

# **Finger Lakes Community College**

## **Non-Discrimination Policy: Procedures for Complaints of Discrimination and Sex Discrimination Other Than Sex-Based Harassment For Students and Employees**



**Academic Year 2024-2025**

*Approved by Board of Trustees: August 7, 2024*

# Finger Lakes Community College

## **Non-Discrimination Policy: Procedures for Complaints of Discrimination and Sex Discrimination Other Than Sex-Based Harassment For Students and Employees**

**Academic Year 2024-2025**

### **Notice of Nondiscrimination**

Finger Lakes Community College does not discriminate based on an individual's race, color, national origin, including shared ancestry or ethnic characteristics, religion, creed, age, disability, gender expression, predisposing genetic characteristics, military status, veteran status, domestic violence victim status, criminal conviction or any other category protected by law in any education program or activity, including employment, applicant for employment, intern (whether paid or unpaid), contractor, student, or applicant for admission.

Under 2024 Amendments to the U.S. Department of Education's Title IX Regulations, Finger Lakes Community College does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, including in admission and employment.

Inquiries about Discrimination and Title IX may be referred to Finger Lakes Community College Title IX Coordinator or Deputy Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights, or both. Finger Lakes Community College's Title IX Coordinator is Chief Human Resources Officer, Room 1340, [TitleIX@flcc.edu](mailto:TitleIX@flcc.edu), 585-785-1428. The Deputy Title IX Coordinators is Sarah Whiffen, Associate Vice President of Student Affairs, Student Center room 2153, [TitleIX@flcc.edu](mailto:TitleIX@flcc.edu), 585-785-1284 and Jennifer Parsons, Assistant Director, Talent Management, Room 1350, [jennifer.parsons@flcc.edu](mailto:jennifer.parsons@flcc.edu), 585-785-1466.

Finger Lakes Community College's Non-Discrimination Policy and grievance procedures can be located on the [FLCC Policies and Legal Notices](#) webpage.

The College prohibits conduct by any employee or a student that disrupts or interferes with another's work performance or educational experience, or that creates an intimidating, offensive, or hostile work or educational environment due to discrimination based on protected status. In keeping with this goal, the College is committed to educate employees in the recognition and

prevention of workplace and educational discrimination, sex discrimination and sex-based harassment.

To report information about conduct that may constitute discrimination or sex discrimination or to make a complaint of discrimination or sex discrimination under Title IX or Finger Lakes Community College's Non-Discrimination Policy, please refer to Finger Lakes Community College's [Policies and Legal Notices](#) webpage.

## **Grievance Procedures for Complaints of Discrimination and Sex Discrimination Other Than Sex-Based Harassment**

Under § 106.45 of the 2024 Title IX Final Rule

### **I. Effective Date**

This Grievance Procedure applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Procedure that occurred on or before July 31, 2024, will be processed through the institution's Student Code of Conduct, Non-Discrimination and Sexual Harassment Response and Prevention Policy, or Title IX Grievance Policy.

Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Grievance Procedure, the Grievance Procedure in its entirety, or the invalidated elements of this Procedure, they will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. If this Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy and/or Student Code of Conduct and/or Non-Discrimination and Sexual Harassment Response and Prevention Policy. Finger Lakes Community College will update this Grievance Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Grievance Procedure, if applicable.

### **II. Scope of Procedure**

Finger Lakes Community College has adopted a grievance procedure that provides for the prompt and equitable resolution of discrimination and sex discrimination Complaints made by students, employees, or other individuals who are participating or attempting to participate in its Education Program or Activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Discrimination based on an individual's race, color, national origin, including shared ancestry or ethnic characteristics, religion, creed, age, disability, gender expression, predisposing genetic characteristics, military status, veteran status, domestic violence victim status, criminal conviction or any other category protected by law in any education program or activity is prohibited. Sex discrimination, as defined by Title IX, includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Title IX's prohibition on sex discrimination includes sex-based harassment in the form of quid pro quo harassment, hostile environment harassment, and four specific offenses (sexual assault, dating violence, domestic violence, and stalking). For the prompt and equitable resolution of Complaints of sex-based harassment involving a student or employee, the institution will utilize the Finger Lakes Community College's Title IX Grievance Policy: Procedures for Sex-Based Harassment Complaints for Students and Employees.

### **III. Jurisdiction of Procedure\***

- This Procedure applies to all discrimination or sex discrimination occurring under Finger Lakes Community College's Education Program or Activity in the United States.
- Conduct that occurs under Finger Lakes Community College's Education Program or Activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by Finger Lakes Community College and conduct that is subject to Finger Lakes Community College's disciplinary authority.
- Finger Lakes Community College has an obligation to address a sex-based hostile environment under its Education Program or Activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's Education Program or Activity or outside the United States.
  - In the limited circumstances in which Title IX permits different treatment or separation on the basis of sex, Finger Lakes Community College must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted by law.

#### **a. Supervisory Responsibility**

Supervisory personnel are responsible for maintaining a work environment that is free from discrimination and sex discrimination. In order to assure compliance with this policy, supervisors are required to promptly report to the Civil Rights Compliance Officer, Title IX Coordinator, or Deputy Title IX Coordinator(s) any complaint of discrimination or sex discrimination that they receive, or any discrimination that they observe, suspect, or become aware of. Supervisors may be subject to disciplinary action, up to and including termination, for failing to report suspected discrimination or sex discrimination, or knowingly permitting such conduct to continue in the workplace. Supervisors will also be subject to discipline for engaging in any retaliation against a

person who makes a complaint of discrimination or sex discrimination, or who assists, participates, or testifies in any investigation or proceeding related to such complaint.

#### **IV. Basic Requirements of Non-Discrimination Grievance Procedure:**

- a) *Equitable Treatment:* Finger Lakes Community College will treat Complainants and Respondents equitably.
- b) *Conflicts and Bias:* Finger Lakes Community College requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.
- c) *Presumption:* Finger Lakes Community College presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its Grievance Procedure.
- d) *Reasonably Prompt Timeframes:* Finger Lakes Community College has established timeframes for the major stages of the grievance procedures, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay.
- e) *Extensions:* Finger Lakes Community College allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay: The request for an extension should be sent electronically to the Title IX Coordinator at [titleix@flcc.edu](mailto:titleix@flcc.edu) and should include the reasons for the request and the length of time for the requested extension.
- f) *Privacy:* Finger Lakes Community College will take reasonable steps to protect the privacy of the Parties and witnesses during its grievance procedure. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedure. The Parties cannot engage in retaliation, including against witnesses.
- g) *Objectivity:* Finger Lakes Community College will objectively evaluate all evidence that is relevant and not otherwise impermissible including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- h) *Impermissible Evidence:* The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by Finger Lakes Community College to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- i) Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- ii) A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless Finger Lakes Community College obtains that Party's or witness's voluntary, written consent for use in its grievance procedures; and
- iii) Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

## **V. Disability Accommodations**

### ***A. Generally***

This Procedure does not alter any institutional obligations under federal applicable federal, state, and/or local disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Grievance Procedure that do not fundamentally alter the Procedure. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

### ***B. Supportive Measures***

If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with Disability Services in the Academic Success & Access Programs Office for students and Human Resources Office for employees, to provide support with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973 in the implementation of any supportive measures.

## **VI. Reporting Discrimination or Sex Discrimination to the Institution**

### ***A. Complaints***

The following people have a right to make a **Complaint of discrimination or sex discrimination**, including Complaints of sex-based harassment, requesting that Finger Lakes Community College investigate and make a determination about alleged discrimination under this policy or Title IX:

- A "Complainant," which includes: a student or employee of Finger Lakes Community College who is alleged to have been subjected to conduct that could constitute discrimination or sex discrimination under this policy or Title IX; or

- A person other than a student or employee of Finger Lakes Community College who is alleged to have been subjected to conduct that could constitute discrimination or sex discrimination under this policy or Title IX at a time when that individual was participating or attempting to participate in Finger Lakes Community College's Education Program or Activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or Finger Lakes Community College's Title IX Coordinator.

With respect to **Complaints of discrimination or sex discrimination other than sex-based harassment**, in addition to the people listed above, the following persons have a right to make a Complaint:

- Any student or employee of Finger Lakes Community College; or
- Any person other than a student or employee who was participating or attempting to participate in Finger Lakes Community College's Education Program or Activity at the time of the alleged discrimination or sex discrimination.

Types of Complaints that may be addressed under these Grievance Procedures include, but are not limited to, discrimination or sex discrimination other than sex-based harassment, such as:

- Complaints of retaliation;
- Complaints of discrimination or sex discrimination that do not involve sex-based harassment;
- Complaints regarding failure to make reasonable modifications to policies, practices or procedures as necessary to ensure equal access and prevent discrimination or sex discrimination on the basis of parental, family or marital status, including pregnancy or related conditions; or
- Complaints that Finger Lakes Community College's policies or procedures discriminate on the basis of sex.

Complaints may be submitted in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

***Contact Information for the Title IX Coordinator or Deputy Title IX Coordinator at Finger Lakes Community College:***

Name: Title IX Coordinator  
 Title: Chief Human Resource Officer  
 Office Address: Room 1340  
 Email Address: [TitleIX@flcc.edu](mailto:TitleIX@flcc.edu)  
 Telephone Number: 585-785-1428

Name: Sarah Whiffen, Deputy Title IX Coordinator  
 Title: Associate Vice President of Student Affairs  
 Office Address: Room 2153 Student Center  
 Email Address: [Sarah.Whiffen@flcc.edu](mailto:Sarah.Whiffen@flcc.edu)  
 Telephone Number: 585-785-1284

Name: Jennifer Parsons, Deputy Title IX Coordinator  
Title: Assistant Director, Talent Management  
Office Address: Room 1350  
Email Address: [jennifer.parsons@flcc.edu](mailto:jennifer.parsons@flcc.edu)  
Telephone Number: 585-785-1466

Mailing Address for complaints:  
Finger Lakes Community College  
Title IX  
3325 Marvin Sands Drive  
Canandaigua, NY 14424

### ***B. Confidential Reports***

The following officials at Finger Lakes Community College will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited by this policy or Title IX:

- Title IX Coordinator or designee(s);
- Officials with Authority to institute corrective measures under this policy or Title IX;
- Responsible Employees

The following officials at Finger Lakes Community College may provide confidentiality:

- Janette Aruck R.N., Director of Student Health Services; Room 3260; 585-785-1298;  
[Janette.Aruck@flcc.edu](mailto:Janette.Aruck@flcc.edu)
- Cherie Dewater R.N., Student Health Service; Room 3260; 585-785-1612;  
[Cherie.Dewater@flcc.edu](mailto:Cherie.Dewater@flcc.edu)
- Kylie Harms N.P., Student Health Services; Room 3260, 585-785-1612
- TBD; Director of Counseling; Room 3260; 585-785-1211
- TBD; Licensed Counselor; Room 3260; 585-785-1211

### ***C. Public Awareness Events***

When Finger Lakes Community College's Title IX Coordinator is notified of information about conduct that reasonably may constitute sex-based harassment under Title IX, discrimination or sex discrimination that was provided by a person during a public event to raise awareness about sex-based harassment, discrimination, or sex discrimination that was held on Finger Lakes Community College's campus or through an online platform sponsored by it, Finger Lakes Community College is not obligated to act in response to the information, unless it indicates an imminent and serious threat to the health or safety of a Complainant, any students, employees, or other persons.

However, in all cases Finger Lakes Community College must use this information to inform its efforts to prevent sex-based harassment, discrimination, and sex discrimination including by providing tailored training to address alleged sex-based harassment, discrimination, and sex discrimination in a particular part of its Education Program or Activity or at a specific location



when information indicates there may be multiple incidents of sex-based harassment, discrimination, or sex discrimination.

Nothing in Title IX or this policy obligates Finger Lakes Community College to require its Title IX Coordinator or any other employee to attend such public awareness events.

## **VII. Supportive and Interim Measures**

### ***A. Providing Supportive Measures***

Complainants who report allegations of sex-based harassment, discrimination, or sex discrimination have the right to receive supportive measures from Finger Lakes Community College regardless of whether they file a Complaint. Supportive measures are non-disciplinary and non-punitive. Supportive measures may vary depending upon what is reasonably available at Finger Lakes Community College.

As appropriate, supportive measures may include but not be limited to:

- Counseling services;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Campus escort services, as available;
- Restrictions on contact applied to one or more Parties (no contact orders)
- changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative;
- Leaves of absence;
- Increased security and monitoring of certain areas of the campus; or
- Training and education programs related to sex-based harassment.

Supportive measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or Finger Lakes Community College's educational environment, or to provide support during Finger Lakes Community College's grievance procedure under this policy.

Finger Lakes Community College may modify or terminate supportive measures at the conclusion of the grievance procedure or may continue them within Finger Lakes Community College's discretion.

Finger Lakes Community College will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one Party of supportive measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to Finger Lakes Community College's Education Program or Activity, or there is an exception that applies, such as:

- Finger Lakes Community College has obtained prior written consent from a person with the legal right to consent to the disclosure;

- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute sex-based harassment under Title IX, discrimination, or sex discrimination in Finger Lakes Community College’s Education Program or Activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

### ***B. Process for Review of Supportive Measures***

Finger Lakes Community College provides for a Complainant or Respondent to seek modification or reversal of Finger Lakes Community College’s decision to provide, deny, modify, or terminate a supportive measure.

This review will be done by an impartial employee of Finger Lakes Community College who did not make the challenged decision on the original supportive measure request. The impartial employee of Finger Lakes Community College who makes this determination will have the authority to modify or reverse the decision if that impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the procedure as outlined above for providing supportive measures in accordance with this policy and the Title IX regulations.

Parties are only allowed to challenge their own individual supportive measures. Challenges by one Party will not be heard to supportive measures afforded to the opposite Party, unless that supportive measure directly impacts the Party making such challenge (i.e., two-way no contact orders).

### ***C. Emergency Removal***

Finger Lakes Community College retains the authority to remove a Respondent from Finger Lakes Community College’s Education Program or Activity on an emergency basis, where Finger Lakes Community College (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex-based harassment, discrimination, or sex discrimination justifies removal.

Finger Lakes Community College will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. The Respondent should submit their challenge within five business days to the Title IX Coordinator, who will then assign a decisionmaker. The decisionmaker who hears a challenge to an emergency removal must not be involved in any decision regarding responsibility or appeal of a determination.

## ***D. Administrative Leave***

Finger Lakes Community College retains the authority to place a non-student employee Respondent on administrative leave during the Grievance Procedure, consistent with Collective Bargaining Agreements and NYS employment law.

Note on student employees: when a Complainant or Respondent is both a student and an employee of Finger Lakes Community College, Finger Lakes Community College must make a fact-specific inquiry to determine whether these procedures apply to that student employee. If the Complainant or Respondent's primary relationship with Finger Lakes Community College is to receive an education and whether the alleged sex-based harassment occurred while the Party was performing employment-related work.

## **VIII. The Grievance Procedure for Discrimination or Sex Discrimination**

### ***A. Filing a Complaint***

#### ***Who can make a Complaint?***

- A Complainant, which includes: a student or employee of Finger Lakes Community College who is alleged to have been subjected to conduct that could constitute discrimination or sex discrimination under this policy and Title IX; or a person other than a student or employee of Finger Lakes Community College who is alleged to have been subjected to conduct that could constitute discrimination or sex discrimination under this policy and Title IX at a time when that individual was participating or attempting to participate in Finger Lakes Community College's Education Program or Activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
- The Title IX Coordinator.

#### ***Title IX Coordinator initiated Complaints:***

In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, the Title IX Coordinator must determine whether to initiate a Complaint of discrimination or sex-discrimination. This determination is fact-specific, and the Title IX Coordinator must consider:

- The Complainant's request not to proceed with the initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of discrimination or sex-discrimination would occur if a Complaint were not initiated;
- The severity of the alleged discrimination or sex discrimination, including whether the conduct, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination, sex discrimination, or sex-based harassment and prevent its recurrence;

- The age and relationship of the Parties, including whether the Respondent is an employee of the recipient;
- The scope of the alleged discrimination, sex discrimination, or sex-based harassment, including information suggesting a pattern, ongoing discrimination, sex discrimination, or sex-based harassment alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether discrimination, sex discrimination, or sex-based harassment occurred; and
- Whether Finger Lakes Community College could end the alleged discrimination, sex discrimination, or sex-based harassment and prevent its recurrence without initiating these grievance procedures.

If after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged present as an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents Finger Lakes Community College from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate a Complaint.

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing supportive measures as listed in Section VIII of these procedures.

***Format of Complaint:***

As defined in section VII of these procedures, a Complaint can be an oral or written request to Finger Lakes Community College that objectively can be understood as a request for Finger Lakes Community College to investigate and make a determination about alleged discrimination or sex discrimination at the institution.

***Who can I report a Complaint to?***

Any reports of discrimination, sex discrimination, or sex-based harassment may be made directly to the Title IX Coordinator, whose contact information is listed at the beginning of this Grievance Procedure. There are other ways in which a Party may report a Complaint.

Finger Lakes Community College requires that any employee who is not a Confidential Employee and who either has authority to institute corrective measures on behalf of Finger Lakes Community College or has responsibility for administrative leadership, teaching, or advising in Finger Lakes Community College's education program or activity must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute discrimination, sex discrimination, and including sex-based harassment.

All other employees at Finger Lakes Community College who are not Confidential Employees and are not employees as identified above are required to: 1) notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute discrimination or sex-discrimination, including sex-based harassment.

**Note:** If an employee has personally been subject to conduct that reasonably may constitute discrimination or sex discrimination under Title IX or any institutional policy or this Grievance Procedure, these requirements do not apply to an employee reporting a personal Complaint.

Following receipt of a complaint of an alleged violation, the Title IX Coordinator engages in a prompt review of the complaint to determine if there is reasonable cause to believe that discrimination or sex discrimination may have occurred.

**Note for Employees:** There may be times when following the receipt of a complaint, the Title IX Coordinator determines the conduct, as reported, does not fall under the jurisdiction of this policy and does or not require the proceedings outlined in the policy. In these cases, the reported conduct will be referred to an employee's supervisor and appropriate Cabinet member to determine next steps.

### ***B. Consolidation of Complaints***

Finger Lakes Community College may consolidate Complaints of discrimination or sex discrimination against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations of discrimination or sex discrimination arise out of the same facts or circumstances. When more than one Complainant or more than one Respondent is involved, references below to a Party, Complainant, or Respondent include the plural, as applicable.

### ***C. Allegations Potentially Falling Under Two Policies:***

*If the alleged conduct, if true, includes conduct that would constitute covered discrimination, sex discrimination, or sex-based harassment and conduct that would not constitute covered discrimination, sex discrimination, or sex-based harassment, this Grievance Process will be applied in the investigation and adjudication of all of the allegations.*

### ***D. Notice of Allegations***

Upon initiation of Finger Lakes Community College's grievance procedure, Finger Lakes Community College will notify the Parties of the following:

- Finger Lakes Community College's grievance procedure;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute discrimination or sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- That Retaliation is prohibited; and
- The Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence.

If, in the course of an investigation, Finger Lakes Community College decides to investigate additional allegations of discrimination or sex discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a Complaint that is consolidated, Finger Lakes Community College will notify the Parties of the additional allegations.

### ***E. Investigation***

Finger Lakes Community College will provide for adequate, reliable, and impartial investigation of Complaints. The burden is on Finger Lakes Community College—not on the Parties—to conduct an investigation that gathers sufficient evidence to determine whether discrimination or sex discrimination occurred.

Finger Lakes Community College will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible. Finger Lakes Community College will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

Finger Lakes Community College will provide each Party with an equal opportunity to access the evidence that is relevant to the allegations of discrimination or sex discrimination and not otherwise impermissible, in the following manner:

- 1) Finger Lakes Community College will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence in an investigative report.
- 2) The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence and will provide that Report to the Parties prior to the hearing in an electronic format for each Party's review and written response.
- 3) The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of the relevant evidence.
- 4) Only relevant evidence (including both inculpatory and exculpatory – i.e., tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.
- 5) The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.
- 6) Finger Lakes Community College will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- 7) Finger Lakes Community College will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the

grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint of discrimination or sex discrimination are authorized.

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by Finger Lakes Community College to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless Finger Lakes Community College obtains that Party's or witness's voluntary, written consent for use in its grievance procedure; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged discrimination, sex discrimination, or sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged discrimination or sex discrimination or preclude determination that discrimination or sex discrimination occurred.

### ***Questioning Parties and Witnesses to Aid in Evaluating Allegations and Assessing Credibility***

When a party or witness's credibility is in dispute, and such dispute is relevant to evaluating one or more allegations of discrimination or sex discrimination, the investigator and/or decisionmaker must have an opportunity to question any party or witness whose credibility is in dispute in a live format.

The investigator/decisionmaker will question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and Relevant to evaluating one or more allegations of discrimination or sex discrimination. This will occur during individual meetings with a Party or witness.

Each Party shall have the opportunity to propose questions that the Party wants asked of any Party or witness and have those questions asked by the investigator/decisionmaker during one or more individual meetings, including follow-up meetings, with a Party or witness, subject to the appropriate procedures outlined herein regarding the decisionmaker's advance evaluation of all

questions. Each Party will be provided with an audio or audiovisual recording or transcript with enough time for the Party to have a reasonable opportunity to propose follow-up questions.

### ***F. Determination Regarding Responsibility***

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, Finger Lakes Community College will:

- Use the preponderance of the evidence standard of proof to determine whether discrimination or sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded by the evidence, under the applicable standard, that discrimination or sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that discrimination or sex discrimination occurred.
- Notify the Parties in writing of the determination whether discrimination or sex discrimination occurred under this policy and/or Title IX, including the rationale for such determination, and the procedures and permissible bases for the Complainant and Respondent to appeal, if applicable;
- Not impose discipline on a Respondent for discrimination or sex discrimination prohibited by policy and/or Title IX unless there is a determination at the conclusion of the grievance procedure that the Respondent engaged in prohibited discrimination or sex discrimination.
- If there is a determination that discrimination or sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - Coordinate the provision and implementation of remedies to a Complainant and other people Finger Lakes Community College identifies as having had equal access to Finger Lakes Community College's Education Program or Activity limited or denied by discrimination or sex discrimination;
  - Coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions; and
  - Take other appropriate prompt and effective steps to ensure that discrimination or sex discrimination does not continue or recur within Finger Lakes Community College's Education Program or Activity.
- Comply with the grievance procedure before the imposition of any disciplinary sanctions against a Respondent; and
- Not discipline a Party, witness, or others participating in the grievance procedure for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether discrimination or sex discrimination occurred.



## ***G. Dismissal of a Complaint***

### *Bases for Dismissal*

Finger Lakes Community College may dismiss a Complaint of discrimination or sex discrimination for any of the following reasons:

- Finger Lakes Community College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in Finger Lakes Community College's Education Program or Activity and is not employed by Finger Lakes Community College;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint under the bases described in these procedures, and Finger Lakes Community College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute discrimination or sex discrimination under this policy and/or Title IX even if proven; or
- Finger Lakes Community College determines that the conduct alleged in the Complaint, even if proven, would not constitute discrimination or sex discrimination under this policy and/or Title IX or these procedures. Note: Finger Lakes Community College must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

### *Notice of Dismissal*

Upon dismissal, Finger Lakes Community College will promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then Finger Lakes Community College will also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing.

Finger Lakes Community College will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then Finger Lakes Community College will also notify the Respondent that the dismissal may be appealed.

Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as outlined below.

## ***H. Appeal of Dismissals and Determinations***

Finger Lakes Community College offers the following process for appeals from a dismissal or a determination whether discrimination or sex discrimination occurred:

If the dismissal or determination is appealed, Finger Lakes Community College will:

- Notify the Parties of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
- Implement appeal procedures equally for the Parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the Parties of the result of the appeal and the rationale for the result.

When a Complaint is dismissed, Finger Lakes Community College will, at a minimum:

- Offer supportive measures to the Complainant as appropriate.
- If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that discrimination or sex discrimination does not continue or recur within Finger Lakes Community College's Education Program or Activity.

The submission of appeal stays (or pauses) any sanctions for the pendency (or duration while the appeal is being deliberated and decided upon) of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, the institution will as soon as practicable notify the other Party in writing of the appeal, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals should be submitted in electronic form to the email address [TitleIX@flcc.edu](mailto:TitleIX@flcc.edu).

Appeals involving students will be decided by an appeal board, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter. Appeals involving an employee will be decided by trained employee in Human Resources or one designated by the Title IX Coordinator.

The outcome of the appeal will be provided in writing simultaneously to both Parties and include rationale for the decision. The determination of the Appeal Decision-making Body is final.

## ***I. Retaliation***

Finger Lakes Community College prohibits retaliation, including peer retaliation, in its Education Program or Activity. Upon receiving a Complaint alleging retaliation or upon receiving information about conduct that reasonably may constitute retaliation under this policy and/or Title IX, Finger Lakes Community College will initiate its grievance procedure or, as appropriate, an informal resolution process.

Retaliation against any individual covered by this policy who, in good faith, brings a written or verbal complaint of discrimination or sex discrimination, or who assists, participates, or testifies in any investigation or proceeding related to such complaint, regardless of whether or not the alleged conduct rises to the level of a violation of this policy or the law, is strictly prohibited. Such retaliation is unlawful under federal, state, and (where applicable) local law, and Finger Lakes Community College will not tolerate or permit adverse treatment of individuals because they report discrimination or sex discrimination or provide information related to such complaints. Adverse treatment includes being discharged, disciplined, discriminated against, or any action that could discourage an individual from coming forward to make or support a claim of discrimination or sex discrimination. Participants who experience retaliation should contact the Title IX Coordinator, Deputy Title IX Coordinators or CRCO, and may file a complaint.

The New York State Human Rights Law protects any individual who has engaged in “protected activity”. Protected activity occurs when a person has:

- Made a complaint of discrimination or sexual harassment, either internally or with any anti-discrimination agency;
- Testified or assisted in a proceeding involving sexual harassment or discrimination under the Human Rights Law or other anti-discrimination law;
- Opposed sexual harassment or discrimination by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- Reported that another employee has been sexually harassed; or
- Encouraged a fellow employee to report harassment.

Any individual who participates in the procedure may do so without fear of retaliation. Violations of this prohibition may result in disciplinary action up to and including dismissal from employment. However, this retaliation provision is not intended to protect persons making intentionally false charges of discrimination or sex discrimination.

### **NYS Definition of Sexual Harassment:**

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of employment or academic benefit; or
- Submission to or rejection of the conduct is used as the basis for an employment or academic decision affecting the person rejecting or submitting to the conduct; or
- The conduct has the purpose or effect of unreasonably interfering with an affected person's work or academic performance, or creating an intimidating, hostile or offensive work or learning environment, even if the reporting individual is not the intended target of the sexual harassment.

A sexually harassing hostile environment includes, but is not limited to, words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job or academic performance. Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment.

The Title IX Grievance Policy for Sex-Based Harassment definitions may overlap New York State's definitions.

### **Civil Right Compliance Officer (CRCO)**

The Chief Human Resources Officer serves as the College's CRCO and Title IX Coordinator. In addition to the CRCO, the Co- Coordinators and Investigator have the responsibility to receive civil rights reports and complaints of discrimination and sex discrimination. The CRCO, Co- Coordinators oversee implementation of this policy and the Title IX Grievance Policy. The Deputy Title IX Coordinators / Investigators act with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by a Deputy Title IX Coordinator / Investigator, contact the Civil Rights Compliance Officer and/or the College President. To raise concerns regarding a potential conflict of interest with any other administrator involved in the investigation or resolution process, please contact a Deputy Title IX Coordinator. Inquiries about and reports regarding this policy and procedure may be made internally to:

Chief Human Resources Officer, TBD  
Civil Rights Compliance Officer (CRCO),  
Title IX Coordinator  
Room 1350,  
585.785.1451

Inquiries may be made externally to (see also Legal Protections & External Remedies, below):

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: 800.421.3481  
Facsimile: 202.453.6012  
TDD#: 877.521.2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

United States Department of Education's Office of Civil Rights  
32 Old Slip 26<sup>th</sup> Floor,  
New York, NY 10005-2500 Tel. 646.428.3800  
[ocr.newyork@ed.gov](mailto:ocr.newyork@ed.gov)

Equal Employment Opportunity Commission (EEOC)  
Contact: <http://www.eeoc.gov/contact/>  
EEOC Field Office  
6 Fountain Plaza, Suite 350  
Buffalo, NY 14202  
716.551.4441

New York State Division of Human Rights – Rochester 1 Monroe Square  
259 Monroe Avenue  
3<sup>rd</sup> floor Rochester, NY 14607  
585.238.8250

### **Confidential Resource for Employees**

A confidential resource for employees; the Employee Assistance Program (EAP) is available to help free of charge and is available 24/7. Tel. 800-252-4555 or Web. HigherEdEAP.com. The EAP is a 3<sup>rd</sup> party, neutral service for employees seeking counseling and other resources.

### **Need to know**

A Responsible Employee who makes a report still affords privacy to the Reporting Party, as only a small group of officials who need to know will be informed. Information will be shared as necessary with investigators, witnesses and the Responding Party. The circle of people with this knowledge will be kept as tight as possible to preserve each party's rights and privacy. Failure of a Responsible Employee, as described in this section, to report an incident or incidents of sexual harassment or discrimination based upon any protected category of which they become aware is a violation of College policy and such Responsible Person may be subject to disciplinary action for failure to comply.

### **Federal Timely Warning Obligations**

Parties reporting sexual misconduct should be aware that under the Clery Act, College administrators must issue timely warnings for incidents reported to them that pose a substantial

threat of bodily harm or danger to members of the campus community. The College will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **False Allegation**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

### **Amnesty for Student Reporting**

The College community encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, students who are reporting parties or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that reporting parties choose to report to College officials, and that witnesses come forward to share what they know. To encourage reporting, the Student Code of Conduct and the Sexual Misconduct and Non-Discrimination Policy offers reporting student parties and witnesses amnesty from minor policy violations related to the incident.

### **Parental Notification (allegations involving students)**

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The university may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act.

### **Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus police regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student affairs, campus safety, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

## ***J. Sanctions***

The determination of whether the Respondent is found responsible for the offense shall be made on the basis of whether or not there is evidence which supports the finding of a violation, using the standard of evidence, a preponderance of evidence (more likely than not). Students will be notified of this decision within a timely manner by electronic delivery. If there is a significant delay, the Respondent will be notified of such delay. Sanctions of suspensions or dismissals may be delivered by a method deemed reasonable by the Senior Director, Center for Student Well-Being, the AVP of Student Affairs and/or the Provost, VP of Academic and Student Affairs, Human Resources, or Cabinet members . The most common sanctions are defined below and any additional sanctions, if appropriate, will be defined in the outcome/decision letter.

### **Examples of Possible Employee Sanctions**

The College is responsible for prompt, effective, remedial and equitable actions in response to a finding of discrimination or sex discrimination, or retaliation. Because each situation will contain many variables, the College's response will be varied. Responsive actions for an employee who has engaged in discrimination, sex discrimination and/or retaliation may include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other appropriate remedies*

Any applicable provisions in Collective Bargaining Agreements shall apply to the imposition of formal disciplinary measures.

### **Examples of Possible Student Sanctions**

- A. No Action** - No action indicates that a student is found not responsible for violating the Code. *[Not eligible to appeal.]*

- B. Informal Warning** - An informal warning indicates that a student's behavior may have violated the Code, but that no sanctions are being assigned by the College at the time. *[Not eligible to appeal.]*
- C. Written Warning** - Written warning is an official notification that the behavior of the student has been unacceptable and violated the Code. Written warnings will be placed in the student's official conduct file. *[Not eligible to appeal.]*
- D. Ongoing Conduct Requirements/Restrictions** - Conduct requirements may be imposed with or without suspension or probation. Conduct requirements include, but are not limited to:
1. restrictions from participating in intercollegiate athletics and extra-curricular activities;
  2. restrictions of access to some or all campus facilities/areas;
  3. monetary payments for purpose of restitution or to cover the expense of educational sanctions;
  4. no contact orders;
  5. denial of financial assistance from programs funded by the College;
  6. required attendance at educational/assessment programs such as behavioral management workshops and comprehensive substance abuse assessments;
  7. administrative hold on access to specified College documents;
  8. loss of on campus employment opportunities, including but not limited to, student aide and Resident Assistant positions;
  9. prohibition/revocation of campus employment;
  10. requirement to complete specific coursework; and
  11. restrictions on completion of coursework (e.g., online only, etc.).
- E. Community Service** - Students may be assigned community service in a manner consistent with their violation (e.g. – a conduct violation in the Cafeteria may result in community service in the Cafeteria). Community service sanctions include, but are not limited to, participating in a designated service project or giving an identified community or agency (on or off campus) a number of service hours to be completed within a specified time period.
- F. Conduct Probation** - Conduct probation indicates to a student that their behavior has resulted in a sanction close to suspension. It is imposed for a definite period of time and includes the likelihood of more severe conduct sanctions, including suspension or dismissal, if the student is found to be violating or to have violated any section of the Code during the probationary period, and may include ongoing conduct requirements. A student on probation may be required to meet periodically with a person designated by the Senior Director, Center for Student Well-Being.
- G. Conduct Suspension** - Suspension prohibits the student from attending Finger Lakes Community College for a designated period of time, which shall not exceed a period of more than five calendar years following the effective date. While on suspension the student is, in most cases, restricted from being on college property. The Senior Director, Center for Student Well-Being or designee will determine the effective dates of the suspension. If required by the suspension, a student who has been suspended must



petition for re-enrollment through the Office of the Associate Vice President of Student Affairs and/or Admissions Review Board. Notice of suspension is kept permanently in the student's official college record maintained by the Registrar's Office and by the Community Standards and Counseling Office.

- H. Conduct Dismissal** - Conduct dismissal *permanently* separates the student from the institution, prohibits the student from ever attending Finger Lakes Community College and, in most cases restricts a person from being on college property. A student may not be readmitted to the College after dismissal. Dismissals are usually accompanied by permanent transcript notations (see below.) Notice of conduct dismissal is kept permanently in the student's official college record maintained by the Registrar's Office and a copy is kept in the Student Conduct Records system.
- I. Housing Conduct Requirements/Restrictions** – Housing Conduct requirements may be imposed with or without suspension or probations. Housing Conduct requirements include, but are not limited to:
1. Restrictions from participating in residence hall activities
  2. Suspension of guest privileges
  3. Restitution for damages
  4. Denial of access to some or all residence hall areas
  5. Suspension of use of otherwise permitted items such as musical instruments or additional furnishings
- J. Housing Probation** - Housing probation indicates to a Resident that their behavior has resulted in a sanction close to Removal from Housing. It is imposed for a definite period of time and includes the likelihood of more severe conduct sanctions if the Resident is found to be violating or to have violated any section of the Student Code of Conduct or Association Rules and Regulations during the probationary period and may include ongoing conduct requirements. A Student on probation may be required to meet periodically with a person designated by the Director of Housing and Residential Life.
- K. Housing Suspension** - Eviction or removal from the Suites at Laker Landing residence hall for a definite period of time, along with termination of the Resident's *License*. The Resident may not return to the Suites at Laker Landing residence hall property, including the courtyard, parking lot, or Pavilion as a guest during this period. If a Resident becomes ineligible for housing due to College Suspension/Dismissal, the Resident will also be removed from Association Housing/Suites at Laker Landing.
- L. Housing Removal/Dismissal** - Eviction or removal from the Suites at Laker Landing residence hall indefinitely and termination of the Resident's *License*. A Resident who has been removed from the Suites at Laker Landing residence hall may not return to the residence hall as a guest. If a Resident becomes ineligible for housing due to College Suspension/Dismissal, the Resident will also be removed from Association Housing/Suites at Laker Landing. Suspension from Association Housing/Suites at Laker Landing is not a prerequisite for Removal from Housing. Removal from Association

Housing/Suites at Laker Landing is sanctioned based on the gravity of the incident and level of violation wherein the Resident is not allowed to return.

**M. Permanent Transcript Notation** - Permanent Transcript Notations (PTN) indicating disciplinary action taken may be placed on student records where students have been found responsible for violating the Title IX Grievance Policy, the Non-Discrimination Policy, or the Student Code of Conduct, including but not limited to, behavior that leads to death or serious physical injury of another person, sexual assault, hazing, or violations of law. Finger Lakes Community College reserves the right to determine additional serious violations that will result in a PTN. A PTN will appear on a student's official academic transcript as grades of AW (Administrative Withdrawal) for the classes during the semester in which the sanction is imposed and a brief comment on the transcript noting sanction and date(s).

For crimes of violence, including, but not limited to sexual violence, (rape, acquaintance rape, Domestic Violence, Dating Violence, Sexual Assault, or Stalking) defined as crimes that meet the reporting requirements pursuant to the federal Clery Act<sup>1</sup> established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "dismissed/expelled after a finding of responsibility for a code of conduct violation". If a respondent withdraws from the institution while such conduct charges are pending and an outcome has not yet been determined, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that indicates the student "withdrew with conduct charges pending". A student may appeal to remove a PTN from their transcript no sooner than one calendar year from the original sanction date. Requests for removal should be sent to the Associate Vice President of Student Affairs and should include a rationale for the request. Appeals will be reviewed by the AVP of Student Affairs and/or the Provost and a decision will be rendered within 30 calendar days from the receipt of the appeal.

**N. Sanctions for Alcohol and Other Drug Violations** - The College treats each student and each situation individually. Therefore, the certainty of sanctions cannot be assured prior to a Conduct Conference occurring. The sanction descriptions below provide *general* guidelines for a Hearing Officer and student reference. These sanctions may, at the discretion of the Hearing Officer, or in consultation with College Officers, be changed and/or added to, based upon the analysis of each student and situation. It is important to remember that while even a single violation can lead to Conduct Suspension or Conduct Dismissal from Finger Lakes Community College, that not all students charged with violations of the Student Code of Conduct receive sanctions.

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<sup>1</sup> Violations equivalent to the Clery Act (as updated by the Violence Against Women Act Final Regulations) Part I crimes covered under the legislation that would require a transcript notation are: murder; rape, fondling, incest and statutory rape; robbery; aggravated assault; burglary; motor vehicle theft; manslaughter; and arson. When the decision is to not approve a request, the student may re-submit after one calendar year has elapsed. There shall be no more than five appeals of a PTN for any student. Rationale for the reason the appeal is not granted will be provided. For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act<sup>1</sup> established in 201 092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they "withdrew with conduct charges pending."

## **Alcohol**

First Violation - Students found responsible for violating the respective section of the Student Code of Conduct will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred *may* receive a written warning, an educational assignment, and/or an online evaluation; while students responsible for hosting an event, or supplying alcohol for an event, *may* receive conduct probation, housing probation, an educational assignment, parental notification (if under 21), a substance abuse evaluation, and/or an online education and/or evaluation.

Second Violation – Students found responsible for violating the respective section of the Student Code of Conduct a second time will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred *may* receive conduct probation, parental notification (if under 21), housing probation, an educational assignment, and/or a substance abuse evaluation; while students responsible for hosting an event, or supplying alcohol for an event, *may* receive conduct suspension, housing suspension, parental notification (if under 21), a substance abuse education and/or evaluation, an online evaluation, and/or conditions necessary for readmission.

Third Violation - Students found responsible for violating the respective section of the Student Code of Conduct a third time will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred *may* receive conduct suspension, housing suspension, a permanent transcript notation, parental notification (if under 21), a substance abuse evaluation, and/or conditions necessary for readmission, while students responsible for hosting an event, or supplying alcohol for an event, *may* receive conduct dismissal, housing dismissal, a permanent transcript notation, parental notification (if under 21), a substance abuse evaluation, an online evaluation, and/or conditions necessary for readmission.

Fourth Violation - Students found responsible for violating the respective section of the Student Code of Conduct a fourth time will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred *may* receive conduct dismissal, housing dismissal, a permanent transcript notation, parental notification (if under 21), a substance abuse evaluation, an online evaluation, and/or conditions necessary for readmission.

## **Other Drugs\***

First Violation - Students found responsible for violating the respective section of the Student Code of Conduct will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred *may* receive conduct probation, housing probation, an educational assignment, parental notification (if under 21), a substance abuse evaluation, and/or an online evaluation, while students involved in hosting an event, or supplying drugs for an event *may* receive conduct suspension, housing suspension, parental notification (if under 21), substance abuse education and/or evaluation, and/or conditions necessary for readmission.

*\*Note: the sale or distribution of drugs or unlawful controlled substances may result in interim (immediate) suspension prior to a conduct conference occurring.*

Second Violation - Students found responsible for violating the respective section of the Student Code of Conduct a second time will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred may receive conduct suspension, housing suspension, parental notification (if under 21), a substance abuse education and/or evaluation, while students involved in hosting an event, or supplying drugs for an event may receive conduct dismissal, housing dismissal, a permanent transcript notation, parental notification (if under 21), a substance abuse education and/or evaluation, and/or conditions necessary for readmission.

Third Violation - Students found responsible for violating the respective section of the Student Code of Conduct a third time will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred may receive conduct dismissal, housing dismissal, parental notification (if under 21), a substance abuse evaluation, an online evaluation, and/or conditions necessary for readmission.

### **DWI/DUI**

First Violation – Students found responsible for violating the respective sections of the Student Code of Conduct, while operating a motor vehicle, will receive sanctions commensurate with their involvement in the situation. Students who are not responsible for property or personal damages may receive conduct probation, housing probation, an educational assignment, parental notification (if under 21), a substance abuse education and/or evaluation, while students who are responsible for property or personal damages may receive conduct suspension, housing suspension, parental notification (if under 21), a substance abuse evaluation, and/or conditions necessary for readmission.

If a student is suspended as a result of alcohol and/or other drug violations and subsequently returns to Finger Lakes Community College, another violation of alcohol or other drug parts of the Student Code of Conduct will likely result in conduct dismissal from the College. For very serious or multiple violations of the Student Code of Conduct, additional sanctions may be warranted and imposed in accordance with normal college conduct procedures.

### **O. Persona Non-Grata Status**

Persona non grata status refers to an individual who is prohibited from entering or remaining on any property owned or controlled by Finger Lakes Community College at any time, for any reason, without specific written reauthorization from the Center for Student Well-Being, AVP of Student Affairs and/or Campus Police. Should an individual fail to comply with the terms of this directive, they will be considered a trespasser and will be subject to arrest and criminal prosecution.

## APPENDIX A

### Definitions

1. ***Accused*** means a person accused of a violation who has not yet entered an institution's judicial or conduct process.
2. ***Admission*** means selection for part-time, full-time, special, associate, transfer, exchange, or any other registration, membership, or matriculation in or at an education program or activity operated by Finger Lakes Community College.
3. ***Bystander*** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of the rules or policies of an institution.
4. ***Consent\**** means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time. Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot Consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to Consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When Consent is withdrawn or can no longer be given, sexual activity must stop. "Consent" and "affirmative consent" may be used interchangeably under the Student Code of Conduct, Title IX Grievance Policy, and Non-Discrimination Policy.
5. ***Complainant*** means:
  - (1) a student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment as defined in this Grievance Procedure and who was participating or attempting to participate in Finger Lakes Community College's Education Program or Activity; or
  - (2) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment under this Grievance Procedure and who was participating or attempting to participate in Finger Lakes Community College's Education Program or Activity at the time of the alleged Sex-Based Harassment.

\*This definition of consent is taken from New York State Education Law § 6441(2)(a).

6. **Complaint** means an oral or written request to Finger Lakes Community College that objectively can be understood as a request for Finger Lakes Community College to investigate and make a determination about alleged Sex-Based Harassment at the institution.
7. **Confidential Employee** means:
  - (1) an employee of Finger Lakes Community College whose communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
  - (2) an employee of Finger Lakes Community College whom the institution has designated as confidential for the purpose of providing services to persons related to Sex-Based Harassment. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about Sex-Based Harassment in connection with providing those services; or
  - (3) an employee of Finger Lakes Community College who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Sex-Based Harassment. The employee's confidential status is only with respect to information received while conducting the study.
8. **Disciplinary Sanctions** means consequences imposed on a Respondent following a determination under this Grievance Procedure that the Respondent violated Finger Lakes Community College's prohibition Sex-Based Harassment.
9. **Education Program or Activity** means any academic, extracurricular, research, occupational training or other Education Program or Activity operated by Finger Lakes Community College.
10. **Party** means Complainant or Respondent.
11. **Peer Retaliation** means Retaliation by a Student against another Student.
12. **Pregnancy or related conditions** means
  - 1) Pregnancy, childbirth, termination of pregnancy, or lactations;
  - 2) *Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactations; or*
  - 3) *Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.*
13. **Relevant** means related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure. Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.
14. **Remedies** means measures provided, as appropriate, to a Complainant or any other person Finger Lakes Community College identifies as having had their equal access to Finger Lakes Community College's Education Program or Activity limited or denied by Sex-Based Harassment. These measures are provided to restore or preserve that person's access to

Finger Lakes Community College's Education Program or Activity after Finger Lakes Community College determines that Sex-Based Harassment occurred.

15. **Respondent** means a person who is alleged to have violated Finger Lakes Community College's prohibition on Sex-Based Harassment.
16. **Retaliation** means intimidation, threats, coercion, or discrimination by any person, by Finger Lakes Community College, a Student, or an employee or other person authorized by Finger Lakes Community College to provide aid, benefit, or service under Finger Lakes Community College's Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a Complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Grievance Procedure.
17. **Sex-Based Harassment** means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:
  - (1) *Quid pro quo harassment*. An employee, agent or other person authorized by Finger Lakes Community College's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
  - (2) *Hostile Environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Finger Lakes Community College's Education Program or Activity (i.e., creates a Hostile Environment). Whether a Hostile Environment has been created is a fact-specific inquiry that includes consideration of the following:
    - (i) the degree to which the conduct affected the Complainant's ability to access Finger Lakes Community College's Education Program or Activity;
    - (ii) the type, frequency, and duration of the conduct;
    - (iii) the Parties' ages, roles within Finger Lakes Community College's Education Program or Activity, previous interactions and other factors about each Party that may be Relevant to evaluating the effects of the conduct;
    - (iv) the location of the conduct and the context in which the conduct occurred; and
    - (v) other Sex-Based Harassment in Finger Lakes Community College's Education Program or Activity;
  - (3) *Sexual Assault* (as defined in the Clery Act, 20 U.S.C. 1092(f)) means any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent;
  - (4) *Dating Violence* (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the

length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship;

(5) *Domestic Violence* means any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or Domestic Violence laws of New York State, or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or Domestic Violence laws of New York State; or

(6) *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.

18. ***Student*** means a person who has registered for classes.
19. ***Student Code of Conduct*** means the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is registered at the institution.
20. ***Supportive Measures*** means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:
  - 1) Restore or preserve that Party's access to Finger Lakes Community College's Education Program or Activity, including measures that are designed to protect the safety of the Parties or Finger Lakes Community College's educational environment; or
  - 2) Provide support during Finger Lakes Community College's Grievance Procedure for Sex-Based Harassment.