

# **Newberry College Discrimination and Harassment Policy & Procedures**

## **I. Discrimination and Harassment Policy**

Newberry College affirms that all men and women are to be treated fairly and equally, with dignity and respect. This affirmation and policy applies to all faculty, students, staff, visitors, guests and agents, and representatives and employees of vendors while on the College campus or work sites and while participating in College sponsored activities located off-campus. Newberry College will not tolerate discrimination and/or harassment on the basis of gender/gender identity, sexual orientation, race, color, national origin, religion, age, marital status or disability or any other characteristics protected by law.

## **II. Prohibited Conduct**

Discrimination and harassment includes many forms of conduct and behavior. Any form of discrimination or harassment contradicts the policies of Newberry College and will not be condoned or tolerated.

Discrimination and/or harassment on the basis of any protected characteristic is strictly prohibited. Under this policy, discrimination and/or harassment is any conduct (verbal, non-verbal, or physical) that is hostile or adverse toward any individual because of his or her gender/gender identity, sexual orientation, race, color, national origin, religion, age, marital status or disability or any other characteristic protected by law, or that of his/her relatives, friends or associates and that: (A) creates an intimidating, hostile or offensive work or learning environment; or, (B) unreasonably interferes with an individual's work or academic performance; or, (C) otherwise adversely affects an individual's employment or academic opportunities.

### **A. Sexual Harassment**

Newberry College is committed to providing a campus environment free from sexual harassment. Sexual harassment is defined by Newberry College to be any unwanted or unwelcome sexual conduct, including but not limited to comments, suggestions, physical contact or propositions.

Sexual harassment is not limited to the workplace or educational environment. It can occur off-site such as at conferences, athletic events, study abroad, field placements, internships, or housing. It can occur out of the state and country. Newberry College will consider the effects of off-campus behavior as a part of the evaluation of whether a hostile environment exists on campus.

Some examples of unwanted conduct that could constitute sexual harassment include (but are not limited to): sexual propositions or advances, sexual jokes, comments about an individual's body, comments about sexual activity including

deficiencies or prowess, displaying sexual images including cartoons, sexual gestures, innuendos of a sexual nature, unwanted contact, sexist statements, intimidating conduct, taunting slurs, hostility for failing to conform to expected notions of sex and gender, persistent requests for sexual activity, inappropriate gifts or communications, and the use of sexist terms of endearment.

Sexual misconduct is a form of sexual harassment which includes, but is not limited to, sexual assault, sexual exploitation, stalking, and relationship violence. Any sexual activity that occurs without consent of all parties is a violation of this policy.

Sexual harassment can occur in any sex or gender and regardless of actual sex, gender, gender identity, gender expression and/or sexual orientation.

The taking and/or sharing of sexual images (digital or otherwise) without permission is a form of sexual harassment. The taking or sharing of sexual images of a person under 18 years of age may violate child pornography laws, is strictly prohibited, and will be reported to local authorities.

Retaliation against anyone who makes a good faith report or complaint of sexual harassment or anyone who participates in an inquiry or investigation is strictly prohibited.

Sexual harassment and misconduct are considered a form of sex discrimination and is prohibited by federal and state law, including Title VII of the 1964 Civil Rights Acts as amended and Title IX of the 1972 Amendment to the Higher Education Act.

## **B. Important Definitions**

**1. Consent:** Consent is an intentional and voluntary decision to engage in an activity, specifically sexual activity. It is the responsibility of the person initiating sexual activity to seek and express consent before engaging in sexual activity. Consent should be given in a clear and affirmative manner.

- Consent to a sexual act does not imply consent to a different act
- Consent to a sexual act does not imply consent to future sexual acts.
- Consent is not assumed based on a relationship status or history
- Consent can be withdrawn at any time before and/or during sexual activity

**2. Lack of Consent:** Consent may not be inferred from silence or lack of objection. The absence of a negative response does not equate to a positive response. It is the responsibility of the person initiating sexual activity to get an affirmative response. Examples of behaviors and comments that do **not** indicate consent:

- Silence
- “Maybe” or “I don’t know”

- A head shake
- Not fighting back
- A verbal “no”

Consent can never be given by:

- Someone who is incapacitated through the use of alcohol, drugs, or any other intoxicating substance
- Someone who is unconscious, asleep, or otherwise unaware that sexual activity is occurring
- Someone under the legal age of consent
- Someone who is mentally disabled or cognitively impaired

Signs of incapacity include (but are not limited to):

- Slurred speech or difficulty communicating
- Difficulty walking and/or standing
- Vomiting
- Unable to keep eyes open
- Unconsciousness
- Confusion and/or Disorientation

Engaging in sexual activity with someone a person should have known is incapacitated is a violation of this policy whether or not the person was a willing participant.

**3. Force:** The use of force to engage in sexual activity is by definition non-consensual. The presence of force negates any indications of consent. Examples of force include (but are not limited to) physical violence, threats, intimidation, abuse of power, coercion, or any other behavior intended to result in sexual activity against a person’s choice.

## **C. Faculty/Student Relationships & Staff/Student Relationships**

### **1. Policy.**

As a matter of sound judgment and professional ethics, faculty and staff members have a responsibility to avoid any apparent or actual conflict between their professional responsibilities and personal relationships with students.

These relationships have the potential to pose risks to the student, faculty member, staff member, third parties and the College. In such relationships, voluntary consent by the student is suspect because of the inherently unequal nature of the relationship. A romantic and/or sexual relationship between a faculty or staff member and a student can lead to a complaint of sexual

harassment when the student feels that he or she has been exploited. In addition, other faculty members, staff members or students may express concerns about undue access or advantage, favoritism, restricted opportunities or unfavorable treatment as a result of a relationship.

## **2. Definition.**

"Supervisory responsibility" includes, but is not limited to, teaching, research, academic advising, coaching, service on evaluation committees, grading, recommending in an institutional capacity for employment, fellowships or awards, and working for. This supervision can occur on or off campus. A "current student" is defined as any individual who is currently enrolled in an academic course (credit or non-credit bearing) or has been enrolled in a course and has not withdrawn or graduated from the college. Students are responsible for abiding by this policy during those times classes are not in session or on break.

## **3. Regulation.**

Romantic and/or sexual relationships between faculty and current students are prohibited. Romantic and/or sexual relationships between current students and staff members (including full time contractors) and current students are prohibited. If a romantic and/or sexual relationship develops, the faculty or staff member must immediately disclose the relationship to the Director of Human Resources.

In rare instances it is possible that a College employee might have a prior dating, romantic, sexual or marital relationship with an individual who later becomes a student. It is also possible that a person engaged in the above mentioned types of relationships may apply, interview and be hired by the college. In such instances it is the obligation of the employee to immediately disclose the relationship to the Director of Human Resources. The Director of Human Resources in consultation with the appropriate administrative unit head will take the steps necessary to ensure the educational experience of the student and other students in the college are not materially affected by the said relationship.

### **III. Enforcement Procedures**

#### **A. Initial Reporting**

An individual who feels he/she has been the object of discrimination and/or harassment, or has witnessed the same, should first advise any of the following:

- The President's Chief of Staff
- The Executive Director of Institutional Research and Effectiveness (who serves as Title IX Coordinator)

- The Vice President for Academic Affairs
- The Associate Academic Dean
- The Dean of Students
- The Associate Dean of Students
- The Director of Human Resources
- The Athletic Director
- The Senior Woman's Administrator

The individual charging the discrimination and/or harassment (complainant) will be given a copy of this policy and advised to make a written complaint to the "Title IX Coordinator" (see College website for contact information for the person currently designated as Title IX Coordinator).

The written complaint should set forth the discriminatory and/or harassing conduct complained of and identify the subject of the investigation (respondent). Where possible, it should set forth dates, identify other individuals who have knowledge of the conduct, and set forth the relief sought by the complainant.

The written complaint should normally be filed within thirty (30) calendar days of the alleged discriminatory and/or harassing conduct. This deadline will be waived for good cause.

Anonymous reporting is allowed where special circumstances exist, as determined by the Title IX coordinator and/or Human Resources, but is discouraged.

The Title IX coordinator will initiate an initial investigation as described in part B below.

In the absence of a written complaint the Title IX coordinator (or their designate) will review the evidence and has the discretion to initiate an initial investigation. This may only occur if, in the opinion of the Title IX coordinator (or their designate), there is behavior that causes one of the following:

- (A) an intimidating, hostile or offensive work or learning environment; or,
- (B) unreasonably interference with an individual's work or academic performance; or,
- (C) actions which otherwise adversely affect an individual's employment or academic opportunities.

### **Reporting Obligations of Responsible Employees:**

All employees and full-time contractors except those listed below are considered "Responsible Employees" and required to promptly report allegations or observations of sexual harassment to the Title IX coordinator or one of the people listed earlier in this section. This is required even if the person(s) affected by the harassment are unsure about pursuing a disciplinary complaint. Failure of a responsible employee to report may result in disciplinary action.

Exceptions: The college counselor, nurse, and pastor have legally defined confidentiality privileges and are exempt from these reporting requirements.

## **B. Process and Enforcement Options when the Complainant and Respondent are students**

Violation of the Newberry College Harassment and Anti-Discrimination policy by a student is a violation of the Student Code of Conduct. Therefore, enforcement of the policy is handled through the Student Conduct Code Disciplinary Process.

If the report comes to the Office of Student Affairs, the Office of Student Affairs will notify the Title IX coordinator of the complaint. If the report comes to the Title IX coordinator it will be forwarded to the Office of Student Affairs.

In the case of alleged sexual harassment, the Disciplinary Process will be modified such that the complainant does not have to be in the same room as the respondent. Questions raised by the respondent will be directed to the chair of the hearing committee who will then direct those questions to the respondent. The complainant's responses will be brought back to the respondent in writing.

The results of the hearing will be shared with the Title IX coordinator. If the finding is "responsible" then the Office of Student Affairs will consult with the Title IX coordinator to make sure disciplinary sanctions are appropriate to ensure the rights of the complainant to pursue their education without fear of discrimination, harassment or retaliation.

In some rare cases, the complainant and Office of Student Affairs may feel that a non-disciplinary mediation and conciliation is appropriate. In that case the Office of Student Affairs may forward the complaint to the Title IX coordinator to follow option D-1 listed below. If mediation and conciliation fail the case will be referred back to the Office of Student Affairs and will go through the Student Conduct Code Disciplinary Process.

## **C. Process and Enforcement Options when the Complainant or Respondent is an employee (faculty, staff, contracted employee, etc.)**

### **C.1. Initial Investigation**

Upon receiving the written complaint, the Title IX coordinator (or their designate) will investigate with the purpose of determining that enough evidence exists to determine whether grounds for the complaint exist. Care should be taken that the individual investigating the complaint does not have any conflict with the complainant or the subject of the investigation (respondent). The individual assigned to investigate the complaint will begin an investigation of the charges, contacting witnesses and gathering materials, and developing a confidential file. Within ten (10) working days of the filing of the written complaint, the Title IX coordinator (or their designate) will provide the

Respondent with a copy of this policy and discuss the complaint confidentially with him/her. During this phase, the identity of the complainant should be kept confidential to the extent reasonably possible.

Upon completion of the initial investigation, the Title IX Coordinator will make a determination as to whether or not grounds for the complaint exist. If the Title IX Coordinator determines that grounds for the complaint do not exist, the complaint shall be dismissed and the complainant and respondent shall be so advised in writing.

If the Title IX Coordinator determines the grounds for the complaint exist, the Title IX Coordinator must provide the complainant and respondent with a full explanation of the complaint, the process and the available enforcement options for satisfaction or resolution of the complaint. This discussion should normally be completed within ten (10) working days of the Title IX Coordinator making a determination that grounds for the complaint exist and in any case not later than thirty (30) days after the complaint is submitted.

If the Title IX coordinator determines there is a threat to the safety of individuals of the campus community or a possibility of further violations of this policy by the respondent may impose emergency actions up to and including suspension from campus (with pay for employees) until the formal investigation is complete. Title IX Coordinator shall also advise appropriate campus officials of the determination with due consideration to confidentiality and privacy requirements.

**C.2. Enforcement options include the following:**

I. Where the goal of the complainant is to stop the discriminating and/or harassing conduct and avoid formal procedures and charges, the Title IX Coordinator will proceed to mediation and conciliation. In any mediation/conciliation meetings, the Title IX Coordinator will be accompanied by at least one other staff or faculty member of opposite gender.

II. If the complainant chooses to file a formal complaint, the mediation and conciliation fails to resolve the matter, or Title IX coordinator (or their designate) determines the facts in the initial investigation suggest mediation is not appropriate then the Title IX coordinator (or their designate) will begin a formal investigation.

**I. Mediation and Conciliation**

Discrimination and harassment are not always clearly identifiable acts that are known to be offensive by all parties. This can be the subtle accumulation of behaviors that create an unwelcome climate in a classroom, office or campus area. The formal complaint of discrimination and/or harassment is also accompanied by considerable emotional and career injury to all parties involved. In an effort to prevent behaviors which individually may not constitute an illegal act from developing into grounds for formal complaint, Newberry College encourages persons subjected to

perceived discriminatory and/or harassing behavior to consider pursuing mediation and conciliation when appropriate.

When the goal of the complainant is to stop the behavior rather than seek a vindication of his/her rights, mediation and conciliation may be the appropriate outcome. With the permission of the complainant, the Title IX Coordinator should speak to the respondent to achieve the following outcomes:

- Make the respondent aware that his/her behavior is being perceived as discriminating and/or harassing and make clear that the behavior is prohibited by law and institutional policy.
- Make the respondent aware that the purpose of this discussion is to achieve a change in behavior, not to pursue formal charges of disciplinary action.
- Make clear that law and policy forbid any retaliation against the complainant by the respondent.
- Suggest possible resolutions of the problem, including but not limited to: a change in the offensive behavior, an apology to the offended party, a reevaluation of a grade, a change in the relationship between the complainant and respondent (i.e., changed advisor, class enrollment, or housing unit).
- Make the respondent aware that the file of this complaint and its outcome will be kept in the appropriate office.

Should mediation and conciliation fail to satisfactorily resolve the matter, or should the complainant request, the Title IX coordinator will proceed to a formal investigation.

## **II. Formal Investigation**

If the complainant requests a Formal Investigation, or if mediation and conciliation fails to resolve the matter, or Title IX coordinator (or their designate) determines the facts in the initial investigation suggest mediation is not appropriate, the Title IX coordinator (or their designate) will begin a formal investigation.

A copy of the written complaint (if available) and the confidential investigation file with the Title IX Coordinator's (or their designee) initial investigation written findings and conclusions will be made available to the appropriate individuals. The reporting relationships are as follows: faculty complaints are reported to the VP of Academic Affairs, complaints against staff are reported to the VP for Business Affairs, complaints against students are reported to the Dean of Student Affairs, complaints against coaches or athletic staff are reported to the Director of Athletics. Complaints



made against a Dean or VP are reported to the President. Should the charges be made against the President, the Chairman of the Board of Trustees shall appoint a President's Council member to consider the matter. The respondent will meet with the Title IX coordinator to at which time the Title IX coordinator will review the results of the initial investigation.

The Title IX coordinator will select a person or committee to investigate the charge. The individual(s) charged with considering the matter may conduct an investigation, the scope and nature of which shall be appropriate to the circumstances as determined by the Title IX coordinator in coordination with the appropriate administrative unit head. The respondent will have reasonable access to the written file, including any formal complaints and evidence. It is not required that the respondent be given copies of the file. The respondent may (but is not required to) file a written response to the complaint within ten (10) days of the respondent receiving the complaint. The individual(s) investigating will ensure the respondent has seen and had a chance to respond to all evidence before coming to a final conclusion.

Upon completing the investigation the person(s) investigating the complaint shall make a determination as to whether or not respondent violated the Discrimination and Harassment policy. At this stage, the standard for making the determination shall be by a preponderance of the evidence. If the person(s) charged with considering the matter determines that sufficient grounds for the complaint do not exist, the complaint shall be dismissed and the parties shall be so advised in writing. If the person(s) charged with considering the matter determines that grounds for the complaint do exist, the person(s) shall recommend the appropriate disciplinary action to be taken. Such disciplinary action may include, but is not limited to: a written warning; letter of reprimand; suspension, probation or expulsion; suspension of salary raises for a specified time; change of job (removing the person from being in a position to retaliate or further affect the victim); required counseling; requiring attendance at discrimination/harassment training program; termination of employment. The findings and recommended discipline shall be in writing. The Title IX coordinator will review the findings and recommendations and make changes to the recommendations to ensure the actions protect the complainant and campus community are protected from further harassment. The Title IX coordinator cannot change the finding.

Absent unusual circumstances, the determination will be made within twenty (20) working days of the formal complaint having been filed.

Both the complainant and the respondent will be notified in writing as to the decision regarding disciplinary action.

#### **IV. Appeal Procedure**

## **A. Appeal**

The respondent may appeal a formal disciplinary finding or disciplinary sanction. An appeal may be based on denial of fairness, new evidence, or disciplinary recommendation. Appeals must state the reason for the appeal and must be presented in writing within one week (5 working days) after receiving the decision on the formal complaint. A written appeal should be delivered to the Title IX Coordinator or the Office of the President. The disciplinary sanction will remain in place during the appeal.

## **B. Appeal Process**

The President, at his or her own discretion, may conduct an investigation, the scope and nature of which shall be appropriate to the circumstances determined by the President in considering the appeal. The President may choose a President's Council or Executive Council member unassociated with the respondent, the complainant, and the circumstances of the case to handle the appeal.

The President (or his or her designee), upon completing consideration of the appeal, will make a written finding either upholding, reversing, or modifying the formal disciplinary finding and/or disciplinary sanction. The decision shall be in writing and shall be final.

Absent unusual circumstances, the appeal determination shall be made within twenty (20) working days of the appeal having been filed. In cases where the President is unavailable the Vice President for Academic Affairs will conduct the appeal.

Both the complainant and the respondent will be notified in writing as to the President's decision regarding the appeal.

Should the charges be made against the President, the appeal should be to the Chairman of the Board of Trustees, who shall appoint a President's Council member to consider the appeal.

## **V. General Guiding Principles**

### **A. Confidentiality**

All communications from the time the complaint is filed shall be kept confidential to the extent reasonably possible. Confidentiality will only be broken if there is a threat to the safety of the complainant or the campus community.

### **B. Retaliation**

Retaliation against the person bringing a report or complaint, or any person involved in an inquiry or investigation is strictly forbidden by Newberry College. A person engaged in retaliatory conduct is subject to the disciplinary action by the college. For students this may include denial of certain privileges, disciplinary probation, suspension, and/or expulsion. For employees this may include warnings, suspensions and/or termination. The college will provide interim measures in response to retaliation-related concerns in order to stop

prohibited conduct and its recurrence. In some instances this may lead to the removal of the person accused of retaliation from campus until the matter is resolved. Retaliation claims are investigated using the same procedures listed in part (III C).

Persons charging discrimination and/or harassment need to be aware that knowingly false claims may subject them to legal consequences.

**C. Confrontation**

During the initial or formal investigation, all reasonable attempts shall be made to prevent the complainant and respondent from being brought together.

**D. Timeliness**

All complaints, investigation, disciplinary action and appeals shall be conducted promptly and within stated guidelines unless good cause is shown requiring an extension. Extensions are granted by the Title IX Coordinator or their designate in their sole discretion.

**E. Tenured Faculty**

In the case of a tenured faculty member who is recommended for termination, the case must then proceed through the procedures for termination of tenure specified in the Faculty Policies Manual.

**F. Procedural Errors**

In the case of a procedural error the Title IX coordinator will inform both the complainant and the respondent of the error and appoint a new team to conduct the investigation. If this occurs the Title IX coordinator or President may appoint a special Title IX coordinator to conduct the initial investigation and if necessary, take the case through the Enforcement and Appeals process to ensure the rights of the complainant and respondent are preserved.

**VI. HAZING**

Newberry College students as individuals or members of registered student organizations are expressly prohibited from engaging in “hazing”. Hazing is defined as “Any action taken or situation created, intentionally, whether on or off campus, to produce mental or physical discomfort, embarrassment, harassment, or ridicule. Such activities may include but are **not** limited to the following: use of alcohol; paddling in any form; creation of excessive fatigue; physical and psychological shocks; quests, treasure hunts, scavenger hunts, road trips or any other such activities carried on outside or inside the confines of the chapter house; wearing of public apparel which is conspicuous and not normally in good taste; engaging in public stunts and buffoonery; morally degrading or humiliating games and activities; and any other activities which are not consistent with academic achievement, fraternal law, ritual or the regulations and policies of the educational institution or applicable state law.”

Newberry College prohibits hazing in all its forms. Students, fraternity or sorority members who feel they have been physically hazed, advisors, or faculty advisors who have information regarding a hazing incident should report this activity to the Dean of

Students, Associate Dean of Students, Director of Student Engagement and Leadership, or Title IX Coordinator. Investigations of complaints involving physical hazing will be taken to resolve complaints without fear of reprisal against the individual filing such a complaint. Corrective action will be taken in accordance with established College policies and procedures should evidence be produced to support the claim during the investigation.

Members of student organizations (including Greek organizations) who feel they have been mentally hazed, harassed, ridiculed, or asked to participate in any activity which violates their religious or moral beliefs should express their concerns to one of the college officers named above. Once notified, the student group must submit a written report of the incident to the Office of Student Affairs, along with any disciplinary action taken against members found violating the College hazing policy.

Student organizations (including Greek organizations) are responsible for and will be held accountable for the actions of one or more of their members involved in a hazing incident. The degree of responsibility of organizations may be lessened or heightened by the manner and actions taken by an organization following an incident. Student organizations found in violation of the College hazing policy will be disciplined by the College. Sanctions levied against an organization may include a warning, reprimand, disciplinary probation, suspension, and forfeiture. In addition, the organization may face criminal charges, as defined under the South Carolina Code, and civil action.

## **VII. MISSING STUDENT NOTIFICATION POLICY AND PROCEDURE**

*Under the Higher Education Opportunity Act, Newberry College is required to establish the following policy and procedures for student living on campus in the residence halls or college owned or operated houses.*

Each student living in an on-campus student housing facility has the option to register a confidential contact person to be notified in the case the student is determined to be missing and the only authorized campus officials and law enforcement officers in furtherance of a missing person investigation may have access to this information. Please note that even if the student does not register a contact person, Newberry College will contact the local law enforcement that the student is missing. The College will notify a parent or guardian of student who is less than 18 years of age and not emancipated.

### **General Procedure**

The Newberry College official receiving the report will collect and document the following information at the time of the report:

- a. The name and relationship of the person making the report.
- b. The date, time and location the missing student was last seen.
- c. The general routine or habits of the suspected missing student (e.g. –visiting friends who live off-campus, working a job away from campus) including any recent changes in behavior or demeanor.
- d. The missing student’s cell phone number (if known by the reporter).

The Newberry College official receiving the report will contact the Residence Life staff member on duty and the Dean of Students in order to update them on the situation and to receive additional consultation. The Dean of Students will ascertain if/when other members of the college's administration need to be contacted. Upon notification from any entity that a student may be missing, Newberry College may use any or all of the following resources to assist in locating the student:

- a. Go to the student's residence hall room,
- b. Talk to the student's RA, roommate, and floor mates to see if anyone can confirm the missing student's whereabouts and/or confirm the date, time, and location the student was last seen.
- c. Secure a current student ID from the Office of Student Affairs or other photo of the student from a friend.
- d. Call and text the student's cell phone and call any other numbers on record.
- e. Send the student an email.
- f. Check all possible locations mentioned by the parties above including, but not limited to, library, residence hall lounges, Kaufmann Hall, etc. The Campus Security Department and the Office of Residence Life may be asked to assist in order to expedite the search process.
- g. Contact or call any other on-campus or off-campus friends or contacts that are made known.
- h. Ascertain the student's car make, model and license plate number. A member of Campus Security will also check all college parking lots for the presence of the student's vehicle.

The Newberry College Campus Technology Staff may be asked to obtain email logs in order to determine the last log in and/or access of the Newberry network. Once all information is collected and documented and the Dean of Students (or her designee) is consulted, Newberry College staff may contact the local police to report the information. (Note: If in the course of gathering information as described above, foul play is evident or strongly indicated, the police can be contacted immediately.)

This document was approved by President's Council on 18 August, 2015.