



DISCRIMINATION & HARASSMENT GRIEVANCE PROCEDURE

Policy No. 129

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 or sexual violence. This procedure outlines the steps a complainant should take in order to have their complaint investigated and resolved. This prohibition against discrimination and harassment 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 predisposition or carrier status, or any other basis prohibited by New York state and/or federal non-discrimination laws or regulations. 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 is unlawful under Civil Rights laws and will not be tolerated.

This policy is designed to promote a safe and healthy learning and work environment and to comply with the laws that prohibit discrimination, including but not 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 sexual 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 Officer/Title IX Coordinator can be contacted at

CivilRightsCompliance@trocaire.edu



Up-to-date Civil Rights Compliance Officer/Title IX Coordinator contact information can be found at <https://trocaire.edu/title-ix-enough-enough-non-discrimination-resources/>

Definitions:

Discrimination:

Discrimination is the materially adverse treatment of an individual or group of individuals because they possess a protected characteristic. Protected characteristics include 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 predisposition or carrier status, or any other basis prohibited by New York State, local, and/or federal non-discrimination laws or regulations.

Harassment:

Harassment is a form of discrimination which involves unwelcome conduct, based on a protected characteristic, where the conduct creates an intimidating, hostile, or offensive academic environment or otherwise adversely affects academic opportunities or participation in the College's activities or benefits.

Claimant:

Shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.

Respondent:

A person accused of a violation who has entered an institution's judicial or conduct process.

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 includes harassment and intimidation, including but not limited to violence, threats of violence, property destruction, adverse educational or employment consequences, and bullying.

Retaliation exists when action is taken against a Reporting Individual 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.

Sex Discrimination

Sex discrimination includes all forms of sexual harassment, sexual assault, and other sexual violence by employees, students, or third parties against employees, students, or third parties. Students, employees, and third parties are prohibited from harassing students and/or employees whether or not the harassment occurs on Trocaire campuses and whether or not the incidents occur during working hours. All acts of sex discrimination including sexual harassment, sexual assault, and other sexual violence, are prohibited by Title IX.



Sexual Harassment:

Sexual harassment may consist of repeated actions or may even arise from a single incident if sufficiently extreme. The Reporting Individual and the accused individual may be of either gender and need not be of different genders. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature where:

- submission to such conduct by the individual is made a term of conditional employment or scholastic status, either explicitly or implicitly;
- submission to, or rejection of, such conduct by the individual influences personnel or scholastic decisions concerning that individual; or
- such conduct has the purpose or effect of interfering with the individual's work or academic performance or of creating an intimidating, hostile, or offensive working or scholastic environment for the individual.

Examples

1. Physical contact of a sexual nature including unwelcome touching, patting, hugging or brushing against a person's body.
2. Explicit or implicit propositions to engage in sexual activity.
3. Comments of a sexual nature, including:
 - Sexually explicit statements or questions
 - Sexually explicit jokes or anecdotes
 - Remarks of a sexual nature regarding a person's clothing or body
 - Whistling, ogling or leering
4. Inappropriate exposure to sexually-oriented graffiti, pictures, posters or other such materials.
5. Physical interference with or restriction of an individual's movements

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 Officer/Title IX Coordinator 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 Officer/Title IX Coordinator. The College will conduct a prompt, thorough, and impartial investigation of sexual misconduct or harassment allegations regardless of whether or not a formal complaint is filed.

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. Students filing a complaint of Sexual Violence, Dating Violence, Domestic Violence or Stalking will follow the procedures outlined in named Policy #124.



3. The Discrimination and Harassment Complaint Form may be obtained by going to <https://trocaire.edu/title-ix-enough-enough-non-discrimination-resources/> or clicking on the non-discrimination policy link on the bottom of every www.trocaire.edu webpage.
4. The Discrimination and Harassment Complaint Form is also available from the Civil Rights Compliance Officer/Title IX Coordinator, Chief Human Resources Officer, and the Chief Student Affairs Officer.
5. If unable to make the complaint in writing, students should contact the Civil Rights Compliance Officer/Title IX Coordinator, Chief Human Resources Officer, or Chief Student Affairs Officer. Employees may contact their department head, Civil Rights Compliance Officer/ Title IX Coordinator, or Chief Human Resources Officer to assist with putting the complaint in writing.
6. 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 would like to see change as a result of the investigation
7. The written Discrimination and Harassment Complaint Form should be forwarded to the Civil Rights Compliance / Title IX Coordinator or Chief Human Resources Officer by yourself or the administrator/ department head assisting you. If given to an administrator/department head, s/he will forward the Complaint Form to the Civil Rights Compliance/ Title IX Officer.
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 Claimant and the Respondent which would always be facilitated by a designated college employee or the Civil Rights Compliance/ Title IX Coordinator. If the Claimant and the Respondent feel that a resolution has been achieved, then the conversation may remain confidential and no further action needs to be taken. If the Claimant, the Respondent or the facilitator choose not to use the informal procedure, or feels the informal procedure is inadequate or has been unsuccessful, the Claimant may still proceed to the formal procedure.
10. Mediation/informal resolution processes will not be used for an allegation of sexual violence.
11. To start the formal procedures regarding matters related to Title IX, the Civil Rights Compliance Officer/Title IX Coordinator 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 but will have an opportunity to question each other through the hearing process.
 - c) Both parties will select an advisor of choice or one will be assigned during the investigation and/or hearing process.
 - d) Put in place temporary and reasonable remedies while the investigation takes place if merited by the allegations.
 - e) Both parties will be given periodic status updates.
 - f) Both parties will have an opportunity to review the investigative notes and have ten (10) days to respond with any revisions and/or updates.
 - g) A decision will be rendered as soon as possible with taking into account the ability for both parties to review all investigative notes and summaries. 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 claimant, the respondent and other material parties shall so be notified. An estimated date for a decision will be made noted. Decisions will be made based on the preponderance of evidence standard.
 - h) The Title IX Coordinator or his/her designee will prepare a written report at the conclusion of an investigation. The Investigator's written report will generally contain, at a minimum:
 - a summary of the investigation;
 - the Investigator's findings
 - i) Hearing Panel. They will provide the following:
 - Conduct a hearing with Claimant, Respondent, their advisors of choice, any witness(es) and members of the hearing panel.
 - include a recommendation concerning whether the Respondent should be found responsible for the alleged sexual misconduct, sexual harassment or Title IX covered action;
 - a summary of the rationale in support of the findings and the violations of the Title IX Policy of which was violated; and
 - if applicable, a recommendation regarding any actions the College will take to provide accommodations to the Claimant, Respondent or safety measure(s) for the college community.
 - j) If the Hearing Panel concludes that the Title IX policy was not violated, they will communicate their findings with the Claimant, Respondent, and advisors in writing.
12. To start the formal procedures regarding of the Non-Discrimination and Harassment Policy excluding Title IX matters: the Civil Rights Compliance Officer/Title IX Coordinator or his/her designee will:



- k) 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.
- l) 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 but will have an opportunity to question each other through the hearing process.
- m) Put in place temporary and reasonable remedies while the investigation takes place if merited by the allegations.
- n) Both parties will be given periodic status updates.
- o) Both parties will have an opportunity to review the investigative notes and have the ability to respond with any revisions and/or updates.
- p) A decision will be rendered as soon as possible with taking into account the ability for both parties to review all investigative notes and summaries. 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 claimant, the respondent and other material parties shall so be notified. An estimated date for a decision will be made noted. Decisions will be made based on the preponderance of evidence standard.
- q) The Title IX Coordinator or his/her designee will prepare a written report at the conclusion of an investigation. The Investigator's written report will generally contain, at a minimum:
 - a summary of the investigation;
 - the Investigator's findings
 - include a recommendation concerning whether the Respondent should be found responsible for the alleged misconduct, harassment or discriminatory action;
 - a summary of the rationale in support of the findings and the violations of the Non-Discrimination and Harassment Policy of which was violated; and
 - if applicable, a recommendation regarding any actions the College will take to provide accommodations to the Claimant, Respondent or safety measure(s) for the college community.
- r) If the Title IX Coordinator/CivilRights Officer concludes that the Non-Discrimination Policy was not violated, s/he will communicate their findings with the Claimant and Respondent in writing.

13. Sanctions/Corrective Action

If the results of the investigation indicate that the College should impose sections and/or remedies, the matter will be referred to the appropriate President's Council Member. If the Respondent is a student, the Chief Student Affairs Office, or designee, will implement sanctions in accordance with the Student Code of Conduct (Policy #600). If the Respondent is an employee, the Council Member or designee, after consultation with the Chief Human Resources Officer, will implement sanctions. If the Respondent is a Council Member, the President will implement sanctions. If the Respondent is the President or a Board member, the matter will be referred to the chair of the Board of Trustees who will proceed according to Board guidelines. The College will take reasonable steps to prevent the recurrence of any



violations of this policy and to correct the discriminatory effects on the reporting individual (and others, if appropriate).

14. Written determination of the final outcome and sanctions (if any) will be provided to the Claimant and Respondent concurrently.

Once written notice of the resolution has been provided, if the Respondent or Claimant is a student, she or he has the opportunity to appeal the outcome to the Judicial Appeals Board, pursuant to the process and procedures contained within Policy #605.

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.

15. If, at the conclusion of an investigation, it is determined that a Claimant, Respondent, or witness knowingly gave false or misleading information, it may be recommended that the individual be subject to disciplinary action, up to and including dismissal for students and termination of employment for faculty and staff.

15. 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>

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