

NEBRASKA WESLEYAN UNIVERSITY

Resolution Procedures for Addressing Complaints of Sexual Harassment and Sexual Misconduct under the 2020 Final Rule for Federal Title IX Regulations

This procedure applies to sexual harassment and sexual misconduct of all forms, including sexual and gender-based harassment/bullying, sexual assault, intimate partner/relationship violence, stalking, and sexual exploitation within the jurisdictions of the 2020 Final Rule for Federal Title IX Regulations.

Sexual harassment, sexual assault, intimate partner/relationship violence, stalking, and sexual exploitation are broad terms intended to capture a spectrum of behavior labeled sexual misconduct. These terms are specifically defined in Section V - Prohibited Conduct of the Sexual Harassment and Sexual Misconduct Policy addressed under the 2020 Final Rule for Federal Title IX Regulations. All behavior referenced as sexual harassment and sexual misconduct that falls under the 2020 Final Rule for Federal Title IX jurisdiction guidelines will be addressed utilizing this procedure.

Hereinafter, Nebraska Wesleyan University will be referred to as “the University”.

I. To Whom This Procedure Applies and Jurisdiction

This procedure follows the 2020 Final Rule for Federal Title IX Regulations and pertains to acts of Prohibited Conduct when:

- The conduct occurs on University grounds or other property owned or controlled by the University;
- The conduct occurs in the context of University employment or an education program or University-sponsored activity within the United States, including, but not limited to, school trips, research, on-line classes or meetings, or internship programs;
- The University has substantial control over both the respondent and the context in which the sexual harassment or sexual misconduct occurs; or
- The conduct occurs on property owned or in buildings controlled by any officially recognized student organization.

All Formal Complaints under this procedure must be made and resolved while the parties are participating in or attempting to participate in the employment or education program or activity of the University. Refer to the NWU Sexual Harassment and Sexual Misconduct Outside of Federal Title IX Regulations Policy for addressing conduct that falls outside of the 2020 Final Rule for Federal Title IX Regulations.

Group Violations:

A Student Organization or University-sponsored team and its officers and membership, may be held collectively and individually responsible when violations of this policy by the organization or its member(s):

- Take place at organization-sponsored or co-sponsored events, whether sponsorship is formal or tacit;
- Have received the consent or encouragement of the organization or of the organization's leadership; or
- Were known or should have been known to the membership or its officers.

There is no minimum number of members who must be involved in a violation of University Policy for disciplinary action to be taken against the Student Organization. In order to decide whether the Student Organization is accountable for the misconduct of individual members, it must be determined whether it is likely that the individuals would have acted if they were not members of the group; if the group, either directly or indirectly, encouraged the behavior; or if the behavior was intentionally ignored.

II. Definition of Terms

Actual Knowledge: occurs when notice of, or allegations of, sexual harassment or sexual misconduct is received by a University Title IX Coordinator or an employee with authority to institute corrective measures.

Advisor of Choice: an individual selected by a Complainant or Respondent to assist them during any part of the process, including the Reporting, Assessment, Investigation, Hearing, and Appeal process. An Advisor of Choice may be a staff member, student, parent, community member, or an attorney. A University-selected Advisor of Choice will be provided for the Hearing for the purpose of cross-examination of the Complainant or Respondent, if the complainant or respondent has not appointed one for themselves. The University will not bear the expense of an attorney acting as an Advisor of Choice retained by any involved party. Any involved party may change their Advisor of Choice at any point. The Advisor of Choice may also serve as the Support Person.

Campus Security Authority (CSA): employees or officials who have been identified as having significant responsibilities for student and campus activities to whom students and employees should report criminal offenses to the Title IX Coordinator, which constitutes Actual Knowledge by the University. CSAs are responsible for reporting crimes to campus administrators as required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment or sexual misconduct.

Confidential Employee: an individual designated by the University to provide support to Students and Employees without being required to report to a Title IX Coordinator.

Day: University working day, not including Saturday, Sunday, or University holidays.

Employee: 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.

Formal Complaint: is a signed, written formal accusation against an individual for violation of the University's sexual harassment and sexual misconduct policies that is submitted by the Complainant or the Title IX Coordinator.

The 2020 Final Rule for Federal Title IX Regulations states that any Third Party, as well as the Complainant, is authorized to submit a report of sexual harassment or sexual misconduct. Additionally, the Final Rule dictates that while Third Parties can make reports of sexual harassment, they are not allowed to become official Complainants. The regulations expressly recognize that a Third Party has power to act on behalf of the involved parties.

The Title IX Coordinator, or designee, may sign a Formal Complaint in the event a harmed party of sexual harassment or sexual misconduct does not wish to file the Formal Complaint, or when the misconduct presents an imminent threat to campus safety or safety of an individual on campus. When the Title IX Coordinator signs a formal complaint, the Title IX Coordinator does not become the Complainant and must comply with the requirements of the 2020 Final Rule for Federal Title IX Regulations.

At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the University's employment or education program or activity.

Harmed Party: an individual or group of individuals who experienced sexual harassment or sexual misconduct.

Hearing Decision Maker: manages and leads the Hearing Process, communicates Hearing protocol, oversees cross-examination questioning, and determines relevancy of each question during cross-examination. The Hearing Decision Maker also makes final decisions of the resolution outcome and, if necessary, sanctions, and communicates the Notification of Determination to the University Administrator.

Investigator: one or more trained University-appointed individuals who conduct an investigation and prepare the official written reports (Preliminary and Final Investigative Reports) after a Formal Complaint is filed.

Mandatory Reporter: all Employees, including Confidential Employees, are mandatory reporters of child abuse by an adult (sexual/physical assault, witness to domestic violence, dating/intimate partner violence, stalking) for minors. In Nebraska, minors are considered all persons under the age of 19.

Officials with Authority: University administrators who have authority to institute corrective measures on behalf of the University.

Reporting Party: an individual, or group of individuals, who reports information to the Title IX Coordinator, which constitutes Actual Knowledge by the University, about an incident of sexual harassment or sexual misconduct. A Reporting Party may be the person who experienced the sexual harassment or sexual misconduct, a Campus Security Authority, a friend of someone who has experienced sexual harassment or sexual misconduct, or someone who has otherwise been made aware of an incident of sexual harassment or sexual misconduct.

Respondent: an individual or group of individuals who is/are the subject of a sexual harassment or sexual misconduct report or Formal Complaint. During the time of the resolution process for a Formal Complaint, the Respondent must be participating in or attempting to participate in the University's employment or education program or activity.

Student: any person enrolled in courses at the University, both full-time and part-time, pursuing undergraduate or graduate studies, including those who audit courses.

Student Organization: any group of persons who have complied with the formal requirements for University recognition as an organization.

Support Person: an individual selected by a Complainant or Respondent to assist them during any part of the process, including the Reporting, Assessment, Investigation, Hearing, and Appeal process. A Support Person may be a staff member, student, parent, community member, or an attorney. The University will not bear the expense of an attorney acting as a Support Person retained by any involved party. Any involved party may change their Support Person at any point. The Support Person may also serve as the Advisor of Choice.

Third Parties: any person who may report an incident of sexual harassment or sexual misconduct to the Title IX Coordinator that constitutes Actual Knowledge by the University, including, but not limited to, parents, bystanders, witnesses, teachers, friends, or other community members.

Title IX Assessment Report: a record of the relevant details as reported to the Title IX Coordinator during the Title IX Assessment, including factors related to any threat of imminent danger or ongoing safety concerns for the campus.

University Administrator: this role is filled by the Vice President for Student Life, or designee, for instances of Formal Complaints involving only students. The Head Title IX Coordinator, or designee, will fill this role for instances of Formal Complaints involving Employees.

Witness: an individual who personally sees or perceives a detail or event and is willing to attest to that detail. Information from witnesses whose sole purpose is to provide character information will not be considered as part of an investigation.

III. Supports

Title IX Coordinators

The Title IX Coordinators oversee the University's assessment, investigation, and resolution of reports of sexual harassment and sexual misconduct ensuring compliance with Title IX and

other relevant state and federal laws. A Report can be made at any time via email, phone, or physical mail, or in person during regular business hours.

Head Title IX Coordinator: Maria Harder, Nebraska Wesleyan University, Smith Curtis 202E, 5000 Saint Paul Ave., Lincoln, NE 68504 (402) 465-2117, mharder@nebrwesleyan.edu

Deputy Title IX Coordinator: Natasha Sutliff, Nebraska Wesleyan University, Smith Curtis 325, 5000 Saint Paul Ave., Lincoln, NE 68504 (402) 432-6925, nsutliff@nebrwesleyan.edu or titleix@nebrwesleyan.edu

The Head Title IX Coordinator, or designee, will manage reports and complaints for Faculty and Staff. The Deputy Title IX Coordinator, or designee, will manage reports and complaints for Students.

The Title IX Coordinators are:

Responsible for oversight of the assessment, investigation, and resolution of all reports of sexual harassment or sexual misconduct;

- Knowledgeable and trained in relevant state and federal laws and University policy and procedures.
 - Annual training includes, but is not limited to, the definition of sexual harassment, the scope of the University's education program or activity, how to conduct an investigation and resolution process including hearings, appeals, and how to serve impartially, including to avoid prejudgment of the facts at issue, conflicts of interest, and bias. Moreover, any materials used to train Title IX Coordinators, investigators, and hearing decision-makers does not rely on sex stereotypes and promotes impartial investigations and adjudications of formal complaints of sexual harassment. Training materials can be found on the NWU Title IX website.
- Available to provide information to any individual, including a Complainant, a Respondent, or a Third Party, about the courses of action available at the University, both informally and formally;
- Available to assist any University community member regarding how to respond appropriately to reports of sexual harassment or sexual misconduct;
- Responsible for oversight of sexual violence prevention education and employee training;
- Responsible for monitoring full compliance with all requirements and timelines specified in the reporting and Formal Complaint procedures;
- Responsible for ensuring resolution procedures, including the hearing and appeal process, are in compliance with Federal and University policies and regulations;
- Responsible for ensuring the timely completion of any remedies or sanctions, and;
- Responsible for compiling annual reports.

Confidential Resources

A Confidential Employee or other confidential resource will not disclose information about sexual harassment or sexual misconduct without the Reporting Party's permission. Confidential Employees must share non-identifying statistical information related to crimes found in the

Annual Security Report (ASR), as required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act).

There are three exceptions when a Confidential Resource must disclose information to University officials or Law Enforcement as required by law:

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 by an adult. In Nebraska, minors are considered anyone under the age of 19.

List of Confidential Resources:

- **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@nebrwesleyan.edu; Voices of Hope 24/7 Support: 402-475-7273.
- **NWU Counseling Services:** serves traditional undergraduate students. Counseling Services is located at 2641 N. 49th Street (49th & St. Paul Avenue) and is open Monday-Friday from 8:00 a.m. to 5:00 p.m.; counseling@nebrwesleyan.edu; (402) 465-2464.
- **University Minister:** can help students, faculty and staff, and is located in Old Main – Room 105; ebousson@nebrwesleyan.edu; (402) 465-2222.
- **Directions Employee Assistance Program:** can help faculty and staff and is located at 3923 South Street Ste. 101 Lincoln, NE 68506; directionseap@directionseap.com; 402-434-2900.
- **WCA (Women’s Center for Advancement):** can help students, faculty and staff, and 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@wcaomaha.org; Office Phone: (402) 345-6555; WCA 24/7 Support: 402-345-7273.

Support Person

A Complainant or Respondent can select a Support Person to assist them during any part of the process, including the Reporting, Assessment, Investigation, Hearing, and Appeal process. A support person may speak only to the individual being supported and may not speak directly to any other party. A Support Person may be a staff member, student, parent, community member, or an attorney.

In the event that the Complainant or Respondent would like a Support Person to assist them and is unable to identify someone, the Title IX Office will provide a list of people who are committed to providing support for either party.

Advisor of Choice

A Complainant or Respondent can select an Advisor of Choice to assist them during any part of the process, including the Reporting, Assessment, Investigation, Hearing, and Appeal process.

An Advisor of Choice is required at the Hearing for both the Complainant and Respondent for the purpose of cross-examination. In the event that the Complainant or Respondent does not identify an Advisor of Choice for the Hearing, the University will provide an Advisor of Choice for them, as neither party is permitted to personally perform cross examination at the hearing.

An Advisor of Choice may be a staff member, student, parent, community member, or an attorney. The University will not bear the expense of an attorney acting as an Advisor of Choice retained by any involved party.

IV. Reporting

There are multiple channels for reporting sexual harassment and sexual misconduct. An individual may choose to report to the University, to law enforcement, to both, or to neither. These reporting options are not exclusive. A individual may simultaneously pursue a criminal investigation and the University sexual harassment and 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 harassment or sexual misconduct to promptly report the incident to a Title IX Coordinator. Any Campus Security Authority (CSA) identified by the University who receives a disclosure of sexual harassment or sexual misconduct by a harmed party or witness is required to report to the Title IX Office. While there is no time limit for reporting sexual harassment or 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 supportive measures, assist individuals in identifying external and/or other internal reporting options, and take reasonable steps to eliminate sexual harassment and sexual misconduct, prevent its recurrence, and remedy its effects.

Making a Report vs. Filing a Formal Complaint:

Making a Report is defined as notification of an incident of sexual harassment or sexual misconduct to a Title IX Coordinator by any Reporting Party. A report may be accompanied by a request for any of the following: resources, no further action, supportive measures, and/or initiation of the Formal Complaint process. The University recognizes that not every individual will be prepared to request supportive measures or to file a Formal Complaint; therefore, Reporting Parties may pursue these options any time in the future. Individuals are not expected or required to pursue any specific course of action.

The University will make a reasonable effort to respect the wishes of the person who experienced sexual harassment or sexual misconduct. However, if the reported incident constitutes an imminent or ongoing threat to campus safety based on the assessment of the Title IX Coordinator, the Title IX Coordinator may file a Formal Complaint.

To ensure the harmed party of sexual harassment or sexual misconduct is informed of their rights and options, Campus Security Authorities (excluding Confidential Employees) will be required to report the relevant details about an incident of sexual harassment or sexual misconduct that involves any Student or Employee as a Complainant, Respondent, and/or Witness. This includes dates, times, locations, and names of parties and witnesses, if known. The Title IX Coordinator will contact the harmed party to provide information and ask how they wish to proceed.

Filing a Formal Complaint is defined as the request to initiate the University's formal Title IX investigative and resolution process. The decision to file a Formal Complaint may be made at any time during Title IX jurisdictional time frames. A Report or Complaint can be made at any time via email, phone, or physical mail, or in person during regular business hours.

To make a Report or file a Complaint, please contact the appropriate resource:

Head Title IX Coordinator: Maria Harder, Nebraska Wesleyan University, Smith Curtis 202E, 5000 Saint Paul Ave., Lincoln, NE 68504 (402) 465-2117, mharder@nebrwesleyan.edu

Deputy Title IX Coordinator: Natasha Sutliff, Nebraska Wesleyan University, Smith Curtis 325, 5000 Saint Paul Ave., Lincoln, NE 68504 (402) 432-6925, nsutliff@nebrwesleyan.edu or titleix@nebrwesleyan.edu

The Head Title IX Coordinator, or designee, will manage reports and complaints for Faculty and Staff. The Deputy Title IX Coordinator, or designee, will manage reports and complaints for Students.

Amnesty:

- **For Complainants:** The University provides amnesty to harmed parties who may be hesitant to report to University officials because they fear that they themselves may be accused of minor policy violations, such as alcohol violations.
- **For Those Who Offer Assistance:** To encourage Students and Employees to offer help and assistance to others, the University pursues a policy of amnesty for minor violations when Students or Employees offer help to others in need. At the discretion of the Vice President for Student Life, Assistant Vice President of Human Resources, or designee, amnesty may also be extended on a case-by-case basis to the person receiving assistance.
- **For Those Who Report Serious Violations:** Students or Employees who are engaged in minor violations but who choose to bring related serious violations by others to the attention of the University may be offered amnesty for their minor violations.
- **For Those Who Witness Serious Violations:** Students or Employees who witness serious violations by others may be offered amnesty for any minor violations if they are called on as a witness to a serious violation but will not be provided amnesty if they participated in, facilitated or condoned the misconduct through a failure to act.

In any of the circumstances listed above, an educational conference or coaching opportunity related to the minor violations may occur, but no conduct proceedings will result.

Abuse of amnesty requests can result in a decision by the Vice President for Student Life, Assistant Vice President of Human Resources, or designee, not to extend amnesty to the same person repeatedly.

Reporting to Law Enforcement: Individuals have the right to notify or decline to notify law enforcement. Police have legal authority to criminally investigate reports of sexual assault, domestic abuse, and stalking, collect evidence, make arrests, and assist in seeking emergency protective measures. In keeping with its commitment to take all appropriate steps to address and to prevent sexual harassment and sexual misconduct, the University encourages individuals to promptly report sexual harassment and sexual misconduct to preserve potential evidence. 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 non-emergency line or visit a team station Monday-Friday between 8:00 AM and 4:00 PM.
 - LPD Non-Emergency Line: (402) 441-6000
- Omaha Police Department: To make a non-emergency police report, visit the Omaha Police Department Headquarters 24/7 or a precinct office Monday-Friday between 8:00 AM and 5:00 PM.
 - Omaha Police Department Headquarters: 505 S. 15th Street, Omaha, NE 68102

Anonymous Reporting to Law Enforcement:

There are options to report a sexual assault or other crimes 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 reports.

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.

V. Supportive 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 harassment or sexual misconduct. The University will offer reasonable and appropriate

measures to facilitate continued access to University employment or education programs and activities for all involved parties. Non-disciplinary, non-punitive individualized services will be offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a report or formal complaint.

The University will keep private any supportive measures provided under this policy to the extent practicable and will promptly address any violation of the supportive measures. The Title IX Coordinator has the discretion to determine the appropriateness of any supportive measure based on all available information and is available to meet with all involved parties to address any concerns about the provision of supportive measures. Supportive measures may include but are not limited to: facilitation of connections to on- and off-campus resources, issuance of a No Contact Order, change of work assignment/location/schedule, change of living space, change of class schedule, and/or security escort.

VI. Title IX Assessment

Upon receipt of a report, the Title IX Coordinator will conduct an initial Title IX Assessment. The first step of the assessment will typically include a preliminary meeting between the Reporting Party and the Title IX Coordinator. The purpose of this meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full investigative interview. The Reporting Party will also receive information about resources, rights, procedural options, and supportive measures.

The Reporting Party may bring up to two people to this meeting: (1) Support Person and/or (1) Advisor of Choice. When either the Support Person or the Advisor of Choice is an attorney, the Title IX Coordinator must be given 2 days advance notice. Neither the Support Person nor the Advisor of Choice can direct questions or comments to the Title IX Coordinator, but they may consult with the Student or Employee they are assisting. The Title IX Coordinator will not allow the presence of a Support Person or Advisor of Choice to inhibit their ability to provide information.

During the Title IX Assessment, the Title IX Coordinator will:

- Assess the nature of the reported misconduct to determine if the conduct is a violation of University policy;
- Address the immediate physical safety and emotional well-being of the Reporting Party and University community;
- Notify the Reporting Party of the range of supportive measures;
- Provide the Reporting Party with information about on- and off-campus resources;
- Determine if concerns exist for discrimination or harassment based on other protected classes;
- Explain the University's policy for prohibiting retaliation;
- Explain the difference between privacy and confidentiality;
- Explain the difference between confidential and non-confidential resources;
- Assess the reported conduct for the need of a timely warning notice as required under federal law;
- Determine if a pattern of evidence or other similar conduct by the Respondent exists;

- Determine if any issues of academic freedom exist, which may be reviewed by the Provost or designee;
- Enter non-identifying statistical information about the report into the University's daily crime log;
- Explain the University's Title IX resolution process, including the evidentiary standard - preponderance of evidence;
- Record the Reporting Party's preferred course of action; and
- Provide the Reporting Party with a written explanation of their rights and options.

The Title IX Coordinator will document all information provided by the Reporting Party during a Title IX Assessment in a Title IX Assessment Report. The purpose of this Report is to record the relevant details as reported to the Title IX Coordinator. This Assessment Report will be shared with the Investigator(s) and University Administrator should a Title IX Formal Complaint be filed.

The University will make a reasonable effort to respect the wishes of the person who experienced sexual harassment or sexual misconduct. However, if the reported incident constitutes an imminent or ongoing threat to campus safety based on the Title IX Coordinator's assessment, a report may become a Formal Complaint. In making this decision, the Title IX Coordinator will consider, but is not limited by, the following factors: whether the person who experienced sexual harassment or sexual misconduct has requested that no formal action be taken; whether they are willing to participate in additional steps; whether the University can undertake any action without their participation; the severity and impact of the sexual harassment or sexual misconduct; whether there exists a pattern of sexual harassment or sexual misconduct; the existence of independent evidence; the existence of relational power differentials; and any legal obligation to proceed based on the nature of the conduct, including sexual harassment and sexual misconduct involving minors by an adult.

Where a Reporting Party requests that a name or other identifiable information not be shared with the Respondent and/or that no formal action be taken, the University may be limited in its ability to fully respond to the matter.

During the Title IX Assessment, the Title IX Coordinator will discuss the availability of supportive measures. Following the Assessment, the Title IX Coordinator will determine if a Formal Complaint will be filed by the University. The University will balance the Reporting Party's requests with its responsibility to provide a safe and non-discriminatory environment for all University community members. Participation in the sexual harassment and sexual misconduct resolution process is voluntary and supportive measures are available at any time for all involved parties.

The Title IX Coordinator will document each report of sexual harassment or sexual misconduct and will review and retain copies of all reports or documentation as per the University's Record Retention Policy. These records will be kept private to the extent permitted by law.

VII. Interim Action

At times, the University may take action to ensure the physical or emotional safety and well-being of the University community. The 2020 Final Rule for Federal Title IX Regulations, in accordance with the §106.44(c) emergency removal provision, expressly authorizes the University to remove a Respondent from the University's employment or education programs or activities on an emergency basis, with or without a resolution process pending, as long as the Respondent has the opportunity to challenge the University's decision immediately following the removal.

Sexual harassment or sexual misconduct reports or Formal Complaints presenting a risk to the physical health or safety of a person may justify emergency removal of a Respondent, which could include a no-trespass or other no-contact order issued.

VIII. Sexual Harassment and Sexual Misconduct Formal Complaint and Investigation

Notice of Complaint

Upon receipt of a Formal Complaint, the Title IX Coordinator is required to send a written notice of the allegations, and notice of the University's resolution process, as well as provide notice of the availability of supportive measures, simultaneously to the Complainant and Respondent.

Meeting with Respondent

After the Notice of Complaint has been sent, the Title IX Coordinator will meet with the Respondent. This meeting is not intended to be an investigative interview. The purpose of this meeting is to inform them of sufficient details of the Formal Complaint, including:

- Full name of all parties involved, if known;
- Conduct constituting a potential policy violation;
- Date, location, and time of alleged incident, if known;
- Overview of the sexual harassment and sexual misconduct resolution process;
- Information about resources, rights, procedural options, and supportive measures;
- The University's presumption that Respondents have not violated a policy due to the alleged misconduct until there is a determination that a policy violation has occurred, which is made at the end of the resolution process;
- The University's evidentiary standard - preponderance of evidence;
- Notice of Support Person and/or Advisor of Choice;
- Notice of conduct violations for knowingly submitting false statements or false information; and
- Review of the University's policy for privacy and prohibiting retaliation.

At this time, the Title IX Coordinator will also set up separate informational meetings with a University Administrator who will provide detailed information to the Complainant and to the Respondent about the resolution process, including the right to decide whether or not to participate in the process. As at every step in the resolution process, all involved parties may bring up to two people to this meeting: (1) Support Person and/or (1) Advisor of Choice.

The Title IX Coordinator will then send a copy of the Title IX Assessment Report to the Investigator.

Meeting with Investigator

The University has designated individuals as Investigators who receive training annually. Annual training includes, but is not limited to, all of the aforementioned general training requirements for Title IX personnel (including Title IX coordinators, investigators, and hearing decision makers); in addition to specific training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Moreover, any materials used to train Title IX Coordinators, investigators, and hearing decision-makers does not rely on sex stereotypes and promotes impartial investigations and adjudications of formal complaints of sexual harassment. Training materials can be found on the NWU Title IX website.. At its discretion, the University may use multiple Investigators, including internal or external Investigators of its choosing.

Throughout the investigation of a Formal Complaint, and the hearing process, the University will ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility remains on the University and not on the parties. The Investigator is solely responsible for all aspects of the investigation, including whether or not to record the investigation interviews. If the Investigator chooses to record the interviews, there will be a single record of the meetings with the Investigator kept in the form of an audio or video recording. The record is the property of the University and will be maintained by the University. No other parties are permitted to record the interviews.

The Investigator will contact the Complainant, Respondent, and relevant witnesses to schedule interviews. All involved parties may bring up to two people to this meeting: (1) Support Person and/or (1) Advisor of Choice. When the Support Person or the Advisor of Choice is an attorney, the Investigator must be given 2 days advance notice. Neither the Support Person nor the Advisor of Choice can direct questions or comments to the Investigator, but they may consult with the Student or Employee they are assisting. The Investigator will not unduly allow a Support Person or an Advisor of Choice's presence to inhibit their ability to gather information. If a Respondent refuses to participate in the investigation or chooses not to answer certain questions from the Investigator, the investigation will continue nonetheless, and decisions will be made without the requested participation from or information from the Respondent.

The Investigator will conduct a thorough, impartial, and unbiased investigation. All individuals will be treated with appropriate respect, and in a manner considerate of their privacy. An investigation may include multiple, in-person or virtual, meetings with the Investigator. The Investigator will make a reasonable effort to complete the investigation within 30 days, but this time frame may be extended depending on the complexity of the circumstances of each case. Scheduling, University closures, or holidays may affect this timing as well. Any delays in the process will be communicated in writing, simultaneously, to the Complainant and the Respondent.

An investigation will typically include interviews of the Complainant, Respondent, and any relevant witnesses provided by either party or discovered during the investigation, and other individuals who may have direct knowledge about the reported conduct. The Investigator will prepare a written summary of each interview. All those interviewed will have an opportunity to review their interview summary for accuracy and submit modifications or additional information within three days of the receipt of the summary from the Investigator.

The Investigator will seek to obtain evidence including text messages, email, photos, social media posts, screen shots, etc. The Investigator may also require access to campus facilities, including residence halls, to gather information and take photos, if necessary. The Complainant and Respondent will have an equal opportunity to provide statements, submit additional information, and/or identify witnesses who may have relevant information. The Complainant, Respondent and any witnesses shall not destroy evidence, including but not limited to the deletion of texts, emails, photos, etc., during the resolution process.

In cases where alcohol and/or other intoxicants are a factor, evaluating incapacitation will require an assessment of whether the involved parties should have been aware of the incapacitation of either party based on an objective and subjective evaluation of the behavior when viewed from the perspective of a sober, reasonable person. Evidence of incapacitation may require evaluating normal and abnormal behaviors of all parties involved, such as vomiting, sleeping, blacking out, and unconsciousness.

An investigation may also require an evaluation of whether consent for sexual behavior was given. An essential element of consent is that it be freely given. Freely given consent might not be present, or may not even be possible, in relationships of a sexual or intimate nature between individuals where one individual has power, supervision or authority over another.

In evaluating whether consent was given, consideration will be given to the totality of the facts and circumstances. This includes, but is not limited to, the extent to which a Complainant affirmatively uses words or actions indicating a willingness to engage in sexual contact, free from intimidation, fear, or coercion; whether a reasonable person in the Respondent's position would have understood such person's words and acts as an expression of consent; and whether there are any circumstances, known or reasonably apparent to the Respondent, demonstrating incapacitation or fear.

Once the Investigator has gathered all relevant information, the Investigator will prepare a Preliminary Investigative Report. This Report will include relevant information gathered during the investigation. The Investigator may also include prior allegations of, or findings of, violations for similar conduct by the Respondent. If witness information is included in the Report, witness names and relevant statements will be identified. Both the Complainant and the Respondent will have 10 days to review the Preliminary Investigative Report and provide follow-up responses or information to the Investigator.

After the preliminary 10-day review period, the Investigator will review follow-up responses and incorporate relevant information into the Final Investigative Report.

Once the Investigator has completed the Final Investigative Report, the Investigator will simultaneously distribute the Report to the Complainant, the Respondent and the Title IX Coordinator. The Title IX Coordinator will notify the University Administrator who will schedule the Title IX Hearing.

The Title IX Hearing will be scheduled no sooner than 10 days after the Complainant and the Respondent have received the Final Investigative Report.

IX. Title IX Hearing

The 2020 Final Rule for Federal Title IX Regulations mandates that a live hearing, that includes cross-examination, is necessary for the resolution of any Formal Complaint.

The University Administrator will send the Notice of Hearing to all involved parties. The Notice will include the date and time of the Hearing, as well as information about contacting the University Administrator to request technology, a private space, or any additional accommodations in order to participate in the Hearing, if needed. The Notice will also include the names of all individuals who will be attending the Hearing. Complainants and Respondents will be given the opportunity to request that a University-assigned Support Person, an Advisor of Choice, or a Hearing Decision Maker be recused from the Hearing due to a potential conflict of interest or bias. The University Administrator will likely not be removed from a hearing on allegation of personal bias, as the University Administrator is not a decision maker and is present to ensure compliance with University procedures and has no impact on the outcome of the Hearing. In the event, the University Administrator does have a conflict of interest, even though they do not act in an adjudicative capacity, an alternate University Administrator may be assigned.

Both Complainant and Respondent are required to have an Advisor of Choice for the Hearing for the sole purpose of conducting cross-examination on behalf of the party. If either party's Advisor of Choice cannot attend the hearing, the University will provide an advisor of the University's choice, without fee or charge. Any involved party may change their Support Person or their Advisor of Choice at any point. Complainants, Respondents, or their Support Person are not allowed to ask questions as part of cross-examination.

The Hearing will be closed to the public. The following individuals will be present at the Hearing:

- The Hearing Decision Maker
- The University Administrator
- The Investigator(s)
- The Complainant, potentially accompanied by a Support Person
- The Complainant's Advisor of Choice
- The Respondent, potentially accompanied by a Support Person
- The Respondent's Advisor of Choice
- Witnesses (if applicable), potentially accompanied by a Support Person
- University Counsel (if applicable)

If the Respondent is a Student Organization, that Organization may be represented by up to four members of the Organization.

The Hearing Decision Maker will conduct a thorough and impartial Hearing without bias or prejudice. The Hearing Decision Maker will receive annual training to conduct such a Hearing. Annual training includes, but is not limited to, all of the aforementioned general training requirements for Title IX personnel (including Title IX coordinators, investigators, and hearing decision makers); in addition to specific training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence

about the complainant's sexual predisposition or prior sexual behavior are not relevant (i.e. rape shield protections). Moreover, any materials used to train Title IX Coordinators, investigators, and hearing decision-makers does not rely on sex stereotypes and promotes impartial investigations and adjudications of formal complaints of sexual harassment. Training materials can be found on the NWU Title IX website.

The Hearing Decision Maker manages and leads the Hearing process, communicates Hearing protocol, oversees cross-examination questioning, and determines relevancy of each question during cross-examination. The Hearing Decision Maker also makes final decisions of the resolution outcome and, if necessary, sanctions and communicates the Notification of Determination to the University Administrator. The Title IX Coordinator is responsible for ensuring the timely completion of any remedies or sanctions.

Hearing Protocol and Guidelines:

The Complainant and Respondent have the right to decline to appear or participate in the Hearing. If a Complainant or Respondent declines to participate, the Hearing Process will continue and statements and evidence the party has previously provided will not be considered by the Hearing Decision Maker. If a Complainant, Respondent, or witness does not submit to cross-examination at the live hearing, the Hearing Decision Maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Decision Maker cannot draw an inference about the determination regarding responsibility based solely on a Complainant's, Respondent's, or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Falsification, distortion, or misrepresentation of information as part of the Title IX resolution process is a violation of University policy. Any person who abuses the University conduct processes in this way may face disciplinary charges for that violation.

The Title IX Hearing will use virtual technology to allow a live hearing to occur with the parties physically located in separate rooms, enabling the Hearing Decision Maker and parties to simultaneously see and hear all parties and witnesses answering questions. Virtual breakout rooms will be used to facilitate the flow of the Hearing. Conversations held in breakout rooms will not be recorded. There will be a single record of the Title IX Hearing kept in the form of a video recording. The record is the property of the University and will be maintained by the University. No other parties are permitted to record the Hearing.

In the event of technical difficulties, the Hearing will be rescheduled, and all parties will be notified.

At the beginning of the Hearing, the Hearing Decision Maker will ask the Investigator to present the relevant information from the Final Investigative Report and may follow up with additional questions for the Investigator. Questions asked by the Hearing Decision Maker and information addressed by the Investigator cannot be re-asked by an Advisor of Choice.

The Hearing Decision Maker must permit each party's Advisor of Choice to ask the other party and any witnesses all relevant questions and follow-up questions, including questions challenging credibility. Questions by either Advisor of Choice cannot be submitted in advance of the Title IX Hearing. Before a Complainant, Respondent, or Witness answers a cross-

examination or other question, the Hearing Decision Maker must first determine whether the question is relevant and explain and record any decision to exclude a question as not relevant. Relevancy for each question will be determined by the Hearing Decision Maker on a question by question basis in a private breakout room with the Advisor of Choice.

Cross-examination at the Hearing will be conducted directly, orally, and in real time. If a Complainant, Respondent, or witness does not submit to cross-examination at the live hearing, the Hearing Decision Maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Decision Maker cannot draw an inference about the determination regarding responsibility based solely on a Complainant's, Respondent's, or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

The Hearing Decision Maker will ensure Rape Shield protections for the Complainant by limiting the ability of an Advisor of Choice to ask questions that are not relevant about the Complainant's past sexual behavior.

Once the Advisors of Choice for the Complainant and Respondent have asked all relevant questions, the Hearing will end.

The Hearing Decision Maker will use a preponderance of the evidence standard (i.e., that it is more likely than not that a policy violation occurred) when evaluating the Formal Complaint outcome and determining sanctions, if applicable. In the event the Respondent is a Student Organization, individual determinations of responsibility will be made, and sanctions may be assigned collectively and/or individually, depending on the circumstances of the Complaint. Sanctions will be proportionate to the involvement of each individual and the organization.

The Hearing Decision Maker has up to 5 days to make a decision and prepare the Notice of Determination. The Title IX Coordinator is responsible for ensuring the timely completion of any remedies or sanctions.

X. Notice of Determination

The Hearing Decision Maker will prepare a Notice of Determination which will include the following information:

- Alleged violations
- Procedural steps
- Findings of fact
- Conclusion
- Rationale
- Sanction(s), if applicable
- Appeal procedures

Once the Notice of Determination is complete, the Hearing Decision Maker will forward it to the University Administrator.

The University Administrator, or designee, will share the Notice of Determination with the Complainant and the Respondent. This information will be shared simultaneously. In most circumstances, the information will be shared in person, or virtually, as well as in writing. The University Administrator will also share the Notice of Determination with the Title IX Coordinator and the Investigator(s).

XI. Sanctions

Sanctions will be determined based on the nature and severity of the policy violation(s) and in consideration for the safety of the campus community. Conduct history will also be considered as part of the sanctioning process. Possible sanctions may include, but are not limited to, protective measures, restrictions, letters of reprimand, action plans, performance improvement plans, reflection statements, coaching, probation, expulsion, and/or separation.

Sanctions go into effect after the conclusion of, or following the deadline to submit, an appeal. The Title IX Coordinator is responsible for ensuring the timely completion of any remedies or sanctions.

XII. Appeals

A Complainant or Respondent may each submit one appeal. An appeal must address all concerns related to the Notice of Determination. Appeals must be submitted within 7 days of receipt of the Notice of Determination. The electronic form to submit the appeal can be found on the [Title IX webpage](#) and in the Notice of Determination.

Grounds for an appeal:

The University offers both parties an appeal from a determination regarding responsibility, from the University's dismissal of a formal complaint, or the dismissal of any allegations contained therein, on the following bases:

- To determine whether the resolution process was conducted in accordance with University procedures that affected the outcome of the matter;
- To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original proceedings, because the person appealing did not know such information and/or facts at the time of the original Investigation or Hearing;
- To determine if any Title IX personnel had a conflict of interest or bias during the resolution process that would have affected the outcome; and/or
- To determine whether the sanction(s) imposed were proportionate to the misconduct.

Upon request, the video recording of the Hearing may be made available to the Complainant or Respondent as part of the appeal process. The record remains the property of the University and will be maintained by the University.

Upon receipt of an appeal, the University Administrator will provide a Notice of Appeal, including sufficient details of the appeal and a link to the Appeal Response Form, to the Complainant and Respondent, allowing 7 days for either party to respond.

Following the 7-day response period, the University Administrator will forward the appeal, along with the Final Investigative Report, the recording of the Title IX Hearing, and any other materials relevant to the determination or appeal, to the University President, or designee, for review.

The University President, or designee, will consider all available documentation. Based on the information provided, the University President will:

- Affirm the findings and/or sanctions determined by the Hearing Decision Maker; or
- Reverse the findings and/or modify the sanctions determined by the Hearing Decision Maker.

The President will prepare the Final Determination of Appeal stating their decision, which is final and binding. The document will include the rationale for the President's decision. The document will be provided to the University Administrator, who will communicate the President's decision to the Complainant and the Respondent, simultaneously. The Final Determination of Appeal will also be shared with the Title IX Coordinator and the Investigator(s).

The University Administrator will make a reasonable effort to complete the appeal process within 10 days, but this time frame may be extended depending on the complexity of the circumstances of each case. Scheduling, University closures, or holidays may affect this timing as well.

XIII. Additional Information

In order to comply with laws protecting the privacy of education records and to provide a process for the consideration of relevant evidence free of intimidation or pressure, documentation related to the Title IX resolution process, including, but not limited to, the Title IX Assessment Report, Investigative reports, written testimony, oral testimony, recordings, or other evidence introduced, will not be disseminated to Third Parties or law enforcement, except as required by law. The University will maintain these records for seven years from the date of the incident, or indefinitely in cases involving a sanction of suspension or expulsion.

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 webpage of the University's website.

The NWU Board of Governors approved these procedures on August 6, 2020. All incidents of sexual harassment and sexual misconduct reported on or after this date will be subject to these procedures. However, the University will apply sexual harassment and sexual misconduct definitions in effect at the time of the incident.