

# NEBRASKA WESLEYAN UNIVERSITY

## **Resolution Procedures for Addressing Complaints of Employee Sexual Misconduct Outside of the 2020 Final Rule for Federal Title IX Regulations**

This procedure applies to reports and complaints of sexual harassment and sexual misconduct involving **Faculty or 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 Faculty and Staff Employees as the Respondent that do or may fall **within Title IX, please see the 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](mailto: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 Misconduct Outside of the 2020 Final Rule for Federal Title IX Regulations Policy, Section V Prohibited Conduct.

Hereinafter, Nebraska Wesleyan Univ

Faculty and

### **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 Employees as the Complainant or the Respondent;

And when:

The conduct occurs outside of the United States.

The University retains jurisdiction over 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 Misconduct Outside of the 2020 Final Rule for Federal Title IX Policy and this procedure when the respondent is an Employee.

Sexual harassment and sexual misconduct involving students as the respondent will be addressed using the 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

**Staff Employee:** Any person who works for the University in return for financial or other 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  
This includes full

- 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

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 grievance process that complies with Section 106.45 of the federal regulations.

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. All members of the NWU community are encouraged to report any incident of sexual harassment and sexual misconduct 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 who has been reported to have engaged in conduct that could constitute sexual harassment or sexual misconduct.

**Sexual Harassment and Sexual Misconduct Vice Presidential or Provost Review:** the or Provost who is responsible for reviewing the Final

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.

**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](mailto:mharder@nebrwesleyan.edu)

Deputy Title IX Coordinator: Natasha Moreno, Nebraska Wesleyan University, Burt Hall 112, 5000 Saint Paul Ave., Lincoln, NE 68504 (402) 465-2356, [nmoreno@nebrwesleyan.edu](mailto:nmoreno@nebrwesleyan.edu) or [titleix@nebrwesleyan.edu](mailto:titleix@nebrwesleyan.edu)

The Head Title IX Coordinator, or designee, will manage reports and complaints for Faculty and



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

to render the respondent eligible for potential disciplinary sanction following the completion of a resolution process that complies with Section 106.45 of the 2020 Final Rule for Federal Title IX Regulations. This is done by the Title IX Coordinator signing a Formal Complaint, on behalf of the University, and can be done with or without consent/permission of the original Complainant. Upon the filing of the Formal Complaint, the Title IX Coordinator will not become a party to the procedure.

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



**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.



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;  
Collaborate with the Provost, or designee, who will determine if any issues of academic freedom exist;  
Explain the University's resolution process, including the evidentiary standard - preponderance of evidence;

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 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 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 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 Actions**

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 any person from employment or education programs or activities on an emergency basis if immediate harm to the person or others is reasonably anticipated. Interim actions may include a no-trespass or other no-contact order to be issued.

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

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

### **Notice of Complaint**

Upon receipt of a Formal Complaint, the Title IX Coordinator will send the Notice of Complaint to both the Complainant and the Respondent, simultaneously, that includes written notice of the University's supportive measures.

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.



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 are negotiable and may result in party-imposed corrective or punitive measures. The terms and outcome of the

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.

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

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

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 – XIV of this procedural document.

**Meeting with Respondent**

Once a Formal Complaint has been made by the Complainant, 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  
a determination that a policy violation has occurred, which is made at the end of the resolution process;
  - 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.

Additionally, after the Notice of Complaint has been sent, the University Administrator will set up

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 consideration for preservation of evidence does remain with the involved 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.



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 R

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 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. 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 whether an allegation falls outside of the definitions utilized in the 2020 Final Rule for Federal Title IX Regulations. At the discretion of the Title IX Coordinator, a third-party reviewer, or designee, may be utilized. Based on the determination, the Formal Complaint will be resolved utilizing the appropriate NWU Sexual Harassment and Sexual Misconduct policy and procedure.

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 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. The names of Witnesses will remain redacted.

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 Vice President for review.

## **X. Sexual Harassment and Sexual Misconduct Vice Presidential or Provost Review**

The Vice President or Provost 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 Vice President, Provost, 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 or Provost 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 Vice President or Provost will use the preponderance of the evidence standard to determine a finding.

Violation Vice President or Provost will

in violation

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, targeted educational projects, progressive discipline, reassignment, reflection statements, training, counseling, coaching, suspension, and/or separation.

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

- 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;  
community standards;
- Any other mitigating or aggravating circumstances; and
- Any sanctions, including termination of a faculty member, must follow the faculty handbook Article VII.

## **XIII**

APPROVED BY THE TITLE IX OFFICE SEPTEMBER 9, 2022

procedures. However, the University will apply sexual harassment and sexual misconduct definitions in effect at the time of the incident.