

NEBRASKA WESLEYAN UNIVERSITY

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

This procedure applies to sexual harassment and sexual misconduct of all forms, including sexual and gender-based harassment/bullying, sexual assault, dating violence, domestic violence, stalking, and sexual exploitation within the jurisdictions of the 2020 Final Rule for 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 Sexual Misconduct Policy addressed under the 2020 Final Rule for Federal Title IX Regulations. All behavior referenced as sexual harassment and sexual misconduct that falls under the 2020 Final Rule for Federal Title IX jurisdiction guidelines will be addressed utilizing this procedure.

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

I. To Whom This Procedure Applies and Jurisdiction

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

- The conduct occurs on University grounds or other property owned or controlled by the University;

- The conduct occurs in the context of University employment or an education program or University-sponsored activity within the United States, including, but not limited to, school trips, research, on-line classes or meetings, or internship programs;

- The University has substantial control over both the respondent and the context in which the sexual

This set of procedures is only applicable to Student and Employee complaints falling within Title IX jurisdiction. The University also will investigate allegations of sexual harassment or sexual misconduct reported against groups of individuals or student organizations under its Sexual Misconduct Outside of the 2020 Final Rule for Federal Title IX Regulations Policy.

should report criminal offenses. CSAs are required to report crimes to campus administrators, which include Title IX

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.

Student: any person enrolled in courses at the University, both full-time and part-time, pursuing

Deputy Title IX Coordinator: Natasha

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 §106.45 of the federal regulations.

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

Filing a Formal Complaint initiates a resolution process by the University. The University offers both formal and informal resolution processes, upon the filing of a Formal Complaint. The decision to file a Formal Complaint may be made at any time during Title IX jurisdictional time frames. A Report or Formal 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:

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 Moreno, Nebraska Wesleyan University, Burt Hall 112, 5000 Saint Paul Ave., Lincoln, NE 68504 (402) 465-2356, nmoreno@nebrwesleyan.edu or titleix@nebrwesleyan.edu

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 lower-level policy violations, such as alcohol violations.

For Those Who Offer Assistance: To encourage Students and Employees to offer help and assistance to others, the University pursues a policy of amnesty for lower-level violations when Students or Employees offer help to others in need. At the discretion of the Student Conduct System Administrator,

APPROVED BY THE

APPROVED BY THE

Assess the reported conduct for the need of a timely warning notice as required under federal law;
Determine if a pattern of evidence or other similar conduct by the Respondent exists;
Determine if any issues of academic freedom exist, which may be reviewed by the Provost or designee;
Enter non-identifying statistical information about the report into the University's daily crime log;
Explain the University's Title IX resolution process, including the evidentiary standard - preponderance of evidence;

also discretionary, based on the assessment of the Title IX 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 signed. An Informal Resolution process can be requested, even if the parties have entered the Formal Resolution process, up to the beginning of a Title IX Hearing. Any of the parties can withdraw from the Informal Resolution process and resume the Formal Resolution process at any time prior to reaching a determination regarding a policy violation. Furthermore, Formal Resolution may cease if the Complainant withdraws the Formal Complaint. However, the University may continue to move forward 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 Title IX Hearing 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 [REDACTED] Following the call, the Informal Resolution Meeting Decorum will be sent electronically to both parties. The facilitator will receive regular and ongoing training on the same topics as Title IX personnel, as set forth in NWU's Title IX policies.

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 [REDACTED]

The Investigator will contact the Complainant, Respondent, and relevant witnesses to schedule interviews. All involved parties may bring up to two people to this meeting: (1) Support Person and/or (1) Advisor of Choice. When the Support Person or the Advisor of Choice is an attorney, the Investigator must be given 2 days advance notice. Neither the Support Person nor the Advisor of Choice can direct questions or comments to the Investigator, but they may consult with the Student or Employee they are assisting. The Investigator will not unduly allow a Support Person or an Advisor of Choice's presence to inhibit their ability to gather information.

If a Complainant or 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 Complainant or Respondent. However, no credibility determinations will be made throughout the formal resolution process (up to and including the live hearing) based on a party's status as Complainant, Respondent, or as a witness. The same holds true regarding whether or not a party chooses to participate in the investigation, or cross-examination at the live hearing.

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

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

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

In cases where alcohol and/or other intoxicants are a factor, eva6(ai)0 evaem

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 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. 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 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.

Report. The Complainant and Respondent's follow-up responses or information must be directed to the Title IX Coordinator.

X. Title IX Hearing

The Hearing Decision Maker must permit each party's Advisor of Choice to ask the other party and any witnesses all relevant questions and follow-up questions, including questions challenging credibility. Before a Complainant, Respondent, or Witness answers a cross-examination or other question, the Hearing Decision Maker must first determine whether the question is admissible and relevant and explain and record any decision to exclude a question as not admissible or relevant. Relevancy and admissibility for each question will be determined by the Hearing Decision Maker on a question-by-question basis.

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

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

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

The Hearing Decision Maker will use a preponderance of the evidence standard (i.e., that it is more likely than not that a policy violation occurred) when evaluating the Formal Complaint outcome and determining sanctions, if applicable. In the event the Respondent is a Student Organization, individual determinations of responsibility will be made, and sanctions ma 0 612 792F2 11.04 Tf1

- Appeal procedures

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

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

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. Conduct history will also be considered as part of the sanctioning process. Possible sanctions may include, but are not limited to, protective measures, restrictions, letters of reprimand, action plans, performance improvement plans, apology letter, reflection statements, targeted educational projects, coaching, probation, suspension, expulsion, and/or separation.

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

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 5 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

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

Upon receipt of an appeal, the University Administrator will provide a Notice of Appeal, including sufficient details of the appeal and a link to the Appeal Response Form, to the Complainant and Respondent, allowing 5 days for either party to respond.

Following the 5-day response period, the University Administrator will forward the appeal, along with the Final Investigative Report, the recording of the Title IX Hearing, and any other materials relevant to the determination or appeal, to the University President, or designee, for review.

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

Affirm the findings and/or sanctions determined by the Hearing Decision Maker; or