

**Bergen Community College
Board of Trustees
Section (HR)**

Policy # HR: 002-001: 2018

Effective Date: August 8, 2018

Responsible Official:
Director of Human Resources

Internal Complaint Processes and Procedures

Reason for Policy: To explain the internal complaint process for filing a Sexual Harassment or Discrimination complaint.

Entities Affected by this Policy: Faculty, staff and students

Policy Statement:

Bergen Community College (the “College”) is steadfastly committed to cultivating and maintaining a working and learning environment that is free from discrimination and harassment based upon membership in enumerated protected classes and/or characteristics (“protected classes”) as well as from retaliation based upon the exercise of rights pursuant to the College’s policies. The following procedures accompany the College’s policies on Discrimination and Sexual Harassment.

Although employees and students are encouraged to use this internal procedure, exhaustion of this procedure is not a prerequisite for filing complaints with appropriate federal or state agencies, or for employees, under collective bargaining agreements. Information on rights and responsibilities under these procedures and applicable laws may be obtained through the Office of Human Resources.

Procedures:

INTERNAL COMPLAINT PROCESS

Any member of the College community who believes that he or she has been subject to conduct that violates the College’s anti-discrimination and harassment policies is encouraged to initiate a report with the Director of Human Resources or his/her designee. Individuals with questions about how to report prohibited conduct should contact the Director of Human Resources.

A complaint against a student arising out of his or her conduct as a student should be reported to the Office of Student Life and Conduct. A complaint alleging that a student has committed a sexual assault, sexual harassment, sexual exploitation, stalking, relationship violence, or other form of sexual misconduct, may also be submitted to the Title IX Deputy Coordinator, Office of Student Life and Conduct or the Title IX Deputy Coordinator of the Office of Human Resources.

College employees and/or students should attempt informal resolution of an alleged complaint. If this is not possible, a formal complaint of alleged discrimination may be filed. Complaints should be filed within thirty (30) calendar days after the incident(s) occurred to ensure that nothing hinders an investigation of a complaint or that the individual bringing the complaint is not subjected to continuing prohibited behavior.

Conduct that implicates the College's anti-discrimination and harassment policies may be handled in a variety of different ways, and therefore the College is prepared to help identify a number of options available to those who believe that they have been subjected to such conduct. An individual may contact the Director of Human Resources to discuss options available to him or her. These options will depend on a number of factors, including the seriousness of the offense, the amount of evidence presented, the degree of confidentiality sought, and the outcome desired by the individual. The Director of Human Resources, or his or her designee, will provide guidance and assistance to an individual interested in alternative options to a formal complaint and investigation process.

A complainant may also discuss any interim measures that he or she feels are necessary during the pendency of the College's resolution process. A complainant may select an informal or formal resolution process, as described below. The "informal resolution" focuses on stopping the discriminatory or harassing, or other behavior without a formal investigation. A formal resolution process ("formal resolution") involves an investigation. Depending on the circumstances, both informal and formal resolution processes may be utilized.

A complaint, whether initiated through the informal or formal resolution process, must be submitted promptly to the Director of Human Resources within 30 calendar days after the incident which gave rise to the complaint. The use of the informal resolution process shall not extend the time limit for initiating a formal complaint.

A. INFORMAL REVIEW AND RESOLUTION

The Director of Human Resources, or his or her designee, will provide guidance to a complainant interested in informal resolution. There are various methods available to attempt informal resolution, and the method or methods chosen should be tailored to the particular circumstances. Methods may include, but are not limited to, coaching the complainant on how to directly address a situation; assisting the complainant and department with the

resolution of a real or perceived problem, such as by mediating a resolution within the department or by aiding in the modification of a situation in which the offensive conduct occurred; and/or arranging a meeting with the alleged offender to discuss the requirements of the pertinent College Policy. The use of the informal resolution process is not a precondition for initiating the formal resolution process.

B. FORMAL REVIEW AND RESOLUTION

1. Complaint Filing

The formal complaint process is initiated with the filing of a signed, written complaint to the Director of Human Resources. Upon receipt and review of a complaint, the Director of Human Resources may request additional information from the complainant if it is unclear whether the complainant's allegations raise an issue of a violation of a College policy. If additional information is received and the Director of Human Resources determines that the allegation does not present a clear violation of a College policy, the Director of Human Resources will accordingly advise the complainant, in writing, and close the complaint. The complainant may appeal the Director of Human Resources' decision to close the matter to the College President or his or her designee within 10 working days.

If the Director of Human Resources requests additional information from a complainant, and the complainant does not submit additional information, the Director of Human Resources may cease the investigation and inform the complainant, in writing, that the case has been closed, and that he or she may resubmit the written complaint with the supplemental information if he or she wishes to proceed with a complaint at that time. The complaint must be resubmitted within 30 days of the alleged events and/or conduct which is the subject of the complaint.

Supervisory employees should immediately report all alleged violations of the College's anti-discrimination and harassment policies, whether reported to or observed directly by the supervisor, to the Director of Human Resources or his/her designee.

If the Director of Human Resources accepts the complaint as drafted, he or she will notify the complainant that the case has been assigned for investigation and simultaneously send a copy of the complaint to the respondent and the president, dean, or vice president of the respondent's department, as applicable. The Director of Human Resources or his or her designee may investigate possible violations of College policies regardless of whether the specific policy is identified in the complaint. The Director of Human Resources will advise the respondent which College policies are at issue.

2. Internal Investigations

The Director of Human Resources and/or his or her designee shall conduct an impartial investigation into the alleged harassment or discrimination submitted by a complainant

against any College employee. The investigation will be conducted as expeditiously as possible to conduct a full and fair investigation. Upon completion of the investigation, the investigator will report in writing to the Director of Human Resources setting forth the steps taken in the investigation and the specific investigatory findings.

- i. Within five (5) working days after a formal or informal complaint of discrimination and/or harassment has been filed, the individual alleged to have committed the alleged infraction, his/her immediate supervisor, and the area dean/vice president will be notified in writing that a complaint has been filed and the timeline for processing the complaint.
- i. At each opportunity during the investigation, conciliation or an informal settlement that is satisfactory to the parties concerned will be explored.
- ii. College employees and students are required to cooperate with the investigation of complaints and any recommendations or final directives issued as a result. Absent extraordinary circumstances, failure to respond to an investigation within forty-eight (48) hours may result in disciplinary action, up to and including termination.

The complainant and the respondent are permitted to have their respective legal counsel or union representative present for any meeting with investigators to discuss a pending complaint filed by or against them, as applicable. However, legal counsel and union representatives are not permitted to participate in the investigation process. They may sit in on meetings with the investigator but they are not permitted to comment and/or ask questions during those meetings. Each party is responsible for notifying the other party of the attendees prior to the meetings.

The only exception would occur in instances in which the complainant or the respondent requires the services of a translator in order to communicate effectively with the investigator. Support person availability shall not be sufficient grounds for postponing meetings with investigators.

3. Independent College Investigations

The College reserves the right to investigate allegations of conduct prohibited by any of its policies in appropriate circumstances, even in the absence of a formal written complaint filed by a complainant pursuant to the Complaint Process upon the recommendation of the College President. In such cases, the College will follow the Complaint Process set forth above.

4. Completion of the Investigation

The Director of Human Resources or his or her designee will conduct initial intake of the complaint to obtain information regarding the complaint. A thorough and impartial investigation into the alleged harassment or discrimination will take place to include

interviews with any witnesses identified by complainant and others who have relevant information.

Determinations concerning whether any interim corrective measures are necessary to prevent continued policy violation(s) shall be reviewed by the Director of Human Resources or his/her designee. Absent extraordinary circumstances, the investigative report will be completed within sixty (60) days of receipt of complaint notice. The time for completion of an investigation may be extended for up to thirty (30) additional working days in cases involving exceptional circumstances. A written report will be prepared and shall include at a minimum:

- A summary of the complaint;
- A summary of the parties' positions;
- A summary of facts developed during the investigation; and
- An analysis of the allegations and facts.

The investigatory report will be submitted to the Director of Human Resources or his/her designee unless the representative has been actively involved as a witness in the investigation. In that case, the report shall be submitted directly to the Executive Director of Human Resources or the President or his or her designee.

5. Fact-Findings and Conclusions

The Director of Human Resources or his or her designee will review the investigatory report and make a determination as to whether the allegations of a violation of the College's policy prohibiting discrimination, harassment, and hostile environments have been substantiated.

Within ten (10) working days of receiving the investigatory report, the Director of Human Resources or his or her designee will issue a final letter of determination to all parties, containing the results of the investigation. The time for issuance of a final letter of determination may be extended for up to ten (10) additional working days in cases involving exceptional circumstances. All parties will be notified of the extension in writing by the investigator.

The final letter of determination shall include at a minimum:

- A brief summary of the parties' positions;
- A brief summary of the facts developed during the investigation; and
- An explanation of the determination, which shall include whether:
 - The allegation was either substantiated or not substantiated; and
 - Whether a violation of a College policy did or did not occur.

If the final determination concludes that the complaint was substantiated and a violation did occur, the alleged discriminator will be notified in writing separately regarding any

disciplinary action to be taken.

C. RETALIATION

The College prohibits retaliation against individuals who, in good faith, assert their right to bring a complaint, participate in an investigation, or protest conduct prohibited by any College policy. Retaliation is an offense that is separate from the original complaint, and it will be considered independent from the merits of the underlying complaint. Individuals who believe they have been subjected to retaliation should report the conduct to the Director of Human Resources for investigation.

D. FALSE ALLEGATIONS

Knowingly making a material misstatement of fact may subject the complainant to discipline. Anyone who believes that he or she has been the subject of a false complaint may meet with the Director of Human Resources or his or her designee to discuss the allegations. The filing of a complaint that does not result in a finding of prohibited conduct is not alone evidence of the intent to file a false complaint.

E. CONFIDENTIALITY

The Director of Human Resources or his or her designee shall work to honor the confidentiality of all parties and limit disclosure of complaints to only those who have a need to know the facts and the parties to a complaint. Reporting and disclosure requirements required by law may present limitations to such confidentiality. Nonetheless, the College will treat all parties with equal care, respect, and dignity and will make every effort to preserve the privacy of all parties involved.

In some instances, a complainant may choose to take no action or to defer action until a later date in order to maintain anonymity. In these instances, the College expressly reserves the right to limit disclosure and to take appropriate action in order to ensure the safety and well-being of members of the College community. If a complainant refuses to cooperate with an investigation, or asks that his or her identity not be revealed to the respondent or witnesses, the Director of Human Resources, or his or her designee in his or her discretion, will investigate to the extent possible based on the information provided, but his or her ability to respond may be limited.

The Director of Human Resources shall work to ensure that all parties, witnesses, and support persons involved in an investigation respect the confidentiality of the investigation as well. Any manager, supervisor or other employee who violates confidentiality as to a complaint of an alleged violation of a College policy will be subject to appropriate disciplinary action. Please contact the Director of Human Resources with any questions regarding confidentiality.

F. RECORD KEEPING

The record of a complaint, informal resolution, or final decision shall be retained in a file in

the Office of Human Resource. Disciplinary action will be documented in the appropriate individual personnel file.

G. FILING COMPLAINTS WITH FEDERAL OR STATE AGENCIES

Although employees and students are encouraged to use this internal procedure, exhaustion of this procedure is not a prerequisite for filing complaints with appropriate federal or State agencies, or for employees, under collective bargaining agreements.

Information on the rights and responsibilities of individuals under these procedures and applicable laws may be obtained through:

Bergen Community College
The Office of Human Resources
Attention: Director of Human Resources
400 Paramus Road, Room A-316
Paramus, NJ 07652
Telephone (201) 447-7442
Email: Human Resources Group@bergen.edu

Related Documents/Policies:

Policy Prohibiting Discrimination
Student Code of Conduct
Employee Code of Conduct
Title IX Policy

Policy History: (adopted/amended)

Adopted: 8.7.18