

**NORTHEAST IOWA COMMUNITY COLLEGE EQUAL OPPORTUNITY, HARASSMENT, AND
NONDISCRIMINATION POLICY
FOR ALL FACULTY, STUDENTS, EMPLOYEES, AND THIRD PARTIES**

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POLICY: EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION

1. Rationale for Policy

NICC is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination and harassment based on a protected characteristic, and retaliation for engaging in a protected activity.

NICC 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 involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, NICC has developed 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 a protected characteristic, and for allegations of retaliation.

2. Applicable Scope

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. At other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When an alleged policy violation is reported, the allegations are subject to resolution using NICC's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the NICC community, a Formal Complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the NICC community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as [guests, visitors, volunteers, vendors, contractors, invitees, and campers]. The procedures below may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed and investigated in accordance with this Policy.

NICC recognizes that reports and/or Formal Complaints under this Policy may include multiple forms of discrimination and harassment as well as violations of other NICC policies; may involve various combinations of students, employees, and other members of the NICC community; and may require the simultaneous attention of multiple NICC departments. Accordingly, all NICC departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable NICC policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination and harassment or retaliation.

3. Title IX Coordinator

The Executive Director for Risk Management serves as the Title IX Coordinator and ADA/504 Coordinator for students, and oversees implementation of NICC's Affirmative Action and Equal Opportunity plan, and NICC's policy on equal opportunity, harassment, and nondiscrimination.

The Title IX Coordinator has the primary responsibility for coordinating NICC's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this Policy.

All parties will be provided with comprehensive information detailing options and resources, which the Title IX Coordinator may also review with the parties in person.

4. Independence and Conflict of Interest

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these 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, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the Executive Director of Human Resources at kuennenc@nicc.edu. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

5. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this Policy and procedures, may be made internally to:

Name: Kelly McMahon
Title IX Coordinator
Office of Risk Management
Location: PEOS 231E
844-642-2338 x 2477
Email: mcmahonke@nicc.edu

Name: Sharon Lyons
Title IX Deputy Coordinator
Office of Human Resources
Location: PEOS 231B
844-642-2338 x 2183
Email: lyonssh@nicc.edu

Name: Zachary Hodgerson
Title IX Deputy Coordinator
Office of Risk Management
Location: Calmar Student Services 139
844-642-2338 x 1479
Email: hodgersonz@nicc.edu

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

Name: Connie S. Kuennen
Executive Director of Human Resources
Location/Address: Calmar Schrage Administration Building
844-642-2338 x 1300
Email: kuennenc@nicc.edu

NICC has also classified all employees except mental health counselors as Title IX Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on [Title IX Mandated Reporting](#) details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Chicago Office
Office for Civil Rights
U.S. Department of Education
John C. Kluczynski Federal Building
230 S. Dearborn Street, 37th Floor, Chicago, IL 60604
Telephone: 312.730.1560
Facsimile: 312.730.1576
TDD: 800.877.8339
Email: OCR.Chicago@ed.gov

Iowa Civil Rights Commission
Grimes State Office Building
400 E. 14th Street
Des Moines, IA 50319-0201
515-281-4121, 1-800-457-4416
Fax 515-242-5840

For complaints involving an employee-on-employee conduct: [Equal Employment Opportunity Commission](#) (EEOC)

Milwaukee District Office
Reuss Federal Plaza
310 West Wisconsin Avenue, Suite 800
Milwaukee, WI 53203-2292
414-662-3680
Fax: 414-297-4133
TTY: 1-800-669-6820

6. Notice/Complaints of Discrimination, Harassment, and/or Retaliation

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a report or Formal Complaint with, or give verbal notice to, the Title IX Coordinator, Deputy Coordinators, or Official With Authority. Such a report or Formal Complaint may be made at any time (including during non-business hours).
- 2) Report online, using the [incident of concern](#) form. Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. NICC tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant.

Because reporting carries no obligation to initiate a formal response, and because NICC respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of confidentiality by making a report that allows NICC to discuss and/or provide supportive measures.

As used in this Policy, the phrase “Formal Complaint” means a document or electronic submission (such as by electronic mail or through the incident of concern report) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that NICC investigate the allegations. 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.

7. Supportive Measures

NICC 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 and as reasonably available. They are offered, without fee or charge to the parties, to restore or preserve access to the NICC’s education program or activity, including measures designed to protect the safety of all parties and/or the NICC’s educational environment and/or to 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, the NICC will inform the Complainant, in writing, that they may file a Formal Complaint with the NICC either at that time or in the future, if they have not done so already. The Title IX Coordinator works

with the Complainant to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

NICC will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair NICC's ability to provide those supportive measures. NICC will act to ensure as minimal an academic/occupational impact on the parties as possible. NICC 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
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- [Timely warnings](#)
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions will be referred to appropriate student or employee conduct processes for enforcement.

8. Immediate Interim Suspension

NICC can act to remove a student Respondent from its education program or activities—partially or entirely—on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator using objective violence risk assessment procedures.

When an immediate interim suspension is imposed, the student will be given notice of the action, along with a written justification, and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon as reasonably possible

thereafter, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the immediate interim suspension is appropriate. When this meeting is not requested, objections to the immediate interim suspension will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting. This section also applies to any restrictions that a coach or college administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for immediate interim suspension decisions.

The Title IX Coordinator has sole discretion under this Policy to implement or modify an immediate interim suspension and to determine the conditions and duration. Violation of an immediate interim suspension under this policy will be grounds for discipline within the student or employee conduct processes, which may include expulsion or termination.

NICC will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take incomplete grades without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural/club athletics].

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact on the parties as possible.

When the Respondent is an employee, or a student employee, accused of misconduct in the course of their employment, existing provisions for interim action are applicable instead of the above immediate interim suspension process.

9. Promptness

Once NICC has received notice or a Formal Complaint, all allegations are promptly acted upon. Complaints typically take 60-90 business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but NICC will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in NICC procedures will be delayed, NICC will provide written notice to the parties of the delay, the cause for the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

10. Confidentiality/Privacy

Every effort is made by NICC to preserve the confidentiality of reports. NICC will not share the identity of any individual who has made a report or Formal Complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of harassment, discrimination, or retaliation; any Respondent; or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA) or its implementing regulations, or as required by law; or to carry out the purposes of 34 C.F.R. Part 106, including any investigation, hearing, or grievance proceeding arising under these policies and procedures.

NICC reserves the right to determine which NICC officials have a legitimate educational interest in being informed about incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint. Information will be shared as necessary with Investigators, Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

NICC may contact parents/guardians of students to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically [below](#).

11. Jurisdiction

This Policy applies to the NICC's education program and activities, to conduct that takes place on property owned or controlled by the NICC, at NICC-sponsored events, and in buildings owned or controlled by NICC's recognized student organizations. The Respondent must be a member of NICC's community in order for this Policy to apply.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprive a person of access to NICC's education program or activities. The NICC may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial NICC interest.

Regardless of where the conduct occurred, NICC will address notice/complaints to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on campus (including virtual learning and employment environments) or in an off campus sponsored program or activity. A substantial NICC interest includes:

- 1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
- 2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
- 3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- 4) Any situation that substantially interferes with the educational interests or mission of NICC.

If the Respondent is unknown or is not a member of the NICC community, the Title IX Coordinator will assist the Complainant in identifying appropriate institutional and local resources and support options. If criminal conduct is alleged, the NICC can assist in contacting local or institutional law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the NICC's community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator.

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

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

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, or other environment external to NICC where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse.

12. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to NICC's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

13. Online Harassment and Misconduct

NICC policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on NICC's education program and activities or when they involve the use of NICC networks, technology, or equipment.

Although NICC may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to NICC, it will engage in a variety of means to address and mitigate the effects.

Members of the NICC community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or sex-based messaging; distributing, or threatening to distribute nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the NICC community.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the NICC's control (e.g., not on NICC networks, websites, or between NICC email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

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

Off-campus harassing speech by employees, whether online or in person, may be regulated by NICC only when such speech is made in an employee's official or work-related capacity.

14. Policy on Nondiscrimination

NICC adheres to all federal, state, and local civil rights laws and regulations prohibiting discrimination in higher education institutions.

A. Protected Characteristics

It is the policy of Northeast Iowa Community College not to discriminate on the basis of age (employment), race, creed, color, sex, sexual orientation, gender identity, national origin, religion, actual or potential parental, family or marital status (programs), or disability as required by Iowa Code §§ 216.6 and 216.9, Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d and 2000e), the Equal Pay Act of 1973 (29 U.S.C. § 206, et seq.), Title IX (Educational Amendments, 20 U.S.C. §§ 1681 – 1688), Section 504 (Rehabilitation Act of 1973, 29 U.S.C. § 794), and Title II of the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.).

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the NICC community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the NICC community, guest, or visitor on the basis of that person's actual or perceived protected characteristics listed above, is in violation of NICC's Nondiscrimination Policy.

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

B. Inclusion Related to Gender Identity/Expression

NICC strives to ensure that all individuals are safe, included, and respected in their working and learning environments, regardless of their gender identity or expression, including intersex, transgender, agender, and gender diverse students and employees.

Discrimination on the basis of gender identity or expression is not tolerated by NICC. If a member of the NICC community feels they have been subjected to discrimination under this Policy, they should follow the appropriate reporting/Formal Complaint process described above.

In upholding the principles of equity and inclusion, NICC supports the full integration and healthy development of those who are transgender, transitioning, or gender diverse, and seeks to eliminate any stigma related to gender identity and expression.

NICC is committed to fostering a climate where all identities are valued and create a more vibrant and diverse community. The purpose of this Policy is to have NICC

administratively address issues some students and employees, including those identifying as intersex, transgender, agender, and gender diverse, may confront as they navigate systems originally designed around the assumption that gender is binary. As our society's understanding of gender evolves, so do the NICC's processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all but understanding them is essential to NICC's goal of being as welcoming and inclusive a community as possible.

Misgendering is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Intentional misgendering is inconsistent with the type of community we hold ourselves out to be. We all get to determine our own gender identity and expression, but we don't get to choose or negate someone else's.

Deadnaming, along with misgendering, can be very traumatic to a person who is transgender, transitioning, or gender diverse. Deadnaming means using someone's birth-assigned (cisgender) name, rather than the name they have chosen.

Intentional deadnaming could be a form of bullying, outing, or otherwise harassing an individual, and thus should be avoided.

This policy should be interpreted consistent with the goals of maximizing the inclusion of intersex, transgender, transitioning, agender, and gender diverse students and employees, including:

- Maintaining the privacy of all individuals consistent with law
- Ensuring all students equal access to educational programming, activities, and facilities, including restrooms and locker rooms
- Ensuring all employees equal access to employment opportunities and work, service, or health-related facilities
- Providing professional development for employees and education for students on topics related to gender inclusion
- Encouraging all students and employees to respect the pronoun usage and identities of all members of the NICC community

NICC has set forth its specific processes for implementing this Policy through the accompanying Title IX-related procedures.

15. Disability Discrimination and Accommodation Policy

NICC is committed to full compliance with the Americans with Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal, state, and local laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by NICC, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The Executive Director of Risk Management has been designated as NICC's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

A. Students with Disabilities

NICC is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to NICC academic programs, facilities, and activities.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Director of Accessibility Services, who coordinates services for students with disabilities.

The Director of Accessibility Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s) in accordance with applicable NICC policies.

B. Employees with Disabilities

Pursuant to the ADA, NICC will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the NICC.

An employee with a disability is responsible for submitting an accommodation request to the Executive Director of Human Resources and providing necessary documentation.

The Executive Director of Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties in accordance with applicable NICC policies.

16. Discriminatory Harassment Policy

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial, or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under NICC Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of NICC Policy, though supportive measures will be offered to those impacted. All offense definitions encompass actual and/or attempted offenses.

A. Discriminatory Harassment

Discriminatory harassment—defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived characteristic protected by policy or law—is a form of prohibited discrimination under NICC policy.

NICC does not tolerate discriminatory harassment of any employee, student, visitor, or third party. NICC will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive and objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, NICC may also impose sanctions on the Respondent through application of the appropriate grievance process.

NICC reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct will not result in the imposition of discipline under NICC policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, employees should contact the Executive Director of Human Resources, and students should contact the Executive Director for Risk Management.

B. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Iowa regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

NICC has adopted the following definition of sexual harassment in order to address the unique environment of an academic community.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex, or that is sexual in nature, that satisfies one or more of the following:

- **Quid Pro Quo:** conduct of an employee of NICC that conditions the provision of an aid, benefit, or service of NICC on an individual's participation in unwelcome sexual conduct.
 - **Sexual Harassment:** unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and, objectively offensive, that it effectively denies a Complainant equal access to the NICC's education program or activity.
- 1) **Sexual Assault** is defined as any sexual act directed against a Complainant, without their consent, or instances in which the Complainant is incapable of giving consent.
 - a. **Incest** is defined as non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Iowa law.
 - b. **Statutory Rape** is defined as non-forcible sexual intercourse, with a person who is under the statutory age of consent of Iowa.
 - 2) **Dating Violence** is defined as violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

- a. **Dating violence** includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- b. **Dating violence** does not include acts covered under the definition of domestic violence.

3) **Domestic Violence** is defined as violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant; by a person with whom the Complainant shares a child in common; or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Iowa, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Iowa.

4) **Stalking** is defined as engaging in a course of conduct, on the basis of sex, directed at the Complainant, that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.

- a. Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- b. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- c. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

NICC 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. The most serious offenses are likely to result in suspension/expulsion/termination.

C. Unethical Relationships Policy

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student or supervisor and employee). 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.

D. Force, Coercion, Consent, and Incapacitation

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

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence 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 unreasonable 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.

Individuals may perceive and experience the same interaction in different ways. Therefore, 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 consent. For example, if 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 reasonably immediate 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. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.

In the State of Iowa the legal age of consent for sexual intercourse is 16 years old. Individuals 14 and 15 years of age may consent to sex with a person within 48 months of their age. Individuals less than 13 years of age cannot legally consent to sexual intercourse.

Proof of consent or non-consent is not a burden placed on either party involved in a complaint. Instead, the burden remains on NICC 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 misconduct occurred and any similar and previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, thus NICC’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

Incapacitation: A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drug consumption. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

E. Other Civil Rights Offenses

In addition to the forms of sexual harassment described above, which are covered by Title IX, NICC additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant’s actual or perceived protected characteristic.

- 1) **Sexual Exploitation** is defined as an individual taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute Sexual Harassment under this Policy.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity; or disseminating sexual pictures without the photographed person’s consent), including the making or posting of non-consensual pornography
- Prostituting another person

- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
 - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
 - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
 - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
 - Knowingly soliciting a minor for sexual activity
 - Engaging in sex trafficking
 - Knowingly creating, possessing, or disseminating child pornography
- 2) **Harm/Endangerment** is defined as threatening or causing physical harm; extreme verbal, emotional, or psychological abuse; or other conduct which threatens or endangers the health or safety of any person or damages their property.
- 3) **Discrimination** is defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities, including disparate treatment.
- 4) **Intimidation** is defined as implied threats or acts that cause the Complainant reasonable fear of harm.
- 5) **Hazing** is defined as acts likely to cause physical or psychological harm or social ostracism to any person within the NICC community, when related to the joining or participating in any group-affiliation activity.
- 6) **Bullying** is defined as repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the Complainant, that is not speech or conduct that is otherwise protected by the First Amendment.

Violation of any other NICC policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived protected characteristic(s), 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 warning through expulsion/termination.

17. Retaliation

NICC and any member of NICC's community are prohibited from taking or attempting 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.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. NICC will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

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

It is not retaliatory for NICC to pursue a code of conduct violation for providing material false statements in the course of the grievance process.

18. Title IX Mandated Reporting

All NICC employees (faculty, staff, administrators) are expected to report actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions.

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting institutional resources. Within the institution, some resources may maintain confidentiality and are not required to report actual or suspected harassment, discrimination, or retaliation in a way that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or institution 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 alleged 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 or required by law), who will act when an incident is reported to them.

The following sections describe the NICC reporting options 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 mental health counselors
- Community-based (non-employees):
 - Licensed professional counselors and other medical providers
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains
 - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designation, except in extreme cases of immediacy of threat or danger to self or others, or when required to disclose by law or court order.

NICC's Mental Health counselors (students) and the Employee Assistance Program (employees) are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Employees who have confidentiality as described above, and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

B. Mandated Reporters and Formal Notice/Complaints

All NICC employees (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 all 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 research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the NICC.

Supportive measures may be offered as the result of such disclosures without formal NICC action.

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

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this Policy, they still have a duty to report their own misconduct, though NICC is technically not on notice simply because a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

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.

19. 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, and/or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the institution and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the NICC proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process, usually upon completion of an appropriate violence risk assessment.

The Title IX Coordinator’s decision is based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires NICC to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. NICC may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and NICC's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When NICC proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that NICC's ability to remedy and respond to notice may be limited if the Complainant does not want the NICC to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the NICC's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the NICC to honor that request, the NICC may offer [Informal Resolution](#) options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by NICC and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

20. Federal Timely Warning Obligations

NICC must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

NICC will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

21. False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence; tampering with, or destroying, evidence; or deliberately misleading an official conducting an investigation, hearing, or informal resolution can be subject to discipline under appropriate NICC policies.

22. Amnesty

The NICC community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to NICC officials or participate in resolution 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 NICC community that Complainants choose to report misconduct to NICC 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, NICC maintains a policy of offering parties and witnesses amnesty from minor policy violations—such as underage consumption of alcohol or the use of illicit drugs—related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty—the incentive to report serious misconduct—is rarely applicable to Respondent with respect to a Complainant.

Sometimes, students or employees are hesitant to assist others for fear that they may get in trouble themselves. NICC maintains a policy of amnesty for individuals who offer help to others in need. Although policy violations cannot be overlooked, NICC may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

24. Process A

These procedures apply only to allegations of sexual harassment that, if true, would meet the definition of Title IX Sexual Harassment as defined in Section 16 of the Policy.

25. Process B

These procedures apply to all allegations of discrimination, harassment, sexual misconduct, or retaliation on the basis of protected class status involving students, staff, faculty members, or third parties that are not addressed under Process A, as determined by the Title IX Coordinator or applicable regulations. Process B also applies to allegations of Title IX Sexual Harassment as defined in the policy that are dismissed under Process A prior to a determination of responsibility being made.