

TITLE: Discrimination & Harassment Grievance Procedure

Purpose:

Trocaire College is committed to creating and maintaining a working and learning environment which is free of discrimination and intimidation. All complaints of discrimination and harassment will be thoroughly investigated to determine whether the totality of the alleged behavior and circumstances may constitute harassment, sexual harassment, discrimination, sexual violence or a form of misconduct. This procedure outlines the steps a complainant should take in order to have their complaint investigated and resolved. This prohibition against discrimination applies to all students, faculty, and staff, to other members of the College community, and to contractors, consultants, and vendors doing business or providing services to the College.

Policy:

Trocaire College does not discriminate in admission, employment, in the administration of its educational policies, scholarship and loan programs, and other institutionally administered programs, on the basis of an individual's actual or perceived, race, color, creed, religion, religious practice, national origin, ethnic group, sex, gender identity, sexual orientation, political affiliation, age, marital status, military status, veteran status, disability, domestic violence victim status, genetic information or any other basis prohibited by New York state and/or federal non-discrimination laws. Sexual harassment includes but is not limited to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment as defined in this policy and as otherwise prohibited by state and federal statutes. Sexual harassment, including acts of sexual assault, sexual violence or sexual exploitation, is a form of sex discrimination and is prohibited by the college. Retaliation against an individual because he or she made a complaint, testified or participated in any manner in an investigation or proceeding will not be tolerated and is unlawful under Civil Rights laws.

This policy is designed to promote a safe and healthy learning and work environment and to comply with multiple laws that prohibit discrimination, including but not necessarily limited to: Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act Amendments Act, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act, Title IX of the Education Amendments Act of 1972, the Pregnancy Discrimination Act of 1978, the Uniformed Services Employment and Re-employment Act, the Veteran's Readjustment Act of 1974, the Genetic Information Nondiscrimination Act of 2008, the Campus Sexual Violence Act ("SaVE Act") provision, Section 304, and any related NYS laws or regulations.

This procedure applies to all students and employees of Trocaire College who would like to bring forward a complaint of discrimination, harassment, or sexual assault or violence regardless

of where the alleged conduct occurred. Conduct that occurs off campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this policy, e.g. if off-campus harassment has continuing effects that create a hostile environment on campus.

The Civil Rights Compliance Officers can be contacted at CivilRightsCompliance@trocaire.edu

Up-to-date Civil Rights Compliance Officers contact information can be found at <https://www.trocaire.edu/about-trocaire/non-discrimination-policy>

Mandatory Employee Reporting:

All College employees, including faculty, staff, and administrators, except those employees who are statutorily prohibited from reporting such information, are required to share with the Civil Rights Compliance Officers any report of sexual misconduct they receive or of which they become aware. All College community members, even those who are not obligated by this policy, are strongly encouraged to report information regarding any incident of sexual misconduct to the Civil Rights Compliance Officers. The College will conduct a prompt, thorough, and impartial investigation of sexual harassment allegations regardless of whether or not a formal complaint is filed.

Prohibition against Retaliation:

No individual who makes a complaint alleging a violation of this policy or who participates in the investigation or resolution of such a complaint shall be subject to retaliation as a result of such activity or participation. Retaliation exists when action is taken against a complainant or participant in the complaint process that (i) adversely affects the individual's opportunity to benefit from the College's programs or activities; and (ii) is motivated in whole or in part by the individual's participation in the complaint process. Any acts of retaliation, as defined in this policy, shall be grounds for disciplinary action, up to and including dismissal for students and termination of employment for faculty, staff and administration.

Procedures:

1. Any student or employee of the College who wishes to file a complaint regarding discrimination or harassment shall, if possible, make such a complaint in writing using the Discrimination and Harassment Complaint Form.
2. The Discrimination and Harassment Complaint Form may be obtained by going to <https://www.trocaire.edu/about-trocaire/non-discrimination-policy> or clicking on the non-discrimination policy link on the bottom left side of every www.trocaire.edu webpage.
3. The Discrimination and Harassment Complaint Form is also available from the Civil Rights Compliance Officers, Student Counseling, Director of Student Life and the Chief Student Affairs Office.

4. If unable to make the complaint in writing, students should contact the Civil Rights Compliance Officers, Student Counselor, Director of Student Life or administrator. Employees may contact their department head or the Civil Rights Compliance Officers to assist with putting the complaint in writing.
5. The written complaint must be signed by the complainant, dated, and include at a minimum, the following information:
 - Date(s), time(s), place(s) of alleged incident(s)
 - Alleged perpetrators of the discrimination or harassment (names, identifiers, etc.)
 - Description of each incident, by date
 - Witnesses, if any (names and identifying information)
 - Other relevant information
 - Desired resolution – what you'd like to see change as a result of the investigation
6. The written Discrimination and Harassment Complaint Form should be forwarded to the Civil Rights Compliance Officers by yourself or the administrator or department head assisting you. If given to an administrator, s/he will forward the Complaint Form to the Civil Rights Compliance Officers.
7. Student complaints regarding another student may be handled by the Chief Student Affairs Officer or designee, through the Student Code of Conduct Process.
8. Individuals have the right to file criminal complaints. Any pending criminal investigation or criminal proceeding may have an impact on the timing of the College's investigation, but the College will commence its own investigation as soon as practicable under the circumstances.
9. It may be possible to resolve a complaint through a voluntary conversation between the complainant and the alleged harasser which would always be facilitated by a designated college employee or Compliance Officer. If the complainant and the alleged harasser feel that a resolution has been achieved, then the conversation may remain confidential and no further action needs to be taken. If the complainant, the alleged harasser or the facilitator choose not to use the informal procedure, or feels the informal procedure is inadequate or has been unsuccessful, he or she may proceed to the formal procedure.
10. Mediation/informal resolution processes will not be used for an allegation of sexual assault.
11. To start the formal procedures, the Civil Rights Compliance Officers or his/her designee will:

- a. Begin a fact-finding and full investigation which will be prompt, thorough and impartial to all parties. The investigation may include interviews of appropriate witnesses.
 - b. Both parties will have an equal opportunity to present relevant witnesses or submit other evidence on their behalf, speak on their own behalf, review any information that will be offered by the other party in support of the other party's position (to the greatest extent possible and consistent with the Family Educational Rights and Privacy Act ("FERPA") or other applicable law... Parties may not cross-examine one another.
 - c. Put in place temporary and reasonable remedies while the investigation takes place if merited by the allegations.
 - d. Both parties will be given periodic status updates.
12. Render a decision within sixty (60) calendar days following receipt of a complaint. The decision will be made as soon as reasonably possible. If the decision is to be delayed for good cause (e.g., key witnesses cannot be interviewed in a timely manner), the complainant, the accused and other material parties shall so be notified and an estimated date for a decision will be noted. Decisions will be made based on the preponderance of evidence standard.
13. Written determination of the final outcome and sanctions (if any) to the complainant and alleged perpetrator concurrently.
14. Both parties have seven (7) business days of receipt of the decision to appeal. If complainant or alleged perpetrator fails to notify the Civil Rights Compliance Officers of appealing the decision within the seven business days in writing, it will be assumed that the resolution is acceptable, and the Civil Rights Compliance Officer will ensure the changes / recommendations are implemented appropriately.
15. Retaliation in any form against the complainant, alleged perpetrator, witnesses or others involved is strictly forbidden and may result in disciplinary action up to and including dismissal or termination from the college.
16. Appeal Process: President-level or designee appeal
- a) The Civil Rights Compliance Officers will forward all materials, including the letter requesting appeal of the initial decision, to the President or designee for review.
 - b) The President or his/her designee will schedule a meeting within ten (10) business days of receipt of the request for review/appeal.
 - c) The participants at the scheduled meeting shall be, at a minimum, the party appealing, the Compliance Officer, and the President and/or his/her designee.
 - d) The President, or his/her designee(s), shall conduct a prompt, thorough and impartial review of the materials. S/he shall have the right to re-interview witnesses, e.g., if

- testimony is unclear or new evidence has been brought to light, or to interview additional witnesses if needed to ensure an equitable decision.
- e) The President, or his/her designee, will present his/her decision within ten (10) business days after the initial appeals meeting unless additional time is needed for good cause. If additional time is needed, both parties shall so be notified and provided with an estimated date of the appeal decision.
 - f) The decision of the President or designee shall be in writing, and sent to the complainant, the accused, and the Civil Rights Compliance Officers.
 - g) The decision of the President or designee is final.
17. To the extent permitted by law, the confidentiality of all parties involved in the resolution of alleged or suspected violations of this policy will be observed, provided that it does not interfere with the College's ability to conduct an investigation and take any corrective action deemed appropriate by the College. Where the College has received a report of sexual misconduct, but the Complainant requests that his/her identity remain confidential or that the College not pursue an investigation, the College must balance this request in the context of its responsibility to provide a safe and non-discriminatory environment for all College community members. The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to investigate may be limited by the request for confidentiality. Under these circumstances, the College will weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment, any potential threats to the community safety, the respective ages and positions of the complainant and the respondent, whether there have been other harassment complaints against the respondent, and the respondent's right to receive information under applicable law. At all times, the College will seek to respect the request of the complainant, and where it cannot do so, the College will consult with the complainant and keep him/her informed about the chosen course of action.
18. The College strongly encourages students to report instances of sex-based discrimination, sexual harassment and sexual misconduct involving students. Therefore, students who report information about sex-based discrimination, sexual harassment, or sexual misconduct involving students will not be disciplined by the College for any violation of the College's drug or alcohol possession or consumption policies in which they might have engaged in connection with the reported incident
19. Any allegations suspected to be fabricated for the purpose of harassing the accused party or disrupting the College's operations are subject to these investigation and grievance procedures and could result in disciplinary action, up to and including dismissal for students and termination of employment for faculty and staff.

20. For further discrimination grievance issues, please contact:

New York Office
Office for Civil Rights
U.S. Department of Education
32 Old Slip, 26th Floor
New York, NY 10005-2500

Telephone: 646.428.3900
Fax: 646.428.3843; TDD: 800.877.8339
E-mail: OCR.NewYork@ed.gov
<http://www2.ed.gov/about/offices/list/ocr/docs/howto.pdf>