

NEBRASKA WESLEYAN UNIVERSITY

Resolution Procedures for Addressing Sexual Harassment and Sexual Misconduct Outside of the 2020 Final Rule for Federal Title IX Regulations when Staff Employees are the Respondent

This procedure applies to reports and complaints of sexual harassment and sexual misconduct involving **Staff Employees as the Respondent**, including sexual and gender-based harassment/bullying, sexual assault, dating violence, domestic violence, stalking, and sexual exploitation **that fall outside of Title IX as outlined in** the 2020 Final Rule for Federal Title IX Regulations jurisdiction guidelines, or a Formal Complaint was made and then dismissed for the same reason.

For reports and complaints of sexual harassment and sexual misconduct involving Staff Employees as the Respondent that do or may fall **within Title IX, please see the Sexual Harassment and Sexual Misconduct Policy within the 2020 Final Rule for Federal Title IX Regulations. If uncertain as to which policy applies, please contact a Title IX Coordinator at titleix@nebrwesleyan.edu.**

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 the Sexual Harassment and Sexual Misconduct Outside of the 2020 Final Rule for Federal Title IX Regulations Policy, Section V – Prohibited Conduct.

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

I. To Whom This Procedure Applies and Jurisdiction

This procedure pertains to acts of Prohibited Conduct when the conduct falls outside of the definitions or jurisdiction of the 2020 Final Rule for Federal Title IX Regulations, or a Formal Title IX Complaint was made and then dismissed for the same reason. Prohibited Conduct outside of Title IX will be addressed under this procedure when it involves:

- Current Staff Employees as the Complainant or the Respondent;

And when:

- The conduct occurs off University grounds or on property not owned or controlled by the University; or

- The conduct occurs outside of the context of University employment or an education program or University-sponsored activity and has an adverse effect for students or staff employees; or
- The conduct occurs outside of the United States.

The University retains jurisdiction over Staff Employees who take a leave of absence for misconduct that occurred prior to the leave through this Procedure and corresponding Policy. Misconduct, if determined to have occurred, will impact rehire eligibility, presence on University grounds, and related activities, which will be addressed at the time of sanctions.

Sexual harassment and sexual misconduct involving a Student and an Employee will be addressed using the Sexual Harassment and Sexual Misconduct Outside of the 2020 Final Rule for Federal Title IX Policy and corresponding procedures involving Staff as a Respondent or Faculty as a Respondent.

Sexual harassment and sexual misconduct involving only students will be addressed using the Sexual Harassment and Sexual Misconduct Outside of the 2020 Final Rule for Federal Title IX Policy and corresponding student procedures.

II. Definitions of Key Terms

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

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 required to report crimes to campus administrators, which include Title IX offenses, to the Title IX Coordinator, 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. 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.

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.

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.

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.

Formal Resolution of Allegation(s) Outside of Title IX: involves an investigation, live hearing, and a Hearing Decision Maker determining whether or not a Respondent has violated the University's sexual harassment and sexual misconduct policy addressing sexual harassment and misconduct that falls outside the 2020 Final Rule for Federal Title IX Regulations. 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 sexual harassment or sexual misconduct.

Informal Resolution of Allegation(s) Outside of Title IX: 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.

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.

Non-Title IX 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 Harmed Party, parent of the Harmed Party, or the Title IX Coordinator.

There are three situations in which the Non-Title IX Formal Complaint may be signed.

1. The Harmed Party may sign the Non-Title IX Formal Complaint
2. The parent of the harmed student may sign the Non-Title IX Formal Complaint in the event a harmed student does not wish to file the Non-Title IX Formal Complaint
3. The Title IX Coordinator may sign the Non-Title IX Formal Complaint

- a) In the event a Harmed Party does not wish to file the Non-Title IX Formal Complaint
- b) When the misconduct presents an imminent threat to campus safety or the safety of an individual on campus

When the parent of the harmed student or the Title IX Coordinator signs the Non-Title IX Formal Complaint, neither becomes the Complainant. Only the Harmed Party is allowed to become the Complainant.

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 which constitutes Actual Knowledge, i.e. 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.

Sexual Harassment and Sexual Misconduct Vice Presidential Review: the Respondent's Division Vice President who is responsible for reviewing the Final Investigative Report and determining responsibility for "violation" or "not in violation" of a University policy, and, if necessary, assigning sanctions, in consultation with University Counsel and the Assistant Vice President of Human Resources.

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.

*Employees who are enrolled and taking classes will continue to be treated as an Employee under this procedure.

Support Person: an individual selected by a Complainant or Respondent to assist them during any part of the Formal or Informal Resolution processes addressed within Title IX or Outside of Title IX Procedures, including the Reporting, Assessment, Informal Resolution, 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.

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.

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, panel members, and decision-makers 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 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 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.
- **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.
- **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.
- **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 Formal or Informal Resolution processes addressed within Title IX or Outside of Title IX Procedures, including the Reporting, Assessment, Informal Resolution, Investigation, Hearing, and Appeal process. 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.

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. An 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.

Anonymous Reporting to the University: Individuals may report sexual harassment and sexual misconduct concerns anonymously 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.

Making a Report vs. Filing a Non-Title IX Formal Complaint:

Making a Report is the 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 Non-Title IX Formal Complaint and proceed to address the matter as the University deems appropriate.

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. 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 Non-Title IX Formal Complaint is defined as the request to initiate the University's formal and informal resolution processes. The decision to file a Non-Title IX Formal Complaint may be made at any time.

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.
- **For Those Who Offer Assistance:** To encourage Employees to offer help and assistance to others, the University pursues a policy of amnesty for minor violations when Employees offer help to others in need. At the discretion of the 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:** 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:** 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 the minor violations may occur, but no conduct proceedings will result.

Abuse of amnesty requests can result in a decision by the Assistant Vice President for 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 Employees to provide support and guidance throughout the initiation, investigation, and resolution of a report of sexual harassment or sexual misconduct. Upon receipt of actual knowledge of an alleged occurrence of sexual harassment or sexual misconduct, the University will offer supportive measures to the alleged victim

("Complainant"). These offered measures will be 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/Limited Contact Order, change of work or class assignment/location/schedule, change of on-campus living space, 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. Furthermore, requests for supportive measures can be made to the Title IX Coordinator.

The Reporting Party may bring a Support Person to this meeting. When the Support Person is an attorney, the Title IX Coordinator must be given 2 days advance notice. The Support Person cannot direct questions or comments to the Title IX Coordinator, but they may consult with the person they are assisting. The Title IX Coordinator will not allow the presence of a Support Person 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 potential violation of University policy and whether it falls within the jurisdiction of Title IX;
- 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;
- Explain the University's 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) should a Non-Title IX 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 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, the Title IX Coordinator may sign a Non-Title IX Formal Complaint, beginning the Formal 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 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. 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 Non-Title IX Formal Complaint, and commence the Formal Resolution Process (after taking account of the aforementioned factors), with or without approval of the original reporting party.

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 Non-Title IX 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 University may remove an Employee from the University's employment or education programs or activities on an emergency basis, with or without a resolution process pending. This may also include a no-trespass or other no-contact order to be issued.

VIII. Sexual Harassment and Sexual Misconduct Formal Complaint Outside the Scope of Title IX

The University offers two options to resolve a Formal Complaint: Informal Resolution and Formal Resolution. Within these resolution methods, there are timeframes for application of the resolution options. Parties may:

- Begin a Formal Resolution process immediately after the filing of a Formal Complaint.
- Begin an Informal Resolution process immediately after the filing of a Formal Complaint.
- Transition to an Informal Resolution process after a Formal Resolution process has begun, up until the beginning of the Sexual Harassment and Sexual Misconduct Vice Presidential Review.
- Transition to a Formal Resolution process from the Informal Resolution process when the Complainant, Respondent, or University no longer agrees to the terms of the Informal Resolution process.

Informal Resolution Process

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. Both parties must voluntarily agree in writing to participate in the Informal Resolution process.

A full investigation of the Formal Complaint filed is not conducted in the Informal Resolution process. Informal Resolution is a voluntary option that allows parties to resolve disputes in a forum that is separate and distinct from the institution's live-hearing process. It is also discretionary, based on the assessment of the TIX Coordinator, whether to offer informal resolution at all, or only in certain cases. The University will generally allow only one Informal Resolution per Respondent. Informal Resolution will not be offered as a resolution strategy when the Formal Complaint involves both Students and Employees.

For some types of reported sexual harassment and sexual misconduct, Informal Resolution may offer parties resolution in a timeframe that is shorter than the Formal Resolution in 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 cases involving a report of sexual assault, dating violence, domestic violence, or circumstances involving severe misconduct.

An Informal Resolution can be requested by a Complainant or Respondent at any time after a Formal Complaint has been submitted. An Informal Resolution process can be requested, even if the parties have entered the Formal Resolution process, up to the beginning of the Sexual Harassment and Sexual Misconduct Vice Presidential Review. Any of the parties can withdraw from the Informal Resolution process and resume the Formal Resolution process, for addressing allegations outside of the Final Rule and 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 written notice to the parties. The written notice will include information regarding:

- The potential outcome of participating in an Informal Resolution process
- The confidentiality of information learned during the Informal Resolution process
- How the Formal Resolution process will resume if any of the parties withdraw from the Informal Resolution process
- The facilitator's inability to be called as a Witness if Informal Resolution cannot reach a mutual agreement and the Formal Resolution process resumes
- Any information obtained during Informal Resolution cannot be used in a subsequent investigation and Sexual Harassment and Sexual Misconduct Vice Presidential Review during the Formal Resolution process

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 Formal Complaint 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 who will collect information about the incident without performing a full investigation, facilitate discussion, and propose solutions for a resolution between the parties. The process will be facilitated with the Complainant and Respondent in separate rooms.

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, the Informal Resolution Meeting Decorum will be sent electronically to both parties.

Each party may have one Support Person present during the informal resolution meeting. When the Support Person is an attorney, the facilitator must be given 2 days advance notice. The

Support Person cannot direct questions or comments to the facilitator, but they may consult with the Student or Employee they are assisting. The facilitator will not unduly allow a Support Person's presence to inhibit their ability to gather information.

At the beginning of the Informal Resolution Meeting, 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.

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).

Formal Resolution Process

The Formal Resolution process involves a full investigation, live-hearing with cross-examination, determination of policy violation by a Hearing Decision Maker, sanctions if applicable, and the opportunity to both the Complainant and the Respondent to appeal, if the grounds for appeal are met. The Formal Resolution is described in detail in Sections IX – XV of this procedural document.

Meeting with Respondent

Once a Formal Complaint has been made by the Complainant, an investigation is required. Based on the outcome of the Title IX Assessment, the Title IX Coordinator may also determine an investigation is required. In either case, 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 the Respondent of sufficient details of the Formal Complaint, including:

- Full name of Complainant, 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 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 option;
- Notice of conduct violations for knowingly submitting false statements or false information; and
- Review of the University's policy for privacy and prohibiting retaliation.

Notice of Complaint

Following the meetings with the Complainant and the Respondent, the Title IX Coordinator will send the Notice of Complaint to both parties, simultaneously, that includes written notice of the allegations, notice of the University's resolution processes, and the availability of supportive measures.

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

IX. Sexual Harassment and Sexual Misconduct Formal Investigation

Meeting with Investigator

The University has designated individuals as Investigators who receive training annually. 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 how to serve impartially, including to avoid prejudgment of the facts at issue, conflicts of interest, and bias. Moreover, any materials used to train Investigators 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.

At its discretion, the University may use multiple Investigators, including internal or external Investigators of its choosing.

Throughout the investigation of a Formal Complaint, 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 one (1) Support Person to this meeting. When the Support Person is an attorney, the Investigator must be given 2 days advance notice. The Support Person cannot direct questions or comments to the Investigator, but they may consult with the Employee they are assisting. The Investigator will not unduly allow a Support Person's presence to inhibit their ability to gather information. Either involved party may change their Support Person at any time.

The Investigator will ensure Rape Shield protections for the Complainant by limiting questions that are not relevant about the Complainant's past sexual behavior.

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 with 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 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.

Falsification, distortion, or misrepresentation of information as part of the Sexual Harassment and Sexual Misconduct 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.

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, with identities redacted. The Investigator may also include prior allegations of, or findings of, violations for similar conduct by the Respondent.

The Preliminary Report will be sent by the Investigator electronically to the Complainant and Respondent, simultaneously. Both the Complainant and the Respondent will have 10 days to meet in-person with the Investigator 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 distribute the Report to the Title IX Coordinator. The Title IX Coordinator will then schedule a meeting with the Respondent's Divisional Vice President for review.

X. Sexual Harassment and Sexual Misconduct Vice Presidential Review

The Respondent's Division Vice President is responsible for reviewing the Final Investigative Report and determining responsibility for "violation" or "not in violation" of a University policy, and, if necessary, assigning sanctions in consultation with University Counsel and the Assistant Vice President of Human Resources.

While reviewing the Final Investigative Report, the Respondent's Division Vice President or University Counsel may ask the Investigator questions about details included in the Report.

The University recognizes that the Investigator is subject matter expert in the investigation, as well as a subject matter expert regarding the material involved in the investigation. Therefore, the Vice President may request that the Investigator provide their recommendation regarding a finding for deliberation. In the event that the Title IX Coordinator has filed the Formal Complaint with the University, the Title IX Coordinator may be present to answer questions. If no additional information is needed, the Respondent's Division Vice President will use the preponderance of the evidence standard to determine a finding.

The Respondent's Division Vice President will render a finding of "in violation" or "not in violation" of a University Policy and assign sanctions, if applicable. The Respondent's Divisional Vice President will prepare the Notice of Determination in collaboration with the Title IX Coordinator. The Notice of Determination will be delivered in person as well as in writing.

XI. Notice of Determination

The Notice of Determination which will include the following information:

- Alleged violations
- Procedural steps

- Findings of fact
- Conclusion
- Rationale
- Sanction(s), if applicable
- Appeal procedures

XII. 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. Possible sanctions may include, but are not limited to, protective measures, restrictions, letters of reprimand, action plans, performance improvement plans, progressive discipline, reassignment, reflection statements, training, counseling, coaching, suspension, and/or separation.

In considering the appropriate sanction, the President will consider the following factors:

- The Respondent's prior discipline history;
- How the University has sanctioned similar incidents in the past;
- The nature and violence of the prohibited conduct;
- The impact of the conduct on the Complainant;
- The impact of the conduct on the community, its members, or University property;
- Whether the Respondent is reasonably likely to engage in similar conduct in the future;
- The University's values and community standards; and
- Any other mitigating or aggravating circumstances.

XIII. 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;
- To determine if any personnel involved in the resolution process 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 receipt of an appeal, the Title IX Coordinator 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 Title IX Coordinator will forward the appeal, along with the Final Investigative Report, and any other materials relevant to the determination or appeal, to the University President, or designee(s), for review.

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

- Affirm the findings and/or sanctions determined by the Respondent's Division Vice President; or
- Reverse the findings and/or modify the sanctions determined by the Respondent's Division Vice President.

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 Title IX Coordinator, who will communicate the President's decision to the Complainant and the Respondent in writing. The Final Determination of Appeal will also be shared with the Assistant Vice President for Human Resources.

The Title IX Coordinator 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.

XIV. Additional Information

Please note: If a Formal Title IX Complaint is filed under the University's Formal or Informal Processes, and is subsequently dismissed as being outside the scope of Title IX, this procedure is available to the University and the party making the complaint. This procedure is also available to complaints made that are deemed by the University to be outside the scope of Title IX.

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 sexual harassment and sexual misconduct 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 years from the date of the incident, or indefinitely in cases involving a sanction of separation.

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 Sexual Harassment and Sexual Misconduct Prevention and Response Page of the University's website.

The NWU Board of Governors approved these procedures on January 22, 2021. 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.