

NEBRASKA WESLEYAN UNIVERSITY

Sexual Misconduct Policy addressed under the 2020 Final Rule for Federal Title IX Regulations

This policy 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 this document.

This policy is based on the 2020 Final Rule for Title IX of the Education Amendments of 1972 (Title IX), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), and corresponding guidance from the Department of Education.

I. Statement of Intent

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be satisfied prior to re-enrollment eligibility. The University also may elect to retain jurisdiction
education programs
and resources.

Additionally, sexual harassment and sexual misconduct by an Employee prior to a leave of absence and/or misconduct that falls outside of the 2020 Final Rule for Federal Title IX Regulations will be addressed using the NWU Sexual Misconduct Outside of Federal Title IX Regulations Policy and related procedures in consultation with the Staff and Faculty Handbooks.

III. Notice of Non-Discrimination

Nebraska Wesleyan provides equal opportunity to all qualified pers

Confidentiality exists in the context of laws that protect certain relationships, including relationships with mental health providers (and those who provide administrative services related to the provision of mental health care), counselors, victim advocates, and ordained clergy, all of whom may engage in confidential communications under Nebraska law. The University has designated individuals able to have confidential communications as "Confidential Employees." Confidential Employees will not be considered actual knowledge, or notice to the University, of the alleged occurrence, but will allow the harmed party to proceed as they so choose. Confidential Employees are further defined in Section VI Reporting, of this document.

The University has the right to share appropriate information with Law Enforcement to ensure

- c. Sexual Assault With An Object To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
 - d. Fondling The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
2. Sex Offenses, Non-forcible

5. Stalking, as defined in 34 U.S.C. § 12291(a)(30), which means engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - a. fear for his or her safety or the safety of others; or
 - b. suffer substantial emotional distress.

Elements of Consent as it relates to Prohibited Conduct

Consent is an affirmative and willing agreement to engage in specific forms of sexual contact with another person. Consent requires an outward demonstration, through mutually understandable words or actions, indicating that an individual has freely chosen to engage in sexual contact. Consent cannot be obtained through the use of **coercion** or **force** or by taking advantage of the **incapacitation** of another individual.

Silence, passivity, or the absence of resistance does not constitute consent for sexual activity. If confusion or ambiguity arises during a sexual interaction, it is essential that each participant stop and clarify

Consent can be withdrawn at any time. When consent is withdrawn, sexual activity must cease. Prior consent does not imply current or future consent; even in the context of an ongoing relationship, consent must be sought and freely given for each instance of sexual contact.

Consent is not present when there is sexual contact with someone who is known, or should have been known, to be **incapacitated** or otherwise mentally or physically incapable of resisting or appraising the nature of conduct. Likewise, consent is not present if the use of **force** or **coercion** of another person to engage in sexual contact against their will has occurred.

Coercion: the use of pressure to compel someone to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they inhibit another individual's freedom of will and ability to choose whether or not to engage in sexual activity.

Force: the use or threat of physical violence or intimidation to overcome an

Incapacitation may result from the use of alcohol and/or drugs. The impact or impairment from alcohol and other drugs vary from person to person (e.g. vomiting, sleeping, blacking out, unconsciousness). Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual assault or harassment in any form and does not diminish the responsibility to obtain informed and freely given consent.

Intentional Falsification:

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 or reports without sufficient details.

Making a Report vs. Filing a 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.

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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 that involves any Student or Employee as a Complainant, Respondent, and/or Witness. This includes dates, times, locations, and names of parties and witnesses, if known. The Title IX Coordinator will contact the harmed party to provide information and ask how they wish to proceed.

Filing a Formal Complaint is a request to initiate either the University's formal Title IX investigative and resolution process or informal resolution process. A **Formal Complaint** is a

harassment and sexual misconduct policies that is submitted by the Harmed Party, parent of the Harmed Party or the Title IX Coordinator. 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, physical mail, or in person during regular business hours.

APPROVED BY THE NWU BOARD OF GOVERNORS SEPTEMBER 9, 202

abuse or neglect of a vulnerable adult or abuse of a minor by an adult. Faculty and staff members are required to share reporting options with all students.

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, dating violence, domestic violence, 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 or reports without sufficient details.

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:

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 living space, change of class schedule, and/or security escort.

IX. Resolution

The University has the responsibility to address sexual harassment and sexual misconduct that violates Federal Title IX and Clery Act regulations through the formal and informal resolution procedures for current Students and Employees. The resolution procedures are guided by the principle of fundamental fairness and respect for all parties, which requires notice, an equitable opportunity to be heard, and an equitable opportunity to respond to a Formal Complaint under this policy. All parties involved with the University's sexual harassment and sexual misconduct resolution processes, including investigators and adjudicators, receive regular and ongoing training. Annual training programs include, but are not limited to, how to conduct an investigation and all resolution processes including informal resolution where applicable, hearings, appeals, and how to serve impartially, including how to avoid prejudgment of the facts at issue, conflicts of interest, and bias. Training materials can be found on the NWU Title IX website. Training will include, among other topics required under Title IX, the fact that