

## **Discrimination, Harassment, or Retaliation Complaint Operating Procedure**

Illegal discrimination, harassment and retaliation are prohibited. As such, Western Nebraska Community College has established both formal and informal procedures to report complaints alleging discrimination, harassment, and retaliation on the basis of race, color, national origin, disability, sex, and age.

### **Prompt Reporting:**

Discrimination, harassment or retaliation complaints are best resolved if addressed early. It may be difficult to substantiate the allegations made in a complaint brought after significant time has passed. The time lines set forth in this procedure are implemented in order to ensure that allegations are investigated and concluded in a timely fashion so that any ongoing conduct can be immediately halted and immediate discipline taken if warranted. Complaints under this procedure shall be made within thirty (30) days of the time the alleged conduct took place unless good cause is shown for the delay. The person alleged to have engaged in unlawful harassment, discrimination or retaliation shall be considered the "respondent" throughout this procedure. The person to whom the alleged unlawful harassment, discrimination or retaliation is directed shall be considered the "complainant" throughout this procedure.

### **Duty to Report:**

If the complainant believes that he/she has been subjected to illegal discrimination, harassment or retaliation, it shall be the duty of that complainant to report such conduct as provided herein. All other persons with direct knowledge of such conduct are encouraged to report knowledge of any illegal conduct involving discrimination, harassment or retaliation. The procedure for reporting is described below.

### **Reporting Procedure:**

The complainant who feels that he/she has been subjected to illegal discrimination, harassment or retaliation should feel free to inform the respondent, either through verbal or written communication, that the behavior is unwelcome and should cease. If the complainant does not feel comfortable in addressing this issue directly with the respondent or, if discussions do not produce a result acceptable to the complainant, then the complainant should make a complaint as provided by this procedure.

A witness who directly observes illegal discrimination, harassment or retaliation may address it directly with the respondent through verbal or written communication that the behavior is inappropriate and should cease. If the witness does not feel comfortable in addressing this issue directly with the respondent, he/she may file a complaint as provided by this procedure. If the witness files the original complaint under this procedure, this person shall not be considered the complainant for purposes of this procedure.

Any complainant, person with direct knowledge of prohibited conduct, or witness may file a written complaint under this procedure. The written complaint shall be submitted to the Vice-President of Human Resources (College's Institutional Civil Rights Officer: Mr. David Groshans, Vice President of Human Resources, WNCC, 1601 East 27<sup>th</sup> Street, Scottsbluff, NE, 6936-1815, (308) 635-6105, [groshans@wncc.edu](mailto:groshans@wncc.edu)). This contact information will also be published in all appropriate student and employment publications). In instances where Title IX compliance may be involved, the College may include/assign the institutional Title IX Officer as an investigator or reviewer. When a written complaint is submitted, it must include a specific description of the conduct complained of; identify the party or parties involved, and the date(s) and circumstances under which the alleged offensive or inappropriate conduct occurred. The complaint must also include an explanation of why the complainant or other reporting party believes that the alleged actions constitute discrimination, harassment or retaliation. The written complaint shall be dated and signed to acknowledge completeness and accuracy.

If a College supervisor receives an anonymous complaint from a student or employee either verbally or in writing, the College supervisor shall immediately send notice of the complaint to the Vice-President of Human Resources.

If the complaint is against the College President or a direct report to the President, the reporting party should make the report under this procedure directly to the Chair of the Board of Governors. If the complaint is against any member of the Board of Governors, the reporting party should make the report directly to the College President, the College's legal counsel, or any other member of the Board who is not the subject of the complaint.

For purposes of this procedure, it is assumed that a report recipient is not a respondent. In the event a person designated by this procedure to receive a report is a respondent in the complaint, the report shall be directed to another appropriate official.

**Deadlines:**

Due dates under this procedure shall be calculated based upon calendar days. If the due date specified falls on a weekend or holiday, the next business day will be the due date for the action. Either party may request a reasonable extension of time for any of the deadlines set forth in this procedure, including the time for making an initial complaint. While the intent of this procedure is to provide for the prompt reporting and investigation of claims of unlawful conduct, these deadlines are not meant to penalize. Therefore, failure to comply with the deadlines set forth herein will not invalidate a complaint, investigation or discipline.

**Retaliation:**

The College's commitment to eradication of any sort of illegal discriminatory or harassing conduct includes prohibiting actions taken in retaliation for complaining of violations of College policy. Retaliation includes taking any action which may have any adverse impact on the student's academic success or the learning environment of the

student if such action is taken because of the student's filing of or participation in the review of a complaint, whether or not such complaint is determined to be valid; or taking any action which may have any adverse impact on the employment status or the work environment of the employee, if such action is taken because of the employee's filing of or participation in the review of a complaint, whether or not such complaint is determined to be valid. The complainant is assured that retaliation due to filing a complaint under this procedure is strictly prohibited by law and by college policy, and shall lead to discipline up to and including termination or expulsion. Any person believing that retaliation has taken or is taking place should immediately report the matter as provided herein.

It shall be considered a violation of College policy for any individual to knowingly file a false or malicious complaint of discrimination, harassment or retaliation. If the College believes that such a false or malicious complaint has been filed, the matter will be investigated under the Formal Procedure review process of this procedure.

### **Complaint Resolution Procedures:**

Western Nebraska Community College has established both formal and informal procedures to resolve prohibited discrimination, harassment or retaliation complaints. Usually, complaints are most effectively addressed at the earliest possible stage. A student or employee who feels that he or she has been subjected to illegal discrimination, harassment or retaliation should feel free to inform the respondent, either through verbal or written communication, that the behavior is unwelcome and should cease. If the student or employee does not feel comfortable in addressing this issue directly with the respondent or, if discussions do not produce a result acceptable to the student or employee, then the student or employee shall file a written complaint in compliance with the Reporting Procedure section of this procedure.

After the complainant has filed his/her complaint in compliance with the Reporting Procedure section of this procedure, a designated officer will meet with the complainant to review the options for resolving this complaint. At this initial meeting, the complainant can request that either the Informal Procedure or Formal Procedure be followed. Based on this interview or at any other time while the Informal Procedure is being pursued, the officer or complainant may elect to move the complaint to the Formal Procedure if circumstances are determined to merit a more complete investigation.

Under either the Informal Procedure or Formal Procedure review process, all involved parties have a duty to cooperate with the review or investigation and they are not to knowingly impede, obstruct or delay the progress of the review. In particular, both the complainant and the respondent have the responsibility to provide all relevant information and facts to the matter under review.

### **Informal Procedure:**

If the Informal Procedure is elected, the Vice President of Human Resources will meet with the complainant to review the complaint, will discuss the allegation(s) with the

respondent, and identify solutions to the complaint. If both parties to the complaint agree to a solution(s), this solution(s) shall be written, signed and dated by both parties to acknowledge that they agree with the solution and agree to maintain the confidentiality of the matter to the extent possible. The Informal Procedure review shall be concluded within a period of thirty (30) days of receipt of the complaint. If a written resolution is reached during the Informal Procedure review, the complaint review process ends at this point.

Within sixty (60) days and again within six (6) months following completion of an Informal Procedure review, the designated officer shall follow up with the complainant and the respondent to determine the status of the resolution. The designated officer will report the results of these follow-up inquiries in writing to the Vice-President of Human Resources.

During the Informal Procedure review process, all parties involved in processing the complaint, including but not limited to the designated officer, shall each serve in a neutral role in the process and shall not act in an advocate role for the complainant or the respondent. The role of the designated officer will be to communicate the issues and identify potential solutions. Legal counsel may be consulted by the designated officer as appropriate. In the event a person designated by this procedure to receive or review a report is the respondent or otherwise involved in the matter, he/she shall be recused from this process and another appropriate official shall be appointed to fulfill that person's role.

If the complainant does not agree with a solution reached during the Informal Procedure, the complainant shall, within ten (10) calendar days of the conclusion of the Informal Procedure review, request in writing that the complaint be investigated through the Formal Procedure.

### **Formal Procedure:**

Under the Formal Procedure, the Vice-President of Human Resources should proceed under the following guidelines:

Upon receipt of a complaint, the Vice-President of Human Resources, or a designee, shall review the allegations provided in the complaint and may consult with legal counsel to determine the appropriate action required. If it is determined that the complaint has sufficient probable cause to be investigated under the College's Discrimination, Harassment and Retaliation Prohibited Policy and Procedure, the Vice-President of Human Resources shall appoint an investigator to investigate the complaint. The appointed investigator may be a College employee, or a third party retained by the College to conduct the assigned investigation. Where appropriate, two parties may be appointed to conduct such investigation.

The investigator shall promptly initiate an investigation of the complaint by discussing the complaint with the complainant and by interviewing any witnesses with relevant information, including but not limited to parties participating in or observing the conduct.

The respondent shall be given a copy of the complaint and shall be given the opportunity to respond in writing to the allegations within seven (7) days of notification of the complaint. All parties in the investigation are to be advised that information surrounding the complaint is to be kept confidential. Witnesses and the respondent are to be advised that retaliation against a complainant is strictly prohibited and may lead to discipline up to and including termination or expulsion. Additionally, the respondent shall refrain from contacting potential witnesses until the investigation is complete.

The investigator shall summarize the findings in a report to the Vice-President of Human Resources within sixty (60) days from receipt of the complaint or from the closure of the Informal Procedure review, whichever is later. When it is not reasonably possible to complete the investigation within that time, the investigation period may be extended by up to an additional sixty (60) days upon approval of the Vice-President of Human Resources. If the extension is granted, the parties to the complaint will be so notified.

The Vice-President of Human Resources shall review the investigator's report and shall, if warranted, take or recommend appropriate action. Not every complaint will necessarily warrant corrective action or discipline. However, if the investigation reveals that discrimination, harassment or retaliation has occurred, the respondent will be subject to discipline up to and including termination or expulsion.

During the Formal Procedure review process, the investigator and all other parties involved in processing the complaint shall serve in a neutral role in the process and shall not act in an advocate role for the complainant or the respondent. The role of the investigator will be to thoroughly investigate the issues as stated in the written complaint and to determine findings based on this review. Legal counsel may be consulted by the investigator as appropriate. In the event a person designated by this procedure to receive or review a report is the respondent or otherwise involved in the matter, he/she shall be recused from this process and another appropriate official shall be appointed to fulfill that person's role.

Within ten (10) days of receipt of the investigator's report, the Vice-President of Human Resources shall notify the complainant and the respondent of the outcome of the investigation and provide them with a summary of the investigation report. The complainant and the respondent shall also be reminded that retaliation taken because of the filing of a complaint is prohibited and that any such retaliation should be reported immediately.

Should the complainant not be satisfied with the conclusions of the investigation then, within ten (10) days of the date of the notice of determination, he/she may request review of the determination. If the complaint was filed against an employee or student, other than the President, a direct report to the President, or a Board member, the request for review shall be submitted to the Office of the President. Upon receipt of the request for review, the President shall designate an officer of the College to review the investigator's report and determine what, if any, appropriate action is required as a result of the findings of the investigation. The reviewer may review the complaint, interview the complainant

and the respondent, if necessary, and complete such other interviews as may be necessary to make a determination. The reviewer shall complete the review within fourteen (14) days. If additional time is needed to complete this review, the reviewing officer shall notify the complainant and the respondent that the review will be delayed, and indicate the reasons for the delay. The reviewer of the investigator's report shall provide a report to the President with his/her findings. The President shall consider this report and shall inform the complainant of his/her findings and conclusions. The decision of the President will be final.

If the complaint was filed against the President, someone who reports directly to the President or a Board member, the request for review shall be submitted to the Chair of the Board of Governors. Upon receipt of the request for review, the Chairperson of the Board of Governors shall contact legal counsel and coordinate the appointment of an external third party who shall serve as an investigator to conduct a review pursuant to the Formal Procedure set forth herein. At the conclusion of this review, legal counsel shall provide the Board of Governors a report and an accompanying recommendation from the reviewer for the Board's consideration. Following completion of the review of this report, the Board of Governors shall take any necessary and appropriate action. The action of the Board of Governors will be final.

**Confidentiality:**

A student or employee seeking general information or guidance about harassment may be concerned about whether the information they share will be confidential. While the College desires to create an environment in which individuals can discuss concerns and make complaints, legal obligations may require the College to take action once it is informed that illegal discrimination, harassment or retaliation may be occurring. Therefore, although the confidentiality of the information received and the privacy of the individuals involved cannot be guaranteed, they will be protected to as great an extent as is possible while still allowing for appropriate and necessary investigation of the matter to occur. The expressed wishes of the complainant regarding confidentiality will be considered in the context of the College's obligation to act upon the charge and the right of the respondent to be informed concerning the charge.

**Policy Enforcement Training:**

Western Nebraska Community College shall provide appropriate training for all staff selected to investigate a complaint under the Formal Procedure review process. The College shall determine the appropriate training required of these College employees and shall provide for periodic, required training and updates. An investigator selected from outside the College shall have demonstrated expertise in conducting such investigations.