

## **705 Sexual and Gender-Based Misconduct Procedure**

*Effective Date: 08/06/2020*

### **Statement:**

The Cankdeska Cikana Community College (henceforth called CCCC or the College) is committed to the safety, respectful, and non-discriminatory learning and working environment for all members of the College community. The College adopts these procedures with a commitment to eliminating sexual and gender-based misconduct, preventing its recurrence and addressing its effects. These procedures are the College's practices and responses to incidents of sexual and gender-based misconduct in compliance with federal and state laws.

### **Reporting Options:**

#### **1. Mandatory Reporting**

All CCCC employees are responsible for taking all appropriate action to prevent sex discrimination or sexual harassment, to correct it when it occurs, and must promptly report it to the Title IX Coordinator. Failure to do so may result in disciplinary action up to and including termination. All CCCC employees are considered responsible employees with a duty to report any incident to the Title IX Coordinator.

#### **2. Confidential Reporting**

Any person who wishes to report an incident and remain anonymous can do so by phone, mail, or email to the Title IX Coordinator. All forms of sexual harassment should be reported, no matter the severity. In addition, CCCC should be made aware of possible threats to the campus community in order to issue timely warnings.

#### **3. Reporting to the Police**

CCCC strongly encourages anyone to report sexual violence and any other criminal offenses to the police. This does not commit a person to prosecution, but will allow the gathering of information and evidence. The information and evidence preserve future options regarding criminal prosecution, College disciplinary actions and/or civil actions against the respondent.

- If the incident happened on campus, it can be reported to the CCCC Security. If the incident happened anywhere else, it can be reported to the local law enforcement with jurisdiction in the location where it occurred. Know that the information you report can be helpful in supporting other reports and/or preventing further incidents. Fort Totten Bureau of Indian Affairs Department: 701.766.4545 (for non-emergencies)
- Reporting for Faculty and Staff (Non-Student) Instances: Faculty and staff shall report any instances of sexual harassment by another faculty or staff member to the Title IX Coordinator. As stated above, CCCC also strongly encourages reporting any instances to the police.

- Employee Obligation to Report (Student Instances): In compliance with Title IX, employees who become aware of a student instance of sexual harassment shall immediately report such instance to the Title IX Coordinator, including the name of the persons involved.

#### 4. Reporting of Student Instances

Students shall report any instances of sex discrimination or sexual harassment to any CCCC employee and/or the Title IX Coordinator. A complaint should be filed as soon as possible. If either the complainant or the respondent is a student, the incident will be addressed through the Title IX process. The report can be made in person, by phone, mail, or email using the contact information listed for the Title IX Coordinator or by any other means that results in the Coordinator receiving the report. The report can be made any time, even during non-business hours.

After receiving a report or notice of an incident, the Title IX Coordinator will promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. A complainant's wishes with respect to whether the CCCC investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.

CCCC will promptly take necessary steps to protect the complainant and ensure safety as necessary, including taking interim steps before the final outcome of any investigation once a report or knowledge of sex discrimination or sexual harassment has occurred. Periodic updates on the status of the investigation will be provided to the complainant. If the school determines that the sexual violence occurred, CCCC will continue to take these steps to protect the complainant and ensure his or her safety, as necessary. CCCC will provide the complainant with any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, and assistance in reporting a crime to local law enforcement.

#### **Written Notice of Complaint:**

Upon receipt of a formal complaint, CCCC will provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview. Written notice includes:

1. Notice of the grievance process, including any informal resolution process;
2. Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response;

3. A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
4. Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
5. Notice that knowingly making false statements or providing false information in the grievance process is a violation of the code of conduct and subject to disciplinary action.

CCCC may consolidate formal complaints where the allegations arise out of the same facts.

### **Investigating and Resolving Complaints:**

During the complaint process and when investigating, CCCC must:

1. Ensure that the burden of proof and of gathering evidence rests on CCCC rather than on the parties.
2. Provide equal opportunity for the parties to present witnesses and evidence.
3. Not restrict either party's ability to discuss the allegations or gather and present evidence.
4. Provide the parties with the same opportunities to have others present during interviews or related proceedings, including an advisor.
5. Provide, to a party who is invited or expected to attend, written notice of the date, time, participants, purpose, and location of any investigative interview, hearing or other meeting with enough time to allow the party to prepare and participate.
6. Provide both parties and their advisors an equal opportunity to review all evidence directly related to the allegations in the formal complaint (both exculpatory and inculpatory) at least 10 days prior to the completion of the final investigation.
7. Prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to both parties and their advisors for review and written response at least 10 days before a hearing or determination of responsibility.

### **Investigations:**

The Title IX Coordinator will make a determination to begin a formal investigation of sex discrimination or a sexual harassment incident which will lead to an institutional action. The coordinator will be available to explain to both parties the process and to notify in writing of the receipt of a complaint and the actions CCCC will take. The burden of gathering evidence and burden of proof must remain on CCCC, not on the parties.

An investigation will be conducted by the CCCC Title IX Investigator. This investigation will include:

- Meeting personally with the complainant, (unless extraordinary circumstances prevent a personal meeting),

- Meeting personally with the respondent, (unless extraordinary circumstances prevent a personal meeting),
- Presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made,
- Collecting any physical evidence,
- Meeting personally with any witnesses, (unless extraordinary circumstances prevent a personal meeting with one or more witnesses), and
- Reviewing any documentary evidence.

The investigation of complaints will be adequate, reliable and impartial. The investigation process can take up to 60 days. CCCC will determine if a Title IX hearing is necessary.

If it is determined that CCCC will proceed with a hearing, the complainant and the respondent will be notified in writing of the hearing date.

CCCC cannot access or use a party's medical, psychological, and similar treatment records unless CCCC obtains the party's voluntary, written consent to do so.

#### **Mandatory or Discretionary Dismissal:**

- **Mandatory Dismissal:** must occur when determined in the course of the investigation that allegation in a formal complaint: (1) did not occur in CCCC's program or activity; (2) did not constitute sexual harassment as defined; or (3) did not occur against a person within the United States. Both parties must receive written notice of a mandatory dismissal and reasons.
- **Discretionary Dismissal:** may occur at any time during the investigation or hearing when: (1) a complainant notifies the Title IX Coordinator in writing that they would like to withdraw; or (2) the respondent is no longer enrolled or employed by CCCC; or (3) specific circumstances prevent CCCC from gathering evidence sufficient to reach a determination. Both parties must receive written notice of a discretionary dismissal and reasons.

#### **Institutional Action**

##### 1. Informal Resolution

Mediation is a method of informal resolution. Informal resolutions are prohibited unless a formal complaint of sexual harassment is filed. Mediation may include conflict resolution or a restorative agreement between the parties with a trained Title IX Hearing Officer presiding over the mediation. Participation in mediation is not mandatory, but will only take place with the consent of both parties involved. Mediation may only be used:

- A. Prior to a notice of hearing being issued;
- B. When a trained Title IX Hearing Officer determines this is a suitable option for resolving the concern, and both the Complainant and Respondent agree to use the process;

- C. When the complaint does not involve sexual violence as defined in the Title IX Policy.
- D. When both parties acknowledge receipt of written notice of their rights under this policy and both parties provide written, voluntary consent.
- E. Mediation is not available when the complaint alleges a CCCC employee harassed a student.

Because the outcomes of voluntary resolution conversations are mutually developed and agreed upon by parties involved, an appeal of the process and its result is not permitted. However, either the Complainant or the Respondent may terminate mediation at any time prior to the entry of a voluntary resolution and proceed with the Title IX hearing. If the parties are unable to agree on a voluntary resolution, the matter will be referred by the Title IX Coordinator to a Title IX Hearing. No offers to resolve the conflict that were made or discussed during the informal voluntary resolution process may be introduced during the Title IX Hearing.

## 2. Title IX Hearing

The Title IX Coordinator will determine if a hearing is necessary; mediation is never appropriate in sexual violence cases. If it is determined that CCCC will proceed with a hearing, the complainant and the respondent will be notified in writing of the hearing date, the alleged policy violation and issued a notice to appear at the hearing. The written notice will be hand delivered directly to the student(s) or mailed to the local address as filed in the Registrar's Office. Students are responsible for providing and maintaining a current local address in the Registrar's Office.

The hearing members shall include at least one trauma trained individual in sex discrimination or sexual harassment adjudication to include a trained Title IX Officer as the hearing officer and three members of faculty and staff as hearing members. The selection of the hearing members will be made by the Title IX Coordinator. Criteria for the hearing committee will include: 1) have received all appropriate training, 2) not a current instructor of either party involved, 3) have no previous substantive or direct knowledge of the incident, and 4) have no other perceived conflict of interest as determined by interview process with the Title IX Coordinator.

Description of the duties of the Title IX Hearing Members will include but not limited to the following:

- Read and understand the Title IX Policy and Procedures, which include the hearing process.
- Read and understand all of the information of the Title IX case provided by the Coordinator prior to the hearing as part of a hearing packet.
- Read and understand the procedures of the Title IX hearing provided by the Coordinator prior to the hearing as part of a hearing packet.
- Have a clear understanding of the incident in question before going into deliberations for a decision.
- Decide the outcome (majority vote) and sanctions if needed based on the information presented, hearing notes, and the CCCC Title IX Policy.

- Provide copies of notes, if made, to the hearing officer. The hearing officer will inform the parties of the decision at the hearing and send a letter as described in this policy.

#### Complainant's Rights:

- Be given a written explanation of the allegations and the hearing process;
- Have access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Be accompanied by an advisor during the hearing. The advisor is limited to advising the student and may not present the case, or make statements during the proceedings. Students must provide CCCC with the name and contact information for the student's advisor as soon as practical but at least three (3) days prior to the hearing;
- Be given a timely hearing;
- Exclude evidence of the victim's past sexual history from discussion during the hearing. The past sexual history of the victim with persons other than the respondent shall be presumed irrelevant;
- Clarifying that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual harassment;
- Written notification of the outcome of the hearing including any sanctions; remedies/accommodations for the complainant; additional remedies for the school community;
- Written notification of any external counseling services that may be available;
- Written notification of options for changing academic, living, transportation, and work site situations if reasonable;
- Written notification of an avenue for appeal.

#### Respondent's Rights:

- Be given written notice of the allegations and the hearing process;
- Have access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Have no violation presumed until found responsible;
- Be given a timely hearing;
- Be accompanied by an advisor during the hearing. The advisor is limited to advising the student and may not present the case, or make statements during the proceedings. Students must provide CCCC with the name and contact information for the student's advisor as soon as practical but at least three (3) days prior to the hearing;
- Written notification of the outcome of the hearing including any sanctions; remedies/accommodations for the complainant; additional remedies for the school community;
- Written notification of any external counseling services that may be available;
- Written notification of options for changing academic, living, transportation, and work site situations, if reasonable;

- Written notification of an avenue for appeal.

The hearing will include opening statements, each party's evidence and witnesses, and closing statements. Students are permitted to be present during the disciplinary hearing (except during deliberations of the panel). Students are permitted to make statements, present witnesses and present evidence during the hearing which has been previously collected and approved during the investigation process. Witnesses and evidence need to be directly related to the incident. The standard of proof used in CCCC Title IX Hearings is the preponderance of the evidence, which means the determination to be made, is whether it is more likely than not a violation occurred. This is significantly different than proof beyond a reasonable doubt, which is required for a criminal prosecution.

In-person hearings are preferred, but videoconference hearings may be conducted if the hearing officer determines that the health, safety and welfare of all participants is better served by the alternate hearing mode.

#### **Standard of Evidence:**

CCCC utilizes the preponderance of the evidence standard when deciding sexual and gender-based misconduct complaints.

#### **Outcomes:**

If it is determined under the preponderance of evidence standard (more likely than not to have occurred) that the respondent is not responsible for a Sex Discrimination or Sexual Harassment policy violation the complaint will be dismissed.

If it is determined under the preponderance of evidence standard (more likely than not to have occurred) that the respondent is responsible for a Sexual Harassment policy violation the following sanctions will be considered. The listing of sanctions below is not intended to be exclusive; in addition, sanctions may be imposed singularly or in combination when a violation of this policy is found.

Sexual Discrimination (includes gender discrimination) may include the following sanctions of the student(s) found responsible.

- Restriction – A limitation on a student's privileges for a period of time and may include but not be limited to the denial of the use of facilities or access to parts of campus, denial of the right to represent CCCC, or denial of participation in extracurricular activities.
- Service Project – Community service or an education class or project beneficial to the individual and campus or community.
- Probation Level I – A specified period of time during which the student is placed on formal notice that he/she is not in good social standing with CCCC and that further violations of regulations will subject him/her to suspension or expulsion from the CCCC.

- Suspension – If warranted by the severity of the incident, exclusion from enrollment in classes and other privileges or activities for a definite period of time not to exceed three years and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from CCCC are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Dean of Student Affairs. Conditions to conclude a suspension and reinstatement process will be stated in the written notification. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student’s record. Any refund of tuition or fees will be subject to CCCC's normal withdrawal policy.
- Expulsion – Termination of student status for an indefinite period. The conditions for readmission, if any, shall be stated in the hearing outcome letter. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student’s record. Any refund of tuition or fees will be subject to CCCC's normal withdrawal policy. Expulsion should be reserved and used only in cases involving the most severe instances of misconduct.

Sexual Harassment may include the following sanctions on the student(s) found responsible.

- Restriction – A limitation on a student’s privileges for a period of time and may include but not be limited to the denial of the use of facilities or access to parts of campus, denial of the right to represent CCCC.
- Service Project – Community service or an education class or project beneficial to the individual and campus or community.
- Behavioral Change Requirement – Required activities including but not limited to, seeking academic counseling, substance abuse assessment, decision making class, writing a reflection paper, etc.
- Probation Level II – Adds to Level I the stipulation that students are prohibited from participating in any extracurricular activities not directly associated with academics (e.g., intramural sports, attending athletic events, student organizations/clubs/associations, leadership positions within housing or other organizations). Students must apply to get off Conduct Probation Level II by submitting documentation of their significant proactive efforts to become good citizens of the community and engage in responsible, productive behavior.
- Suspension – If warranted by the severity of the incident, exclusion from enrollment in classes and other privileges or activities for a definite period of time not to exceed three years and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from CCCC are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Dean of Student Affairs. Conditions to conclude a suspension and reinstatement process will be stated in the written notification. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student’s record. Any refund of tuition or fees will be subject to CCCC's normal withdrawal policy.

- Expulsion – Termination of student status for an indefinite period. The conditions for readmission, if any, shall be stated in the hearing outcome letter. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student’s record. Any refund of tuition or fees will be subject to CCCC's normal withdrawal policy. Expulsion should be reserved and used only in cases involving the most severe instances of misconduct.

Sexual Violence may include the following sanction on the student(s) found responsible.

- Expulsion – Termination of student status for an indefinite period. The conditions for readmission, if any, shall be stated in the hearing outcome letter. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student’s record. Any refund of tuition or fees will be subject to CCCC's normal withdrawal policy. Expulsion should be reserved and used only in cases involving the most severe instances of misconduct.

Both parties will be notified of the outcome in writing by certified mail or other agreed upon form of notice within five business days after the hearing at the same time. Both parties have the right to appeal the decision reached through the hearing proceedings within five days after the hearing.

**Appeals:**

An appeal is not a new hearing, but is a review of the record of the original hearing. It serves as a procedural safeguard for the student. The burden of proof shifts from CCCC to the party appealing who was found responsible for the policy violation. The student must show one or more of the listed grounds for an appeal. All appeals will be decided by a board or committee of the President’s choosing and the President will provide the contact information of the appointed board/committee upon notice of an appeal.

1. Appeals must be submitted in writing to the board/committee, that the President appoints, within five (5) working/school days of receiving the decision. Failure to file an appeal within the prescribed time constitutes a waiver of any right to an appeal.
2. The appeal must cite at least one of the following criteria as the reason for appeal and include supporting argument(s):
  - A. The original hearing was not conducted in conformity with prescribed procedures and substantial prejudice to the complainant or the respondent resulted.
  - B. The evidence presented at the previous hearing was not “sufficient” to justify a decision against the student or group.
  - C. New evidence which could have substantially affected the outcome of the hearing has been discovered since the hearing. The evidence must not have been available at the time of the original hearing. Failure to present information that was available is not grounds for an appeal.
  - D. The sanction is not appropriate for the violation. This provision is intended to be utilized when a determined sanction is inherently inconsistent with CCCC

procedures or precedent. Simple dissatisfaction with a sanction is not grounds for overturning a sanction under this provision.

3. The board/committee, appointed by the President, will review the record of the original hearing, including documentary evidence. It is the board/committee's discretion to convert any sanction imposed to a lesser sanction, to rescind any previous sanction, or to return a recommended sanction to the original hearing committee for review/or reconsideration. If there is new evidence (unavailable at the time of the hearing through no fault of the parties) which is believed to substantially affect the outcome, or evidence presented at the previous hearing(s) was "insufficient" to justify a decision against the student or group, or a finding that a substantial procedural error resulting in prejudice occurred, the matter may be remanded to either a rehearing of the entire matter or reconsideration of specific issues. If remanded to the original hearing committee, either or both students may appeal the committee's decision to the board/committee, appointed by the President, and the procedures set out above shall control the appeal.
4. The final decision will be communicated in writing by the board/committee, appointed by the President, to the appealing student(s). The decision will be communicated within ten (10) working/school days of receiving the written recommendation. Both parties will be notified of the final outcome of the appeal.
5. The decision of the board/committee, appointed by the President, on appeal shall be final.

### **Retaliation:**

Retaliation against an individual for raising an allegation of sexual or gender-based harassment, for cooperating in an investigation of such a complaint, or for opposing discriminatory practices is prohibited. Submitting a complaint that is not in good faith or providing false or misleading information in any investigation of complaints is also prohibited.

If an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual harassment or filing a sexual harassment complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an OCR or College's investigation or proceeding. Therefore, if a student, parent, teacher, sponsor coach, or other individual complains formally or informally about sexual harassment or participates in an OCR or College's investigation or proceedings related to sexual harassment, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating against the individual) because of the individual's complaint or participation. Individuals who, apart from official associations with CCCC, engage in retaliatory activities will also be subject to CCCC's policies insofar as they are applicable to third party actions.

CCCC will take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses. Complaints of retaliation will follow the same process of investigation, hearing, and appeal. If it is determined under the preponderance of evidentiary standard that a student is responsible for retaliation the following sanction will be imposed: suspension.

**Recordkeeping:**

CCCC will document all reports and complaints of sex discrimination and provide copies of those reports to the Title IX Coordinator. CCCC Title IX Coordinator will maintain a secured electronic file system of all Title IX cases, reports, and complaints by academic year. The cases will include all information related to the individual case, which includes but is not limited to the initial complaint, letters sent to all parties, response from the respondent, immediate assistance, investigation notes, mediation agreement if applicable, notice of a hearing, committee selection, hearing notes, hearing decision, written notice of the outcome, and any recordings made of the hearing or in the course of the investigation. The time period to maintain the case records will be no less than seven (7) years from the date of CCCC's final action or decision (whether through report of the investigation, mediation, or hearing). The confidential reporting of the number of incidents and types will be sent to CCCC Security for the preparation of the Annual Crimes Report.

**Training:**

All CCCC employees except student employees and temporary non-academic employees, including the CCCC Board of Regents, are required to complete annual training regarding their responsibilities under Title IX. All individuals involved in implementing the College's sexual and gender-based misconduct grievance procedures must have training or experience in handling sexual violence complaints in the operation of the College's grievance procedures. Individuals who have not completed training as required by the Title IX Coordinator shall not investigate, adjudicate, or otherwise be involved in the handling and resolution of sexual or gender-based misconduct complaints. All training materials utilized will be posted online for public viewing.

**Free Speech and Academic Freedom:**

Nothing in this policy shall be construed to abridge academic freedom and inquiry, principles of free speech, or the College's educational mission.

**Other Complaint Procedures:**

A complainant can seek criminal charges through local law enforcement. Local law enforcement that covers the CCCC campus is the Bureau of Indian Affairs:

Bureau of Indian Affairs  
816 3rd Ave., North

Fort Totten, North Dakota 58335  
Phone: (701)-766-4545

A complaint or concern regarding discrimination or harassment may also be sent to the Office for Civil Rights (OCR) or the Equal Employment Opportunity Commission (EEOC).

A complaint or concern to OCR/EEOC may be sent to:

Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Hotline: (800)-421-3481  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, D.C. 20507  
Hotline: (800)-669-4000  
Email: [info@eeoc.gov](mailto:info@eeoc.gov)