

3358: 14-3-19 Equal Opportunity and Non-Discrimination/Anti-Harassment.

Effective Date: 4/1/12; Revised 12/14/18, 4/26/19, 8/28/20

Policy statement: Northwest state community college (“NSCC” or “the college”) is committed to maintaining a workplace and academic environment free of discrimination and harassment. Therefore, the college shall not tolerate discriminatory or harassing behavior by or against trustees, employees, vendors, customers, students, or other persons participating in a college program or activity.

- (A) Employees and students are expected to assist in the college’s efforts to prevent discrimination or harassment from occurring. Administrators, supervisors, and employees who have been designated to act on behalf of the college are specifically responsible for identifying and taking proper action to stop such behavior when they see it occurring and to report it to the reporting structure of the college as identified in this policy.
- (B) While the college does not tolerate any form of discrimination or harassment, the Non-Discrimination/Anti-Harassment Policy and related procedures are intended to cover discrimination and harassment based on a protected class. Protected classes for purposes of this policy are age, ancestry, color, disability, familial status, gender, genetic information (GINA), military or veteran status, national origin, race, religion, sex, and sexual orientation, or any other bases under the law. Through this and related policies, the college acknowledges and complies with its duties under Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Clery Act, as amended, by the 2013 Reauthorization of the Violence Against Women Act (VAWA), the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, Sections 503 and 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, as amended, the Pregnancy Discrimination Act, and relevant state and local laws, by setting forth comprehensive frameworks for receiving, processing, investigating, and resolving complaints.
- (C) Anyone who is subjected to conduct that creates an intimidating or hostile environment, regardless if the conduct is based on a protected class, shall report the conduct to a person outlined in section (E) of this rule. If human resources determines that the conduct alleged to be creating an intimidating or hostile environment is not based on a protected class, the report may be referred for remediation according to the relevant policy.
- (D) Reports of sexual assault, sexual exploitation, dating or domestic violence, stalking, or sexual harassment (“sexual misconduct”) are governed by the college’s sexual misconduct policy governing student and employees (policy 3358:14-3-35 or the sexual misconduct policy), which establishes separate procedures for reporting and resolving allegations of Sexual Misconduct against students and employees pursuant to Title IX of the Education Amendments of 1972 (as well as provides for resolution options when the reported behavior is sexual misconduct, but does not rise to meet the jurisdictional requirements of title IX through non-title IX resolution procedures which sit in that same policy.) For more information on the title IX policy, including definitions of the sex-based

prohibited conduct and reporting options, please visit the [NSCC Title IX Website](#) or refer to the sexual misconduct policy governing students and employees.

(E) In furtherance of these expectations, all employees are required to participate in required training.

(1) Definitions of discrimination/harassment. As used in this policy, the following terms are defined and will be adhered to as follows:

(a) Discrimination – occurs when an adverse employment action is taken and is based upon a protected class. Discrimination may occur in several forms, such as:

(i) Disparate treatment - when a person, or a group of people are treated less favorably than another person or group of people on the basis of a protected class.

(ii) Disparate impact - when a college policy, practice or decision is based on neutral factors that have an adverse impact on a protected class.

(b) Harassment* – (1) Unwelcome, protected class-based physical non-verbal or verbal conduct that (2) is sufficiently severe, persistent or pervasive that (3) it unreasonably interferes with, denies, or limits an individual's ability to participate in or benefit from the college's education and employment programs and activities; and (4) is based on power differentials (quid pro quo) or the creation of a hostile environment. *This definition does not include sex-based harassment/discrimination ("sexual misconduct"). To understand how the college defines sexual misconduct and to report incidents of sexual misconduct, see policy 3358:14-3-35.

(i) Hostile Work Environment - occurs when the conduct at issue is sufficiently severe or pervasive that it creates an intimidating, abusive or offensive environment regarding employment or academic decisions for a person in a protected class. A single instance of discrimination may be sufficient to create a hostile work environment.

(2) Discrimination/harassment indicators and examples

(a) Examples of discrimination/harassment include, but are not limited to the following:

(i) Conduct that explicitly or implicitly affects an individual's or group's employment or academic achievement; unreasonably interferes with an individual's work performance or learning ability; and/or creates an intimidating, hostile or offensive work, or

academic environment when that person belongs to a protected class;

- (ii) Verbal behaviors or comments, slurs, jokes, recordings, videos, music and personal references or use of negative terms used to identify someone in a protected class;
- (iii) Non-verbal, offensive, graphic communication (i.e. obscene hand or finger gestures), bullying, demeaning, insulting, intimidating, or suggestive written material, email, posters, graffiti, cartoons, other electronically transmitted messages or use of social media which are directed at someone because of a protected class;
- (iv) Any other conduct that has the effect of creating an intimidating, hostile, offensive work environment, or unreasonably interferes with a person's work or academic environment based on a protected class.

(3) Consequences of discrimination/harassment

- (a) Employees - any employee found to be in violation of this policy will be subject to disciplinary action, up to and including termination of employment.
- (b) Students - any student found to be in violation of this policy will be subject to review and resolution in accordance with the student code of conduct policy 3358:14-5-08 and may be subject to disciplinary action in accordance therewith.

(4) Reporting responsibilities and filing a complaint

- (a) Anyone who believes that an administrator, any employee, supervisor, student, or non-employee's behavior constitutes discrimination or harassment has a responsibility to report the behavior/action as soon as it is known so that the College may administer this policy.
 - (i) Allegations can be made by individuals who are directly involved in, who observe, or who receive reliable information that discrimination/harassment may have occurred.
- (b) Complaints involving employees: In cases of alleged discrimination/harassment in employment or if the victim or alleged perpetrator is an employee, the complaint may be made to any of the following:
 - (i) an employee of human resources; or
 - (ii) an employee of the NSCC police department.

- (c) Complaints involving students: In cases of alleged discrimination/harassment when the victim and/or alleged perpetrator is a student, a potential student, or someone participating in a college-sponsored event or activity, the complaint may be made to any of the following:
 - (i) human resources;
 - (ii) the vice president of academics;
 - (iii) an academic dean; or
 - (iv) an employee of the NSCC police department.
- (d) Any person designated to receive complaints under this policy who has direct or constructive knowledge of alleged discriminatory or harassing behavior must immediately report the behavior to the office of human resources or chief student affairs officer. Failure to do so may result in disciplinary action, up to and including termination of employment.
- (e) Emergency: Any person seeking immediate assistance or relief from bodily danger or a threat of bodily danger should immediately contact the northwest state community college police department at 419-267-1452 or by dialing 9-1-1
- (f) Reporting: Complaints made in good faith regardless of whether or not there is sufficient information to render a substantiated finding will not be held against an employee or student in any way.
 - (i) Any employee who knowingly or maliciously makes a false allegation of discrimination or harassment will be subject to disciplinary action, up to and including termination of employment.
 - (ii) Any student who knowingly or maliciously makes a false allegation of discrimination or harassment will be subject to the process outlined by the student code of conduct policy 3358:14-5-08.

(5) Academic freedom/first amendment guidelines

- (a) The college is committed to providing a safe, anti-harassing, and nondiscriminatory environment that protects the civil rights of individuals, per college policies and in compliance with state and federal law, and the college recognizes the value of academic freedom in the classroom.
- (b) College policies are not intended to restrict serious discussion of controversial issues in the academic classrooms or trainings. In light of this, to

minimize the potential for multiple claims that course content is discriminatory, harassing or offensive, it is recommended that in courses where such discussions occur, faculty provide a disclosure that the content covered may be controversial. However, employees and students are encouraged to file complaints in accordance with section D in this policy for reasons specified therein.

(6) Confidentiality

To the extent possible, all information received in connection with the reporting, investigation, and resolution of allegations will be treated as confidential, except to the extent it is necessary to disclose information in order to investigate, prevent or address the effects of the discrimination/harassment, resolve the complaint or when compelled to do so by law. All individuals involved in the process should observe the same standard of discretion and respect for the reputation of everyone involved in the process.

(7) Retaliation

The college, in compliance with federal, state and local law that strictly prohibits it, will not tolerate retaliation in any form against any individual who files a complaint or report, makes an allegation, or who participates in an investigation of discrimination or harassment. Retaliation is a serious violation that can subject the offender to discipline, up to and including termination of employment and/or student status, independent of the merits of the underlying allegation. Allegations of retaliation should promptly be directed to human resources or student affairs. If at any time, a party feels as though the retaliatory conduct poses a threat to their safety or the safety of others, the party should contact law enforcement.

(8) Formal complaint procedures

Complainants may initiate formal procedures by filing a complaint with human resources (HR). HR responds to complaints in accordance with the procedures outlined below. However, there may be exceptional circumstances that justify a departure from these procedures, and, should such circumstances arise, HR will advise the parties to the complaint as soon as possible. If a complaint alleges sex-based harassment or discrimination in addition to protected class harassment or discrimination covered by this policy, HR may work in concert with the institution's Title IX Coordinator to investigate and resolve the complaint, if applicable and at their discretion. HR may work independently if it is determined that conducting two investigations makes the most sense given the specific facts of the matter alleged. Decisions made with regard to the consolidation of investigations will be made on a case-by-case basis.

(a) Filing a complaint

- (i) HR and student affairs work in concert to accept and respond to complaints. Student affairs will accept student reports and will aid students in reporting to HR. A complaint must be filed with HR by any current employee or student or applicant for employment or admission who believe that they have been subject to protected class harassment or discrimination. If the complaint involves allegations of employment discrimination, it must be filed with HR within three hundred days of the most recent alleged prohibited discriminatory or retaliatory conduct. HR retains discretion to accept complaints filed outside of the three hundred day timeframe for good cause. A complainant may also file a formal charge of discrimination, harassment, and/or retaliation with a state or federal agency authorized by law to receive such complaints.
- (ii) HR and/or student affairs (respectively) will also initially accept complaints in alternate written form, such as email, or verbal where the human resources department will attempt to collect the at a minimum: (1) the complainant's name and contact information; (2) the name of the respondent(s); (3) an explanation of the conduct believed to constitute protected class harassment or discrimination or an allegation of retaliation with approximate date(s) of when these actions occurred; and (4) a brief description of why the complainant believes that the alleged conduct at issue is based on one or more protected characteristics. If a reasonable accommodation or other assistance is needed to file a complaint, please contact HR.
- (iii) As stated, reports of sexual assault, sexual exploitation, dating and domestic violence, stalking, and/or sex-based harassment ("sexual misconduct") are governed by the sexual misconduct policy governing students and employees. However, reports of harassment or discrimination based on sexual orientation, gender identity, pregnant or parenting status, or other gender-based misconduct that does not rise to the level of constituting hostile environment sexual harassment as defined by Title IX will be resolved utilizing this policy and procedure.

(b) Receipt of complaint and initial assessment

- (i) Upon notice of a complaint, HR/student affairs will first assess the allegations to determine whether interim measures pending resolution of the matter are appropriate. Interim measures may include, but are not limited to, a safety plan, schedule change, temporary removal of the respondent from the workplace or academic program, if warranted, and other measures, including issuance of a "no contact" directive. In making this assessment, HR/student affairs will consider the totality of the circumstances, the nature and severity of the allegations, and whether the allegations implicate a potential, ongoing safety threat to the complainant or the

community. HR/student affairs will consult with college administrators, as appropriate.

- (ii) From this point forward, the party alleging to be the victim of the harassment or discrimination will be called the “complainant” and the person accused of engaging in the unwanted behavior will be called the “respondent.”

(c) Evaluation of a complaint

- (i) Following HR’s notice of a complaint, HR shall decide whether the complaint states a potential violation of this policy and shall notify the complainant of its decision. If the complaint lacks sufficient information for HR to make this decision, HR will contact the complainant to gather additional information.
- (ii) If HR determines that the complainant’s allegations, if true, do not state a violation of college policies, an explanation of this decision shall be explained to why the complaint does not state a violation and may inform the complainant of other possible avenues of redress, such as through other college policies or offices.
- (iii) If HR concludes that the complainant’s allegations do not state a policy violation, but nevertheless implicate potentially concerning behaviors, HR will advise complainants of steps that HR will take to assist them in addressing their concerns informally.
- (iv) If HR concludes that the allegations of the complaint state a potential violation, HR will notify the complainant of that determination and will meet with the complainant to confirm the specific factual allegations upon which the complaint is based and to discuss the formal complaint procedures.
- (v) For complaints that also implicate conduct prohibited by the sexual misconduct policy, HR will consult with the Title IX Coordinator. Generally, such complaints or reports will be investigated concurrently under the appropriate Title IX procedures, unless the Title IX Coordinator determines that doing so would unduly delay resolution of the allegations under the Title IX policy. In these situations, HR will notify complainants under which policies and procedures their reported allegations will be resolved.

(d) Investigation

- (i) Notice of the investigation: As soon as practicable, HR will provide notice to the complainant and the respondent(s) of the commencement of

the investigation. Such notice will: (a) name the complainant and the respondent; (b) specify the nature of the alleged harassment; (c) explain that the complaint will be investigated in accordance with these procedures; (d) identify the investigator; (e) explain the college's prohibition against retaliation; and (f) provide a copy of this policy and the complaint procedures.

(ii) Investigation overview: If HR has not already done so, HR will conduct a formal interview of the complainant and the respondent(s). During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the investigator to each other or to any witness. The investigator will notify and seek to meet separately with the complainant, the respondent, and any third-party witnesses, if applicable, and will gather other relevant and available evidence and information, including electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party). The investigation conducted by HR may further include, but is not limited to:

- (a) Interviewing material witnesses;
- (b) Reviewing relevant files and records;
- (c) Comparing the treatment of the complainant to that of others similarly situated in the department or unit;
- (d) Reviewing applicable policies and procedures; and/or
- (e) Following up with the parties as new evidence is collected, as appropriate, and permitting the parties to provide additional information to the record.

(e) Timeframe for investigation

The investigation shall be promptly and thoroughly investigated and would not normally exceed sixty business days. This timeframe may be extended for good cause. HR will notify the parties in writing of any extension of this timeframe.

(f) Findings

(i) Upon conclusion of the investigation, HR will conduct a meeting with the complainant and respondent separately to provide a verbal outcome of the investigation will include a finding as to whether there is suffi-

cient information, by a preponderance of the evidence, to support a finding that the respondent(s) engaged in the alleged harassment in violation of the this policy.

- (ii) If HR issues a finding of violation, HR will construct a letter that will include recommended action items, which may include, but are not limited to: (a) a directive to stop any ongoing discriminatory, harassing and/or retaliatory behavior/practices; (b) disciplinary or other corrective action be taken against the respondent and/or others; (c) relief be granted to the complainant, such as accommodations, reinstatement, hiring, reassignment, promotion, training, back pay or other compensation and/or benefits (specific remedies shall be fact-specific to each complaint); and/or (d) other proactive measures, such as targeted training or education.

(9) Administrative review

- (a) HR retains discretion to conduct an administrative review into allegations of harassment or discriminatory conduct, in absence of a formal complaint. In determining whether to initiate an administrative review of allegations harassment or discrimination, HR will consider all known information, including: (1) the nature and the severity of the allegations; (2) whether the allegations are amenable to resolution through other channels, such as human resources intervention; (3) the history of prior complaints regarding the same individuals, department and/or area; (4) the expressed wishes, if known, of the affected individual(s); and (5) any other pertinent information.
- (b) Administrative reviews will include interviewing witnesses and reviewing pertinent documents and will normally be concluded within 60 business days. This timeframe may be extended for good cause and any recommended action items will be presented to the College's Legal Counsel. The same level of confidentiality applicable in complaint investigations will apply to administrative reviews.

(10) Obligation to provide truthful information

All college community members are expected to provide truthful information in connection with any report made under this policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or to intentionally harm another in connection with a complaint under these policies is prohibited and subject to disciplinary sanction. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

(11) External complaints

Individuals also have the right to file complaints with one of the following federal or state agencies. Please be advised that separate deadlines and time limitations for filing complaints with the external agencies may apply, and HR's investigation does not toll or otherwise suspend these deadlines or time limitations. Please contact the following agencies for more information about the applicable deadlines:

Equal Employment Opportunity Commission

To file a claim with the EEOC, contact the nearest local EEOC office. More information about filing a claim with the EEOC can be found at <http://www.eeoc.gov/facts/howtofil.html>

EEOC — Cincinnati Area Office **EEOC — Cleveland District Office**

550 Main Street

10th Floor

Cincinnati, OH 45202

Phone: (513) 684-2851

TTY: (513) 684-2074

1240 E 9th Street

Suite 3001

Cleveland, OH 44113-1454

Phone: (216) 522-2001

TTY: (216) 522-8441

U.S. Department of Education Office for Civil Rights

1-800-421-3481

ocr@ed.gov

<http://www2.ed.gov/about/offices/list/ocr/index.html>

To file a claim with the Ohio Civil Rights Commission (OCRC), contact the nearest office below. More information about filing a claim with the OCRC can be found at the website. You may also check out more information at the [Office of Civil Rights Commission](#) website.

Columbus — Central Office

Rhodes State Office Tower

30 East Broad Street, 5th Floor

Columbus, OH 43215

Phone: (614) 466-2785

Toll-Free: (888) 278-7101

Columbus Regional Office

30 East Broad Street 4th Floor

Columbus, OH 43215

Phone: (614) 466-5928

TTY: (614) 752-2391

Fax: (614) 466-6250

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Akron Government Building

Suite 205

161 South High Street

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Point West III

3055 Kettering Blvd, Suite 111

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Akron, OH 44308

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