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by Central Community College law enforcement and/or other Central Community College officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
- The right to a Central Community College-implemented no contact order when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes

are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:

- o Relocating an on- u‰μ••šμ vš[•Z}μ•]vP-ošam)puslojo(a(io 6)E vš}v
- o Assistance from Central Community College staff in completing the relocation
- o Z vP]vP v u‰o}Ç [• Å}CEI vÀ]CE}vu vš ~ XPXU CE ‰}CEš]vP relocation)
- o Transportation accommodations
- o Visa/immigration assistance
- o Arranging to dissolve a housing contract and a pro-20612792