



NEBRASKA
WESLEYAN
UNIVERSITY

Campus Judicial Procedures for Sexual Assaults

Revised February, 2003

Introduction

The University has established these specific discipline procedures for instances where a Nebraska Wesleyan University student alleges sexual assault by another Nebraska Wesleyan University student.

The University has determined that the nature of sexual assault incidents requires judicial proceedings which differ from procedures followed for other violations of the Code of Student Conduct.

Definitions

1. Sexual Assault: Sexual assault includes, but is not limited to, threatening, forcing, coercing, or deceiving another to engage in sexual activity knowing that the activity is offensive to the other person or that the other person is unable to assess the nature of or control his/her own conduct. Sexual assault also includes engaging in sexual activity with another after one has impaired substantially the other's judgment or control by administering drugs or intoxicants.
2. Aggravating Circumstances: The hearing panel may consider additional aggravating circumstances in addition to allegations of sexual assault and these may be considered by the hearing panel in determining the severity of the sanctions imposed. Aggravating circumstances may include failure on the part of the respondent to comply with any refraining orders, and/or participation by the respondent in any acts which may be reasonably construed as retaliatory harassment against the complainant; and/or sexual assault which results in any personal injury or serious personal injury to the complainant, or any sexual assault which results in the transmission of any disease, infection, or illness to the complainant.
3. Complainant shall mean the person alleging the sexual assault;
4. Respondent shall mean a person accused of sexual assault;
5. Intimate parts shall mean the genital area, groin, inner thighs, buttocks, anal area, or breasts;
6. Past sexual behavior shall mean sexual behavior other than the sexual behavior upon which the alleged sexual assault is based;
7. Serious personal injury shall mean great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;

8. Personal injury shall include minor physical injuries, psychological stress, or other physical or mental problems resulting from the assault;
9. Sexual contact shall mean the intentional touching of the complainant's clothing covering the immediate area of the complainant's sexual or intimate parts. Sexual contact shall also mean the touching by the complainant of the respondent's sexual or intimate parts or the clothing covering the immediate area of the respondent's sexual or intimate parts when such touching is intentionally caused by the respondent. Sexual contact shall include only such conduct that can be reasonably construed as being for the purpose of sexual arousal or gratification of either party; and
10. Sexual penetration shall mean sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the respondent's or complainant's body, or any object manipulated by the respondent into the genital, oral or anal openings of the complainant's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen.

Filing a Complaint

1. A Nebraska Wesleyan University student wishing to bring a complaint of sexual assault against another Nebraska Wesleyan University student will do so by filing and signing a complaint with the Vice President or Associate Vice President for Student Life. There is no deadline for filing a complaint; however, the hearing panel may consider the time elapsed since the alleged assault in determining the credibility of witnesses, evidence and cause for the delay. Complainants should be aware that the University may lack jurisdiction in a matter which occurs during periods when students are not enrolled.
2. Prior to filing a complaint, a complainant may wish to contact a trained sexual assault resource person. The roles of the resource person are to listen, provide support, answer questions about the University's policy and judicial procedures on sexual assault and to discuss options available to the complainant.

Resource persons are available at reasonable times and reasonable places. The complainant who uses the services of a sexual assault resource person other than those provided by the University does so at his/her own expense.

3. The false reporting or false accusation of a sexual assault by a student may be grounds for disciplinary action against the student. Students who later recant their testimony or admit that an allegation was false when made and that they knew the allegation was false but made it anyway, are subject to this section.
4. A student may voluntarily withdraw a complaint, at which time all further investigations will ordinarily cease. If, however, the withdrawal of the complaint is due to threats of retaliation or harassment from the respondent or other parties, the University may choose to prosecute the case anyway.

Notification of the Accused

1. Upon receiving the complaint, the Vice President or Associate Vice President for Student Life will notify the respondent within five days that a complaint of sexual assault has been filed and that a hearing will be conducted to determine a) if there is reasonable cause or no reasonable

cause to believe a sexual assault took place and b) any resulting sanctions.

2. In the event a criminal procedure for the same offense is pending, a hearing may be held.
3. The respondent will be informed that a sexual assault resource person is available to listen, provide support, answer questions about the University's policy and judicial procedures on sexual assault and to discuss options available to the respondent.

Resource persons are available at reasonable times and reasonable places. The respondent who uses the services of a sexual assault resource person other than those provided by the University does so at his/her expense.

4. The notice of charges against the respondent shall include a statement of the facts upon which the complaint is based, the name of the person making the accusation, the date, time and place of the hearing and an explanation of the rights of the complainant and the respondent.
5. Once the notification of charges has been made, the Vice President or Associate Vice President for Student Life shall tell the complainant and the respondent to refrain from written or spoken contact with each other. Any form of retaliation or harassment shall be grounds for separate judicial action or considered as an aggravating circumstance by the hearing panel in assessing sanctions. The complainant and the respondent will be asked to sign a notification of the refraining order which will state the appropriate restrictions and possible penalties for violating the order. The Vice President for Student Life is authorized to suspend, temporarily, either the complainant or the respondent, or both of them, for failing to comply with refraining order.
6. The Vice President or Associate Vice President for Student Life, after consulting with the President of the University Judiciary, is authorized to enforce terms and conditions of the refraining order references in paragraph 5 above, and make all necessary arrangements, on a temporary basis prior to a determination by the hearing panel, to enforce and designate alternatives to classes, class attendance, campus residency, campus-sponsored activities, extra-curricular activities, and/or any other University-related activity, if the respondent warrant such arrangements.

Composition of Hearing Panel

The hearing panel shall be composed of three members: the Vice President or Associate Vice President for Student Life, who will serve as chair, and two current members of the University Judiciary. Of the two Judiciary members one must be a student and one a non-student (either faculty or staff). The President of the University Judiciary shall assign the Judiciary members to the hearing panel on a case-by-case basis. The hearing panel shall include members of both genders, none of whom shall have a conflict of interest or prejudice for or against either the complainant or the respondent. A majority decision of the hearing panel is required for all decisions rendered by the panel. The hearing panel shall be instructed that all deliberations and proceedings are to be confidential.

Hearing Panel Procedures

1. The hearing shall be closed to the public. No tape recordings may be made of the hearings or of the deliberation of the panel. Except as specifically outlined below, only the hearing panel and University legal counsel will be allowed at the hearing or the deliberation.

2. The hearing panel will interview the complainant, who may be accompanied by no more than three persons. The complainant may be accompanied by legal counsel when appearing before the hearing panel. The role of counsel is limited to consultation with the complainant. Legal counsel or other representatives (resource persons, parents) are not permitted to participate directly in the hearing. The complainant may submit written materials or suggest witnesses to the panel. The panel will attempt to learn all that is relevant to the matter subject to the Nebraska Wesleyan University judicial procedure for cases of sexual assault. The respondent shall not have the right to be present during the interview between the complainant and the panel unless the complainant gives permission for the respondent to be present. If the complainant refuses to appear, the hearing panel will declare the complaint withdrawn and the case closed.
3. The hearing panel will interview the respondent any time after it has interviewed the complainant. The respondent may be accompanied by no more than three persons. The respondent may be accompanied by legal counsel when appearing before the hearing panel. The role of counsel is limited to consultation with the respondent. Legal counsel or other representatives (resource persons, parents) are not permitted to participate directly in the hearing. The respondent may submit written materials or suggest witnesses. The panel will attempt to learn all that is relevant to the matter subject to the Nebraska Wesleyan University judicial procedures for cases of sexual assault. The complainant shall not have the right to be present during the interview between the respondent and the panel unless the respondent gives permission for the complainant to be present. If the respondent refuses to appear before the panel, the panel reserves the right to render a finding on the basis of evidence submitted.
4. Both the complainant and the respondent may provide to the hearing panel the names of individuals who witnessed the event or events leading up to or following the alleged assault. After interviewing the complainant and the respondent the hearing panel shall have the discretion to interview witnesses in person or to accept written statements from witnesses who can provide information relevant to the alleged assault. Neither the complainant nor the respondent has the right to be present during witness testimony or to have access to witness statements. The hearing panel has the discretion to disclose to either party information gained from witness testimony if such disclosure is germane to the finding. The hearing panel shall keep witnesses' names confidential. The hearing panel may require subsequent interviews with the complainant, the respondent or witnesses.

Procedural Rules

1. No tape recordings of the hearing or the panel's deliberation may be made by any party present at the hearing.
2. The past sexual behavior of the complainant may not be introduced.
3. Consent to sexual intercourse between the complainant and the respondent on occasions prior to the alleged assault is not considered permission for subsequent sexual contact. Testimony or evidence of previous consent will not be allowed to be introduced by the complainant or the respondent.
4. The use of alcohol or drugs by the complainant or the respondent at the time of the alleged assault may be introduced by either party, but such use does not take away responsibility for behavior or the consequences of the behavior.

5. Results of a lie detector test taken by the complainant or the respondent may not be introduced.
6. The hearing panel may consider any evidence relevant to establishing a finding; however, the lack of physical evidence that a sexual assault took place will not by itself be grounds for dismissal of a charge.
7. The hearing panel will make its determination based on the greater weight of the evidence presented. The greater weight of the evidence means evidence sufficient to make a claim more likely true than not true. Greater weight of the evidence does not necessarily mean a greater number of witnesses or exhibits.
8. The hearing panel will deliberate in closed session and determine if there is reasonable cause or no reasonable cause to believe a sexual assault took place. If the hearing panel concludes a sexual assault occurred, it will assess a sanction(s) according to those sanctions outlined in the Code of Student Conduct.

Notification of Finding

The Vice President or Associate Vice President for Student Life will notify in writing both the complainant and the respondent of the finding within 48 hours (two school days) after the end of the deliberation of the hearing panel. The notice will be sent to the last known university address.

Appeal

Either the complainant or the respondent may file an appeal to the President of the University. The appeal must be filed within 24 hours of receipt of the decision of the panel. The University President will then consider the matter on the basis of written statements by the respondent, the complainant and/or the hearing panel. The President of the University may request a personal interview with the complainant or the respondent prior to making a decision. The President of the University will then decide whether there is reasonable cause or no reasonable cause to believe a sexual assault took place. If the President concludes that there is reasonable cause to believe a sexual assault occurred, the President will determine a sanction(s) from the range of sanctions outlined in Section V, B of the Code of Student Conduct. The decision of the President is final and cannot be appealed.

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