

## **Title IX : Sexual Harassment/Harassment**

Approved: 9/7/21

### **ARTICLE IV**

#### **SEXUAL HARASSMENT/HARASSMENT**

Each student and employee has the right to learn and work in an environment free of unlawful harassment based on an individual's race, color, religion, creed, ancestry, gender, national origin, disability, age or other basis prohibited by law.

It shall be a violation of this policy for any personnel of the Cooperative to harass a student, any Cooperative personnel, or any visitor through conduct or communication of a sexual nature, or communication disparaging a person's religion, race, color, religion, creed, ancestry, national origin, gender, disability, or age as defined by this policy. For the purpose of this policy, "cooperative personnel" includes NCSEC Governing and Advisory Board members, all cooperative employees and agents, volunteers, contractors, or persons subject to the supervision and control of the Cooperative.

The Cooperative will investigate all complaints of harassment and will discipline or take appropriate action against any student or other Cooperative personnel who is found to have violated this policy.

The Cooperative will provide annual in-service education and training about harassment for employees.

#### **A. Definitions**

1. Harassment: Harassment consists of physical or verbal conduct related to a person's gender, race, color, religion, creed, ancestry, national origin, age, disability, or other basis prohibited by law when the conduct is so severe, pervasive, and objectively offensive that it:

- a. has the purpose of effecting or creating an intimidating, hostile or offensive working or academic environment;
- b. has the purpose or effect of substantially or unreasonably interfering with an individual's work performance which deprives the staff member access to employment or academic opportunities.

2. Sexual Harassment: Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- a. A Cooperative employee conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Cooperative's education program or activity; or
- c. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

The Title IX regulations defining sexual harassment and setting forth other Title IX requirements can be found at 34 CFR §106.

3. Harassment and sexual harassment can occur over social media. However, an allegation of sexual harassment only falls within the jurisdiction of Title IX when it occurs within a Cooperative program or activity. (Sexual harassment complaints beyond Title IX jurisdiction can still be reported. They just go to the Director instead of the Title IX Coordinator.)

4. Title IX Coordinator: The Cooperative's Title IX Coordinator is designated by name during the July board meeting (and is generally the Business Manager). When a complaint occurs related to discrimination or harassment on the basis of sex, the Title IX Coordinator responds to that complaint by exercising the following duties.

- a. Assist the complainant in filing a formal complaint (if so desired). (Formal complaints must be filed by the complainant or a parent filing on behalf of a student complainant, or be signed by the Title IX Coordinator.)
- b. Provide respondents with written notice about the complaint.
- c. Offer supportive measures to complainants and respondents, and document such. (Examples of supportive measures include counseling, extensions of deadlines, schedule modifications, increased supervision, or mutual restrictions on contact between the parties.)
- d. After review of each Title IX complaint, either dismiss the complaint or arrange an investigation. (If dismissing the complaint, both parties must be notified of the dismissal in writing, including the reasons for doing so.)
- e. When the complainant and the respondent are both willing to do so, facilitate an informal resolution of the complaint (unless the allegation is that an employee sexually harassed a student). (During informal resolution, the parties must receive written notice describing the allegations and informing how resolving that complaint informally precludes any formal complaint based on the same allegations. Informal resolution requires the voluntary, written consent of both parties.)
- f. Maintain records of Title IX complaints, investigations, remedies, supportive measures, informal resolutions, disciplinary actions, and appeals.

## **B. Reporting Incidents of Harassment**

Any person who believes he or she has been the victim of sexual harassment or who has witnessed sexual harassment shall report that incident to the Cooperative's Title IX Coordinator.

Any person who believes he or she has been the victim of other (non-Title IX) harassment as defined above as an employee of the Cooperative shall report the alleged acts immediately to the Cooperative Director. If the complaint involves the NCSEC Director, that complaint shall be filed directly with the NCSEC Governing Board President, who will relay it to the President of NCSEC Advisory Board. The form for reporting harassment of any kind is available in the NCSEC policy manual.

1. Submission of a complaint or report of harassment. Submission of a complaint or report of harassment will not affect the individual's employment or work assignments.

2. Confidentiality. The Cooperative will make attempts to respect the confidentiality of the complainant and the individual(s) against whom the complaint is filed as much as possible consistent with the Cooperative's legal obligations and the necessity to investigate allegations of harassment and take disciplinary action when the conduct has occurred.
3. Procedure. The complaining employee will be asked to put the facts surrounding the conduct in writing on a form provided by the Cooperative that includes the following: complainant's name and address; time and date of the incident; type of harassment; description of the incident; name of or identifying information about the alleged perpetrator; name of any witnesses, what action, if any, has been taken; and signature of the complainant.
4. Required Reporting. If the accusations include possible criminal activity such as molestation, sexual battery, or similar contact, all mandatory state reporting requirements including, but not limited to, contact with the State Department of Social Services will be initiated.

### **C. Investigation**

Upon receipt of a written report alleging harassment and determination that the complaint will not be dismissed, the NCSEC Director or Title IX Coordinator shall immediately authorize investigation. This investigation may be conducted by Cooperative officials or by a third party designated by the Cooperative. The investigating party shall provide a written report of the status of the investigation to the NCSEC Director.

For Title IX investigations, prior to the release of the investigative report, a tentative report of findings must be sent to the complainant and the respondent (along with their advisors). These parties have 10 days to submit a written response, which the investigator must consider before issuing the final report. After the investigative report is released, the parties have an additional 10 days to submit written responses to the decision-maker before any determination of responsibility.

In determining whether alleged conduct constitutes harassment, the Cooperative should consider the surrounding circumstances, the nature of the advances, relationships between the parties involved, and the context in which the alleged incidents occurred.

The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigating party.

In addition, the Cooperative may take immediate steps at its discretion to protect the complainant, students, and employees pending completion of an investigation of alleged harassment.

During the investigation, all parties directly involved in the complaint may have legal or other representation. If any party elects to be represented at any step of the complaint procedure, the name of the representative must be declared in writing to the NCSEC Director or his/her designee with two (2) working days of the filing of the complaint, notification of any investigation, or the filing of any appeal.

## **D. Cooperative Action**

1. After considering the results of the harassment investigation, the Cooperative Director will make a determination of responsibility.

For complaints of sexual harassment, the standard of evidence used for determining responsibility will be the preponderance of evidence standard.

2. The complainant and respondent will be advised of the Director's decision in writing. This decision must communicate the procedural steps taken, any findings of fact, and a determination of responsibility – for each allegation. The decision must also document the sanctions or remedies for each allegation.

3. If either party is not satisfied with the decision rendered by the Director, he or she may request an appeal hearing in executive session with the NCSEC Governing Board. The request for hearing must be submitted in writing through the NCSEC Director's Office within ten (10) working days following receipt of the Director's response. The appeal must include the original complaint form, a copy of the written decision from the NCSEC Director, and a written statement as to the reasons for appeal. The hearing will be scheduled within (30) working days of the request for hearing. The parties involved will be notified in writing of the time and date of the scheduled hearing.

Title IX harassment determinations may only be appealed on the basis of the following circumstances:

- a. procedural irregularity
- b. new evidence not reasonably available
- c. conflict of interest against Title IX Coordinator, investigator, or decisionmaker

4. The NCSEC Governing Board will render an appeal decision in writing within ten (10) working days of the hearing.

## **E. Procedures during Conflicts of Interest \*\***

To minimize conflicts of interest, the decision maker must not be the investigator or the Title IX Coordinator. With that in mind, if an allegation of sexual harassment involves the Title IX Coordinator, the Director will exercise the Title IX Coordinator's duties.

If the Director has assumed the Title IX Coordinator's duties or is the subject of a harassment complaint, then any determinations of responsibility must be made by the Advisory Board President.

The NCSEC Governing Board reserves its role for the appeals process and may appoint a representative to exercise that role.

## **F. Prohibition against Retaliation**

The NCSEC Cooperative will discipline any individual who retaliates against any person who reports alleged harassment or who retaliates against any person who testifies, assists, or participates in any investigation, proceeding, or hearing related to a harassment complaint.

Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment. Retaliation is itself a violation of federal and state laws prohibiting discrimination and may lead to separate disciplinary action against an individual.

If any NCSEC personnel or student who has filed a complaint or has testified, assisted, or participated in the investigation of harassment believes that he or she has been retaliated against because of his or her participation, he or she should follow the procedures set forth above.

## **G. False Charges**

Charges found to have been intentionally dishonest or made maliciously without regard for truth may subject complainants to disciplinary action.

## **H. Uncomfortable Situations**

The Cooperative recognizes that not every uncomfortable situation constitutes harassment. Whether a particular action or incident is a personal, social relationship without a discriminatory effect on employment or learning environment requires a determination based on all the facts and surrounding circumstances. False accusations can have a serious detrimental effect on innocent parties.

## **I. Discipline**

Any Cooperative action taken pursuant to this policy will be consistent with requirements of applicable collective bargaining agreements and Cooperative policies. The Cooperative will take such disciplinary action it deems necessary and appropriate, including but not limited to, warning, suspension, or immediate discharge to end harassment and prevent its recurrence.

## Written Notice of Title IX Rights

You have become the subject of a Title IX (sexual harassment) complaint, the details of which are attached. These allegations need to be investigated, after which a determination of responsibility will be issued. If you are found to be responsible for sexual harassment, then you will face disciplinary sanctions.

However, at this time you are presumed not to be responsible for any allegations. Final responsibility will not be determined until later, following investigation and (if applicable) the grievance process. In the meantime, as the respondent to a Title IX complaint, you have the following rights.

- You have the right to detailed notice of the allegations, including the following:
  - names of known parties
  - conduct alleged
  - date and location of conduct (if known).
- You have the right to have an attorney or non-attorney advisor.
- You have the right to prepare a response prior to any initial interview.
- You have the right to inspect and review evidence against you.
- You have the right to resolve an allegation informally, if you and the complainant would both agree to do so.
- If any new allegations would be uncovered during the course of investigation, you also have these rights with respect to the new allegations.
- You have the right to appeal the determination of responsibility for these reasons:
  - procedural irregularity
  - new evidence not reasonably available
  - conflict of interest against Title IX Coordinator, investigator, or decision maker.