

<p><b>Policy title:</b> Sexual Harassment and Sexual Misconduct Outside of the 2020 Final Rule for Federal Title IX Regulations</p>	<p><b>Category:</b> Administration Human Resources Student Conduct Title IX/Sexual Misconduct</p>
<p><b>Owner:</b> Head Title IX Coordinator</p>	<p><b>Approved by:</b> Board of Governors</p>

## Purpose of this policy

Nebraska Wesleyan University is committed to proactively creating and maintaining a welcoming, safe, healthy educational environment for all students, staff, and faculty.

## Application of this policy

Students, employees, student organizations, and third parties.

## Policy statement

This policy applies to sexual misconduct of all forms, including sexual and gender-based harassment/bullying, sexual assault, intimate partner/relationship violence, sexual exploitation, and stalking.

Sexual harassment, sexual assault, intimate partner/relationship violence, sexual exploitation and stalking are broad terms intended to capture a spectrum of behavior labeled sexual misconduct. These terms are specifically defined in this document in Section V – Prohibited Conduct.

This policy is based on Title IX of the Education Amendments of 1972 (Title IX), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), and corresponding guidance from the Department of Education.

### I. Statement of Intent

Nebraska Wesleyan University (“University”) is committed to establishing and maintaining a community that is free from all forms of discrimination and illegal harassment. The University seeks to create an environment in which the greatest academic potential of students and professional potential of employees may be realized. In order to create and maintain such an environment, the University recognizes that all who work and learn at the University are responsible for ensuring that the community is free from illegal discrimination based on sex or gender, including sexual harassment, sexual assault, stalking, sexual exploitation, and intimate partner violence. These behaviors threaten our learning, living, and work environments and are considered prohibited conduct for all University Students, Employees, and Third Parties.

When the University becomes aware of allegations of sexual misconduct, it will take prompt and effective remedial action. The Director of Title IX Services oversees the University’s response to all allegations of sexual misconduct. To make a report, contact [titleix \[at\] nebrwesleyan.edu](mailto:titleix@nebrwesleyan.edu) or connect with the appropriate staff member:

- Natasha Sutliff, Title IX Coordinator for Lincoln Students
- Amy Harrison, Title IX Coordinator for Omaha Students
- Maria Harder, Director of Title IX Services and Title IX Coordinator for Faculty and Staff

## II. To Whom this Policy Applies

### This policy applies to:

- **Employees:** Any person who works for the University in return for financial or other compensation. This includes full-time and part-time faculty, full-time and part-time staff, adjunct faculty, visiting faculty, and student employees.
- **Students:** Any person enrolled in courses at the University, both full-time and part-time, including study abroad and auditing courses, and pursuing undergraduate or graduate studies.
- **Student Organizations:** Any group of persons who have complied with the formal requirements for University recognition as an organization.
- **Third Parties:** Any person or entity providing services for the University or visiting the University. This includes, but is not limited to, contractors, vendors, visitors, guests, volunteers, or other third parties within the University's control.
- The University retains conduct jurisdiction over students who choose to take a leave of absence, withdraw or have graduated for any misconduct that occurred prior to the leave, withdrawal or graduation. If sanctioned, a hold may be placed on the student's ability to reenroll and/or obtain official transcripts and/or graduate and all sanctions must be satisfied prior to re-enrollment eligibility. In the event of serious misconduct committed while still enrolled but reported after the accused student has graduated, the University may invoke the appropriate procedures and, should the former student be found responsible, the University may revoke that student's degree or impose other disciplinary sanctions.

This policy pertains to acts of Prohibited Conduct (defined in this document, Section V – Prohibited Conduct) committed by or against Students, Employees, and Third Parties when:

- The conduct occurs on University grounds or other property owned or controlled by the University;
- The conduct occurs in the context of a University employment or education program or University-sponsored activity, including, but not limited to, University-sponsored study abroad, school trips, research, on-line, or internship programs; or
- The conduct occurs outside the context of University employment or education program or activity but has an adverse effect or creates a hostile environment for students, employees, or third parties while on University grounds or other property owned or controlled by the University or in any University employment or education program or activity.

## III. Notice of Non-Discrimination

Nebraska Wesleyan University provides equal educational and employment opportunities to all qualified persons in all areas of university operation, including scope and content of educational opportunities, and athletic participation, and decisions regarding faculty appointment, promotion, or tenure, without illegal regard to race, religion, age, sex, creed, color, disability, marital status, national or ethnic origin, gender identity or sexual orientation.

## IV. Confidentiality and Privacy

The University is committed to protecting the privacy of all individuals involved in a report of sexual misconduct, whenever possible. Every effort will be made to protect the privacy of all individuals involved in a manner consistent with the need for a thorough review of the allegation.

Confidentiality exists in the context of laws that protect certain relationships, including relationships with mental health providers (and those who provide administrative services related to the provision of mental health care), counselors, victim advocates, and ordained clergy, all of whom may engage in confidential communications under Nebraska law. The University has designated individuals able to have confidential communications as "Confidential Employees."

Privacy means that information related to a report of sexual misconduct will be shared with Employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All Employees who are involved in the University's Title IX response receive specific training and guidance about safeguarding private information. All employees, other than Confidential Employees, are mandatory reporters under Title IX.

The privacy of Student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in the University's FERPA policy.

The University has the right to share appropriate information with Law Enforcement to ensure campus safety.

## V. Prohibited Conduct

**A. Sexual Harassment:** any unwelcome conduct of a sexual nature or based on sex or gender, sexual orientation, gender identity, or gender expression, including acts of verbal, nonverbal, or physical aggression, intimidation, hostility, or bullying based on sex/gender or sex/gender-stereotyping, even if the acts do not involve conduct of a sexual nature. Sexually harassing behaviors differ in type and severity. Key determining factors are that the behavior is unwelcome, is sex- or gender-based, and is reasonably perceived as offensive and objectionable under both a subjective and objective assessment of the conduct. Sexual harassment involves one of the following conditions: hostile environment or quid pro quo.

**Hostile Environment:** conduct that has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e., it is sufficiently serious, pervasive, or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both an objective and subjective standard. A single, isolated incident of sexual harassment alone may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

**Quid Pro Quo:** occurs when it is stated or implied that an individual's submission to, or rejection of, conduct of a sexual nature is a condition of employment, evaluation of academic work, or involvement in any University program or activity.

**B. Sexual Assault:** any intentional sexual contact with another person without that person's consent; sexual contact with someone who they knew, or should have known, was incapacitated or otherwise mentally or physically incapable of resisting or appraising the nature of their conduct; or forcing or coercing another person to engage in sexual contact against their will.

Sexual contact includes intentional contact with the intimate parts of another, causing another person to touch one's intimate parts, disrobing, or exposure of intimate parts without consent. Intimate parts may include the breasts, genitals, buttocks, groin, mouth, or any other part of the body that is touched in a sexual manner. Sexual contact also includes vaginal or anal penetration, however slight, with a body part (e.g. penis, tongue, finger, hand, etc.) or object, or oral penetration involving mouth-to-genital contact.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual assault or harassment in any form and does not diminish one's responsibility to obtain informed and freely given consent.

### Related Sexual Assault Definitions

**Coercion:** the use of pressure to compel someone to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they inhibit another individual's freedom of will and ability to choose whether or not to engage in sexual activity.

**Consent:** an affirmative and willing agreement to engage in specific forms of sexual contact with another person. Consent requires an outward demonstration, through mutually understandable words or actions, indicating that an individual has freely chosen to engage in sexual contact. Consent cannot be obtained through the use of coercion or force or by taking advantage of the incapacitation of another individual.

Silence, passivity, or the absence of resistance does not constitute consent for sexual activity. If confusion or ambiguity arises during a sexual interaction, it is essential that each participant stops and clarifies the other's willingness to continue.

Consent can be withdrawn at any time. When consent is withdrawn, sexual activity must cease. Prior consent does not imply current or future consent; even in the context of an ongoing relationship, consent must be sought and freely given for each instance of sexual contact.

**Force:** the use or threat of physical violence or intimidation to overcome an individual's freedom to choose whether or not to participate in sexual activity. There is no requirement that a party physically resist the sexual advance or request, but resistance may be viewed as evidence of non-consent.

**Incapacitation:** the inability, temporarily or permanently, to give consent because the individual's mental and/or physical ability is diminished, and/or the individual is asleep, unconscious, or unaware that sexual activity is occurring. A person who is incapacitated lacks the ability to make informed, rational judgments and cannot consent to sexual activity.

Incapacitation may result from the use of alcohol and/or drugs. The impact of alcohol and other drugs varies from person to person.

**C. Intimate Partner/Relationship Violence:** any act of physical, sexual, or emotional violence or threatened act of violence in person, in writing, or electronically, against a person who is, or has been involved in, a sexual, dating, domestic, or other intimate relationship with that person. It may also take the form of threats, assault, property damage, or violence or threat of violence to one's self, one's sexual or romantic partner, one's family members or friends, or to the family members or friends of the sexual/romantic partner. It may involve one act or an ongoing pattern of behavior.

**D. Sexual exploitation:** violating the sexual privacy of another, or taking sexual advantage of another without consent, and that behavior does not otherwise constitute sexual assault.

Examples of sexual exploitation include, but are not limited to:

- Voyeurism – watching or taking pictures, videos, or audio recordings of another person in a state of undress or of another person engaging in a sexual act without the consent of all parties;
- Creating, disseminating, streaming, or posting pictures or video of another in a state of undress or of a sexual nature without the person's consent;
- Exposing one's genitals to another person without consent;
- Trafficking of another individual;
- Knowingly exposing another individual to a sexually transmitted infection without the other individual's knowledge and consent; or
- Inducing incapacitation or attempted incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

**E. Stalking:** when a person engages in a course of conduct or repeatedly communicates and/or commits acts toward another person, including following the person without proper authority, under circumstances that would cause a reasonable person to:

1. Fear for their safety or the safety of others; or
2. Suffer substantial emotional distress.

A course of conduct involves two or more acts that include, but are not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person, or interferes with a person's property.

Stalking includes cyberstalking, in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person.

**F. Retaliation:** any act or attempt to seek retribution from any individual or group of individuals involved in the report, investigation, and/or resolution of a sexual misconduct allegation. Retaliation can take many forms, including, but not limited to, continued abuse or violence, threats, exclusion, and intimidation. Any individual or group of individuals can engage in retaliation. Acts of Retaliation will be addressed as a separate violation of the Sexual Misconduct and Sexual Harassment Policy.

**G. Failure to comply with the directives of a No Contact Order administered by the University.**

## VI. Reporting

There are multiple channels for reporting sexual misconduct. An individual may choose to report to the University, to law enforcement, to both, or neither. These reporting options are not exclusive. An individual may simultaneously pursue a criminal investigation and the University sexual misconduct resolution process. The Title IX Coordinator will support all parties involved in understanding and assessing all options. Questions should be directed to a Title IX Coordinator.

**Reporting to the University:** The University encourages anyone who becomes aware of an incident of sexual misconduct to promptly report the incident to a Title IX Coordinator. Mandatory reporters are required to report. While there is no time limit for reporting sexual misconduct to the University, the University's ability to respond may diminish over time, as evidence may erode, memories fade, and individuals may no longer be affiliated with the University. If an individual is no longer affiliated with the University, the University will provide reasonably appropriate remedial measures, assist individuals in identifying external reporting options, and take reasonable steps to eliminate sexual misconduct, prevent its recurrence, and remedy its effects.

**Anonymous Reporting to the University:** Individuals may report security concerns to the University through the University website by clicking on the link "Report a Concern", located at the bottom of every webpage. Reporting parties may choose to remain anonymous.

Please note, the University may be limited in its ability to respond to concerns reported anonymously.

**Title IX Coordinators:** Nebraska Wesleyan University has three Title IX Coordinators, each responding to specific members of the campus community. The Title IX Coordinators oversee Nebraska Wesleyan University's processes regarding the review, investigation, and resolution of reports of sexual misconduct. The Title IX Coordinators also ensure the University's compliance with Title IX. The Title IX Coordinators can be contacted by telephone, email, or in person during regular office hours.

- Natasha Sutliff, Title IX Coordinator for Lincoln Students – Smith-Curtis 330H; (402) 432- 6925; titleix [at] nebrwesleyan.edu
- Amy Harrison, Title IX Coordinator for Omaha Students, Omaha Adult and Graduate Programs – Omaha Campus Room 103; (402) 827-3555; titleix [at] nebrwesleyan.edu
- Maria Harder, Title IX Coordinator for Faculty and Staff & Director of Title IX Services – Smith-Curtis 202E, (402) 465-2117; titleix [at] nebrwesleyan.edu

A "**Confidential Employee**" is an individual designated by the University to provide support to Students without being required to report to a Title IX Coordinator. The University has identified the Voices of Hope Campus Advocate, Counseling Services, and University Ministries as Confidential Employees.

When an individual shares information with a Confidential Employee or a community professional with the same legal protections, they cannot reveal the information to any third party except when an applicable law or court order requires or permits disclosure of such information. For example, information will be disclosed when: (1) the individual gives written consent for the disclosure; (2) there is concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor.

Additionally, Confidential Employees must share non-identifying information related to crimes found in the Annual Security Report with a Clery Compliance Officer, as required by the Clery Act.

A "**Responsible Employee**" is any Employee who is not a Confidential Employee. They are considered mandatory reporters. A Responsible Employee is required to report to a Title IX Coordinator all relevant details (obtained directly or indirectly) about an incident of sexual misconduct that involves any Student, including dates, times, locations, and names of

parties and witnesses, if known. Disclosure at public awareness events (e.g., "Take Back the Night") and certain research-based disclosures (i.e., where a Student is a subject in an Institutional Review Board-approved human subjects research project) will not trigger an individual investigation.

**Reporting to Law Enforcement:** Individuals have the right to notify or decline to notify law enforcement. In keeping with its commitment to take all appropriate steps to address and prevent sexual misconduct, the University encourages individuals to promptly report sexual misconduct to local law enforcement. The University will assist individuals in notifying law enforcement if they choose to do so.

To Contact Lincoln or Omaha Police:

- **911 (for emergencies)**
- **Lincoln Police Department** – To make a non-emergency police report, call the nonemergency line (402) 441-6000
- **Omaha Police Department** – To make a non-emergency police report, visit the OPD Headquarter 24/7 or a precinct office Monday – Friday 8 AM – 5 PM OPD Headquarters: 505 S. 15th Street, Omaha, NE 68102

**Anonymous Reporting to Law Enforcement:** There are options to report a sexual assault to law enforcement anonymously. These processes vary depending on the police department receiving the report. Please note, law enforcement may be limited in their ability to respond to anonymous report of sexual assault.

Lincoln Police Department:

- To make an anonymous report of sexual assault to the Lincoln Police Department, visit <https://lincoln.ne.gov/city/police/anonfrm.htm> or call (402) 441-3866. Individuals can choose to report as much information as they would like.
- Victims who choose to receive a forensic examination by a sexual assault nurse examiner may request that the evidence be collected anonymously, meaning they can choose whether to report their name and other information to law enforcement.

**Omaha Police Department:**

- Victims who choose to receive a forensic examination by a sexual assault nurse examiner may request that the evidence be collected anonymously, meaning they can choose whether to report their name and other information to law enforcement.

## VI. Confidential Resources

A Confidential Employee or other confidential resource will not disclose information about sexual misconduct without the reporting party's permission. Confidential Employees must share non-identifying information related to crimes found in the Annual Security Report, as required by the Clery Act.

**Confidential Resources for Students:**

- **Voices of Hope Campus Advocate:** can help students, staff, and faculty access on- and off-campus resources and can also support an individual who chooses to report to the Title IX Coordinator. The Voices of Hope Campus Advocate is available by appointment; advocate [at] nebrwesleyan.edu; Voices of Hope 24/7 Support: 402-475- 7273
- **Counseling Services:** is located at 2641 N. 49th Street (49th & St. Paul Avenue). Counseling Services serves traditional undergraduate students and is open Monday-Friday from 8:00 a.m. to 5:00 p.m.; counseling [at] nebrwesleyan.edu; (402) 465-2464.
- **University Ministries:** is located in Old Main - Room 105; ebousson [at] nebrwesleyan.edu; (402) 465-2222.
- **WCA (Women's Center for Advancement):** provides free and confidential support to survivors of domestic violence, sexual assault, and stalking; the WCA is located at 3801 Harney St, Omaha, NE 68131; info [at] wcaomaha.org; Office Phone: (402) 345-6555; WCA 24/7 Support: 402-345-7273.

**Confidential Resources for Employees:**

- Directions EAP (**Employee Assistance Program**): is located at 3930 South St, Ste. 101 in Lincoln, NE 68506; directionseap [at] directionseap.com; (402) 434-2900.
- University Ministries: is located in Old Main – Room 105; ebousson [at] nebrwesleyan.edu; (402) 465-2222.
- Voices of Hope: provides free and confidential support to empower those who have experienced relationship violence, sexual assault, or abuse; Voices of Hope is located at 2545 N St., Lincoln, NE 68510; info [at] voicesofhopelincn.org; Office Phone: (402) 476- 2110; Voices of Hope 24/7 Support: 402-475-7273.

## **VII. Remedial and Protective Measures**

The University offers a wide range of resources for Students and Employees to provide support and guidance throughout the initiation, investigation, and resolution of a report of sexual misconduct. The University will offer reasonable and appropriate measures to protect a reporting party and facilitate their continued access to University employment or education educational or employment opportunities) or protective (involving actions that may impact the Respondent). The University may also provide, when possible and in the best interest of both parties, reasonable and appropriate measures to the Respondent to facilitate their access to University employment and education programs and activities.

The University will keep private any remedial and protective measures provided under this policy to the extent practicable and will promptly address any violation of the remedial and protective measures. The Title IX Coordinator has the discretion to determine the appropriateness of any remedial and protective measure based on all available information and is available to meet with a reporting party or Respondent to address any concerns about the provision of remedial and protective measures. Examples of remedial and protective measures can be found in the Procedures for Addressing Sexual Misconduct and Sexual Harassment (for students or faculty/staff).

## **VIII. Resolution**

The University has the responsibility to address sexual misconduct based on Title IX and Clery Act regulations and may take disciplinary action against a Respondent who is a current Student or Employee. Disciplinary action against a Respondent will be taken through one of the University's resolution procedures. Because the relationship of students, staff, and faculty to the University differ in nature, the procedures that apply when seeking disciplinary action necessarily differ as well. Each of the procedures, however, is guided by the same principles of fundamental fairness and respect for all parties, which require notice, an equitable opportunity to be heard, and an equitable opportunity to respond to a report under this Sexual Misconduct and Sexual Harassment Policy. All staff involved with the Sexual Misconduct and Sexual Harassment resolution processes, including investigators and adjudicators, receive annual training.

Any question of interpretation of the Sexual Misconduct and Sexual Harassment Policy will be referred to the Director of Title IX Services. The Director of Title IX Services will consult with the University President, whose interpretation is final.

## **IX. Additional Information**

This document is thoroughly reviewed on an annual basis and may be updated periodically for accuracy and clarity. The most current version can be found on the Title IX page of the University's website.

The NWU Board of Governors approved this policy on September 5, 2019. Incidents of sexual misconduct committed on or after this date will be subject to this version of the policy.