

NEBRASKA WESLEYAN UNIVERSITY

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

This procedure applies to forms of sexual harassment and sexual misconduct, including sexual and gender-based harassment/bullying, sexual assault, dating violence, domestic violence, stalking, and sexual exploitation (“Prohibited Conduct”) when the Prohibited Conduct falls **outside of** the 2020 Federal Title IX Regulations and Nebraska Wesleyan University’s (“University”) corresponding policy, “Sexual Harassment and Sexual Misconduct Policy outside of the 2020 Federal Title IX Regulations.”

Sexual harassment, sexual assault, dating violence, domestic 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 corresponding Sexual Harassment and Sexual Misconduct Policy Outside of the 2020 Federal Title IX Regulations (“Outside of Title IX Policy”). All behavior referenced as sexual harassment and sexual misconduct that falls outside of the 2020 Federal Title IX jurisdiction guidelines will be addressed utilizing this procedure.

This procedure is based on the 2020 Final Rule for Title IX of the Education Amendments of 1972 (Title IX), the Jeanne Clery Campus Safety Act (Clery Act), and corresponding legal guidance.

Hereinafter, Faculty and Staff Employees will be referred to as “Employees,” unless uniquely specified.

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I. Definitions of Key Terms

Actual Knowledge: the standard of notice the University must have of an alleged occurrence of sexual harassment or sexual misconduct, which 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.

Complainant: an individual who is alleged to be the Harmed Party of conduct that could constitute sexual harassment or sexual misconduct and has been filed and signed with the University.

Confidential Employee: an individual designated by the University working in their confidential capacity to provide support to Students and Employees without being required to report to a Title IX Coordinator. A report to a Confidential Employee will not be considered actual knowledge, or notice to the University, of the alleged occurrence of sexual harassment or sexual misconduct, and will not trigger the University’s mandatory response obligations.

Day: University working day, not including Saturday, Sunday, or University holidays. The University will make all reasonable efforts to comply with all time frames set forth in these procedures, but all applicable timelines may be extended depending on the complexity of the circumstances of each case.

Decisionmaker: participates in the evidence review process and makes final decisions of the resolution outcome and, if necessary, sanctions, and communicates the Notice of Determination to the University Administrator. The Decisionmaker will be a person independent from either Title IX Coordinator, any investigator, or any other administrator considered as “Title IX Personnel” (including the facilitator of the Informal Resolution Process).

Education Program or Activity: includes all campus operations, including off-campus settings that are operated or overseen by the University, including, for example, field trips, online classes, and athletic programs; conduct subject to the University’s disciplinary authority that occurs off-campus; and conduct that takes place via University-sponsored electronic devices, computer and internet networks and digital platforms operated by, or used in the operations of, the University.

Employee Reporting Obligations: All Employees and Student Employees have required reporting obligations based on their job responsibilities. Specific jobs in Category A, listed in Table 1: Employee Reporting Obligations (Section III of these procedures), will be required to promptly report disclosures of Prohibited Conduct that reasonably could be sexual harassment or sexual misconduct directly to the Title IX Coordinator. All other Employees not specifically identified and all Student Employees as noted in Category B (in Table 1) will be required to address disclosures of Prohibited Conduct using either Option 1 or Option 2. Option 2 requires Employees and Student Employees to provide contact information for the Title IX Coordinator

and information about how to make a report and file a complaint to anyone who provides a disclosure. The two options that meet Employee Reporting Obligations are:

- Option 1: Report all information disclosed and/or made available to the employee about sexual harassment or sexual misconduct to a Title IX Coordinator.
- Option 2: Provide contact information for the Title IX Coordinator to anyone who provides a disclosure **and** information about how to make a report and file a complaint.

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*.

Faculty Employee: any person who works for the University in return for financial or other compensation who has faculty rank for the primary position of the employee's job. This includes full-time, part-time, adjunct and temporary faculty employees.

Staff Employee: any person who works for the University in return for financial or other compensation who does not have faculty rank for the primary position of the employee's job. This includes full-time, part-time, and temporary staff employees.

***Student/employee crossover:** Students who work on campus as an employee and employees who are registered in courses at the University fall under the jurisdiction of the Outside of Title IX Policy and these procedures. Details of the student/employment status will be assessed by the Title IX coordinator for appropriate application of procedures.

Expert Witness: a person who is permitted to participate in an investigation because of special knowledge or proficiency in a particular field that is relevant to the Complaint.

Finding: a written conclusion by a preponderance of the evidence, issued by a Decisionmaker, that the conduct did or did not occur as alleged.

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

The 2020 Final Rule for Federal Title IX Regulations states that there are three situations in which the Formal Complaint may be signed.

1. The Harmed Party may sign the Formal Complaint.
2. The parent of the harmed student may sign the Formal Complaint in the event a harmed student does not wish to file the Formal Complaint.
3. The Title IX Coordinator may sign the Formal Complaint.
 - a) In the event a Harmed Party does not wish to file the Formal Complaint.
 - b) When the misconduct presents an imminent threat to campus safety or the safety of an individual on campus.

The University reserves the right to file a formal complaint over the Complainant's objection if the University deems it in the University's best interest to do so, including without limitation in order to render the respondent eligible for potential disciplinary

sanction following the completion of a resolution process that complies with §106.45 of the federal regulations.

Formal Resolution: involves an investigation, an evidence review phase, and a Decisionmaker determining whether or not a Respondent has violated the sexual harassment and sexual misconduct policy. Sanctions may be assigned if the Respondent is found in violation of the Policy. The Complainant and Respondent both have the right to appeal the determination of the outcome and/or the sanctions assigned.

Harmed Party: an individual or group of individuals who experienced an alleged occurrence of sexual harassment or sexual misconduct. Once a Harmed Party files a Formal Complaint, alleging an occurrence of sexual harassment or sexual misconduct, they are referred to as a “Complainant” as defined herein.

Informal Resolution: involves a facilitated resolution that is voluntary, agreed upon, and acceptable to, the Complainant, Respondent, and the University. The Complainant, Respondent, or the University may withdraw from Informal Resolution at any point up to the time the resolution is completed.

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 abuse or neglect of a vulnerable adult or abuse of a minor by an adult. In Nebraska, minors are considered all persons under the age of 19.

Officials with Authority: University administrators who are given specific authority to institute corrective measures on behalf of the University (i.e. university president and vice presidents).

Reporting Party: an individual, or group of individuals, who reports information to the Title IX Coordinator. Reporting Parties can include, but are not limited to, 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, parents, bystanders, witnesses, instructors, friends, other community members, or someone who has otherwise been made aware of an incident of sexual harassment or sexual misconduct.

Respondent: an individual, or group of individuals such as a student organization, who has been reported to have engaged in conduct that could constitute sexual harassment or sexual misconduct.

Sanctions: disciplinary steps that may be imposed on a Respondent who is found responsible for a violation of the University’s policies.

Students: any person registered in courses at the University, either full-time or part-time, pursuing undergraduate or graduate studies, including those who audit courses. For Employees who are enrolled and taking classes, refer to the Student/Employee Crossover definition.

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

Support Person: an individual selected by a Complainant or Respondent to assist them during any part of the Formal or Informal Resolution processes, including the Reporting, Assessment, Informal Resolution, Investigation, Hearing, and Appeal process. A Support Person may be a staff member, student, friend, family member, community member, or an attorney. Any involved party may change their Support Person at any point. The Support Person may also serve as the Advisor of Choice.

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 and whether the matter falls within the definitions and jurisdiction of Title IX.

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

II. Role of Title IX Coordinator

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.

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

Assistant Director of Title IX Services and Title IX Coordinator: Natasha Moreno, Nebraska Wesleyan University, Burt Hall 112, 5000 Saint Paul Ave., Lincoln, NE 68504 (402) 465-2356, nmoreno@nebrwesleyan.edu or titleix@nebrwesleyan.edu

The Title IX Coordinators are:

- Responsible for oversight of the assessment, investigation, and resolution of all reports of sexual harassment or sexual misconduct;
 - These responsibilities include making the determination of whether the complaint regarding the alleged occurrence of sexual harassment or sexual misconduct is within the definition of the Final Rule, or will be handled by the procedures governing alleged occurrences outside of the definition of the Final Rule.
- Committed to supporting all parties involved in understanding and assessing all rights, options, and resources;

- Knowledgeable and trained in relevant state and federal laws and University policy and procedures;
- Responsible for oversight of annual training programs for Title IX personnel and all members of the campus community. Trainings include, but are 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. Additionally, training ensures that Title IX personnel do 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 involved party about the courses of action available at the University;
- Available to assist any party regarding how to respond appropriately to reports of sexual harassment or sexual misconduct;
- Responsible for oversight of sexual violence prevention education;
- Responsible for monitoring full compliance with all requirements and timelines specified in the reporting and Formal Complaint procedures;
- Responsible for ensuring resolution procedures are in compliance with Federal and University policies and regulations;
 - The Title IX coordinator has discretion to address noncompliance during any part of the resolution process. This includes the discretion to remove, with or without prior warning, from any meeting or proceeding an involved party or Support Person/Advisor of Choice who does not comply with meeting expectations or decorum and any other applicable part of the resolution process.
- Collaborate with the Provost, or designee, when disclosures or supportive measures are related to issues of academic freedom or instructional methods;
- Responsible for ensuring the timely completion of any remedies or sanctions, and;
- Responsible for compiling annual reports.

III. Employee Reporting Obligations

The University requires employees with specific job responsibilities that include the authority to institute corrective measures, individuals who serve the institution in a supervisory capacity, administrators, faculty/instructors, advisors, and other positions as noted below in Table 1, to promptly report directly to the Title IX Coordinator conduct that reasonably could be sexual harassment or sexual misconduct using **ONLY** Option 1.

Employees and student employees whose job responsibilities are not listed under Category A are required to address disclosures of sexual harassment or sexual misconduct using either Option 1 or Option 2. Option 2 allows employees listed under Category B to provide contact information for the Title IX Coordinator **and** information about how to make a report and file a complaint to anyone who provides a disclosure. Option 2 requirements can be met using the Title IX Resource card or email template, which are both located on the Title IX webpage.

The two options that meet employee reporting obligations are:

- Option 1: Report all information disclosed and/or made available to the employee about sexual harassment and sexual misconduct to a Title IX Coordinator.
- Option 2: Provide contact information for the Title IX Coordinator to anyone who provides a disclosure **and** information about how to make a report and file a Formal Complaint.

Table 1: Employee Categories of Reporting Obligations

<u>Reporting</u>	<u>Choice of Reporting or Providing Information</u>
Employees in this category can ONLY use Reporting (Option 1) to meet this reporting obligation.	Employees in this category may use Reporting (Option 1) OR Providing Resource Information (Option 2) to meet this obligation.
<p style="text-align: center;"><u>Job Category A</u></p> <ol style="list-style-type: none"> 1. Advisors, Academic and Club 2. Chief of Staff 3. Coaches (All) 4. Deans, Assistant Deans 5. Department Chairs, Program Directors 6. Directors, Assistant Directors 7. Faculty, full-time, part-time, adjuncts 8. Provost/Vice Presidents 9. Student Life/Affairs Personnel 10. Supervisors 11. Title IX Personnel 12. University President 	<p style="text-align: center;"><u>Job Category B</u></p> <ol style="list-style-type: none"> 1. All other employees, including student employees, not listed in Obligation 1 2. Confidential Employees (exempt from Option 1)

Instances of disclosures may occur through various communications that include, but are not limited to, conversation, emails, classroom assignments, and social media and must be addressed in accordance with the University’s procedures.

IV. Reporting Sexual Harassment and Sexual Misconduct

Individual disclosure

An individual may choose to report to the University, including the Title IX coordinator, a Confidential Resource, or through anonymous reporting. An individual may choose to report to law enforcement. These reporting options through the University and law enforcement are not exclusive. An individual may simultaneously pursue a civil or criminal investigation off campus and the University sexual harassment and sexual misconduct resolution process.

How to Make a Report vs. Filing a Formal Complaint to the University

All reports and Formal Complaints of an incident of sexual harassment or sexual misconduct will be taken seriously and in good faith. 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.

Making a Report is the notification of an incident of sexual harassment or sexual misconduct made to a Title IX Coordinator, or an Official with Authority, 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. The University reserves the right to file a Complaint over the Complainant's objection if the University deems it in the University's best interest to do so. This is done by the Title IX Coordinator signing a Complaint, on behalf of the University, and can be done with or without consent/permission of the original Complainant. Upon the filing of the Complaint, the Title IX Coordinator will not become a party to the procedure.

A report can be made at any time via email/electronically, phone, or physical mail, or in person during regular business hours.

Filing a Formal Complaint is defined as the request to the Title IX coordinator to initiate the University's formal and informal resolution processes regarding incidents of sexual harassment and sexual misconduct. The decision to file a Complaint may be made at any time via email/electronically, phone, or physical mail, or in person during regular business hours. The Title IX coordinator will provide assistance about what course of action may best support the individual(s) involved and how best to address the complaint.

There are three situations in which the Complaint may be signed.

1. A Harmed Party may sign the Complaint.
2. A parent, guardian, or other authorized individual with the legal right to act on behalf of the Harmed Party may sign the Complaint in the event a Harmed Party does not wish to file the Complaint.
3. A Title IX Coordinator may sign the Complaint:
 - a. In the event a Harmed Party does not wish to file the Complaint.
 - b. When the Prohibited Conduct presents an imminent threat to campus safety or the safety of an individual on campus.

The University reserves the right to file a Formal Complaint over the Complainant's objection if the University deems it in the University's best interest to do so, including without limitation in order to render the respondent eligible for potential disciplinary sanction following the completion of a resolution process that complies with § 106.45 of the Federal Regulations.

When someone other than the Harmed Party signs the Complaint, that party does not become the Complainant. Only the Harmed Party is allowed to be the Complainant.

It is important for Reporting Parties to note that the University will consider amnesty protections as outlined below. **Amnesty** is protection granted to individuals for participating in minor policy violations without fear of a personalized conduct proceeding.

- **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.
- **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 Student Conduct System Administrator, 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 and 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 and 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, a coaching opportunity related to minor violations may occur, but no conduct proceedings will result.

Abuse of amnesty protections can result in a decision by the Student Conduct System Administrator, Assistant Vice President for Human Resources, or designee, not to extend amnesty.

Reporting to Confidential Employees

Confidential Employees are exempt from Employee Reporting Obligations Option 1, listed in Section III of this document. A Confidential Employee is an individual designated by the University to provide support to Students and Employees without being required to report to a Title IX Coordinator.

When an individual shares information with a Confidential Employee or a community professional with the same legal protections, the Confidential Employee 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 vulnerable adult or abuse of a minor by an adult. In Nebraska, minors are considered anyone under the age of 19.

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

Anonymous Reporting to the University

Anonymous reports of sexual harassment and sexual misconduct concerns can be submitted to the University through the University website by clicking on the link [Report a Concern](#), located at the bottom of every webpage. Please note, the University may be limited in its ability to respond to concerns reported anonymously, or reports without sufficient details. Reporting anonymously does not fulfil Employee Reporting Obligations.

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. The University will assist individuals in notifying law enforcement if they choose to do so.

To Contact Lincoln Police Department:

- 911 (for emergencies).
- 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.

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 or reports without sufficient details.

- 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.

V. Conflict of Interest

Any individual carrying out any part of the Outside of Title IX Policy or these procedures shall be free from any actual conflict of interest or demonstrated bias that would impact the handling of a matter.

Any individual may object to the participation of the Informal Resolution Facilitator, Investigator, Decisionmaker, and Appellate Decisionmaker on the grounds of a demonstrated bias or actual conflict of interest and are to be submitted in writing to the Title IX coordinator.

Should the Title IX Coordinator have a conflict of interest, the Title IX Coordinator shall immediately notify the Director of Title IX Services who will either take, or reassign to an appropriate designee, the role of Title IX Coordinator for purposes of carrying out the handling and finalization of the matter at issue.

Objections regarding the Title IX Coordinator are to be made, in writing, to the Director of Title IX Services. All objections will be considered, and changes made as appropriate. Any change will be communicated in writing.

A conflict or objection involving the Director of Title IX Services on the grounds of a demonstrated bias or actual conflict of interest are to be made, in writing, to the University President.

VI. Response to a Report

The following steps will be used following the receipt of a report of Prohibited Conduct to the Title IX Coordinator.

Initial Contact

Following receipt of a report alleging a potential violation of the Outside of Title IX Policy, the Title IX Coordinator will contact the Reporting/Harmed Party to offer an initial intake and assessment meeting. Initial contact includes related rights, options, and resources. The Title IX coordinator will assess available information for imminent or ongoing threats, immediate physical safety, and emotional well-being to the Harmed Party or campus community. If the individual bringing forward information about sexual harassment or sexual misconduct is not the actual Harmed Party/Complainant, the Title IX Coordinator will limit communication to general information on policies and processes.

Title IX Assessment

After the initial outreach, an involved party may agree to meet with the Title IX coordinator. The purpose of this initial 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.

During this meeting, the Title IX coordinator will provide the following:

1. Written explanation of rights, options, and resources, and the difference between privacy and confidentiality;
2. Overview of related University policy;
3. Identify any concerns about discrimination or harassment based on other protected classes;
4. Information regarding available confidential campus and community resources, including: counseling, health care, mental health, or victim advocacy. Upon request, information regarding legal assistance, visa and immigration assistance, student financial aid and other available services may be provided;
5. Availability of Supportive Measures regardless of whether a Formal Complaint is filed and/or any resolution process is initiated;
6. Options for resolution (no action, prevention, agreement, investigation) and how to initiate such resolution processes;
7. Explanation of the University's evidentiary standard ("preponderance of evidence");
8. Right to notify law enforcement as well as the right not to notify law enforcement;
9. Information about the importance of preserving evidence and, in the case of potential criminal misconduct, how to get assistance from the Title IX coordinator or local law enforcement in preserving evidence;
10. Right to a Support Person/Advisor of Choice, if applicable, during the University proceedings including the initial meeting with the Title IX Coordinator;
11. Statement about retaliation protections for filing a complaint, or participating in the complaint process, which is prohibited; and
12. Information on how to file a Complaint, as well as documentation on the Reporting Party's preferred course of action.

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 Formal Complaint be filed. The Title IX Coordinator will also enter non-identifying statistical information about the report into the University's daily crime log.

The University will make a reasonable effort to respect the wishes of the person who experienced sexual harassment and sexual misconduct. In all cases, the Title IX coordinator will continue to assess imminent or ongoing threat, immediate physical safety, and emotional well-being to Harmed Party or campus community to comply with the need of a timely warning or emergency notification as required under federal law.

If the reported incident constitutes an imminent or ongoing threat to campus safety, the Title IX Coordinator may sign a Formal Complaint, beginning the resolution process. 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 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 vulnerable adults and involving minors by an adult. The Title IX Coordinator, in their discretion, upon receipt of a report of an alleged occurrence of sexual harassment or sexual misconduct, may determine to sign a Formal Complaint, and commence the formal resolution process (after taking account of the aforementioned factors), with or without approval of the original Reporting Party.

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

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.

Requests for Confidentiality or No Further Action

When a Harmed Party requests confidentiality from a Confidential Resource, the University will follow the guidelines outlined in Section IV of this procedure.

When a Harmed Party requests that the Title IX coordinator not use their name as part of any resolution process, or that the University not take any further action, the University will generally try to honor those requests. However, there are certain instances in which the University has a broader obligation to the community and may need to act against the wishes of the Harmed Party. In such circumstances, the Title IX Coordinator will notify the Harmed Party in writing of

the need to take action. The factors the Title IX Coordinator will consider when determining whether to act against the wishes of a Harmed Party include:

1. The Harmed Party's request not to proceed with initiation of a complaint;
2. The Harmed Party's reasonable safety concerns regarding initiation of a Formal Complaint;
3. The risk that additional acts of Prohibited Conduct would occur if a Formal Complaint is not initiated;
4. The severity of the alleged Prohibited Conduct, including whether the sexual harassment or sexual misconduct, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the sexual harassment or sexual misconduct and prevent its recurrence;
5. The relationship of the parties, including whether the Respondent is an Employee;
6. The scope of the alleged Prohibited Conduct, including information suggesting a pattern, ongoing nature, or is alleged to have impacted multiple individuals;
7. The availability of evidence to assist a Decisionmaker in determining whether sexual harassment or sexual misconduct occurred;
8. Whether the University could end the alleged sexual harassment or sexual misconduct and prevent its recurrence without initiating its resolution procedures under the Outside Title IX Policy; and
9. Whether the conduct as alleged presents an imminent and serious threat to the health or safety of the Harmed Party or other persons, or that the conduct as alleged prevents the University from ensuring equal access on the basis of sex to its Education Program or Activity.

Emergency Removal Evaluation

At times, the University may take action to ensure the physical or emotional safety and well-being of the University community. Per § 106.44(c) of the Federal Regulations, the University retains the authority to remove a Respondent from the University's Education Program or Activity on an emergency basis, where the University:

1. Completes an individualized safety and risk analysis;
2. Determines that an immediate and serious threat to the health or safety of a Complainant or any student, employee, or other individual arising from the allegations of sexual harassment or sexual misconduct justifies a removal; and
3. Provides the Respondent with notice of and an opportunity to appeal the decision immediately following the removal.

Removal of a person will initiate the University's resolution process. Interim actions may include a no-trespass or other no-contact order to be issued.

The Respondent may appeal the decision immediately following the removal, by notifying the Title IX Coordinator in writing through the Title IX webpage. An impartial individual, not otherwise involved in the case, will consider the appeal and determine if the emergency removal was reasonable. For other prohibited conduct, the University may defer to its interim suspension policies for students and administrative leave for Employees.

Administrative Leave Evaluation

The University retains the authority to place an Employee who is a Respondent on administrative leave during a pending complaint process, with or without pay, as appropriate. Administrative leave implemented as a supportive measure or as emergency removal is subject to the procedural provisions above, including the right to appeal the decision.

Faculty members may refer to the [Faculty Handbook](#), Article VII for additional information regarding faculty procedures.

Instances of Student Withdrawal or Employee Resignation With Pending Complaint(s)

If a Student or Employee Respondent permanently withdraws or resigns from the University with unresolved allegations pending, the University will consider whether and how to proceed with the resolution process. The University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s) and any ongoing effects of the alleged Prohibited Conduct.

A Student who is a Respondent who withdraws or leaves while the process is pending may not return to the University without first resolving any pending complaints, which applies to all University programs. Records will be retained by the Title IX Coordinator and the Student Conduct Administrator will place a registration hold on the Respondent's account.

An Employee who is a Respondent who resigns with unresolved allegations pending is not eligible for rehire with the University and the records retained by the Title IX Coordinator will reflect that status. Employment references made to the Human Resources office for that individual will include that the former employee resigned during a pending complaint process.

Evaluation of Dismissal of a Formal Complaint

Before dismissing a Formal Complaint, the University will make reasonable efforts to clarify all available information and the allegations with the Complainant.

The University may dismiss a Formal Complaint if:

1. The University is unable to identify the Respondent after taking reasonable steps to do so;
2. The Respondent is not participating in the University's Education Programs or Activities and/or is not employed by the University;
3. The Complainant voluntarily withdraws their complaint in writing and the Title IX Coordinator declines to initiate a Formal Complaint;
4. The Complainant voluntarily withdraws some but not all allegations in a Formal Complaint and the University determines that the conduct that remains alleged in the complaint would not constitute Prohibited Conduct; or
5. The University determines the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct under University sexual harassment and sexual misconduct policies.

Upon dismissal, the University will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the University will notify the parties simultaneously, in writing. If a dismissal of one or more allegations changes the appropriate decision-making process under these procedures, the Title IX Coordinator will include that information in the notification. The Title IX Coordinator will provide the Complainant details in the written notice about any matter that is being referred for handling under a different policy, and/or being referred to another appropriate office for handling.

The University will notify the Complainant that a dismissal may be appealed on the basis outlined in Section XII. Appeal Procedures. If dismissal occurs after the Respondent has been

notified of the allegations, then the University will also notify the Respondent that the dismissal may be appealed on the same basis. If a dismissal is appealed, the University will follow the procedures outlined in the Appeals section of these procedures.

When a Formal Complaint is dismissed, the University will, at a minimum:

1. Offer supportive measures, simultaneously to the Complainant and Respondent, as appropriate;
2. Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to determine that sexual harassment or sexual misconduct does not continue or recur within the University Education Program or Activity.
3. Provide the Complainant details in the written notice about any matter that is being referred to another appropriate office for handling under a different policy or code. The University may also send evidence already gathered as part of the referral.

A Complainant who decides to withdraw a Formal Complaint or any portion of it may later request to reinstate it or refile it.

VII. Consolidation of Complaints

The University may consolidate Complaints for allegations of sexual harassment and sexual misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment and sexual misconduct arise out of the same facts or circumstances. Where a resolution process involves more than one party, references in this section to the singular “party,” “Complainant,” or “Respondent” may be considered plural, as applicable. Where multiple policies may be implicated by the same set of facts or circumstances, the University may separate the proceedings in accordance with the requirements of the individual policies.

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.

The University also reserves the right to use the University’s Outside of Title IX Policy and these procedures to adjudicate other allegations and conduct violations that are outside of the scope of the Title IX Policy in instances when the conduct is associated with or intertwined with an alleged issue of Prohibited Conduct. The Title IX Coordinator will address these consolidated Complaints in collaboration and coordination with other appropriate offices, such as Student Conduct and Human Resources, who may use alternative University procedures when misconduct is consolidated.

VIII. Options for Resolution

There are multiple options for resolution of a Formal Complaint of sexual harassment or sexual misconduct.

Report Only

Whether a Reporting Party or Harmed Party reports to a Title IX coordinator, a harmed party may request to keep the misconduct as a report only with no additional university action (see additional information in Section VI: Response to a Report, under “Requests for Confidentiality or No Further Action”).

Supportive Measures

After a disclosure, requests for supportive measures may be made to the Title IX Coordinator who will determine whether to implement reasonable supportive measures designed to assist involved parties and community members in maintaining access to and participation in the University’s Educational Programs and Activities and services during the resolution process. Supportive measures will be reasonable and appropriate 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 involved parties regardless of making a report or Complaint.

A resolution using only supportive measures is an option for a Complainant who does not wish to take any further steps to address their concern, and when the Title IX Coordinator determines that no further action is required. Some types of support that may be appropriate include but are not limited to: facilitation of connections to on- and off-campus resources, issuance of a No Contact/Limited Contact Order, change of work or class assignment/location/schedule, change of on-campus living space, change of class schedule, and/or security walking service.

Supportive measures do not preclude later use of another resolution method. For example, if new information becomes available to the University and the Title IX Coordinator determines there is need for additional steps to be taken, or the Complainant later decides to pursue another resolution method.

Informal Resolution

Informal Resolution involves a facilitated resolution that is voluntary, agreed upon, and acceptable to, the Complainant, Respondent, and the University. The Complainant, Respondent, or the University may withdraw from Informal Resolution at any point up to the time the resolution is completed. If any of the parties choose to withdraw from the Informal Resolution process prior to its completion, the University will immediately begin using the Formal Resolution processes in place (See Section IX: Informal Resolution Procedures).

Formal Resolution

The formal resolution process for the University, after receiving a signed Formal Complaint, involves an investigation, evidence review phases, and a Decisionmaker determining whether or not a Respondent is more likely than not to have violated a sexual harassment and sexual misconduct policy. Sanctions may be assigned if the Respondent is found in violation of the Policy. The Complainant and Respondent both have the right to appeal the determination of the outcome and/or the sanctions assigned (See Section X: Formal Resolution Procedures).

IX. Informal Resolution Procedures

The informal resolution process involves a facilitated resolution that is voluntary and acceptable to the Complainant, Respondent, and the University after the filing of a Formal Complaint. All parties must voluntarily agree in writing to participate in the informal resolution process. The

Title IX Coordinator has the discretion to determine whether to offer informal resolution at all, or only in certain cases; generally allowing only one informal resolution per Respondent. Parties are entering into this process freely, voluntarily, and because each party believes that entering this process is in their best interest. Participation in the informal resolution process is not required, not a product of coercion, nor is it a condition of continued enrollment, employment or any other right from the party's educational or employment opportunities (e.g., admission to University events, use of University resources and facilities, Tuition Remission).

Informal resolution does not include a full investigation and does not include any finding of responsibility nor an admission of the falsehood of the allegations and is a voluntary, structured interaction between or among affected parties that balances support and accountability. This is separate and distinct from the institution's hearing process. Regardless of entering into the informal resolution process, the Title IX Coordinator must still take other prompt and effective steps as needed to determine that sexual harassment and sexual misconduct does not continue or recur within the University's employment, or Education Programs and Activities.

For some types of reported sex harassment and sexual misconduct, informal resolution may offer parties resolution in a timeframe that is shorter than a formal resolution; it is a confidential, non-adversarial manner that allows the parties to discuss the issues and clear up misunderstandings. However, informal resolution may not be an appropriate option for all cases of sex harassment and sexual misconduct.

An informal resolution can be requested by a Complainant or Respondent at any time, even if the parties have previously entered the formal resolution process, up to the beginning of the Decisionmaker review. Any of the parties can withdraw from the informal resolution process and resume the formal resolution process, for addressing allegations under this procedure, at any time prior to reaching a determination regarding a policy violation. However, the University may proceed to address the matter, as it deems appropriate, if there is an imminent threat of safety to the campus community.

Prior to entering the informal resolution process, the University must provide information to the Complainant and Respondent that includes:

1. The specific allegation and the specific conduct that is alleged to have occurred;
2. The requirements of the informal resolution process;
3. The consequences of participating in the informal resolution process, including record-keeping and potential sharing of information, and the University's ability to disclose this information for future resolution processes, including investigations arising from the same or different allegations;
4. An agreement resulting from the informal resolution process is binding only on the parties and is not subject to appeal;
5. A statement indicating that once the Informal Resolution Agreement is finalized and signed by the Parties, they cannot initiate or continue an investigation procedure arising from the same allegations;
6. A statement indicating that the decision to participate in the informal resolution process does not presume that the conduct at issue has occurred;
7. A statement that the Respondent is presumed not in violation of a policy, unless Respondent admits to violations of a policy;
8. An explanation that all parties may be accompanied by a Support Person;

9. A statement that any party has the right to withdraw from the informal resolution process and initiate or resume resolution procedures at any time before agreeing to a resolution;
10. The facilitator's inability to be called as a Witness if a formal resolution process is pursued;
11. Information regarding supportive measures, which are available equally to all parties.

Engaging in the informal resolution process is not an admission of responsibility for the allegation or an admission of the falsehood of the allegations. The existence of an informal resolution is not viewed as a "Finding of a Policy Violation". The terms and outcome of the informal resolution are negotiable and may result in party-imposed corrective or punitive measures.

Once a report has been resolved through the informal resolution process, the agreements are binding according to the resolution terms and the outcome will be enforced by the University. Due to the voluntary nature of entering into an informal resolution process, there is no right to appeal the signed resolution agreement.

If the terms of the informal resolution agreement are violated, not met, or left incomplete, it is considered a Conduct Violation and will be addressed under the Code of Student Conduct for Students, or under University conduct policies for Employees.

NWU's informal resolution process is conducted by a neutral third party ("facilitator") who will collect information about the incident without performing a full investigation, facilitate discussion, and propose solutions for a resolution between the parties. Informal resolution facilitators do not have a conflict of interest or bias in favor of or against Complainants or Respondents generally or regarding the specific parties in the matter. The facilitator may not act as the Investigator or Decisionmaker for the same matter in any other resolution method.

Facilitating an Informal Resolution Agreement

The facilitator will schedule an advance call with each party, separately, prior to the informal resolution meeting. The facilitator will explain the process, goals, and options for the meeting. Following the call, if all parties have agreed to explore informal resolution, the facilitator will send the Meeting Decorum electronically to both parties. The date and time of the initial meeting will be set by the facilitator or the Title IX Coordinator and all parties will be notified with advance notice.

Each party may have a Support Person present during any part of the informal resolution process. When the Support Person is an attorney, the facilitator must be given two (2) days advance notice. The Support Person cannot direct questions or comments to the facilitator, but they may consult with the party they are assisting. The facilitator will not allow a Support Person's presence to unduly inhibit their ability to gather information.

At the beginning of the informal resolution meeting, which is held separately with each party, the facilitator will establish facts that are not in dispute and identify what the parties hope to accomplish and why it is important to reach an agreement. The facilitator will navigate a

conversation that attempts to move toward a resolution that will be agreed to and signed by both parties.

Any party may craft or create the terms of their agreement and will be asked for their suggestions or ideas during the process. Examples of agreements may include but are not limited to:

- An agreement that the Respondent will change classes or housing assignments;
- An agreement that the Parties will not communicate or otherwise engage with one another;
- Completion of a training or educational project by the Respondent;
- Completion of a community service project by the Respondent;
- An agreement to engage in a facilitated dialogue; and/or
- Discipline agreed upon by all parties.

Finalizing the Informal Resolution Agreement

Once the final terms of the Informal Resolution Agreement have been agreed upon by all parties, in writing, and approved by the Title IX Coordinator, the matter will be considered closed, and no further action will be taken. Once signed, no appeal is permitted. The informal resolution process is generally expected to be completed within thirty (30) days and may be extended by the Title IX Coordinator as appropriate. All parties will be notified, in writing, of any extension and the reason for the extension.

No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any outside person by the Complainant or Respondent. Information from an informal resolution process can be shared with other offices as appropriate by the Title IX Coordinator.

If an agreement cannot be reached, either because the Parties do not agree, determine they no longer wish to participate in the informal resolution process, or the facilitator does not believe that the terms of the agreement or continuing the informal resolution process is appropriate, the facilitator may recommend that the reported conduct be addressed through another resolution method. The Title IX Coordinator will inform the parties of such decision, in writing.

Any violations of the terms of the Informal Resolution Agreement or procedural expectations, including Meeting Decorum rules, may result in disciplinary action.

X. Formal Resolution Procedures

A. Notice of Formal Complaint

Upon receipt of a signed Formal Complaint, the Title IX Coordinator will send the Notice of Formal Complaint to both the Complainant and the Respondent, simultaneously, communicating the initiation of an investigation. Should additional allegations be brought forward, or new information regarding location or date of the incident(s), a revised written Notice of Complaint shall be provided to all parties as needed or after the jurisdiction review is completed by the Title IX Coordinator.

The Notice will include, at a minimum:

1. The University's resolution procedures, and any alternative resolution process (informal or supportive measures), including a link to these procedures;
2. Sufficient information available at the time to allow the parties to respond to the allegations, including the specific allegation(s), identities of the parties involved in the incident(s), the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
3. A statement that Retaliation is prohibited;
4. Contact information for the assigned Investigator and Decisionmaker, as well as the process for appealing the appointed Investigator, Decisionmaker, or Title IX Coordinator, and the deadline (if not previously completed);
5. A statement indicating the expected length of the major stages of the resolution process, as well as any applicable deadlines;
6. A statement that the Respondent is presumed "not in violation" of a University policy until a determination is made at the conclusion of the investigation and decision-making procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Investigator and Decisionmaker;
7. A statement indicating that the parties may have a Support Person;
8. A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence, and to provide a response;
9. A statement that the University prohibits knowingly making false statements or knowingly submitting false information during resolution procedures, with a link to the relevant policy(ies); and
10. A statement indicating the investigator's process of communication will be in writing and includes any investigation deadlines and schedule for investigative meetings. Investigators will provide reasonable notice for meetings.

Acceptance of Responsibility

If a Respondent accepts responsibility and agrees to waive their right to an investigation, evidence review phase and Decisionmaker determination for all or part of the Prohibited Conduct alleged, the Title IX Coordinator, or designee, will work in consultation with Student Conduct System Administrator or the Assistant Vice President of Human Resources in assigning appropriate sanctions. The Title IX Coordinator will continue processing remaining allegations of Prohibited Conduct, if any.

Assignment of the Investigator, Decisionmaker, and/or Appellate Decisionmaker

The University has designated individuals identified and trained as Investigators, Decisionmakers, and Appellate Decisionmakers who receive annual training. Training programs include, but are not limited to, the definition of sex harassment and sexual misconduct, the scope of the University's Education Program or Activity, how to conduct an investigation, and how to serve impartially, including how to avoid prejudgment of the facts at issue, conflicts of interest, and bias. Moreover, any materials used to train Investigators, Decisionmakers, and Appellate Decisionmakers do not rely on sex stereotypes and promote impartial investigations, adjudications, and appeal decisions related to the resolution of reports and Formal Complaints of sexual harassment or sexual misconduct. Training materials can be found on the NWU Title IX website.

The University will assign an Investigator, Decisionmaker, and, if applicable, Appellate Decisionmakers, to conduct an adequate, reliable, and impartial investigation and determination, as applicable, in a reasonably prompt timeframe. The University reserves the right to utilize internal or external Investigators and Decisionmakers. The University also reserves the right to utilize a dual investigator model (more than one investigator).

Rights and Requirements

The University **requires** Employees to participate as a witness in, or otherwise assist with, an investigation, proceeding, hearing (if applicable), or appeal involving sexual harassment and sexual misconduct.

All other parties are expected and encouraged to participate in the investigation, and each have the same rights during the resolution process including the right to a Support Person, to submit relevant witness names and evidence, and to review the evidence gathered by the Investigator prior to the provision of the Final Investigative Report to the Decisionmaker.

All individuals will be treated with appropriate respect, and in a manner considerate of their privacy.

Written Notice of Meetings

The University will provide the involved parties whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time to prepare to participate.

Investigative Timeline

The Investigator will conduct a thorough, prompt, impartial, and unbiased investigation. The Investigator will make a reasonable effort to complete the investigation within thirty (30) days, but this time frame may be extended depending on the complexity of the circumstances of each case. Scheduling, University closures, period of examinations, law enforcement investigations or other good cause reasons may affect this timing. Good cause reasons may include availability of witnesses and other participants and providing participants reasonable time to review materials. Any significant delays in the process will be communicated in writing, simultaneously, to the Complainant and the Respondent.

The University will consider an involved party's request for an extension of a deadline related to a Complaint.

The Title IX Coordinator will ensure that the parties will be provided access to periodic status updates.

B. Individual Interviews with Investigator

The Investigator will interview all parties and relevant witnesses and gather relevant documentary evidence provided by the parties and any identified witnesses. Interviews may be conducted in person or virtually. When a party meets with an Investigator, the Investigator will ask questions related to the allegations in the Formal Complaint and a party is given the opportunity to speak to the allegations and related events. Parties may identify fact witnesses and provide evidence that is relevant to the allegations and not otherwise impermissible (defined in Section X. subsection C. Investigative Evidence). This will include inculpatory

evidence (that tends to show it more likely that someone committed a violation) and exculpatory evidence (that tends to show it less likely that someone committed a violation). The Investigator ultimately determines whom to interview to determine the facts relevant to the complaint, which typically includes the Complainant, Respondent, and relevant witnesses (“Involved Parties”), to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility. Investigators reserve the right to hold meetings with Expert Witnesses. Character evidence is not relevant evidence, and therefore will not be considered.

The Investigator will contact the involved parties to schedule interviews. All involved parties may bring a Support Person to this meeting. When the Support Person is an attorney, the Investigator must be given two (2) days advance notice. The Support Person cannot direct questions or comments to the Investigator, but they may consult with the person they are assisting. The Investigator will not allow a Support Person’s presence to unduly inhibit their ability to gather information. Either involved party may change their Support Person at any time.

Additional attendees may be permitted at the discretion of the Title IX Coordinator. Additional attendees will also be approved in connection with an approved disability-related or language barrier accommodation, or for other related accessibility concerns. All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of those proceedings and may be subject to further the University discipline for failure to do so.

The individual interviews may be conducted with all participants physically present in the same geographic location, or, at the University’s discretion, with all participants joining virtually through a video conferencing option. The Investigator is solely responsible for all aspects of the investigation, including meeting rules and 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 and not shared outside the University. No other parties are permitted to record the interviews.

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.

Intentional falsification, distortion, or misrepresentation of information as part of the Sexual Harassment and Sexual Misconduct resolution procedures is a violation of University policy. Any person who abuses the University conduct processes in this way may face disciplinary charges for that violation.

Participation in the resolution process is addressed in this section, under subsection A: "Rights and Requirements". The investigation will continue and decisions will be made with the available information.

C. Investigative Evidence

Burden of Evidence

Throughout the investigation of a Formal Complaint, the University has the burden of conducting an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. This burden does not rest with any involved party, and any party may decide to limit their participation in part or all of the process, or to decline to participate. A party's participation, or lack thereof, does not shift the burden of proof away from the University and does not indicate whether or not someone is in violation of the policy or acceptance of responsibility.

Impermissible Evidence

The following types of evidence and related questions are impermissible, meaning the information will not be accessed or considered, except to determine whether one of the exceptions listed below applies. Impermissible evidence will not be disclosed or otherwise used, regardless of relevance:

1. Evidence that is protected under a privilege recognized by Federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
2. Evidence provided to a Confidential Resource, unless the person who made the disclosure or otherwise provided evidence to the Confidential Resource has voluntarily consented to re-disclosure;
3. An involved party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the University obtains that party's or witness's voluntary, written consent for use in these procedures; and
4. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that

someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to alleged sexual harassment or sexual misconduct. The fact of prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant's consent to other sexual activity or preclude a determination that Prohibited Conduct occurred.

Management of Evidence/Information

To maintain the privacy of evidence gathered or shared during any part of the resolution procedures, access to materials will be provided only by a secure method. Given the sensitive nature of the information provided during any of the resolution procedures, involved parties and advisors are not permitted to copy, remove, publicize, share, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided or make use of the documents outside of the processes described, unless given explicit permission by the Title IX coordinator. Parties may request to review a hard copy of materials, and the University will make that available in a supervised or monitored setting. Any student or employee who fails to abide by this may constitute retaliation and may be subject to discipline. Any advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

D. Evidence Review Phases

Interview Summary Review

The Investigator will prepare a summary of each interview. All those interviewed will have an opportunity to review their interview summary for accuracy and submit suggested modifications or additional information within three (3) days of receipt of the summary from the Investigator.

Preliminary Investigative Report and Review

Once the Investigator has gathered all relevant information and after the interview summary review period, the Investigator will prepare a Preliminary Investigative Report.

This Report will include relevant information, excluding impermissible evidence, 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. At this point in the process, the Investigator will send the Preliminary Investigative Report to the Title IX Coordinator for the jurisdictional review to determine appropriate procedural application. At the discretion of the Title IX Coordinator, a third-party reviewer, or designee, may be utilized.

The Preliminary Report will then be provided to the Complainant and Respondent, simultaneously. If applicable or directed by the Complainant or Respondent, the Report will be shared with any identified Support Person by the Title IX coordinator. Both the Complainant and the Respondent will have three (3) days to review the Preliminary Investigative Report and provide follow-up responses or information to the Investigator. The purpose of the inspection and review process is to allow each party the equal opportunity to respond to the evidence prior to conclusion of the investigation, to submit any additional relevant evidence, and the names of

any additional witnesses with relevant information. Relevant responses submitted during the preliminary review period will be included in the Final Investigative Report.

The Title IX Coordinator shall have the discretion to extend the evidence review period based on the volume and nature of the evidence. At the conclusion of the evidence review, when deemed appropriate by the Investigator, the Investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence is gathered during this second fact-gathering period, the new evidence will be made available for review by the parties and their advisors during the final review and response period. The Investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

After the preliminary three-day (3) review period, the Investigator will review follow-up responses and incorporate relevant information into the Final Investigative Report.

E. Final Investigative Report

The Investigator will prepare a Final Investigative Report including all of the relevant information gathered and steps taken during the investigation process, excluding impermissible evidence. The Investigator will include as an attachment all relevant evidence gathered during the investigation.

The Final Investigative Report will include:

1. A description of the allegations of Prohibited Conduct;
2. Information about the policies and procedures used to evaluate the allegations;
3. A description of the procedural steps taken by the investigator, including any notifications to the parties, interviews with parties and witnesses, and methods used to gather other evidence;
4. An evaluation of the relevant evidence, excluding impermissible evidence, and the rationale for that evaluation; and
5. Findings of fact for each allegation.

The Investigator will forward the Final Investigative Report to the Title IX Coordinator, who will provide the Report to the Complainant and Respondent simultaneously. If applicable or directed by the Complainant or Respondent, the Report will be shared with any identified Support Person by the Title IX coordinator.

F. Decisionmaker Review

The Decisionmaker will evaluate the relevant evidence, excluding impermissible evidence, and will make factual determinations regarding each allegation, and also determine whether a violation of the Outside of Title IX Policy occurred. The Decisionmaker may question the Complainant, the Respondent, any witness, any other administrators involved to seek clarification on relevant information. The Decisionmaker may choose to place less or no weight upon statements by a party or witness who refused to respond to questions deemed relevant and not impermissible or declined to participate. Evidence not provided during the investigation process will not be considered by the Decisionmaker. The Decisionmaker will not draw an inference about whether sexual harassment and sexual misconduct occurred based solely on a party's or witness's refusal to respond to questions.

The Decisionmaker will make a reasonable effort to conduct their review within five (5) days. The Decisionmaker will prepare a Notice of Determination and provide the Notice to the Title IX Coordinator. The Title IX Coordinator will then provide the Complainant and Respondent and their Advisor of Choice, if any, with the Notice of Determination. If necessary, the Decisionmaker may work in consultation with Student Conduct System Administrator, the Assistant Vice President of Human Resources, and/or University Counsel in assigning sanctions.

G. Notice of Determination

The Decisionmaker will make a reasonable effort to conduct their review within five (5) days. The Decisionmaker will prepare a Notice of Determination and provide the Notice to the Title IX Coordinator. All findings will be made using the preponderance of the evidence standard, which means that the allegation(s) are more likely than not to have occurred. To the extent credibility determinations need to be made, such determinations will not be based on a person's status as Complainant, Respondent, or Witness. If necessary, the Decisionmaker may work in consultation with the Student Conduct System Administrator, the Assistant Vice President of Human Resources, and/or University Counsel in assigning sanctions.

The Notice of Determination will include:

1. A description of the allegations of Prohibited Conduct;
2. Information about the policies and procedures used to evaluate the allegations;
3. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, and methods used to gather other evidence;
4. An evaluation of the relevant and not otherwise impermissible evidence and the rationale for that evaluation;
5. Findings of fact for each allegation, with rationale;
6. Conclusions regarding which section of this Policy or other University policy, if any, the Respondent has or has not violated, with rationale;
7. Sanction(s), if applicable; and
8. Appeal procedures.

I. Written Impact Statement Option

The Complainant and Respondent may each submit a written impact statement at any time prior to the Conclusion of the Decisionmaker Review. The impact statement is not evidence and will be reviewed only after a determination is reached.

J. Conclusion of Decisionmaker Review

The Notice of Determination will be provided to the Title IX Coordinator and University Administrator. The Title IX Coordinator will communicate the findings to the Complainant and Respondent, and their Support Person should the party wish the Support Person to receive it, along with reiterating with procedures for appeal. If applicable, sanctions become effective on the date that the appeal process is finalized. If no party appeals, the determination and applicable sanctions become final on the date that the time period to appeal ends (three [3] days after the dissemination of the Notice of Determination).

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, reference to counseling, performance improvement plans, apology letter, reflection statements, targeted educational projects, coaching, probation, suspension, expulsion, and/or separation.

If applicable, sanctions become effective on the date that the appeal process is finalized. If no party appeals, the determination and applicable sanctions become final on the date that the time period to appeal ends three (3) days after the dissemination of the Notice of Determination).

The Title IX Coordinator is responsible for ensuring the timely completion of any or sanctions.

Failure to Complete Sanctions/Comply with Responsive Actions

All responding parties are expected to comply with sanctions/responsive actions/ corrective actions within the timeframe specified by the University. Responding parties needing an extension to comply with their sanctions must submit a written request to the Title IX Coordinator stating the reasons for needing additional time.

Failure to follow through on conduct sanctions/responsive actions/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive actions/corrective actions listed above.

XII. Appeal Procedures

The University recognizes the following procedural steps where University decisions can be appealed by a Complainant or Respondent:

- Supportive measure decisions
- Emergency removals
- Dismissals of Complaints
- Notice of Determination – ONLY on the following grounds:
 - **Procedural Error:** A procedural error occurred and the error would change the outcome. A description of the error and its impact on the determination of the case must be included in the written appeal; and/or
 - **New Evidence:** New evidence or information has arisen that was not available or known to the party during the investigation, that would change the outcome. Information that was known to the party during the resolution process but which they chose not to present is not considered new information. The new evidence, an explanation as to why the evidence was not previously available or known, and an explanation of its potential impact on the investigation findings must be included in the written appeal; and/or
 - **Actual Conflict of Interest or Demonstrated Bias:** The Title IX Coordinator, Investigator, or others with a role in the process has an actual conflict of interest or demonstrated bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that would change the outcome. Any

evidence supporting the alleged conflict of interest or demonstrated bias must be included in the written appeal.

A Complainant or Respondent may individually submit one appeal for any of the University decisions as listed in this Appeal Procedures section. All concerns about each procedural step must be addressed in one appeal submission at each appeal opportunity.

Appeals must be submitted within three (3) days of a Notice following any specified procedural step. Directions regarding how to submit an appeal can be found on the Title IX webpage and in the letters of Notice.

Faculty members who want to submit an appeal regarding a Notice of Determination on specified conditions will follow the appeal process outlined in the [Faculty Handbook](#), Section VIII.

Upon receipt of an appeal, the Title IX Coordinator will provide a Notice of Appeal, including sufficient details about the appeal, the name of the assigned Appellate Decisionmaker, and a link to the Appeal Response Form, to both the Complainant and Respondent, allowing three (3) days for the non-appealing party to respond.

Following the three-day (3) response period, the Title IX Coordinator will forward the appeal, along with all relevant information regarding the appeal, to the Appellate Decisionmaker, or designee(s), for review.

The Appellate Decisionmaker, or designee(s), will consider all available documentation related to the appeal. Based on the information provided, the Appellate Decisionmaker, or designee(s), will:

- Affirm the decision or Findings determined by the Decisionmaker/University Administrator; or
- Modify or reverse the decision or Findings determined by the Decisionmaker/University Administrator.

The Appellate Decisionmaker, or designee(s), will prepare the Final Determination of Appeal stating their decision, which is final and binding. The document will include the rationale for the decision. The Appellate Decisionmaker will make a reasonable effort to complete the appeal process within five (5) days, which may be extended for good cause. The document will be provided to the Title IX Coordinator, who will communicate the final decision to the Complainant and the Respondent in writing. The Final Determination of Appeal will also be shared with the University Administrator, if applicable.

XIII. Record Retention

In order to comply with laws protecting the privacy of employment records and to provide a process for the consideration of relevant evidence free of intimidation or pressure, documentation related to the Outside of 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 (7) years from the date of the incident, or indefinitely in cases involving a sanction of separation. All records will be afforded the confidentiality protections required by law, including but not limited to the Family Educational Rights and Privacy Act (FERPA) governing confidentiality of student information.

XIV. Additional Enforcement Information

The U.S. Equal Employment Opportunity Commission (EEOC) investigates reports of unlawful harassment, discrimination, and retaliation, including sex-based harassment, in employment.

- U.S. Equal Employment Opportunity Commission (EEOC)
<https://www.eeoc.gov/contact-eeoc>

The Office for Civil Rights (OCR) investigates complaints of unlawful discrimination and harassment of students and employees in education programs or activities.

Other questions about Title IX may be referred to the assistant secretary for civil rights:

Office for Civil Rights,
Lincoln Commission on Human Rights
555 S.10th Ste. 304
Lincoln, NE 68508
402-441-7624

Nebraska Equal Opportunity Commission
1526 K Street Ste. 310
Lincoln, NE 68508
402-471-2024
1-800-642-6112

Any person may report conduct prohibited by the Outside of Title IX Policy or the Title IX Policy to the Title IX Coordinator:

- Assistant Director of Title IX Services and Title IX Coordinator: Natasha Moreno, Nebraska Wesleyan University, Burt Hall 112, 5000 Saint Paul Ave., Lincoln, NE 68504 (402) 465-2356, nmoreno@nebrwesleyan.edu or titleix@nebrwesleyan.edu

A complaint about the Title IX Coordinator may be made to:

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

XV. Clery-Reportable Crimes and Disclosure Obligations

The Clery Act is a federal crime and incident disclosure public safety law. It requires, among other things, that the University report the number of incidents of certain crimes, including some of the Prohibited Conduct in the Outside of Title IX Policy, Title IX Policy, and these procedures,

that occur in particular campus-related locations. The Clery Act also requires the University to issue warnings to the community in certain circumstances.

In the statistical disclosures and warnings to the community, the University will ensure that a Complainant's name and other identifying information are not disclosed. The Title IX Coordinator will refer information to the Clery Compliance Administrator when appropriate for disclosing crime statistics or sending campus notifications.

For additional information of Clery-reportable crimes, please refer to the [Campus Safety](#) page.

XVI. Policy Review and Revision

The corresponding policy and these procedures will be reviewed and updated regularly by the University. Modifications to the corresponding Outside of Title IX policy and these procedures will be made in a manner consistent with institutional policy upon determining that changes to law, regulation or best practices require policy or procedural alterations not reflected herein. These procedures will apply regardless of the time of the incident.

This procedure may be revised at any time without notice. All revisions supersede prior versions and are effective immediately upon posting to the University website.

This procedure is effective as of January 9, 2025 and was approved by NWU's Title IX office.