

Centenary College of New Jersey

ANTI- HARASSMENT, DISCRIMINATION & RETALIATION POLICY Revised April, 2009

Approved by: *Barbara-Jayne Lewthwaite, Acting President*
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Introduction

Centenary College is committed to maintaining an academic and workplace environment free from all forms of unlawful sexual or other harassment, discrimination and retaliation in connection with academic and employment practices.

Applicability of Policy

This Policy sets forth the College's zero tolerance for sexual or other unlawful harassment or discrimination or retaliation of any kind whether it be by a Faculty member, Staff member/employee, Student, visitor or third-party transacting business with any member(s) of the College. This Policy prohibits sexual or other unlawful harassment, discrimination or retaliation against all members of the College community (including Faculty members, Staff members/employees and Students) as well as non-employees including but not limited to employment applicants and applicants for academic enrollment. This Policy further prohibits retaliation against anyone who complains pursuant to this Policy, or participates in an investigation pursuant to this Policy. It is the responsibility of all members of the College community to abide by this Policy.

Laws Regarding Discrimination & Sexual Harassment

The College abides by all applicable federal, state and local laws that prohibit unlawful discrimination or harassment on the basis of race, color, national origin, ancestry, creed, age, religion, sex, gender, affectional or sexual orientation, marital or family status, military or veteran status, disability or any other protected trait or class, in any educational or employment program, policy or practice of the College. By way of example, Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex and national origin in employment practices. Title IX of the 1972 Education Amendments prohibits discrimination on the basis of sex in education programs receiving federal funds. The Federal courts, and the Equal Employment Opportunity Commission (EEOC) in its April 1980 Sexual Harassment Guidelines, have ruled that the sexual harassment of employees constitutes unlawful sex discrimination and is a violation of Title VII. Discrimination and sexual harassment are violations of federal and state law as well as serious violations of Centenary College policy and will not be tolerated.

- Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
- Submission to or rejection of such conduct is made implicitly or explicitly a term or condition of instruction, employment or participation in any Centenary College activity;
- Submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting an individual;
- Such verbal or physical conduct has the effect of unreasonably interfering with an individual's work, academic performance, or living conditions by creating an intimidating, hostile or offensive environment.

Sexual harassment is a form of discrimination because it unjustly deprives a person of equal treatment. It can endanger a person's well-being by impeding the ability to work, and interfering with educational opportunities. It can occur between people of the same sex as well as between those of different sexes.

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Examples of Discrimination and Harassment

Examples of behaviors or conduct which may constitute unlawful workplace/academic environment harassment and/or discrimination include, but are not limited to:

- Racial or ethnic jokes whether communicated verbally, in writing or electronically (e.g. via e-mail);
- The use of race or ethnic based nicknames;
- Responding to deficiencies in job or academic performance differently based upon the employee's or student's race, national origin or religion.

Examples of behaviors or conduct which may constitute unlawful sexual harassment include, but are not limited to:

- Unwelcome sexual propositions, invitations, solicitations and flirtations or requests for "dates";
- Visual contact, such as leering or staring at another's body, gesturing, displaying sexually suggestive objects, cartoons, posters, magazines or pictures of scantily-clad individuals;
- Denying training, promotion, or access to any other employment or academic opportunity because sexual advances have been rejected;
- Unwelcome and inappropriate touching, patting, fondling, pinching or obscene gestures;
- Graphic verbal commentary about a person's body, dress, appearance, sexual activities, whistles and obscene telephone calls;
- Sexually suggestive objects, pictures, videotapes, audio recordings, electronic communications or literature.

Policy Against Retaliation

The College prohibits unlawful retaliation against anyone who has complained about unlawful sexual or other harassment, discrimination or retaliation, as well as those who support any individual making such complaint or who provide information or participate in an investigation into any such good faith complaint or report. Fear of retaliation should not be a barrier to reporting incidents of harassment or discrimination, or to the making of any good faith complaints whatsoever. Retaliation is a serious violation of Centenary College policy and will not be tolerated. Retaliation is, in addition to the underlying conduct about which a Complainant has complained, grounds for disciplinary action.

It shall not be retaliation for a Claimed Offender to defend him/herself against a complaint of sexual or other harassment, discrimination or retaliation under this Policy.

Complaint Procedures

The procedures described below are provided for the prompt and equitable resolution of complaints by Faculty members, Staff members/employees or Students who believe they might be the victim of a specific act or pattern of conduct falling within the above definitions of harassment or discrimination and/or complaints which involve retaliation regarding complaints about such conduct or participation in an investigation into any such complaint. Any individual having such a belief, or making such a claim (referred to as the "Complainant"), may do either or both of the following:

1. Engage In Self-Help

In circumstances where the Complainant believes she or he has been or is the subject of unlawful sexual or other harassment, discrimination or retaliation, and that there is no jeopardy to the Complainant's personal safety, the Complainant may, solely at her or his option, verbally or in writing communicate to the Claimed

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Offender that the behavior is unwelcome and/or offensive and request that the conduct cease immediately. The Complainant should keep a record of what happened, the date it happened, the names, addresses and telephone numbers of any witnesses to the conduct, and a record of her or his communication with the Claimed Offender.

2. Complaint

A Faculty or Staff member who is a Complainant may make a complaint to the Director of Human Resources who is the Equal Opportunity Employment Officer for non-Students (referred to as the Director), or designee. A Centenary Student who is a Complainant may make a complaint to the Dean of Students who is the Equal Opportunity Employment Officer for Students (referred to as the Dean), or designee. When a complaint involves both Students(s) and non-Student(s) (i.e., Faculty, Staff, Visitor etc.), the Director of Human Resources, or designee, and the Dean of Students, or designee, will both be involved in the investigation of the complaint, utilizing these Policy guidelines.

Complainants are encouraged to provide the following information to the Director of HR or designee, (for Faculty and Staff) or the Dean of Students, or designee, (for Students) preferably in writing:

- The Complainant's name and status within the College community including:
 - For Faculty member or Staff member/employee's: title, department, full-time or part-time status
 - For Students: academic program, student status (1st or 2nd yr, etc.);
- The basis for the complaint: unlawful sexual or other harassment, discrimination and/or retaliation;
- A brief description of what occurred including, but not limited to, dates and times of all claimed unlawful conduct; names and any available contact information of witnesses or individuals who have any knowledge of the claimed unlawful conduct;
- The name and position/status of the College community member, visitor or third-party who engaged in the claimed unlawful conduct;
- The date on which the Complainant first knew of the claimed unlawful conduct and any steps the Complainant has taken, to date, if any, to resolve the complaint;
- A statement of the remedy or relief sought by the Complainant;
- The Complainant's signature and date of signature;
- Copies of materials, if any, which the Complainant believes may be relevant to the College's investigation should be attached and/or provided.

Any complaints under this Policy shall be made within 90 days following the last claimed act of unlawful sexual or other harassment, discrimination or retaliation. Where self-help was pursued by the Complainant, or for any good cause to be determined by the Director of HR (for Faculty and Staff), or the Dean of Students (for Students) the 90-day limit may be extended by the Director of HR in her/his sole discretion (for Faculty and Staff) or the Dean of Students (for Students) in her/his sole discretion.

The Director of HR, Dean of Students, or designee, (referred hereinafter as the Director/Dean) will review with the Complainant the Complainant's perception of unlawful sexual or other harassment, discrimination or retaliation. The Director/Dean may then do any of the following things, or any combination thereof, in her or his discretion:

- Discuss (separately) with the Complainant and the Claimed Offender the claimed unlawful conduct;

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- Gather any other information or conduct any investigation or interviews that the Director/Dean, in her or his discretion, deems appropriate;
- Remind the Claimed Offender of the College's Policy against such claimed unlawful conduct and this Policy's provisions against retaliation;
- Attempt to facilitate an informal solution to the extent practicable under the circumstances;
- Take other steps deemed appropriate by the Director/Dean which may include (i) instructing the Complainant and Claimed Offender to refrain from engaging in any communication except that which is required for business and/or academic purposes pending resolution of the matter; and/or (ii) taking appropriate steps so that the Complainant and the Claimed Offender will have minimal or no business or academic contact with one another, to the extent practicable, pending resolution of the matter.
- Refer the complaint to the Anti-Discrimination and Harassment Committee (the "Committee") for review, investigation and action by that Committee as set forth below if the Director/Dean deems the same appropriate under the circumstances after consultation with the President or designee. Any determination by the Director/Dean to forward a matter to the Committee for review and action shall be made as soon as practicable and in no event later than 90 business days of the Director/Dean's receipt of a complaint under this Policy absent good cause warranting an extension of time.

While the Director/Dean will be sensitive to a Complainant's wishes not to proceed, if any, in certain circumstances, the College may need to take action including, but not limited to, the referral of a complaint to the Committee for further review and/or investigation and action consistent with the College's legal obligations and/or this Policy. Should a resolution of the matter deemed appropriate to the Director/Dean be reached short of the forwarding of the complaint to the Committee, the Director/Dean will file all documentation concerning a complaint against any Faculty member, Staff member/employee or Student in the Human Resources Department separate from Faculty or Staff member/employee personnel files or Student files, as the case may be. These records will be maintained in order to document that a complaint was made and that a resolution was reached. However, letters of disposition will be filed in the Faculty or Staff member/employee personnel files and Student files, respectively.

Within 15 business days of any determination by the Director/Dean that a complaint should proceed to the Committee for review and/or investigation and action, the Director/Dean shall convene the Committee which shall commence review and/or investigation of the matter.

- For any complaint against a Faculty member, or by a Faculty member against another Faculty member, the Committee shall consist of 2 Faculty members selected by the College (1 male/1 female) who are not involved with the complaint, and the Director of HR.
- For any complaint by a Faculty member against a Staff member/employee, Student, visitor or third party transacting business with the College, the Committee shall consist of 2 members, 1 Faculty member and 1 Administrative Official, (1 male/1 female), selected by the College who are not involved with the complaint, and the Director of HR.
- For all other complaints, the Committee shall consist of 2 Administrative Officials selected by the College (1 male, 1 female) who are not involved with the complaint, and the Director of HR.
- For a complaint involving a Student, the Dean of Students or designee will be a member of the Committee.

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The Director/Dean shall chair each Committee and orient it to its responsibilities. The Committee shall hear statements from the Complainant, the Claimed Offender (separately) and other persons as the Committee may, in its sole discretion, deem essential for reviewing the complaint and shall review all documentation which the Director/Dean may supply to the Committee, if any.

The Director of HR shall, as soon as practicable and in any event no later than 90 business days after receipt of the complaint, make reasonable effort to ensure that a fact-finding investigation of the complaint is completed and that the Committee submits a final report, inclusive of recommendation(s) regarding resolution of the complaint, to the President or designee and others with a legitimate need to know within 90 business days of receipt of the complaint by the Committee.

The final report shall be based upon statements and evidence presented formally during the course of the hearing. If the Claimed Offender is found to have violated this Policy, the Committee may, in determining its recommendation(s), take into account previous disciplinary action(s), if any, against the Claimed Offender.

Upon receipt of the Committee's recommendation, the President of the College or designee will, in the case of a Staff member/employee, Student or other individual not governed by Article IX of the College's Constitution, make a final and binding decision and, in the case of a Faculty member governed by Article IX of the College's Constitution, make a recommendation. The final and binding decision or recommendation, as the case may be, may include, but is not limited to, (1) a letter of disposition which includes a statement of the College's Policy against unlawful sexual or other harassment, discrimination and/or retaliation or (2) a letter of disposition stating the discipline or recommended discipline for the Offender up to and including termination of employment for a Staff member/employee, expulsion in the case of a Student and dismissal for cause in the case of a Faculty member governed by Article IX of the Constitution.

In the event (1) the Claimed Offender is a Faculty member governed by Article IX of the Constitution of the College and (2) the President recommends any action subject to the provisions of Article IX, Section D, the procedures set forth in Article IX, Section D shall be followed.

If any complaint under this Policy is made against the Director of Human Resources or the Dean of Students, the functions assigned to that person under this Policy will be transferred to an individual designated by the President of the College.

In addition to utilizing the internal procedures set forth in this Policy, any Faculty member, Staff member/employee or Student who believes that she/he has been the subject of unlawful sexual or other harassment, discrimination and/or retaliation may file a complaint directly with external agencies that investigate discrimination, harassment and retaliation charges.

Prompt Investigation and Confidentiality

Complaints of unlawful sexual or other harassment, discrimination and/or retaliation are serious violations of College policy. Once a complaint of unlawful sexual or other harassment, discrimination or retaliation has been made, the College has an obligation to promptly investigate the matter. The College will be respectful of the Complainant's wishes not to proceed, recognizing, however, that in certain circumstances the College may need to implement any or all of the procedures set forth above and/or other appropriate action in accordance with the College's legal or other responsibilities. The College will take prompt remedial action to address a substantiated complaint of unlawful sexual or other harassment, discrimination or retaliation as

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deemed appropriate by the College, in its sole discretion, and in accordance with this Policy and all applicable law.

All investigations into claims of unlawful sexual or other harassment, discrimination and/or retaliation will be conducted respectfully. Every reasonable effort will be made to preserve confidentiality, to the extent practicable, however, in the course of an investigation it will be necessary to discuss the complaint with the Claimed Offender, other persons who may have relevant information and those with a legitimate need to know.

Duty to Cooperate

Supervisors, those who have supervisory responsibility over Faculty members, Staff members/employees, are under an affirmative obligation to report incidents of unlawful sexual or other unlawful harassment, discrimination and/or retaliation which come to their attention via formal or informal complaints, or which they otherwise come to know about. Supervisors may be held individually liable or otherwise responsible for failing to report matters about which they knew or reasonably should have known. Supervisors should not, under any circumstances, try to “handle the matter” on their own. Individuals who have a responsibility under the law or under this Policy for taking action to discover and to put an end to unlawful sexual or other harassment, discrimination and/or retaliation do so as agents of the College and accordingly will be defended legally by the College for all such action taken in good faith, even if mistaken.

All non-supervisory employees who observe or witness what they believe may be unlawful sexual or other unlawful harassment, discrimination and/or retaliation, or who learn about such conduct, must promptly refer the matter to the Director/Dean, or if the matter is against the Director of Human Resources or the Dean Students, to the employee’s own supervisor who will report it to the Vice President of Finance/CFO or the Vice President for Student Engagement and Services, respectively. Unlawful harassment or discrimination against non-employees will not be tolerated and similarly must also be reported. Employees should not, under any circumstances, try to “handle the matter” on their own.

Standard of Proof

A violation of this Policy must be established by a preponderance of the evidence. The Complainant carries the burden of proof. Neither party can be compelled to make statements at the hearing. Anyone who decides not to offer statements at the hearing, must sign the “Statement of Voluntary Decision Not to Offer Testimony” (Statement) which is a statement indicating their understanding of their right to make statements and acknowledging their decision not to do so. Should a party decide not to offer statements and also refuse to sign the Statement, the Director/Dean shall sign the Director’s/Dean’s own name to the Statement, stating that the Director/Dean was so advised by the party of that party’s decision not to speak on their own behalf. While the Committee shall not draw a negative inference from the failure of either party to speak on their own behalf, that decision not to speak on their own behalf does not change the burden of proof.

Time Limits

Any time limits set forth in this Policy may be extended by the Director/Dean for good cause which shall be determined by the Director/Dean in her or his sole discretion. For purposes of this Policy, “good cause” shall include, but not be limited to, examination periods or schedules, College recess and any other facts or circumstances rendering the time limits set forth in the Policy unreasonable or impracticable. By way of example, in the event that an investigation requires the interview of a Faculty member(s), Student(s) or Staff member/employee(s) who may be unavailable between semesters, and those interviews are significant to the investigation, these deadlines may be extended by the Director/Dean until the beginning of the following semester.

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The Complainant and Claimed Offender will be given reasonable notice of any such extensions of the time limits set forth in the Policy.

In the event the Complainant fails to respond within the time limits provided, upon written notice of such failure by the Director/Dean to the Complainant, the complaint will be deemed to have been withdrawn.

Academic Freedom

The ability of the College to achieve its purposes in large part depends upon the quality and integrity of the academic work that its Faculty and Students perform. In the College's educational setting, as distinct from other workplaces within the College, wide latitude for professional judgment in determining the appropriate content and presentation of academic material is required. Conduct, including pedagogical techniques, that serves a legitimate educational purpose does not constitute sexual or other unlawful harassment, discrimination or retaliation. Those participating in the educational setting bear a responsibility to balance their rights of free expression with a consideration of the reasonable sensitivities of other participants.

Nothing contained in this Policy shall be construed either to (1) limit the legitimate exercise of free speech including, but not limited to, written, graphic or verbal expression that can reasonably be demonstrated to service legitimate educational, artistic or political purposes, or (2) infringe upon the academic freedom of any member of the College community. Routine differences of opinion that arise but are not based upon legally impermissible criteria are not covered under this Policy.

Complaints Filed by the Director of Human Resources

The Director/Dean may file a complaint of unlawful sexual or other harassment, discrimination or retaliation against an individual believed to have engaged in such conduct, based on the number of complaints filed against the individual. In the event of a complaint under this section, the Director/Dean shall function as the Complainant. The President or designee shall assign the functions of the Director/Dean delineated in this policy to a member of the Executive Staff.

Appeal

A Claimed Offender who is found to have violated this Policy may appeal the decision by submitting a written letter of appeal to the President within 30 days of receipt of the President's letter of disposition. The President or designee will decide if an appeal should be heard. This decision will be based on new evidence or a failure to observe due process. Appeals will not be heard to reconsider penalties.

If the President or designee decides that an appeal should be heard, the President or designee will review the information, decide and issue a letter of disposition of appeal within 30 business days from receipt of the letter of appeal.

This appeal procedure applies to all violations of this Policy with the exception of those cases wherein an appeals procedure contained in the College Constitution is applicable in which case the appeals procedure contained in the Constitution shall apply.

False Accusations

Once a complaint of unlawful sexual or other harassment, discrimination and/or retaliation has been made and it is determined that a Faculty member, Staff member/employee or Student knowingly made a false or dishonest accusation of unlawful sexual or other harassment, discrimination and/or retaliation, or knowingly provided false information in the course of an investigation of such a complaint, such conduct *will be grounds for disciplinary action up to and including discharge in the case of a Staff member/employee,*

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expulsion in the case of a Student and dismissal for cause in the case of a Faculty member governed by Article IX of the Constitution.

Monitoring

Subsequent to the resolution of a substantiated, reported incident of claimed unlawful sexual or other unlawful harassment, discrimination and/or retaliation, the Director/Dean shall follow up with the Complainant within an appropriate period of time to ensure that the conduct covered by this Policy has ceased, that corrective action has been complied with, and that retaliation has not occurred.

Record Keeping

Any investigatory records of a complaint against a Faculty member, Staff member/employee or Student under this Policy are confidential and shall be maintained in the office of the Director of Human Resources, or the Dean of Students, as applicable, and separate from Faculty or Staff/employee personnel files and/or Student files, as the case may be. A copy of any Letter of Disposition will, however, be maintained in the Faculty or Staff member/employee personnel file or Student file, as the case may be, of both the Complainant and Claimed Offender, respectively. The College's release, if any, of confidential investigatory records shall be consistent with applicable state and federal law.

EMPLOYMENT AT-WILL

While this Policy is intended to provide for the prompt and equitable resolution of complaints regarding unlawful sexual or other harassment, discrimination and/or retaliation, this Policy is not intended to abrogate or limit in any way the status of any at-will staff member/employee and/or agent of the College. This Policy does not create an employment contract or a guarantee of continued employment for any staff member/employee and/or agent. Nor does this Policy abrogate or limit the College's authority or discretion to make all lawful employment decisions, including decisions about discipline, suspension without pay, discharge, corrective action concerning conduct that the College deems unacceptable, improper or inappropriate regardless of whether that conduct constitutes sexual or other harassment, discrimination or retaliation. Nor does it limit the College's authority or discretion to impose a non-disciplinary suspension without pay pending the results of an investigation subject to the provisions set forth in the College Constitution, to the extent the same may be applicable.

This Policy is a product of the law as it currently exists. The College reserves the right to revise, modify, amend or terminate any part or all of this Policy at any time in the College's sole discretion without prior notice.