

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

**POLICY: 3020 Sexual Violence or Sex Harassment
Reporting, Policies and Procedures**

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BOARD POLICY

The Board of Trustees of the Nebraska State Colleges is committed to providing an environment in which all students who participate in College programs and activities can work together in an atmosphere free from unlawful discrimination, harassment, or violence. Sexual violence and sex harassment are prohibited by law and by Board policy and the Colleges will not tolerate sexual violence or sex harassment in any form, including, but not limited to, sexual assault; stalking; dating violence; domestic violence; acquaintance, date or stranger rape; non-consensual sexual intercourse; sexual cyber harassment or sexual bullying. The Colleges will take appropriate action to prevent, correct, and discipline harassing or violent behavior that is found to violate Board policies and principles of equal opportunity and access.

This policy provides guidance for what students should do if they have been victims of sexual violence or sex harassment, and what the Colleges will do if such violence or harassment occurs. A student alleged to have committed sexual violence or sex harassment can be disciplined under the Code of Student Conduct and/or prosecuted under Nebraska criminal statutes. Additional Board Policies, Employee Handbooks and Collective Bargaining Agreements, also apply to employees alleged to have committed sexual violence or sex harassment.

The Colleges have a responsibility to respond to reports of sexual violence or sex harassment and attend to the needs of the students who are involved. Reports of sexual violence and sex harassment are taken with the utmost seriousness, and the student will be promptly referred to the appropriate persons or resources for assistance. The Colleges are also responsible to ensure that the individual charged with committing such violence or harassment is treated fairly. Individuals are presumed innocent unless proven responsible, and will also be referred to appropriate services for assistance.

Definitions

Dating Violence: Dating violence is violence (*violence includes, but is not limited to sexual or physical abuse or the threat of such abuse*) committed by a person (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (b) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, (iii) the frequency of interaction between the persons involved in the relationship.

Dating violence can occur when one person purposely hurts or scares someone they are dating. Dating violence can be physical, emotional, and/or sexual abuse.

Domestic Violence: Domestic violence shall mean felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws.

Domestic violence includes patterns of abusive behavior in relationships used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behavior that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, coerces, threatens, blames, hurts, injures, or wounds someone.

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Under Neb. Rev. Stat. §28-323, domestic assault occurs when a person; (a) intentionally and knowingly causes bodily injury to his or her intimate partner; (b) threatens an intimate partner with imminent bodily injury; or, (c) threatens an intimate partner in a menacing manner. Intimate partner means a spouse; a former spouse; persons who have a child in common whether or not they have been married or lived together at any time; and persons who are or were involved in a dating relationship.

Sexual Assault: Sexual assault shall mean an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sexual assault is contact or sexual penetration that occurs without the consent of the recipient.

Sexual contact means the intentional touching of a person's intimate parts or the intentional touching of a person's clothing covering the immediate area of the person's intimate parts. Sexual contact also includes when a person is forced to touch another person's intimate parts or the clothing covering the immediate area of the person's intimate parts. Sexual contact shall include only such contact which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party.

Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse or any intrusion of any part of the person's body or of a manipulated object into the genital or anal openings of another person.

Sex Harassment: Sex harassment is unwelcome conduct of a sexual nature. Sex harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature. Federal law (specifically, Title IX) prohibits student-on-student discrimination, including hostile environment sex harassment and hostile environment gender harassment. (Gender harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, sexual orientation and/or gender identity, even if those acts do not involve conduct of a sexual nature.) Harassment does not have to include an intent to harm, be directed at a specific target, or involve repeated incidents. (For instance, as detailed below, a single instance of unwelcome physical contact of a sexual nature could constitute unlawful sex or gender harassment.) Sex and/or gender harassment creates a hostile environment for the student-victim when it is so severe, pervasive, or persistent that it interferes with or limits the victim-student's ability to participate in or benefit from the Colleges' services, activities, or opportunities because of his or her sex or gender. Sex Harassment includes Dating Violence, Domestic Violence, and Stalking as defined in this policy.

Sexual Violence: Any intentional act of sexual contact (touching or penetration) that is accomplished toward another without his/her consent. Such acts may include, but are not limited to, forced oral sex, forced anal penetration, insertion of foreign objects into the body, and any act of sexual intercourse "against someone's will." This includes, but is not limited to, the use of a weapon, physical violence or restraint, verbal threats, intimidation, and threats of retaliation or harm. Sexual Violence includes Sexual Assault as defined in this policy.

Consent: Positive cooperation in the act or expressing intent to engage in the act. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. A person who is giving consent cannot be incapacitated by drugs or alcohol, unconscious, passed out, coming in and out of consciousness, under the threat of violence, injury or other forms of coercion, and cannot have a disorder, illness, or disability that would impair his/her understanding of the act or his/her ability to make decisions. A person who is giving consent cannot be forced, coerced or deceived into providing consent.

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A person may express a lack of consent through words or conduct. A person need only resist, either verbally or physically, so as to make the person's refusal to consent genuine and real and so as to reasonably make known to the actor the person's refusal to consent. A person need not resist verbally or physically where it would be useless or futile to do so.

The presence or absence of consent is based on the totality of circumstances, including the context in which an alleged incident occurred. The fact that a student was under the influence of drugs/alcohol may be considered in determining whether that person had consented to the act in question. Consent may not be inferred from silence or passivity alone.

Stalking: Stalking shall mean 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.

Stalking includes a pattern of repeated and unwanted attention, harassment, contact or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking may include: repeatedly communicating with, following, threatening, or spreading rumors about a person who does not want the attention.

Student: An individual for whom the College maintains records and who is currently enrolled or registered in an academic program or who has completed the immediately preceding term and is eligible for re-enrollment.

Reporting

Reports can be filed by the alleged victim or a third party who is aware of allegations of sexual violence or sex harassment, including other students or College employees. Reports should be filed with one of the designated College administrators and/or employees responsible for student services, as follows:

- President
- Vice Presidents
- Deans
- College Title IX Coordinator and Designees (*contact information is listed below*)
- Dean of Students
- Housing/Residence Life Staff to include:
 - Directors
 - Managers
 - Assistant Directors
 - Senior Residence Hall Advisors
 - Residence Hall Advisors
- Coaches and Assistant Coaches
- Campus Security Officers

Reports to the above designated administrators or employees will constitute "notice" to the College for the purposes of considering an investigation and institutional response in conjunction with the Title IX Coordinator.

College employees (even medical or mental health professionals identified below) are required by law to report any allegations of sexual abuse or assault of a minor to either law enforcement or the Department of Health and Human Services.

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Exception Regarding Employee Reporting: The law recognizes and protects the confidentiality of communications between a person seeking care and a medical or mental health professional. Medical or mental health professionals employed by the Colleges (Licensed Student Counselors and Nurses) respect and protect confidential communications from students, faculty, and staff to the extent they are legally able to do so. Employees may have to breach a confidence, however, when they perceive an immediate and serious threat to any person or property.

Confidentiality

The College appreciates the privacy concerns inherent in allegations of sexual violence or sex harassment. To protect students' privacy rights, the names of students or other identifying information, especially that which is contained in written documents and notes, will only be disclosed to third parties if; (a) prior written permission is given by the student concerned; (b) the disclosure is necessary to conduct an investigation; (c) the disclosure is necessary to pursue disciplinary action; or, (d) the disclosure is otherwise required by law.

Victims will be informed that the College has a legal duty to include information about reports of criminal sexual misconduct in annual security report statistics which do not identify either the person claiming to have been subject to criminal sexual misconduct or the alleged perpetrator.

If an alleged victim is under the age of eighteen (18) years, the College will obtain consent from the parents or guardians prior to beginning an investigation or disclosing information, unless otherwise required by law.

If the alleged victim requests confidentiality, asks that the report not be pursued, or declines to participate in an investigation or disciplinary proceeding, the College will document the request. The College will take reasonable steps to investigate and respond to reports consistent with such a request, if possible. Requests will be evaluated and weighed against the College's responsibility to provide a safe and nondiscriminatory environment.

Disciplinary Processes and Consequences

Processes and procedures described in Board Policies 3100 and 3200 may be used subsequent to a sexual violence or sex harassment investigation to address cases of student misconduct, due process and discipline. If the alleged perpetrator is an employee, other Board Policies or Collective Bargaining Agreements will determine the due process steps and disciplinary consequences.

Disciplinary consequences may include, but are not limited to: warnings, disciplinary probation, loss of privileges, restitution, remedial work assignments, remedial educational requirements, service requirements, remedial behavioral requirements, College housing relocation, College housing suspension, removal from College housing, suspension, and expulsion.

Law Enforcement

Alleged victims should be advised that physical evidence can be collected at the same time as medical care is provided, but that medical evidence for a criminal prosecution cannot be collected without a report being made to local law enforcement. It is important that students make an informed decision regarding important physical evidence that can be preserved.

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While students are not *required* to notify law enforcement authorities regarding a report of sexual violence or sex harassment, reports still need to be filed with Campus Security to inform them that an act of violence may have occurred. Campus Security shall notify the Title IX Coordinator, who is responsible for coordinating the College response to the reports of sexual violence and sex harassment. Pursuant to federal law, the College has a legal responsibility for documenting and reporting an incidence of sexual violence and sex harassment.

Regardless of whether or not the law enforcement authorities choose to prosecute a reported offense, the College can pursue formal disciplinary action against a student or employee alleged to have committed sexual violence or sex harassment.

Title IX Coordinators

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Investigation Procedures

Note: While this policy and procedures are written primarily for the benefit of students, the same procedures shall also apply in the event either the individual reporting the sexual violence or sex harassment, or the alleged perpetrator, is not a student. Similarly, while the procedures assume that the incident occurred on or near College property or at an official College function or activity, some of these procedures may also apply if an alleged incident occurs off-campus or in a setting unrelated to College functions/activities.

- 1) An initial report may occur by telephone, email, in writing, or in person. When an initial report of sexual violence or sex harassment is received by any designated administrator or employee (listed in this Policy under “Reporting”), the initial report shall be shared with the Title IX Coordinator as quickly as possible.
- 2) The Title IX Coordinator or designee will contact the alleged victim for the following purposes:
 - To ask questions in order to gain a better understanding regarding the nature of the incident;
 - To explain confidentiality and reporting requirements;
 - To explain the investigatory process, law enforcement options, and possible consequences;

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- To provide information about resources that are available to the individual; and,
 - To ask if the alleged victim wishes for the report to be pursued through an investigation or not. (If the alleged victim requests confidentiality, or asks that the report not be pursued, the College will take all reasonable steps to investigate and respond to the report consistent with the request for confidentiality or request not to pursue an investigation, if possible. The request will be evaluated and weighed against the College's responsibility to provide a safe and nondiscriminatory environment.)
- 3) The Title IX Coordinator or designee, after consultation with the NSCS General Counsel, will determine if an investigation will be conducted.
- 4) If an investigation will be conducted, the Title IX Coordinator or designee will immediately begin an investigation and will take steps to complete the investigation within sixty (60) calendar days after receipt of the report, if possible. The College is committed to a complete and impartial investigation of reports of sexual violence or sex harassment, including the opportunity for both parties to present witnesses and other evidence. Investigations will occur as quickly as possible, but the complexity of the investigation, the severity and the extent of the harassment, or number of involved parties can impact the duration.

The investigation shall consist of:

- Reviewing all related written statements or reports;
 - Interviewing the alleged victim, alleged perpetrator and other witnesses;
 - Reviewing applicable College records; and,
 - Reviewing other relevant material and evidence.
- 5) The Title IX Coordinator or designee will provide parties involved in the investigation with periodic updates while an investigation is pending, consistent with Family Educational Rights and Privacy Act (FERPA) restrictions.
- 6) At the conclusion of the investigation, the Title IX Coordinator or designee will make a determination regarding the report using a "preponderance of the evidence" standard (more likely than not that sexual violence or harassment occurred) and will provide the recommendation to the Vice President responsible for Student Affairs and the President.
- 7) Within ten (10) working days from receipt of the Title IX Coordinator's or designee's recommendation, the Vice President will issue a written statement to the alleged victim, the alleged perpetrator and the Title IX Coordinator regarding the outcome of the investigation and a decision as to whether or not disciplinary proceedings will commence. In the event that disciplinary proceedings commence at the conclusion of the investigation, the College has an obligation to disclose the outcome of the disciplinary proceedings to the student who reports being the victim of sexual violence.
- 8) If the alleged victim and alleged perpetrator agree with the decision of the Vice President, the matter is considered resolved without any further rights of appeal by either party. If either the alleged victim or the alleged perpetrator object to the decision of the Vice President, either individual may appeal the decision in writing to the President within seven (7) calendar days. The President will review the matter and then issue his/her decision to; (a) affirm the Vice President's decision; (b) refer the matter for further investigation; or, (c) refer the matter for disciplinary proceedings. The President's decision will be final.

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Note: Title IX prohibits retaliation for reporting parties and any individuals participating in an investigation. The College will not only take steps to prevent retaliation but will also take strong responsive action if it occurs.

Resources and Assistance

The Title IX Coordinator or Designee will have available contact and referral information for counseling/mental health services, medical services, law enforcement, judicial remedies/restraining orders, and educational resources, and will share resource information with victims and alleged perpetrators. Assistance options including, College no contact orders, changes in academic, living, transportation and working situations may be made available as remedies to protect victims or witnesses.

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