

**Overview of Policy Changes Necessitated by
2020 DOE Title IX Rules and Regulations**

Attachment: Overview of Policy Changes re New Title IX Regs (2757 : Revisions to Board Policy 3020;

The following does not address every change necessitated by the new Title IX Regulations, but is intended to highlight some of the significant changes:

Subject	Current Policies	Revised Policies
Parties	Alleged Victim and Alleged Perpetrator	Complainant and Respondent
To Whom Does Title IX Policy Apply	All employees students, including traditional students, online or distance education students and students participating in dual enrollment programs	All employees and students located <u>within the United States</u> , including traditional students, online or distance education students and students participating in dual enrollment programs
Where Does Title IX Policy Apply	<ul style="list-style-type: none"> (a) campuses of the NSCS; (b) Areas owned or controlled by the Colleges; (c) Off campus, to the extent that the conduct occurring off campus has continuing adverse effects on campus or creates a hostile environment for a student; (d) College educational programs or activities whether on or off campus including internships, clinic programs and placements and College sponsored study-abroad programs. 	<p>To the Colleges' education programs and activities which include</p> <ul style="list-style-type: none"> (a) the physical campuses of the NSCS; (b) areas owned or controlled by the Colleges; (c) locations, events, or circumstances over which the Colleges exercise substantial control over both the respondent and the context in which the sexual harassment occurs; and (d) any building owned or controlled by a student organization that is officially recognized by the College. <p><i>Does not apply outside of United States or anywhere off campus unless it fits one of the criteria above.</i></p>

Subject	Current Policies	Revised Policies
When Does Title IX Policy Apply	Title IX Policy applies when the College has actual or constructive knowledge of sexual misconduct or sex discrimination.	College has actual knowledge, or a report or allegation of sexual harassment reported to the Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College. We have retained the concept of mandatory reporters and have listed those individuals in the policy.
To What Conduct Does Title IX Policy Apply	<p>Sexual Violence and Harassment on the basis of sex including:</p> <ul style="list-style-type: none"> (a) Dating Violence; (b) Domestic Violence; (c) Sexual Assault; (d) Sex/gender harassment including unwelcome sexual advances, requests for sexual favors, cyberbullying, other verbal, nonverbal, online, or physical conduct of a sexual nature, physical aggression, intimidation, or hostility based upon sex, sex-stereotyping, sexual orientation and/or gender identify even if acts do not involve conduct of a sexual nature (quid pro quo, hostile environment and retaliatory harassment) (e) Sexual violence; (f) Stalking; and (g) Retaliation. 	<p>Sexual Harassment on the basis of sex including:</p> <ul style="list-style-type: none"> (a) Quid Pro Quo Harassment (b) Severe, Pervasive and Objectively Unwelcome Conduct <u>based upon a reasonable person standard</u>; (c) Sexual Assault; (d) Dating Violence; (e) Domestic Violence; (f) Stalking; and (g) Retaliation. <p><i>Some definitions referenced in the new Reg are based upon various federal criminal statutes and differ from Clery or VAWA. More limited than current. Although not mentioned in Regs we have retained references to gender identity and sexual orientation. Conduct no longer falling within 30205011 will be addressed through the Colleges student code of Conduct set forth in Policy 3100/5007.</i></p>
Initiating an Investigation	Decision to initiate an investigation after receiving a report is within the discretion of the TIXC.	Requires a formal complaint signed by the complainant or the TIXC

Subject	Current Policies	Revised Policies
Role of Title IX Coordinator	Conducts the investigation and issues a finding letter determining responsibility	Conducts an investigation and issues a report laying out the evidence and assessing credibility but does not make credibility determinations or provide a finding regarding responsibility. The Hearing Panel makes credibility determinations and makes a determination regarding responsibility.
Temporary Suspensions/Removal pending investigation	Students may be ordered to leave the College under a temporary suspension pending disciplinary action due process, per Board Policy 3200, in the event that the student's continued presence is believed to threaten the safety or health of another person or for reasons at the discretion of the Vice President responsible for Student Affairs.	Prior to removing the accused from the College on an emergency basis, the college must: <ul style="list-style-type: none"> (a) Conduct an individualized safety and risk analysis prior to removal; (b) Determine whether an immediate threat to the physical health or safety of anyone on campus arising from the allegations exists and whether the risk justifies removal; and (c) If removal is deemed appropriate, the Respondent must have an opportunity to immediately challenge the decision.
Training	Title IX Coordinators and designees receive regular training through ATIXA/other groups and the System Office.	All college officials who participate in the investigation or decision making (including appeals) must receive annual training and all training materials must be made available on the College's website.
Advisors	Parties permitted to have a person present during interviews, meetings, and/or hearings to provide support. However the person did not participate.	Parties may have an advisor of their choice but if they do not have one the College must appoint one. That advisor is responsible for conducting all cross examination on behalf of the party during the hearing.

Subject	Current Policies	Revised Policies
Mandatory Dismissal	Not specifically addressed in policy. Dismissal within discretion of the College.	Required to dismiss a formal complaint if: (a) Conduct is not Sexual Harassment under the definition in the policy; (b) Conduct did not occur in the College education program or activity; or (c) Conduct did not occur against a person in the United States
Permissive Dismissal	Not specifically addressed in policy. Dismissal within discretion of the College.	College MAY dismiss a formal complaint if: (a) Complainant withdraws a formal complaint in writing; (b) Respondent is no longer enrolled or employed by the College; (c) Circumstances prevent the College from gathering evidence sufficient to reach a determination.
Sharing Evidence with Parties	Parties given the opportunity to review and respond to evidence.	Sets forth specific requirements for ensuring all parties receive all evidence collected during the investigation whether deemed relevant or not by the TIXC. Parties may respond to the other’s accounts throughout the investigation. Title IX Coordinator creates an investigative report at the conclusion of the investigation and parties have the opportunity to provide written responses.
Pre-Hearing Conference	Not Addressed in policy.	The Hearing Panel, as decision-maker, must make all determinations of relevance for the hearing. The Pre-Hearing Conference is a procedural step added to streamline implementation of this requirement. It is conducted by the Hearing Chairperson during which the Chairperson makes determinations regarding the relevancy of all questions or evidence intended to be asked or relied upon during the hearing. Requires written Pre-Hearing Conference Summary outlining decisions and the basis for those decisions.

Subject	Current Policies	Revised Policies
Hearings	Colleges had a great deal of discretion in the hearing process and Respondents could choose to avoid a hearing by admitting conduct and accepting sanctions.	<p>Hearings required unless both parties agree to engaging in an informal process facilitated by the College and much more like a formal court proceeding.</p> <p>Minimum of 3 individuals on the hearing panel.</p> <p>Parties may cross examine each other and witnesses at the hearing, but their Advisor must ask the cross examination questions on their behalf. Specific requirements regarding the relevance of evidence.</p> <p>Requirement to record the hearing. College must also have the ability to keep parties in separate rooms if desired, with technology enabling the hearing panel and parties to see the person answering questions.</p> <p>Extensive recordkeeping requirements.</p>

Due to extensive revisions, this draft of Board Policy 3020 is not presented in legislative format.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020 GRIEVANCE POLICY & PROCEDURES FOR SEXUAL HARASSMENT & SEX DISCRIMINATION PAGE 1 OF 21

This policy addresses sex discrimination that occurs in the form of sexual harassment. The Board of Trustees of the Nebraska State Colleges prohibits discrimination on the basis of sex and 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 sexual harassment and sex discrimination.

Colleges and universities receiving federal funding, including the Nebraska State College System, are required by Title IX of the Education Amendments of 1972 and 34 CFR Part 106 to not discriminate on the basis of sex in their educational programs or activities, including admission and employment. Inquiries about Title IX or 34 CFR Part 106 can be made to the Colleges' respective Title IX Coordinators or to the Assistant Secretary of the Department of Education.¹

This policy constitutes the Nebraska State College System's Grievance Policy and Procedures for addressing sexual harassment, including how a student, or others reporting on behalf of a student, may report or file a formal complaint of sexual harassment and how the Colleges will respond. The Colleges will take appropriate action to prevent, correct, and discipline behavior that is found to violate this policy or principles of equal opportunity and access.

A student alleged to have committed sexual harassment may be disciplined under the Code of Student Conduct and/or prosecuted under Nebraska criminal statutes. Additional Board Policies, Employee Handbooks and Collective Bargaining Agreements apply to employees alleged to have committed sexual harassment.

Reports of sexual harassment are taken with the utmost seriousness. The Colleges are responsible for responding to reports or complaints of sexual harassment and attending to the needs of impacted students. Complainants and Respondents are both referred to appropriate resources and services to assist them and are treated equitably in receiving individualized Supportive Measures from the Colleges. Respondents are presumed to be not responsible for the alleged conduct, and the College's investigation or response will be impartial and fair to all parties.

I. Scope

A. To Whom Does this Policy Apply?

1. This policy applies to all students located within the United States, including traditional students, online or distance education students, and students participating in dual enrollment programs. This policy applies to students located within the United States regardless of whether the other party involved is a fellow student, an employee, or a third party.

B. Where Does this Policy Apply?

1. This policy applies to the Colleges' education programs and activities, which include:
 - a. The physical campuses of the Nebraska State Colleges;

¹ The Office for Civil Rights can be contacted by the following methods: Email – OCR@ed.gov; Telephone – 800-421-3481; FAX – 202-453-6012; TDD – 800-877-8339; Website – <https://ocrcas.ed.gov/contact-ocr> The OCR National Headquarters is located at U.S. Department of Education, Office of Civil Rights, Lyndon Baines Johnson Department of Education Building, 400 Maryland Avenue, SW, Washington, DC 20202-1100

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION

PAGE 2 OF 21

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- b. Areas owned or controlled by the Colleges;
 - c. Locations, events, or circumstances over which the Colleges exercise substantial control over both the respondent and the context in which the sexual harassment occurs;
 - d. Any building owned or controlled by a student organization that is officially recognized by the College.

C. When Does this Policy Apply?

- 1. This policy applies when the College has notice, in the form of actual knowledge, of a report or allegation of Sexual Harassment that has been reported to the Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College as defined in section III of this policy. If the College has actual knowledge of sexual harassment in an education program or activity against a person in the United States, it must respond promptly.

II. Prohibited Conduct

- A. The definition of Sexual Harassment consists of six (6) types of conduct that the College prohibits, which are explained in this section.
- B. **Sexual Harassment:** Sexual Harassment is conduct on the basis of sex, including gender identity and sexual orientation, that satisfies one or more of the following:
 - 1. Quid Pro Quo Harassment
An employee of the College conditioning the provision of an aid, benefit, or service of the College's on an individual's participation in unwelcome sexual conduct.
 - 2. Severe, Pervasive, and Objectively Offensive Unwelcome Conduct
Unwelcome conduct determined by a *reasonable person* to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity. Unwelcomeness and objective offense are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION

PAGE 3 OF 21

3. Sexual Assault

An offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.² Sexual assault includes:

- a. Forcible Sex Offense: Any sexual act directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent. This includes:
 - i. Forcible Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
 - ii. Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - iii. Sexual Assault with an Object: To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - iv. Forcible Fondling—The touching of the private body parts of another person (including, but not limited to, the buttocks, groin, and breasts) for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

² The 2020 Department of Education's Regulations of Title IX state the following in footnote 791 on page 547: The Clery Act, 20 U.S.C. 1092(f)(6)(A)(v) defines "sexual assault" to mean an "offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation." The FBI UCR, in turn, consists of two crime reporting systems: The Summary Reporting System (SRS) and the National Incident-Based Reporting System (NIBRS). U.S. Dep't. of Justice, Criminal Justice Information Services, SRS to NIBRS: The Path to Better UCR Data (Mar. 28, 2017). The current Clery Act regulations, 34 CFR 668.46(a), direct recipients to look to the SRS for a definition of rape and to NIBRS for a definition of fondling, statutory rape, and incest as the offenses falling under "sexual assault." The FBI has announced it will retire the SRS and transition to using only the NIBRS in January 2021. Federal Bureau of Investigation, Criminal Justice Information Services, Uniform Crime Reporting (UCR) Program, National Incident-Based Reporting System (NIBRS), <https://www.fbi.gov/services/cjis/ucr/nibrs>. NIBRS' forcible and nonforcible sex offenses consist of: rape, sodomy, and sexual assault with an object (as well as fondling, statutory rape, and incest, as noted above). Thus, reference to the Clery Act will continue to cover the same range of sex offenses under the FBI UCR regardless of whether or when the FBI phases out the SRS.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION

PAGE 4 OF 21

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- b. Non-Forcible Sex Offense: Non-forcible sexual intercourse. This includes the following:
- i. Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Nebraska state law.
 - ii. Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent of 16.³
4. Dating Violence
Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant.
- a. 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.
 - b. For the purposes of this definition, Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.
5. Domestic Violence
A felony or misdemeanor crime of violence committed:
- a. By a current or former spouse or intimate partner of the Complainant;
 - b. By a person with whom the Complainant shares a child in common;
 - c. By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
 - d. By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Nebraska;
 - e. By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Nebraska.

³ Nebraska Revised Statute 28-319.01

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION

PAGE 5 OF 21

6. Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- a. Fear for the person's safety or the safety of others; or
- b. Suffer substantial emotional distress.

For the purposes of this definition:

- c. Course of conduct means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- d. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

C. Retaliation

Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured under Title IX or 34 CFR Part 106, or because the individual made a complaint or report, testified, assisted, participated, or refused to participate in an investigation, proceeding, or Hearing under this policy.

III. Additional Definitions**A. Advisor:**

1. An individual selected by either the Complainant or Respondent to guide them through the grievance process and accompany them to all meetings, including the Hearing. An Advisor may, for example, assist a party in reviewing the Investigative Report, or provide feedback to a party in preparation for the Hearing.
2. At the Hearing, the party's Advisor asks the other party and any Witness all relevant questions or follow up questions, including those challenging credibility, on behalf of their advisee. In all other instances throughout the grievance process, the party will speak for themselves.
3. If an Advisor is an attorney, they may not participate any more than a non-attorney Advisor would be permitted to participate.
4. If a party does not have an Advisor at the Hearing, the Vice President for Student Affairs or their designee shall appoint an Advisor for the party without any fee or charge to the party.

B. Complainant:

1. An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

C. Confidential Employee:

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL HARASSMENT & SEX DISCRIMINATION

PAGE 6 OF 21

1. A College employee who does not have a duty to report incidents of Sexual Harassment to the Title IX Coordinator.
2. Medical or mental health professionals employed by the Colleges (Licensed Student Counselors, Nurses and Athletic Trainers) are Confidential Employees and respect and protect confidential communications from students, faculty, and staff to the extent they are legally able and/or required to do so.
3. Confidential Employees may have to breach confidentiality when they perceive an immediate and serious threat to any person or property.

D. Consent:

1. Definition:
 - a. Consent is positive cooperation in an act or expression of intent to engage in an act. Consent is indicated through words or conduct. Consent cannot be inferred from silence or passivity alone.
 - b. An individual who consents to a sexual act must give that consent voluntarily, and with knowledge and understanding of the nature of the act and their participation in it.
 - c. Consent to one type of sexual activity does not necessarily constitute consent for another type of sexual activity.
 - d. Consent can be withdrawn by any party at any time through words or conduct.
2. Capacity to Consent:
 - a. A person cannot give consent when they are:
 - i. Incapacitated by drugs or alcohol;
 - ii. Unconscious, passed out, asleep, coming in and out of consciousness;
 - iii. Have a disorder, illness, or disability that impairs their understanding of the act and their ability to make decisions.
 - iv. They are under the threat of violence, injury, or other forms of coercion or intimidation.
 - v. They are forced, coerced, intimidated, or deceived into providing consent.
 - b. If the Complainant was incapacitated, the question of whether the Respondent knew, or should have known, that the Complainant was incapacitated will be considered.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

**GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION**

PAGE 7 OF 21

3. Lack of Consent:

- a. 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 other party that person's refusal to consent.
- b. 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.

E. Education Program or Activity:

1. The Colleges' education programs or activities include locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurred, including any building owned or controlled by a student organization that is officially recognized by the College.

F. Employee:

1. An individual who is paid by the College to perform specific job duties, including faculty and staff, whether they are employed part-time or full-time. This definition excludes student-employees and third party contractors unless otherwise noted.

G. Formal Complaint:

1. A complaint filed and signed by a Complainant or the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting the College investigate the allegation of Sexual Harassment per this policy.
2. At the time of filing the Formal Complaint the Complainant must be participating in or attempting to participate in the Colleges education program or activity.
3. In the event that the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator does not become a party to the Formal Complaint.

H. Hearing Chairperson:

1. The individual who conducts the Hearing and makes decisions regarding the relevance of questions and evidence and their inclusion in the Hearing. The Hearing Chairperson is responsible for providing the determination in writing to the parties.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL HARASSMENT & SEX DISCRIMINATION

PAGE 8 OF 21

I. Hearing Panel:

1. A panel of at least three (3) individuals, who are not students, including the Hearing Chairperson who consider the evidence presented regarding a Formal Complaint and make a determination regarding responsibility pursuant to this policy and, if applicable, any disciplinary action or sanctions to be imposed. The determination will be made using the preponderance of the evidence standard.

J. Mandatory Reporter:

1. Any College employee who is required to report incidents of sexual misconduct of which they become aware to the Title IX Coordinator. The following College employees are Mandatory Reporters:
 - a. President
 - b. Vice Presidents
 - c. Academic Deans
 - d. College Title IX Coordinator and Designees
 - e. Dean of Students
 - f. Housing/Residence Life Staff to include:
 - i. Directors
 - ii. Managers
 - iii. Assistant Directors
 - iv. Senior Residence Hall Advisors
 - v. Residence Hall Advisors
 - g. Coaches and Assistant Coaches
 - h. Campus Security Officers

K. Pre-Hearing Conference:

1. This is an opportunity for the Complainant and Respondent to meet separately with the Hearing Chairperson to review Hearing procedures, submit the questions they intend to ask at the Hearing, and confirm the list of Witnesses, if any, they wish to call at the Hearing. The parties may also discuss options for an Informal Resolution as an alternative to proceeding with a Hearing.

L. Preponderance of the Evidence Standard:

1. A preponderance of the evidence is the greater weight of the evidence indicating it is more likely than not that the alleged conduct occurred. It is the standard the College's decision-maker (Hearing Panel) will use to determine whether or not a Respondent is responsible for Sexual Harassment.

M. Reporting Party:

1. An individual who reports to the Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College on another person's behalf.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

**GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION**

PAGE 9 OF 21

N. Respondent:

1. An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

O. Student:

1. An individual who is currently enrolled or registered in an Education Program or Activity or who has completed the immediately preceding term and is eligible for re-enrollment.

P. Supportive Measures:

1. Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available and without fee or charge to the Complainant and Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.
2. The College may utilize Supportive Measures as supplemental tools in disciplinary action, sanctions or in Informal Resolutions.
3. Parties are treated equitably when offered Supportive Measures. Supportive Measures are kept confidential to the extent possible without impairing the College's ability to provide them.
4. Supportive Measures are designed to restore or preserve equal access to the College's Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or to deter Sexual Harassment.
5. Supportive Measures may include but not be limited to: a referral to counseling services, reasonable academic accommodations, changes to on-campus housing or employment situations, use of Campus Security's escort services, bi-lateral No Contact Orders, and other similar measures.
6. Requests for Supportive Measures must be made directly to the Title IX Coordinator, who will facilitate implementation.

Q. Title IX Coordinator:

1. The employee responsible for responding to reports of Sexual Harassment at the College. The Title IX Coordinator conducts investigations of allegations of Sexual Harassment against a Respondent in a Formal Complaint made by a Complainant.
2. As part of the investigation, the Title IX Coordinator will interview the Complainant, the Respondent, and any Witnesses or others with pertinent information and gather other evidence including but not limited to, submitted written statements, text messages, social media posts, pictures, videos, security camera footage, and other relevant material.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

**GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION**

PAGE 10 OF 21

3. The Title IX Coordinator reviews and assesses the credibility of the available evidence, synthesizes areas of dispute and agreement, and creates an Investigative Report summarizing this information and provides it to the Hearing Panel.

R. Witness:

1. An individual who witnessed the alleged incident or has relevant information about the allegations.

IV. Dismissal of Formal Complaints

A. Mandatory Dismissal

1. The College is required⁴ to dismiss a Formal Complaint made per this policy in the following circumstances:
 - a. The alleged conduct would not constitute Sexual Harassment as defined in this policy, even if proved;
 - b. The alleged conduct did not occur in the College's Education Program or Activity; or,
 - c. The alleged conduct did not occur against a person in the United States.
2. The parties will receive written notice explaining the reasons for dismissal. Allegations that are dismissed for these reasons may be addressed by the Student Code of Conduct set forth in Board Policy 3100. The parties may appeal the dismissal, per the appeal requirements in Section VII.C.12.

B. Permissive Dismissal

1. The College may choose to dismiss a Formal Complaint made per this policy in the following circumstances:
 - a. The Complainant withdraws a Formal Complaint in writing.
 - b. The Respondent is no longer enrolled or employed by the College.
 - c. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination.
2. The parties will receive written notice explaining the reasons for dismissal. The parties may appeal the dismissal, per the appeal requirements in Section VII.C.12.

⁴ Per 34 CFR § 106.45(3)(i)

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

**POLICY: 3020 GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION PAGE 11 OF 21**

V. Reporting Sexual Harassment

A. Reporting to the College

1. Any person may report sex discrimination, including Sexual Harassment, to the College. A person who alleges to be the victim of Sexual Harassment is the Complainant. A person who submits a report on behalf of another person is the Reporting Party. Reports can be made by mail, telephone, email, in person, or by any other means that results in the Title IX Coordinator receiving the person's written or verbal report.
2. The names and contact information for the Colleges' Title IX Coordinators are below.

Chadron State College	Peru State College	Wayne State College
Name: Ted Tewahade E-mail: ttewahade@csc.edu Phone: (308) 430-0980 Address: Crites Hall 341 1000 Main Street Chadron, NE, 69337 https://www.csc.edu/titleix/	Name: Eulanda Cade E-mail: ecade@peru.edu Phone: (402) 872-2230 Address: Administration, 312 PO Box 10 Peru, NE, 68421 https://www.peru.edu/titleix/	Name: Tiffany Dearstone E-mail: tidears1@wsc.edu Phone: (402) 375-7589 Address: Student Center 12G 1111 North Main Street Wayne, NE, 68787 https://www.wsc.edu/info/20160/title_ix

3. The College appreciates the privacy concerns inherent in allegations of Sexual Harassment.
 - a. 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;
 - i. Prior written permission is given by the student concerned;
 - ii. The disclosure is necessary to conduct an investigation or implement a Supportive Measure;
 - iii. The disclosure is necessary to pursue disciplinary action;
 - iv. The disclosure is otherwise required by law.
 - b. Complainants 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 the parties involved.⁵

⁵ Per the Clery Act, 20 U.S.C. § 1092(f)

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

**POLICY: 3020 GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION PAGE 12 OF 21**

4. The law recognizes and protects the confidentiality of communications between a person seeking care and a medical or mental health professional.
 - a. Medical or mental health professionals employed by the College (Licensed Student Counselors, Nurses and Athletic Trainers) are Confidential Employees.
 - b. Confidential Employees are not required to report incidents of Sexual Harassment or Sex Discrimination of which they become aware to the Title IX Coordinator and may respect and protect confidential communications from students, faculty, and staff to the extent they are legally able to do so. Confidential Employees may have to breach a confidence, however, when they perceive an immediate and serious threat to any person or property.
 - c. All College employees (including Confidential Employees) are required by state law to report allegations or reasonable suspicion of child abuse or neglect, including sexual assault or abuse of a minor, to either law enforcement or the Department of Health and Human Services.⁶ The Child Abuse and Neglect Hotline is (800) 652-1999. In Nebraska, the age of majority is nineteen (19).

B. Reporting Conduct to Law Enforcement

1. Reporting conduct to the College and reporting conduct to law enforcement are two (2) separate processes. A Complainant can choose to report the conduct only to the College, or only to law enforcement, or to both the College and law enforcement.

C. Judicial Orders

1. Parties may pursue judicial remedies such as orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal, civil, or tribal courts.
2. Parties are responsible for notifying the College of such an order and should provide a copy of it to the Title IX Coordinator/Designee as soon as reasonably possible. The party may discuss options with the Title IX Coordinator/Designee regarding enforcing the order when the parties participate in a College Educational Program or Activity.

D. Medical Care and Law Enforcement

1. A Complainant may obtain medical care to collect and preserve physical evidence of the alleged offense.
2. Health care providers are required to report to law enforcement when an injury appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault.⁷

⁶ Nebraska Revised Statute 28-711.

⁷ *Nebraska Medical Sexual Assault Protocol*, Nebraska Attorney General's Office, July 2019. Available at <https://ago.nebraska.gov/sites/ago.nebraska.gov/files/doc/Nebraska%20Medical%20Sexual%20Assault%20Protocol%20FINAL.pdf>

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL HARASSMENT & SEX DISCRIMINATION

PAGE 13 OF 21

3. A Complainant eighteen (18) years and older who has not experienced serious bodily injury may choose from the following options regarding reporting to law enforcement and evidence collection: (1) Full report with evidence collection; (2) Partial report with evidence collection; and (3) Anonymous report with evidence collection. Additional information about these options is available in the [Nebraska Medical Sexual Assault Protocol](#). It is important that a Complainant make an informed decision regarding important physical evidence that may be preserved.
4. Regardless of whether or not the law enforcement authorities choose to prosecute a reported offense, the College can pursue disciplinary action against a student or employee alleged to have committed Sexual Harassment. If a report is made to law enforcement and the agency pursues an investigation, the College will cooperate with the law enforcement agency.

VI. Emergency Removal of Complainants and Respondents

A. The College may remove a Complainant or Respondent from the College's Education Program or Activity on an emergency basis when appropriate.

1. In such an instance the College must do the following:
 - a. Conduct an individualized safety and risk analysis prior to removal;
 - b. Determine whether an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment exists, and whether the risk justifies removing a Complainant or Respondent;
 - c. If removal is deemed appropriate, the College must provide the party with notice of removal and an opportunity to challenge the decision immediately following removal.
2. Decisions to remove a Complainant or Respondent on an emergency basis will be made by the Vice President for Student Affairs. The Vice President for Student Affairs will consider the result of the College's safety and risk assessment process when determining whether removal is appropriate:

VII. Grievance Process

A. Overview

1. The Complainant has two (2) options to resolve their Formal Complaint of Sexual Harassment: (1) the College investigates the alleged conduct and a determination regarding responsibility is made after a Hearing; or (2) both the Complainant and Respondent agree to an Informal Resolution that the College deems appropriate, any time prior to a determination regarding responsibility. Informal Resolutions require the voluntary and written consent of both the Complainant and Respondent, and may not involve a full investigation. The Complainant may choose which process to initiate.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL HARASSMENT & SEX DISCRIMINATION

PAGE 14 OF 21

2. The Colleges' grievance process for resolving allegations of Sexual Harassment is fair and impartial. All relevant evidence will be objectively evaluated, including inculpatory and exculpatory evidence. Credibility determinations are not based on a person's status as a Complainant, Respondent, or Witness. Respondents are presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. All parties and Witnesses are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.
3. The burden of proof and gathering evidence rests on the College, not the parties. Parties will have opportunities to provide their account of the alleged incident, respond to the other party's account, and inspect and review evidence that is directly related to the allegations.
4. Each party may have an Advisor of their choice, who may be, but is not required to be, an attorney. Advisors may accompany the party to any meeting or proceeding. If a party does not have an Advisor at the Hearing, the Vice President for Student Affairs or their designee shall appoint an Advisor for the party without any fee or charge to the party.
5. The College strives to complete the Grievance Process within sixty (60) business days. Throughout the process the College will provide the parties with regular status updates and information regarding next steps.

B. Request to Temporarily Delay the Grievance Process

1. A party may submit a written request to the Title IX Coordinator to temporarily delay the grievance process or provide a limited extension of time for good cause. Good cause may include, but is not limited to:
 - a. The absence of a party, the party's Advisor, or a Witness;
 - b. Concurrent law enforcement activity;
 - c. The need for language assistance or disability accommodation.
2. If the request is granted, the Title IX Coordinator will notify the parties in writing of the delay or extension and the reasons for it. The College may also elect to delay the grievance process for good cause.

C. Process Steps

1. Report Received:
The Title IX Coordinator receives an initial report alleging Sexual Harassment. This report may be from the person who alleges to be the victim of Sexual Harassment (Complainant) or it may have been submitted on their behalf by a third party (Reporting Party). Outreach to Complainant:
The Title IX Coordinator will promptly contact the Complainant for the following purposes:

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION

PAGE 15 OF 21

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- a. To discuss the report, the availability of Supportive Measures, and the Complainant's wishes regarding Supportive Measures;
 - b. To listen to the Complainant's account and ask questions to gain a better understanding of the nature of the alleged incident;
 - c. To explain this policy and the definition of Sexual Harassment.
2. Outreach to Complainant:
The Title IX Coordinator will promptly contact the Complainant for the following purposes:
 - a. To discuss the report, the availability of Supportive Measures, and the Complainant's wishes regarding Supportive Measures;
 - b. To listen to the Complainant's account and ask questions to gain a better understanding of the nature of the alleged incident;
 - c. To explain this policy and the definition of Sexual Harassment
 3. Determination Regarding Policy Application:
The Title IX Coordinator will determine whether the alleged conduct is redressible by this policy, which applies exclusively to Sexual Harassment, or whether the alleged conduct may be redressible under another College policy, such as the Student Code of Conduct.
 - a. Alleged conduct that would constitute Sexual Harassment if proved can be addressed by this policy. Continue to Step 4.
 - b. Alleged conduct that does not constitute Sexual Harassment if proved may be redressible under another College policy. In this case, the Title IX Coordinator will refer the Complainant to the appropriate College official.
 - c. If the alleged conduct is redressible by this policy, the Title IX Coordinator will facilitate appropriate Supportive Measures for the parties. If the alleged conduct is redressible under another College policy, the Title IX Coordinator will delegate the responsibility of facilitating Supportive Measures to the Dean of Students or other appropriate College official.
 4. Formal Complaint Submitted:
Complainant will sign a Formal Complaint alleging Sexual Harassment against a Respondent and requesting that the College investigate the allegation.
 5. Parties Receive Notice of Allegations:
The Complainant and Respondent will be notified in writing of the allegations and that the College will conduct an investigation. The Respondent's notice will include sufficient details known at the time and allow sufficient time for Respondent to prepare a response before any initial interview.
 6. Title IX Coordinator or Designee Conducts Investigation:
The investigation will involve the following:

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION

PAGE 16 OF 21

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- a. Gathering evidence;
 - i. If a party wishes for their medical records, prior educational records, or other records that are external to the College to be considered in the grievance process they must provide written consent for those records to be released to the College and make arrangements for the records to be sent to the College.
 - b. Interviewing the Complainant, Respondent, and any Witnesses;
 - c. Review and assessment of all related written statements, reports, and other relevant material;
 - d. Synthesizing areas of dispute and agreement between the parties;
 - e. Preparation of an Investigative Report that organizes, assesses, and fairly summarizes the relevant evidence and synthesizes areas of dispute and agreement between the parties.
 - f. Review of applicable College policies;
 - g. If a party has not selected an Advisor to be present at the Hearing the College will appoint an Advisor. The Advisor will ask all cross-examination questions at the hearing on the party's behalf.
7. Inspection and Review of Evidence and Parties' Response:
Prior to the completion of the Investigative Report, the parties and their Advisors, will receive an electronic copy of all the evidence obtained from the investigation that is directly related to the allegations.
- a. **Parties will have ten (10) calendar days to submit a written response**, which will be considered prior to the completion of the Investigative Report. This is an opportunity for each party to correct or clarify the evidence or provide additional information before the Investigative Report is completed.
 - b. Any written response from the parties will be included in the Investigative Report.
 - c. A party's failure to respond will be taken as their confirmation that the evidence they received is accurate for the purposes of the following procedural steps.
8. Investigative Report Prepared and Provided to the Parties:
The Title IX Coordinator/Designee will prepare an Investigative Report that organizes and fairly summarizes the relevant evidence and highlights key issues.
- a. The Title IX Coordinator/Designee will also prepare a file containing any additional evidence that is directly related to the allegations, but upon which the College does not intend to rely in making a determination regarding responsibility. Both the Investigative Report and this file (if applicable) will be provided to the parties and their Advisors when they receive the Investigative Report.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL HARASSMENT & SEX DISCRIMINATION

PAGE 17 OF 21

-
- b. The parties and their Advisors will receive an electronic copy of the Investigative Report and any additional evidence for their review and written response at least ten (10) calendar days prior to the Hearing. This is an opportunity for each party to identify any inaccuracies in the Investigative Report or any additional evidence before the Hearing. A party's failure to respond will be taken as their confirmation that the Investigative Report and any additional evidence is accurate. Once the Investigative Report is finalized the Title IX Coordinator/Designee will provide it and any additional evidence to the Hearing Panel.
 - c. Parties and/or Hearing Panel members who wish to call a Witness during the Hearing must submit in writing the Witness's name(s) and contact information to the Hearing Chairperson before the date of the Pre-Hearing Conference. The Hearing Chairperson is responsible for summoning the Witnesses in writing.
9. Pre-Hearing Conference:
Each party and their Advisor will attend a Pre-Hearing Conference with the Hearing Chairperson. The purpose of this Pre-Hearing Conference is to prepare the parties for the Hearing and ensure that they understand the procedures.
- a. The Pre-Hearing Conference must occur after the parties have had ten (10) calendar days to review the Investigative Report and any additional evidence and respond. The Title IX Coordinator or Designee will be present, but the Hearing Chairperson will direct the conference.
 - b. At the Pre-Hearing Conference, the parties and their Advisors:
 - i. Will be notified of the Hearing date, time, and location.
 - ii. Will have the opportunity to inspect and review the Investigative Report and all the evidence directly related to the allegation, including evidence upon which the College does not intend to rely in making a determination of responsibility and exculpatory and inculpatory evidence.
 - iii. Will confirm the list of Witnesses the party and/or the Hearing Panel wishes to call at the Hearing.
 - iv. Will submit in writing any evidence they intend to use or questions they intend to ask (through their Advisor) of the other party and any Witnesses at the Hearing.
 - c. During the Pre-Hearing Conference, the Hearing Chairperson will review the submitted questions and evidence and make a determination regarding their relevancy.
 - d. If a question or evidence is not relevant, the Hearing Chairperson will explain and document their decision to exclude it from the Hearing in the Pre-Hearing Conference Summary. The parties may provide reasons why they believe the question or evidence is relevant or not relevant and their rationale will be taken into consideration by the Hearing Chairperson.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION

PAGE 18 OF 21

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- e. Questions and evidence about the Complainant's or Respondent's sexual predisposition or prior sexual behavior are not relevant. There are three (3) exceptions:
 - i. Such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant;
 - ii. If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent;
 - iii. If the questions and evidence concern specific incidents of the Respondent's prior sexual behavior with respect to the Complainant and are offered to prove consent.
 - f. Exclusion of such questions or evidence will be explained and documented in the Pre-Hearing Conference Summary.
 - g. Questions or evidence that constitute or seek disclosure of information protected by a legally recognized privilege are not permitted at the Hearing, unless the person holding the privilege waives it. This may include information protected by doctor-patient or attorney-client privilege. The exclusion of such questions or evidence will be explained and documented in the Pre-Hearing Conference Summary.
 - h. The parties and their Advisors will be informed that they may still resolve the matter informally at this point in the grievance process. See Section VII. D. for information about Informal Resolutions. If the parties wish to continue to a Hearing, the Hearing Chairperson will review Hearing procedures with each party.
 - i. The Hearing Chairperson will write a Pre-Hearing Conference Summary that includes documentation of relevancy based exclusions of questions or evidence and the list of approved questions or evidence. The Hearing Chairperson will provide it to the parties in writing before the Hearing and it will become part of the record provided to the Hearing Panel.
10. Hearing:
- a. The College will conduct a live Hearing to determine whether the Respondent is responsible for the alleged conduct, and if so, what disciplinary measures or sanctions will be imposed. The Hearing Panel is the decision maker and will use the preponderance of the evidence standard, which means the greater weight of the evidence.
 - b. The Hearing Panel will consist of a minimum of three (3) individuals, who each have a vote. Students will not serve on the Hearing Panel. The Hearing Chairperson will direct the hearing and the determination will be made by the majority vote. At its discretion, the College may employ a third party to conduct the hearing.
 - c. The Title IX Coordinator or Designee (who conducted the investigation) will be present at the Hearing to answer questions or clarify information, but will have no other role in the grievance process.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION

PAGE 19 OF 21

-
- d. The Hearing Panel will be permitted to call witnesses. Each party's Advisor will be permitted to present evidence and ask the other party and any witnesses all relevant questions and follow-up questions, including those that challenge credibility.
 - e. Before a party or Witness responds to a question or evidence presented, the Hearing Chairperson must first determine whether it is relevant and explain any decision to exclude a question or evidence presented as not relevant, unless the question or evidence presented was approved as relevant during the Pre-Hearing Conference.
 - f. If a party or Witness does not submit to cross-examination at the Hearing, the Hearing Panel must not rely on any statement that party or Witness made (during the investigation and/or the Hearing) in reaching a determination regarding responsibility. However, the hearing panel cannot draw an inference about the determination regarding responsibility based solely on a party's or Witness's absence from the Hearing or refusal to answer cross-examination or other questions.
 - g. Either party may request to be located in separate rooms during the Hearing, with technology enabling the Hearing Panel and parties to simultaneously see and hear the party or Witness answering questions.
 - h. The College shall create an audio or audio-visual recording of any Hearing and make it available to the parties for inspection and review. After the Hearing is complete the Hearing Panel will convene in private within forty-eight (48) hours of the end of the hearing to vote.
11. Parties Receive Written Determination Regarding Responsibility:
- a. The Hearing Chairperson will simultaneously provide the parties a written determination regarding responsibility and any applicable disciplinary action within ten (10) calendar days of the Hearing's conclusion.
 - b. If an appeal is filed, the determination will become final on the date that the College provides the parties with the written determination of the result of the appeal. If no appeal is filed, the determination will become final on the date that an appeal would no longer be timely.
12. Appeal:
- a. The Complainant and/or the Respondent may appeal to the President a determination regarding responsibility or the College's dismissal of a Formal Complaint.
 - b. **Appeals must be submitted to the President in writing within five (5) calendar days of the determination regarding responsibility or within five (5) calendar days of the dismissal of the Formal Complaint.**
 - c. The Title IX Coordinator/Designee will provide the President the record of the investigation and Hearing.
 - d. When an appeal is filed the Title IX Coordinator/Designee will notify the other party in writing. Both parties will have five (5) calendar days to submit to the President a written statement in support of, or challenging, the outcome.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020

GRIEVANCE POLICY & PROCEDURES FOR SEXUAL
HARASSMENT & SEX DISCRIMINATION

PAGE 20 OF 21

-
- e. The permissible bases for appeal are:
 - i. Procedural irregularity that affected the outcome of the matter;
 - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
 - iii. The Title IX Coordinator, Designee, Hearing Chairperson or Hearing Panel member had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that affected the outcome of the matter.
 - f. The parties will simultaneously receive a written decision describing the result of the appeal and the rationale for the result.
 - g. If an appeal is filed, the determination will become final on the date that the College provides the parties with the written determination of the result of the appeal. Any sanctions imposed by the initial determination of responsibility will go into effect *after* the five (5) day window for appeals closes, and if an appeal occurs, after it is complete. However, existing Supportive Measures may remain in place.

D. Informal Resolution

- A. At any time prior to reaching a determination regarding responsibility the College may facilitate an Informal Resolution process that does not involve a full investigation and Hearing. A Formal Complaint is a prerequisite of an Informal Resolution, and both parties must provide voluntary, written consent to participate in the Informal Resolution process.
 - 1. The College will provide the parties with written notice disclosing the allegations, the requirements of the Informal Resolution process, and any consequences resulting from participating in the Informal Resolution process, including records that will be maintained or shared.
 - 2. The Title IX Coordinator/Designee can present a framework of potential remedies to guide the parties in negotiation, but the parties themselves must come to an agreement. The Title IX Coordinator/Designee will facilitate this process, and will use their discretion to ensure that the Informal Resolution is appropriate for the College. The parties may not bind the College to a resolution that the College does not deem appropriate.
 - 3. Informal Resolution may be accomplished through mediation and other forms of facilitation, such as the parties communicating through the Title IX Coordinator/Designee to minimize contact with each other, or the parties communicating directly with each other and the Title IX Coordinator/Designee.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3020 GRIEVANCE POLICY & PROCEDURES FOR SEXUAL HARASSMENT & SEX DISCRIMINATION PAGE 21 OF 21

- 4. The Informal Resolution process cannot be used to resolve allegations that an employee (including a student-employee) sexually harassed a student if the alleged harassment occurred in the context of their employment.

VIII. Retaliation

A. Retaliation is Prohibited

- 1. The College will not tolerate or engage in intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured under Title IX or 34 CFR Part 106, or because the individual made a complaint or report, testified, assisted, participated, or refused to participate in an investigation, proceeding, or Hearing under this policy.
- 2. The exercise of First Amendment rights does not constitute retaliation.
- 3. Complaints alleging retaliation may be filed and resolved per this policy.

IX. Disciplinary Sanctions & Remedies

A. Range of Options

- 1. Subsequent to a determination of responsibility, the College may take disciplinary action, impose sanctions and apply remedies, which may include, but are not limited to: warnings, disciplinary probation, loss of privileges, restitution, remedial work assignments, remedial education requirements, service requirements, remedial behavioral requirements, College housing relocation or suspension, removal from College housing, suspension, and expulsion.
- 2. Remedies, including disciplinary action and informal resolutions, are designed to restore or preserve the Complainant’s equal access to the Colleges’ education programs and activities.

Policy Adopted:	6/15/12	Effective:	7/1/12	<u>Policy Revised:</u>
Policy Revised:	7/29/13			
Policy Revised:	12/10/13			
Policy Revised:	4/25/14	Effective:	7/1/14	
Policy Revised:	11/7/14			
Policy Revised:	1/14/15			
Policy Revised:	3/26/15	Effective:	7/1/15	
Policy Revised:	8/5/15			
Policy Revised:	3/1/16			
Policy Revised:	10/14/16			
Policy Revised:	6/16/17			
Policy Revised:	7/31/17			
Policy Revised:	6/19/18			

Attachment: Revisions to Board Policy 3020 (2757 : Revisions to Board Policy 3020; 3100; 3200; 5007 and New Policy 5011)

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3100 Conduct & Discipline; Students

Page 1 of 4

BOARD POLICY

The Board and the Colleges are committed to creating and maintaining a productive educational community that fosters the personal, ethical and intellectual development of its students. Adherence to standards of conduct is essential to the educational process and to the safety and well-being of the College community.

The Board grants authority to the Presidents to designate appropriate officers, establish representative college committees, render initial decisions and provide appeal procedures in regard to allegations of academic dishonesty; grade appeals; failure to pay a financial obligation; or academic performance, achievement, probation and suspension. All disciplinary sanctions imposed for misconduct identified in this policy are to be governed by terms of this policy and the due process requirements set forth in Board Policy #3200. Acceptance of this policy by the student is implied as a condition of his or her enrollment.

PROCEDURE

Students are responsible to obey the laws of the state and nation, the regulations and policies of the Board and of the Colleges; and to refrain from any conduct injurious to themselves, to others, or to the reputation or interests of the College.

A student shall not ignore a summons from the President or other officer of administration of the College, or from a member of the faculty.

Student misconduct as identified under this policy or a violation of College regulations or policy, whether occurring on or off College property, may result in disciplinary action being taken against the student.

Students may be ordered to leave the College under a temporary suspension pending disciplinary action due process per Board Policy 3200 in the event the student's continued presence is believed to threaten the safety or health of another person or for other reasons at the discretion of the Vice President responsible for Student Affairs or designee. Such order shall be given in writing by the Vice President responsible for Student Affairs or designee.

Students suspended or expelled from one of the State Colleges may be admitted to another Nebraska State College only under the same conditions that they would be readmitted to the College from which they were suspended.

Misconduct

The following acts shall be considered to constitute misconduct for which an offending student or student organization may be subject to disciplinary sanctions.

1. Participation in a demonstration on College property which materially and substantially disrupts or obstructs the normal operations, activities or functions of the College, including unauthorized occupation of College premises;
2. Failure to evacuate College facilities or willfully ignoring any emergency or alarm signal or request to evacuate by appropriate emergency personnel;
3. Falsification or willful suppression of any information for or on an application for admission, or falsification or misuse of College identification and other documents;

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3100 Conduct & Discipline; Students

Page 2 of 4

4. Misuse of computers or computing resources, including, but not limited to, violating the following federal regulations: the Copyright Act of 1976 and the Fair Use Guidelines, the Digital Millennium Copyright Act of 1998, and the Technology, Education and Copyright Harmonization Act of 2002;
5. Unlawful or unauthorized possession, use, distribution, dispensing, delivery, sale or consumption, manufacture, or being in the presence of any alcoholic beverage, including empty bottles/cans or any alcohol container on any part of College property including outdoor areas and parking lots;
6. Alcohol consumption that endangers the health, safety, or property of oneself or another, or requires medical treatment or College staff intervention;
7. Unlawful or unauthorized possession, use, distribution, delivery, dispensing, manufacture or sale, or being in the presence of any drug; being in possession of paraphernalia for drug use, except as expressly permitted by law, or being unlawfully under the influence of any drug unless directed by a licensed physician;
8. Inflicting unwanted physical contact on another person; conduct that intimidates, harasses, or threatens the safety, health, property, or life of others or oneself; participating or contributing to an incident of abuse or assault; causing, provoking or engaging in any fight, brawl or riotous behavior; or inflicting willful and repeated harm through the use of computers, cell phones, and other electronic devices;
9. Any act occurring on College property or on the premises of a student housing unit which intentionally disturbs the peace and quiet of any person or group of persons;
10. Sex harassment ~~or sexual violence~~, as Board Policy #3020 defines those terms;¹
11. Conduct which is unreasonably dangerous to the health or safety of other persons or oneself;
12. Theft or attempted theft of any property or receipt of stolen property;
13. Damaging or attempting to damage property of the College or of another individual;
14. Using or possessing bombs, explosives, incendiary devices, or fireworks;
15. Setting or attempting to set any fire on the campus or on the premises of any student housing unit, except in fireplaces or other facilities designated for fires;
16. Failing to report a fire or any other extremely dangerous condition when known or recognized on College property or on the premises of any student housing unit;
17. Possessing or selling firearms, ammunition, weapons, explosives, or dangerous chemicals on College property or on the premises of any student housing unit;
- ~~18. Obstructing or failing to comply with the directions of a law enforcement officer, firefighter, or College official in the performance of his or her duty on College property, on the premises of any student housing~~

¹ The Office for Civil Rights can be contacted by the following methods: Email – OCR@ed.gov; Telephone – 800-421-3481; FAX – 202-453-6012; TDD – 800-877-8339; Website – <https://ocrcas.ed.gov/contact-ocr>. The OCR National Headquarters is located at U.S. Department of Education, Office for Civil Rights, Lyndon Baines Johnson Department of Education Building, 400 Maryland Avenue, SW, Washington, DC 20202-1100

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3100 Conduct & Discipline; Students

Page 3 of 4

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18. Obstructing or failing to comply with the directions of a law enforcement officer, firefighter, or College official in the performance of his or her duty on -College -property, on the premises of any student housing unit or at any activity or event sponsored by the College or an organization;
19. Hazing any person. Consent of the victim of the hazing will not constitute a defense to an allegation of misconduct for hazing. Hazing shall mean any activity by which a person intentionally or recklessly endangers the physical or mental health or safety of an individual for the purpose of initiation into, admission into, affiliation with, or continued membership with any organization;
20. Committing any unlawful act of indecent exposure or public indecency;
21. Participating in any gambling activity in violation of the laws of the State of Nebraska or of the United States;
22. Unauthorized use of any College property, facilities, equipment or materials;
23. Possessing, producing, manufacturing, or having manufactured without proper authorization, any key or unlocking device for use on any College facility or lock;
24. Serious traffic violations on the campus, including, but not limited to, operating any vehicle while intoxicated, speeding, reckless endangerment, or reckless driving;
25. Violation of any student housing unit policy, rule or regulation;
26. Failure to redeem or make arrangements to redeem, within one week after receipt of written notice, an insufficient funds or no account check submitted to the College for cash or for payment of College goods or services;
27. Abuse of College investigations or disciplinary proceedings which includes, but is not limited to, failure to obey a request to appear before a disciplinary officer or committee, falsification of testimony, disruption or interference with the orderly conduct of any hearing, attempting to discourage any person from using College disciplinary procedures or participating in such procedures, attempting to influence the impartiality of a member of a disciplinary committee prior to any proceeding, filing a malicious, false or frivolous complaint, verbal or physical harassment or intimidation of a member of a disciplinary committee prior to, during, or after a proceeding, failure to comply with any sanction imposed, influencing or attempting to influence another person to commit an abuse of disciplinary proceedings, and a violation of the privacy rights of any student or College employee in regard to a disciplinary proceeding;
28. Any act by a student which occurs on the campus, while studying abroad, on the premises of any student housing unit or at any activity or event sponsored by the College or an organization which is in violation of any ordinance of the municipality in which the College resides, shall constitute misconduct;
29. Falsely setting off or otherwise tampering with any emergency safety equipment, fire alarm, or other device established for the safety of individuals and/or college facilities;
30. Harassing or discriminating against any student, faculty or staff member, as defined in Board Policy 3021, on the basis of race, color, national origin, sex, sexual orientation, gender identity, disability, religion or age; and

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3100 Conduct & Discipline; Students

Page 4 of 4

31. Any other activity or conduct prohibited by the College in published policies.

Unreasonably Dangerous or Threatening Conduct Toward Self

Student behaviors and actions that are unreasonably dangerous to self or which threaten the student’s own safety or health may constitute misconduct under this Policy and may be addressed by the College administration through the disciplinary process. When practicable and appropriate, efforts will be made to advise students regarding voluntary withdrawal options in lieu of initiating disciplinary due process as set forth in Board Policy #3200.

At the discretion of the Vice President responsible for Student Affairs or designee, a student may be allowed to voluntarily withdraw when continued enrollment no longer appears to be in the best interests of the student and/or College in conjunction with mutually agreed upon conditions that will be required for the student to reapply for admission.

Temporary Suspension

Students may be ordered to leave the College under a temporary suspension pending disciplinary action due process per Board Policy 3200 in the event the student’s continued presence is believed to threaten the safety or health of another person or for other reasons at the discretion of the Vice President responsible for Student Affairs or designee.

Other Interim Measures

Pending disciplinary action under Board Policy 3200, students may be subject to the interim measures, including but not limited to no contact orders, temporary restrictions from specific areas of the campus, changes in class schedules and/or delivery; changes in residence hall assignments and/or changes in campus employment.

Legal Reference: RRS 85-312	State colleges; morals of the pupils; faculty; religious test forbidden
RRS 85-601	Interference with operation; faculty, administrative staff, student; dismissal or expulsion
RRS 85-301	State college; official names; Board of Education; appointment; no compensation; travel expenses
RRS 53-186	Consumption of liquor on public property, public roads, streets, alleys; prohibition; exceptions

- Policy Adopted: 1/28/77
- Policy Revised: 4/3/81
- Policy Revised: 6/5/93
- Policy Revised: 3/11/94
- Policy Revised: 8/29/97
- Policy Revised: 3/28/08
- Policy Revised: 3/25/11
- Policy Revised: 1/18/12
- Policy Revised: 4/25/14
- Policy Revised: 6/10/16
- Policy Revised: 6/19/18
- Policy Revised: 9/12/19
- Policy Revised: 4/23/20

Policy Revised:

Attachment: Revisions to Board Policy 3100 (2757 : Revisions to Board Policy 3020; 3100; 3200; 5007 and New Policy 5011)

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3200

Due Process -- Students

Page 1 of 4

BOARD POLICY

It is the policy of the Board to grant procedural due process to students accused of misconduct under the terms of Board Policy 3100. Regarding allegations of academic dishonesty; grade appeals; failure to pay a financial obligation; or, academic performance, achievement, probation and suspension each College will devise its own adjudication procedures. However, for allegations of misconduct identified in Board Policy 3100 that may result in disciplinary sanctions, the due process procedures outlined below shall be followed.

Nothing herein shall prohibit the College from resolving conduct issues informally if warranted by the individual circumstances including, but not limited to the responsiveness of the student, the severity of the offense, a student's prior misconduct, and the health and safety of the student and other members of the campus community. Informal resolution of conduct issues in which two (2) or more students are involved in a physical altercation with one another will not be permitted unless all students involved agree to informal resolution.

DISCIPLINARY SANCTIONS

Disciplinary sanctions may include warnings, demands for restitution or reimbursement, fines, a period of probation, remedial behavioral requirements, remedial educational requirements, suspension, or expulsion.

REQUESTS TO DELAY DUE PROCESS PROCEDURES

In the event that a concurrent civil or criminal action for the same behavior which forms the basis of misconduct allegations under the provisions of this policy is in progress, the accused student may request in writing to the Vice President responsible for Student Affairs, or equivalent administrator, that the College delay the continuance of the due process procedures. By requesting to delay until the external civil or criminal proceeding has concluded, the student agrees that he or she shall not attend any College classes or College-sponsored events or activities or shall not enter or use College property, including but not limited to living in residence halls, without specific written authorization from the Vice President responsible for Student Affairs. The Vice President responsible for Student Affairs, or equivalent administrator, may place reasonable limits on the length of the delay permitted.

WITHDRAWAL

At the discretion of the Vice President responsible for Student Affairs, a student may be allowed to voluntarily withdraw when continued enrollment no longer appears to be in the best interests of the student and/or College in conjunction with mutually agreed upon conditions that will be required for the student to reapply for admission. The Vice President responsible for Student Affairs will work with the Vice President for Academic Affairs to determine what, if any, academic penalties would apply. Any unresolved conduct issues will remain pending and must be resolved as a condition of readmission. Additional conditions may include, but not be limited to, the length of time a student must wait to reapply and/or the length of time a student has to reapply for admission.

PROCEDURE

1. The student shall be notified in writing by an appropriate College official that he/she is accused of misconduct. The student shall be made aware of grounds which would justify such action by way of the student handbook or other published College regulation.
2. The student shall be notified that he/she may elect one of three courses of action. The student shall be advised of a date (deadline) by which such an election must be communicated to the appropriate College official.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3200 Due Process -- Students

Page 2 of 4

- a. The student may admit the alleged violation and request, in writing, that the appropriate College official take whatever action seems appropriate.
- b. The student may admit the alleged violation in writing and request a hearing before the appropriate hearing panel designated by the College. The hearing panel will determine the appropriate sanctions.
- c. The student may deny the alleged violation, in which case, the appropriate College official shall refer him/her to the appropriate hearing panel designated by the College. The hearing panel will determine responsibility and the appropriate sanctions.

NOTE: If the student fails to respond to the appropriate College official in a timely manner according to the date (deadline) and/or fails to elect one (1) of the three (3) courses of action, the appropriate College official may address the alleged misconduct without providing further due process.

3. Under option 2a noted above, the College may address the alleged misconduct without providing further due process. The student's decision can be binding, if freely and knowingly made, even though suspension, expulsion or the imposition of a stigmatizing sanction might result. Students should be advised in writing of all risks associated with any waiver of due process rights and provided a reasonable amount of time to consider their decision and to confer with a family member or advisor.
4. If the student selects either option 2b or 2c as noted above, a hearing shall be conducted in accordance with the following procedure within ten (10) class days, unless the student requests an extension in writing, which shall not be unreasonably denied. Requests for an extension should be directed to the Vice President responsible for Student Affairs or their designee. Students studying abroad shall be under the direction of the accompanying College official until his/her return to campus, at which time, if needed, the due process procedures will commence.
 - a. Prior to the hearing, the student shall be entitled to the following:
 - Written notification of the time and place of the hearing with reasonable time allowed for grievant to prepare a presentation and defense.
 - A written statement of the allegations (incident or behavior) with sufficient particularity so that the student may prepare his/her defense.
 - The grounds which would justify disciplinary action cited in the student handbook or Board Policy and the possible sanctions that may be imposed.
 - Written notification of the names of the witnesses who are directly responsible for having reported the allegations, or, if there are no such witnesses, written notification of how the allegations came to the hearing panel's attention, and
 - A copy of all documentary evidence to go before the hearing panel.
 - b. The student shall be entitled to appear in person before the hearing panel, and may call witnesses on his/her behalf. If the student does not appear before the hearing panel, the hearing shall be held in his/her absence.
 - ~~Title IX Matters: If the hearing concerns a violation of Board Policy 3020, the College's Title IX Coordinator or designee shall present the evidence supporting his/her finding of responsibility.~~

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3200 Due Process -- Students

Page 3 of 4

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- c. The student shall be entitled to be accompanied by a person of his or her own choosing from the College community to assist in the proceedings or by counsel at the student's expense. An attorney or advisor, if present at the request of the student, may be present to counsel the student, but may not directly participate in the hearing by making oral presentations or arguments, examine or cross-examine a witness, or object to testimony of a witness or to introduction of other evidence.
 - d. The student shall be entitled to ask questions of the hearing panel or any witnesses.
 - e. The student shall be entitled to an expeditious hearing of the case.
 - f. Hearings are closed to the public.
 - g. An audio recording of the hearing will be made and kept by the College consistent with document retention schedules.
 - h. The student shall be entitled to an explanation in writing of the reasons for any decisions rendered against him/her and the discipline imposed, and shall be given access to the hearing panel's decision for his/her personal records.
5. The hearing panel designated by the College shall be composed of College administrators, faculty, staff, and/or students. Such selection shall be at the approval of the President or designated Vice President. Individuals serving on this panel need not be disqualified because they have superficial knowledge of the background of the case, or because they may know the participants. The basic test shall be whether or not the panelist can judge the case fairly, without bias or prejudice, and solely on the evidence presented.
 6. The hearing panel shall be the decision-making body acting independent of the President.
 7. Technical rules of evidence or procedure need not be employed in hearing proceedings. A student's misconduct shall be determined by a preponderance of the evidence (i.e., it is more likely than not that misconduct occurred). Hearing decisions need not be unanimous. A simple majority vote shall be sufficient. Hearsay evidence is not required to be excluded, but a finding of misconduct on hearsay evidence alone is not appropriate in hearings, including a serious disciplinary case such as suspension or expulsion.
 8. Members of the hearing panel shall have the opportunity to examine the case file beforehand, and to question the accused and witnesses at the hearing.
 9. The student shall be notified of his/her right to appeal the decisions of the hearing panel to the Vice President responsible for Student Affairs. Appeals must be in writing and are due to the Vice President within five (5) class days after the student received the hearing panels' decision. If the Vice President was a member of the hearing panel, this step of the appeal process is not applicable and the student may appeal directly to the President. Appeals to the Vice President must be based on one (1) of the following grounds:
 - a. Procedural due process was violated;
 - b. The sanction was excessive;
 - c. The evidence did not support the decision; or,
 - d. Substantive new information is available that was not available at the hearing.

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 3200

Due Process -- Students

Page 4 of 4

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- 10. The student shall be notified of his/her right to appeal the decisions of the Vice President to the President, who has final authority. Should the student appeal, any action assessed by the hearing panel shall be suspended until acted upon by the President. Appeals to the President are due within five (5) class days after the student receives the Vice President’s decision. Appeals to the President must be based on one (1) of the following grounds:
 - a. Procedural due process was violated;
 - b. The sanction was excessive;
 - c. The evidence did not support the decision; or,
 - d. Substantive new information is available that was not available at the hearing.

 - 11. Appeals of the President’s decision may be submitted to the Chancellor but shall be limited to allegations that fair procedural process has not been provided in accordance with Board Policy 3200. Appeals to the Chancellor must be in writing and are due within five (5) class days after the student receives the President’s decision. Should the student appeal, any action assessed by the hearing panel shall be suspended until acted upon by the Chancellor.

Legal reference: RRS 85-312 State colleges; morals of the pupils; faculty; religious test forbidden
 RRS 85-602 Faculty, administrative staff, students; dismissal or expulsion; procedure
 RRS 85-603 Faculty, administrative staff, student; dismissal or expulsion; order; contents; service

Policy Adopted: 1/28/77
 Policy Revised: 6/5/93
 Policy Revised: 3/11/94
 Policy Revised: 4/11/03
 Policy Revised: 6/2/06
 Policy Revised: 3/28/08
 Policy Revised: 3/25/11
 Policy Revised: 4/20/12
 Policy Revised: 6/19/18
 Policy Revised: 9/12/19

Policy Revised:

Attachment: Revisions to Board Policy 3200 (2757 : Revisions to Board Policy 3020; 3100; 3200; 5007 and New Policy 5011)

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5007

Anti-Harassment/Discrimination Policy

Page 1 of 4

BOARD POLICY

It is the policy of the Nebraska State College Board of Trustees to provide a workplace free of tensions involving matters which do not relate to the System's business. In particular, an atmosphere of tension created by unlawful discrimination or harassment does not belong in the workplace. Discrimination and harassment based on race, color, religion, sex, sexual orientation, gender identity, disability, age, marital-status, national origin, and any other categories protected by relevant federal, state, or local law are unlawful and prohibited by the Nebraska State College Board of Trustees.

Unlawful discrimination against or harassment of employees, students, applicants for employment and admission, and any visitors to campus are prohibited. Unlawful discrimination includes, without limitation, the unjust or prejudicial treatment of individuals based on their belonging to a protected category. Unlawful harassment includes, without limitation, verbal harassment (derogatory comments and/or slurs, negative stereotyping, intimidating behavior), physical harassment (assault or physical interference), visual harassment (posters, cartoons, drawings, or improper written or graphic material), sexual/gender harassment, and innuendo. Further, other forms of unlawful harassment include actions that have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Each College has designated an individual to coordinate the College's nondiscrimination efforts to comply with regulations implementing Title II of the Americans with Disabilities Act, Titles VI and VII of the Civil Rights Act, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act. Inquiries regarding nondiscrimination policies and practices may be directed to the Compliance Coordinators assigned at each College and identified on each College website. Complaints of sexual harassment are addressed separately by Board Policy 5011 and should be directed to the College's Title IX Coordinator. Complaints of other discrimination on the basis of sex are addressed in this policy.¹

~~This policy elaborates further on the definition and scope of sex/gender harassment.~~

~~Sex harassment includes Dating Violence, Domestic Violence, Sexual Assault, Sexual Violence, Stalking and Retaliation as defined below.~~

~~**Sex/Gender Harassment:** Sex/gender harassment is unwelcome conduct of a sexual nature that is sex or gender based. It is a violation of state and federal law. Sex/gender harassment can include (but is not limited to) the following:~~

- ~~● Unwelcome sexual advances;~~
- ~~● Requests for sexual favors;~~
- ~~● Cyberbullying;~~
- ~~● Other verbal, nonverbal, online, or physical conduct of a sexual nature; and~~
- ~~● 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.~~

¹ The Office for Civil Rights can be contacted by the following methods: Email – OCR@ed.gov; Telephone – 800-421-3481; FAX – 202-453-6012; TDD – 800-877-8339; Website – <https://ocrcas.ed.gov/contact-ocr>. The OCR National Headquarters is located at U.S. Department of Education, Office for Civil Rights, Lyndon Baines Johnson Department of Education Building, 400 Maryland Avenue, SW, Washington, DC 20202-1100.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5007 Anti-Harassment/Discrimination Policy

Page 2 of 4

Harassment does not have to include an intent to harm, be directed at a specific target, or involve repeated incidents. Sex/gender harassment is a violation of this policy.

i. Quid Pro Quo Harassment

Quid Pro Quo harassment is defined as unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature, by a person who has authority or power over another, when submission to the sexual conduct is made (either explicitly or implicitly) a condition of a person's employment, participation in College programs or activities, or is used in evaluating a person's employment performance, development, or progress or in making another decision that will affect the person's relationship with the Colleges.

ii. Hostile Environment Harassment

Sex and/or gender harassment creates a hostile environment for a person when it is so severe, pervasive, or persistent that it interferes with, denies, or limits the person's ability to perform their job duties, or to participate in or benefit from the College's services, activities, or opportunities because of their sex or gender. A single incident, if sufficiently severe, can constitute a hostile environment. If conduct is sufficiently severe, it can create a hostile environment without being repetitive. Likewise, conduct that is less severe may not be sufficient to create a hostile environment without repeated incidents.

The determination regarding whether a hostile environment has been created requires objective and subjective consideration of the pertinent circumstances, including the type of conduct alleged, its severity, duration, and frequency, the context, including the person's age, sex, and relationship to each other, and any history of similar behavior.

iii. Retaliatory Harassment

Retaliation is any adverse or negative action taken against a person due to their report of a policy violation, their cooperation in an investigation into an alleged policy violation, or their engagement in any other protected activity.

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 who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with 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 or intimate partner 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 or intimate partner, 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.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5007

Anti-Harassment/Discrimination Policy

Page 3 of 4

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.~~

~~**Sexual Violence:** Any intentional act of sexual contact (touching or penetration) that is accomplished toward another without their 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. *Note:* It is never appropriate for allegations of sexual violence to be resolved by mediation.~~

~~**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 their safety or the safety of others; or, (b) suffer substantial emotional distress.~~

- ~~i. "Course of conduct" is defined as two or more acts (including, but not limited to) acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.~~
- ~~ii. "Reasonable Person" is defined as a reasonable person under similar circumstances and with similar identities to the victim.~~
- ~~iii. "Substantial emotional distress" is defined as significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.~~

~~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: threatening, repeatedly communicating with, or following a person who does not want the attention.~~

~~**Retaliation:** Any adverse or negative action taken against an individual due to their report of a policy violation, their cooperation in an investigation into an alleged policy violation, or their engagement in any other protected activity.~~

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5007

Anti-Harassment/Discrimination Policy

Page 4 of 4

PURPOSE

The purpose of this policy is to establish clearly and unequivocally that the Nebraska State College System prohibits every form of unlawful harassment and discrimination and to set forth procedures for employees to report workplace harassment or discrimination.

PROCEDURES

If any employee has reason to believe that they or another employee has been unlawfully harassed or discriminated against, that employee should report the violation to a supervisor, the Director of Human Resources, Title IX Coordinator, or Vice President. If the reporting employee feels that the report does not achieve satisfactory results, a second report should be made to another administrator. Reports from employees in the System Office can be directed to the Chancellor or Vice Chancellor for Employee Relations.

Any complaints reported will be kept confidential to the extent possible and the reporting employee shall be assured that no negative consequences will be suffered as a result of making a report in good faith. All complaints are to be promptly and thoroughly investigated. If the investigation reveals that unlawful workplace harassment or discrimination has occurred, disciplinary action is to be immediately taken against the appropriate person or persons.

If the 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.

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.

In addition to promptly investigating and addressing all reports of harassment or discrimination, ongoing educational efforts and training on the issues of unlawful harassment, sexual abuse, and child molestation shall continue for employees.

- Policy Adopted: 10/26/84
- Policy Revised: 3/11/94
- Policy Revised: 9/17/04
- Policy Revised: 4/25/14
- Policy Revised: 11/7/14
- Policy Revised: 3/26/15 Effective: 7/1/15
- Policy Revised: 3/24/17
- Policy Revised: 6/16/17
- Policy Revised:

Attachment: Revisions to Board Policy 5007 (2757 : Revisions to Board Policy 3020; 3100; 3200; 5007 and New Policy 5011)

New policy

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 1 of 21

This policy addresses sex discrimination that occurs in the form of sexual harassment. The Board of Trustees of the Nebraska State Colleges prohibits discrimination on the basis of sex and is committed to providing an environment in which all employees who participate in College programs and activities can work together in an atmosphere free from sexual harassment and sex discrimination.

Colleges and universities receiving federal funding, including the Nebraska State College System, are required by Title IX of the Education Amendments of 1972 and 34 CFR Part 106 to not discriminate on the basis of sex in their educational programs or activities, including admission and employment. Inquiries about Title IX or 34 CFR Part 106 can be made to the Colleges' respective Title IX Coordinators or to the Assistant Secretary of the Department of Education.¹

This policy constitutes the Nebraska State College System's Sexual Harassment and Sex Discrimination Policy for addressing sexual harassment, including how an employee, or others reporting on behalf of an employee, may report or file a formal complaint of sexual harassment and how the Colleges will respond. The Colleges will take appropriate action to prevent, correct, and discipline behavior that is found to violate this policy or principles of equal opportunity and access.

An employee alleged to have committed sexual harassment may be disciplined under this policy 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 harassment.

Reports of sexual harassment are taken with the utmost seriousness. The Colleges are responsible for responding to reports or complaints of sexual harassment and attending to the needs of impacted employees. Complainants and Respondents are both referred to appropriate resources and services to assist them and are treated equitably in receiving individualized Supportive Measures from the Colleges. Respondents are presumed to be not responsible for the alleged conduct, and the College's investigation or response will be impartial and fair to all parties.

I. Scope

A. To Whom Does this Policy Apply?

1. This policy applies to all employees located within the United States, including part-time and full-time employees. This policy applies to employees located within the United States regardless of whether the other party involved is a fellow student, an employee, or a third party. This policy does not apply to third party contractors.

¹ The Office for Civil Rights can be contacted by the following methods: Email – OCR@ed.gov; Telephone – 800-421-3481; FAX – 202-453-6012; TDD – 800877-8339; Website – <https://ocrcas.ed.gov/contact-ocr>. The OCR National Headquarters is located at U.S. Department of Education, Office for Civil Rights, Lyndon Baines Johnson Department of Education Building, 400 Maryland Avenue, SW, Washington, DC 20202-1100

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 2 of 21

B. Where Does this Policy Apply?

1. This policy applies to the Colleges' education programs and activities, which include:
 - a. The physical campuses of the Nebraska State Colleges;
 - b. Areas owned or controlled by the Colleges;
 - c. Locations, events, or circumstances over which the Colleges exercise substantial control over both the respondent and the context in which the sexual harassment occurs;
 - d. Any building owned or controlled by a student organization that is officially recognized by the College.

C. When Does this Policy Apply?

1. This policy applies when the College has notice, in the form of actual knowledge, of a report or allegation of Sexual Harassment that has been reported to the Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College as defined in section III of this policy. If the College has actual knowledge of sexual harassment in an education program or activity against a person in the United States, it must respond promptly.

II. Prohibited Conduct

- A. The definition of Sexual Harassment consists of six (6) types of conduct that the College prohibits, which are explained in this section.
- B. **Sexual Harassment:** Sexual Harassment is conduct on the basis of sex, including gender identity and sexual orientation, that satisfies one or more of the following:
 1. Quid Pro Quo Harassment
An employee of the College conditioning the provision of an aid, benefit, or service of the College's on an individual's participation in unwelcome sexual conduct.
 2. Severe, Pervasive, and Objectively Offensive Unwelcome Conduct
Unwelcome conduct determined by a *reasonable person* to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's Education Program or Activity. Unwelcomeness and objective offense are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 3 of 21

3. Sexual Assault

An offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.² Sexual assault includes:

- a. Forcible Sex Offense: Any sexual act directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent. This includes:
 - i. Forcible Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
 - ii. Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - iii. Sexual Assault with an Object: To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - iv. Forcible Fondling—The touching of the private body parts of another person (including, but not limited to, the buttocks, groin, and breasts) for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

² The 2020 Department of Education's Regulations of Title IX state the following in footnote 791 on page 547: The Clery Act, 20 U.S.C. 1092(f)(6)(A)(v) defines "sexual assault" to mean an "offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation." The FBI UCR, in turn, consists of two crime reporting systems: The Summary Reporting System (SRS) and the National Incident-Based Reporting System (NIBRS). U.S. Dep't. of Justice, Criminal Justice Information Services, SRS to NIBRS: The Path to Better UCR Data (Mar. 28, 2017). The current Clery Act regulations, 34 CFR 668.46(a), direct recipients to look to the SRS for a definition of rape and to NIBRS for a definition of fondling, statutory rape, and incest as the offenses falling under "sexual assault." The FBI has announced it will retire the SRS and transition to using only the NIBRS in January 2021. Federal Bureau of Investigation, Criminal Justice Information Services, Uniform Crime Reporting (UCR) Program, National Incident-Based Reporting System (NIBRS), <https://www.fbi.gov/services/cjis/ucr/nibrs>. NIBRS' forcible and nonforcible sex offenses consist of: rape, sodomy, and sexual assault with an object (as well as fondling, statutory rape, and incest, as noted above). Thus, reference to the Clery Act will continue to cover the same range of sex offenses under the FBI UCR regardless of whether or when the FBI phases out the SRS.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 4 of 21

- b. Non-Forcible Sex Offense: Non-forcible sexual intercourse. This includes the following:
 - i. Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Nebraska state law.
 - ii. Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent of 16.³

- 4. Dating Violence
Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - a. 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.
 - b. For the purposes of this definition, Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.

- 5. Domestic Violence
A felony or misdemeanor crime of violence committed:
 - a. By a current or former spouse or intimate partner of the Complainant;
 - b. By a person with whom the Complainant shares a child in common;
 - c. By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
 - d. By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Nebraska;
 - e. By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Nebraska.

³ Nebraska Revised Statute §28-319.01

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 5 of 21

6. Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- a. Fear for the person's safety or the safety of others; or
- b. Suffer substantial emotional distress.

For the purposes of this definition:

- c. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- d. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

C. Retaliation

Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured under Title IX or 34 CFR Part 106, or because the individual made a complaint or report, testified, assisted, participated, or refused to participate in an investigation, proceeding, or Hearing under this policy.

III. Additional Definitions

A. Advisor:

1. An individual selected by either the Complainant or Respondent to guide them through the grievance process and accompany them to all meetings, including the Hearing. An Advisor may, for example, assist a party in reviewing the Investigative Report, or provide feedback to a party in preparation for the Hearing.
2. At the Hearing, the party's Advisor asks the other party and any Witness all relevant questions or follow up questions, including those challenging credibility, on behalf of their advisee. In all other instances throughout the grievance process, the party will speak for themselves.
3. If an Advisor is an attorney, they may not participate any more than a non-attorney Advisor would be permitted to participate.
4. If a party does not have an Advisor at the Hearing, the appropriate Vice President shall appoint an Advisor for the party without any fee or charge to the party.

B. Complainant:

1. An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 6 of 21

C. Confidential Employee:

1. A College employee who does not have a duty to report incidents of Sexual Harassment to the Title IX Coordinator.
2. Medical or mental health professionals employed by the Colleges (Licensed Student Counselors, Nurses and Athletic Trainers) are Confidential Employees and respect and protect confidential communications from students, faculty, and staff to the extent they are legally able and/or required to do so.
3. Confidential Employees may have to breach confidentiality when they perceive an immediate and serious threat to any person or property.

D. Consent:

1. Definition:
 - a. Consent is positive cooperation in an act or expression of intent to engage in an act. Consent is indicated through words or conduct. Consent cannot be inferred from silence or passivity alone.
 - b. An individual who consents to a sexual act must give that consent voluntarily, and with knowledge and understanding of the nature of the act and their participation in it.
 - c. Consent to one type of sexual activity does not necessarily constitute consent for another type of sexual activity.
 - d. Consent can be withdrawn by any party at any time through words or conduct.
2. Capacity to Consent:
 - a. A person cannot give consent when they are:
 - i. Incapacitated by drugs or alcohol;
 - ii. Unconscious, passed out, asleep, coming in and out of consciousness;
 - iii. Have a disorder, illness, or disability that impairs their understanding of the act and their ability to make decisions.
 - iv. They are under the threat of violence, injury, or other forms of coercion or intimidation.
 - v. They are forced, coerced, intimidated, or deceived into providing consent.
 - b. If the Complainant was incapacitated, the question of whether the Respondent knew, or should have known, that the Complainant was incapacitated will be considered.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 7 of 21

3. Lack of Consent:

- a. 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 other party that person's refusal to consent.
- b. 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.

E. Education Program or Activity:

1. The Colleges' Education Programs or Activities include locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurred, including any building owned or controlled by a student organization that is officially recognized by the College. The Colleges' Education Programs or Activities includes employment, for the purposes of this policy.

F. Employee:

1. An individual who is paid by the College to perform specific job duties, including faculty and staff, whether they are employed part-time or full-time. This definition excludes student-employees and third party contractors unless otherwise noted.

G. Formal Complaint:

1. A complaint filed and signed by a Complainant or the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting the College investigate the allegation of Sexual Harassment per this policy.
2. At the time of filing the Formal Complaint the Complainant must be participating in or attempting to participate in the Colleges education program or activity.
3. In the event that the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator does not become a party to the Formal Complaint.

H. Hearing Chairperson:

1. The individual who conducts the Hearing and makes decisions regarding the relevance of questions and evidence and their inclusion in the Hearing. The Hearing Chairperson is responsible for providing the determination in writing to the parties.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 8 of 21

I. Hearing Panel:

1. A panel of at least three individuals, who are not students, including the Hearing Chairperson who consider the evidence presented regarding a Formal Complaint and make a determination regarding responsibility pursuant to this policy and, if applicable, any disciplinary actions or sanctions to be imposed. The determination will be made using the preponderance of the evidence standard.

J. Mandatory Reporter:

1. Any College employee who is required to report incidents of sexual misconduct of which they become aware to the Title IX Coordinator. The following College employees are Mandatory Reporters:
 - a. President
 - b. Vice Presidents
 - c. Academic Deans
 - d. College Title IX Coordinator and Designees
 - e. Dean of Students
 - f. Housing/Residence Life Staff to include:
 - i. Directors
 - ii. Managers
 - iii. Assistant Directors
 - iv. Senior Residence Hall Advisors
 - v. Residence Hall Advisors
 - g. Coaches and Assistant Coaches
 - h. Campus Security Officers

K. Pre-Hearing Conference:

1. This is an opportunity for the Complainant and Respondent to meet separately with the Hearing Chairperson to review Hearing procedures, submit the questions they intend to ask at the Hearing, and confirm the list of Witnesses, if any, they wish to call at the Hearing. The parties may also discuss options for an Informal Resolution as an alternative to proceeding with a Hearing.

L. Preponderance of the Evidence Standard:

1. A preponderance of the evidence is the greater weight of the evidence indicating it is more likely than not that the alleged conduct occurred. It is the standard the College's decision-maker (Hearing Panel) will use to determine whether or not a Respondent is responsible for Sexual Harassment.

M. Reporting Party:

1. An individual who reports to the Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College on another person's behalf.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM**POLICY: 5011****Sexual Harassment and Sex Discrimination Policy****Page 9 of 21****N. Respondent:**

1. An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

O. Student:

1. An individual who is currently enrolled or registered in an Education Program or Activity or who has completed the immediately preceding term and is eligible for re-enrollment.

P. Supportive Measures:

1. Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available and without fee or charge to the Complainant and Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.
2. The College may utilize Supportive Measures as supplemental tools in disciplinary action, sanctions or in Informal Resolutions.
3. Parties are treated equitably when offered Supportive Measures. Supportive Measures are kept confidential to the extent possible without impairing the College's ability to provide them.
4. Supportive Measures are designed to restore or preserve equal access to the College's Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or to deter Sexual Harassment.
5. Supportive Measures may include but not be limited to: a referral to counseling services, reasonable academic accommodations, changes to on-campus housing or employment situations, use of Campus Security's escort services, bi-lateral No Contact Orders, and other similar measures.
6. Requests for Supportive Measures must be made directly to the Title IX Coordinator, who will facilitate implementation.

Q. Title IX Coordinator:

1. The employee responsible for responding to reports of Sexual Harassment at the College. The Title IX Coordinator conducts investigations of allegations of Sexual Harassment against a Respondent in a Formal Complaint made by a Complainant.
2. As part of the investigation, the Title IX Coordinator will interview the Complainant, the Respondent, and any Witnesses or others with pertinent information and gather other evidence including but not limited to, submitted written statements, text messages, social media posts, pictures, videos, security camera footage, and other relevant material.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 10 of 21

3. The Title IX Coordinator reviews and assesses the credibility of the available evidence, synthesizes areas of dispute and agreement, and creates an Investigative Report summarizing this information and provides it to the Hearing Panel.

R. Witness:

1. An individual who witnessed the alleged incident or has relevant information about the allegations.

IV. Dismissal of Formal Complaints

A. Mandatory Dismissal

1. The College is required⁴ to dismiss a Formal Complaint made per this policy in the following circumstances:
 - a. The alleged conduct would not constitute Sexual Harassment as defined in this policy, even if proved;
 - b. The alleged conduct did not occur in the College's Education Program or Activity; or,
 - c. The alleged conduct did not occur against a person in the United States.
2. The parties will receive written notice explaining the reasons for dismissal. Allegations that are dismissed for these reasons may be addressed as misconduct by other Board Policies and/or Collective Bargaining Agreements. The parties may appeal the dismissal, per the appeal requirements in Section VII.C.12.

B. Permissive Dismissal

1. The College may choose to dismiss a Formal Complaint made per this policy in the following circumstances:
 - a. The Complainant withdraws a Formal Complaint in writing.
 - b. The Respondent is no longer enrolled or employed by the College.
 - c. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination.
2. The parties will receive written notice explaining the reasons for dismissal. The parties may appeal the dismissal, per the appeal requirements in Section VII.C.12.

⁴ Per 34 CFR § 106.45(3)(i)

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 11 of 21

V. Reporting Sexual Harassment

A. Reporting to the College

1. Any person may report sex discrimination, including Sexual Harassment, to the College. A person who alleges to be the victim of Sexual Harassment is the Complainant. A person who submits a report on behalf of another person is the Reporting Party. Reports can be made by mail, telephone, email, in person, or by any other means that results in the Title IX Coordinator receiving the person's written or verbal report.
2. The names and contact information for the Colleges' Title IX Coordinators are below.

Chadron State College	Peru State College	Wayne State College
Name: Ted Tewahade E-mail: ttewahade@csc.edu Phone: (308) 430-0980 Address: Crites Hall 341 1000 Main Street Chadron, NE, 69337 https://www.csc.edu/titleix/	Name: Eulanda Cade E-mail: ecade@peru.edu Phone: (402) 872-2230 Address: Administration, 312 PO Box 10 Peru, NE, 68421 https://www.peru.edu/titleix/	Name: Tiffany Dearstone E-mail: tidears1@wsc.edu Phone: (402) 375-7589 Address: Student Center 12G 1111 North Main Street Wayne, NE, 68787 https://www.wsc.edu/info/20160/title_ix

3. The College appreciates the privacy concerns inherent in allegations of Sexual Harassment.
 - a. 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;
 - i. Prior written permission is given by the student concerned;
 - ii. The disclosure is necessary to conduct an investigation or implement a Supportive Measure;
 - iii. The disclosure is necessary to pursue disciplinary action;
 - iv. The disclosure is otherwise required by law.
 - b. Complainants 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 the parties involved.⁵

⁵ Per the Clery Act, 20 U.S.C. § 1092(f)

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 12 of 21

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4. The law recognizes and protects the confidentiality of communications between a person seeking care and a medical or mental health professional.
 - a. Medical or mental health professionals employed by the College (Licensed Student Counselors, Nurses and Athletic Trainers) are Confidential Employees.
 - b. Confidential Employees are not required to report incidents of Sexual Harassment or Sex Discrimination of which they become aware to the Title IX Coordinator and may respect and protect confidential communications from students, faculty, and staff to the extent they are legally able to do so. Confidential Employees may have to breach a confidence, however, when they perceive an immediate and serious threat to any person or property.
 - c. All College employees (including Confidential Employees) are required by state law to report allegations or reasonable suspicion of child abuse or neglect, including sexual assault or abuse of a minor, to either law enforcement or the Department of Health and Human Services.⁶ The Child Abuse and Neglect Hotline is (800) 652-1999. In Nebraska, the age of majority is 19.

B. Reporting Conduct to Law Enforcement

1. Reporting conduct to the College and reporting conduct to law enforcement are two separate processes. A Complainant can choose to report the conduct only to the College, or only to law enforcement, or to both the College and law enforcement.

C. Judicial Orders

1. Parties may pursue judicial remedies such as orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal, civil, or tribal courts.
2. Parties are responsible for notifying the College of such an order and should provide a copy of it to the Title IX Coordinator/Designee as soon as reasonably possible. The party may discuss options with the Title IX Coordinator/Designee regarding enforcing the order when the parties participate in a College Educational Program or Activity.

D. Medical Care and Law Enforcement

1. A Complainant may obtain medical care to collect and preserve physical evidence of the alleged offense.
2. Health care providers are required to report to law enforcement when an injury appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault.⁷

⁶ Nebraska Revised Statute §28-711.

⁷ *Nebraska Medical Sexual Assault Protocol*, Nebraska Attorney General's Office, July 2019. Available at <https://ago.nebraska.gov/sites/ago.nebraska.gov/files/doc/Nebraska%20Medical%20Sexual%20Assault%20Protocol%20FINAL.pdf>

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 13 of 21

3. A Complainant eighteen (18) years and older who has not experienced serious bodily injury may choose from the following options regarding reporting to law enforcement and evidence collection: (1) Full report with evidence collection; (2) Partial report with evidence collection; and (3) Anonymous report with evidence collection. Additional information about these options is available in the [Nebraska Medical Sexual Assault Protocol](#). It is important that a Complainant make an informed decision regarding important physical evidence that may be preserved.
4. Regardless of whether or not the law enforcement authorities choose to prosecute a reported offense, the College can pursue disciplinary action against an employee alleged to have committed Sexual Harassment. If a report is made to law enforcement and the agency pursues an investigation, the College will cooperate with the law enforcement agency.

VI. Emergency Removal of Respondents

A. The College may remove a Respondent from the College's Education Program or Activity on an emergency basis when appropriate.

1. In such an instance the College must do the following:
 - a. Conduct an individualized safety and risk analysis prior to removal;
 - b. Determine whether an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment exists, and whether the risk justifies removing the Respondent;
 - c. If removal is deemed appropriate, the College must provide the Respondent with notice of removal and an opportunity to challenge the decision immediately following removal.
2. Decisions to remove a Respondent on an emergency basis will be made by the President. The President will consider the following factors when determining whether removal is appropriate:
 - a. Whether the circumstances indicate there is a risk to the greater College community;
 - b. Whether a risk exists that the Respondent will engage in additional acts of Sexual Harassment;
 - c. Whether other complaints of Sexual Harassment have been made against the Respondent;
 - d. Whether the Sexual Harassment was allegedly committed by multiple Respondents;
 - e. Any additional relevant information.

VII. Grievance Process

A. Overview

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 14 of 21

1. The Complainant has two options to resolve their Formal Complaint of Sexual Harassment: (1) the College investigates the alleged conduct and a determination regarding responsibility is made after a Hearing; or (2) both the Complainant and Respondent agree to an Informal Resolution that the College deems appropriate, any time prior to a determination regarding responsibility. Informal Resolutions require the voluntary and written consent of both the Complainant and Respondent, and may not involve a full investigation. The Complainant may choose which process to initiate.
2. The Colleges' grievance process for resolving allegations of Sexual Harassment is fair and impartial. All relevant evidence will be objectively evaluated, including inculpatory and exculpatory evidence. Credibility determinations are not based on a person's status as a Complainant, Respondent, or Witness. Respondents are presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. All parties and Witnesses are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.
3. The burden of proof and gathering evidence rests on the College, not the parties. Parties will have opportunities to provide their account of the alleged incident, respond to the other party's account, and inspect and review evidence that is directly related to the allegations.
4. Each party may have an Advisor of their choice, who may be, but is not required to be, an attorney. Advisors may accompany the party to any meeting or proceeding. If a party does not have an Advisor at the Hearing, the appropriate Vice President shall appoint an Advisor for the party without any fee or charge to the party.
5. The College strives to complete the Grievance Process within sixty (60) business days. Throughout the process the College will provide the parties with regular status updates and information regarding next steps.

B. Request to Temporarily Delay the Grievance Process

1. A party may submit a written request to the Title IX Coordinator to temporarily delay the grievance process or provide a limited extension of time for good cause. Good cause may include, but is not limited to:
 - a. The absence of a party, the party's Advisor, or a Witness;
 - b. Concurrent law enforcement activity;
 - c. The need for language assistance or disability accommodation.
2. If the request is granted, the Title IX Coordinator will notify the parties in writing of the delay or extension and the reasons for it. The College may also elect to delay the grievance process for good cause.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 15 of 21

C. Process Steps

1. Report Received:
The Title IX Coordinator receives an initial report alleging Sexual Harassment. This report may be from the person who alleges to be the victim of Sexual Harassment (Complainant) or it may have been submitted on their behalf by a third party (Reporting Party).
2. Outreach to Complainant:
The Title IX Coordinator will promptly contact the Complainant for the following purposes:
 - a. To discuss the report, the availability of Supportive Measures, and the Complainant's wishes regarding Supportive Measures;
 - b. To listen to the Complainant's account and ask questions to gain a better understanding of the nature of the alleged incident;
 - c. To explain this policy and the definition of Sexual Harassment.
3. Determination Regarding Policy Application:
The Title IX Coordinator will determine whether the alleged conduct is redressible by this policy, which applies exclusively to Sexual Harassment, or whether the alleged conduct may be redressible under another College policy.
 - a. Alleged conduct that would constitute Sexual Harassment if proved can be addressed by this policy. Continue to Step 4.
 - b. Alleged conduct that does not constitute Sexual Harassment if proved may be redressible under another Board policy or Collective Bargaining Agreement. In this case, the Title IX Coordinator will refer the Complainant to the appropriate College official.
 - c. If the alleged conduct is redressible by this policy, the Title IX Coordinator will facilitate appropriate Supportive Measures for the parties. If the alleged conduct is redressible under another Board policy or Collective Bargaining Agreement, the Title IX Coordinator will delegate the responsibility of facilitating Supportive Measures to the Dean of Students or other appropriate College official.
4. Formal Complaint Submitted:
Complainant will sign a Formal Complaint alleging Sexual Harassment against a Respondent and requesting that the College investigate the allegation.
5. Parties Receive Notice of Allegations:
The Complainant and Respondent will be notified in writing of the allegations and that the College will conduct an investigation. The Respondent's notice will include sufficient details known at the time and allow sufficient time for Respondent to prepare a response before any initial interview.
6. Title IX Coordinator or Designee Conducts Investigation:
The investigation will involve the following:

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 16 of 21

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- a. Gathering evidence;
 - i. If a party wishes for their medical records, prior educational records, or other records that are external to the College to be considered in the grievance process they must provide written consent for those records to be released to the College and make arrangements for the records to be sent to the College.
 - b. Interviewing the Complainant, Respondent, and any Witnesses;
 - c. Review and assessment of all related written statements, reports, and other relevant material;
 - d. Synthesizing areas of dispute and agreement between the parties;
 - e. Preparation of an Investigative Report that organizes, assesses, and fairly summarizes the relevant evidence and synthesizes areas of dispute and agreement between the parties.
 - f. Review of applicable College policies;
 - g. If a party has not selected an Advisor to be present at the Hearing the appropriate Vice President will appoint an Advisor. The Advisor will ask all cross-examination questions at the hearing on the party's behalf.
7. Inspection and Review of Evidence and Parties' Response:
 Prior to the completion of the Investigative Report, the parties and their Advisors, will receive an electronic copy of all the evidence obtained from the investigation that is directly related to the allegations.
- a. **Parties will have the (10) calendar days to submit a written response**, which will be considered prior to the completion of the Investigative Report. This is an opportunity for each party to correct or clarify the evidence or provide additional information before the Investigative Report is completed.
 - b. Any written response from the parties will be included in the Investigative Report.
 - c. A party's failure to respond will be taken as their confirmation that the evidence they received is accurate for the purposes of the following procedural steps.
8. Investigative Report Prepared and Provided to the Parties:
 The Title IX Coordinator/Designee will prepare an Investigative Report that organizes and fairly summarizes the relevant evidence and highlights key issues.
- a. The Title IX Coordinator/Designee will also prepare a file containing any additional evidence that is directly related to the allegations, but upon which the College does not intend to rely in making a determination regarding responsibility. Both the Investigative Report and this file (if applicable) will be provided to the parties and their Advisors when they receive the Investigative Report.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 17 of 21

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- b. The parties and their Advisors will receive an electronic copy of the Investigative Report and any additional evidence for their review and written response **at least ten (10) calendar days prior to the Hearing**. This is an opportunity for each party to identify any inaccuracies in the Investigative Report or any additional evidence before the Hearing. A party's failure to respond will be taken as their confirmation that the Investigative Report and any additional evidence is accurate. Once the Investigative Report is finalized the Title IX Coordinator/Designee will provide it and any additional evidence to the Hearing Panel.
 - c. Parties and/or Hearing Panel members who wish to call a Witness during the Hearing must submit in writing the Witness's name(s) and contact information to the Hearing Chairperson before the date of the Pre-Hearing Conference. The Hearing Chairperson is responsible for summoning the Witnesses in writing.
9. Pre-Hearing Conference:
Each party and their Advisor will attend a Pre-Hearing Conference with the Hearing Chairperson. The purpose of this Pre-Hearing Conference is to prepare the parties for the Hearing and ensure that they understand the procedures.
- a. The Pre-Hearing Conference must occur after the parties have had ten (10) calendar days to review the Investigative Report and any additional evidence and respond. The Title IX Coordinator or Designee will be present, but the Hearing Chairperson will direct the conference.
 - b. At the Pre-Hearing Conference, the parties and their Advisors:
 - i. Will be notified of the Hearing date, time, and location.
 - ii. Will have the opportunity to inspect and review the Investigative Report and all the evidence directly related to the allegation, including evidence upon which the College does not intend to rely in making a determination of responsibility and exculpatory and inculpatory evidence.
 - iii. Will confirm the list of Witnesses the party and/or the Hearing Panel wishes to call at the Hearing.
 - iv. Will submit in writing any evidence they intend to use or questions they intend to ask (through their Advisor) of the other party and any Witnesses at the Hearing.
 - c. During the Pre-Hearing Conference, the Hearing Chairperson will review the submitted questions and evidence and make a determination regarding their relevancy.
 - d. If a question or evidence is not relevant, the Hearing Chairperson will explain and document their decision to exclude it from the Hearing in the Pre-Hearing Conference Summary. The parties may provide reasons why they believe the question or evidence is relevant or not relevant and their rationale will be taken into consideration by the Hearing Chairperson.
 - e. Questions and evidence about the Complainant's or Respondent's sexual predisposition or prior sexual behavior are not relevant. There are three (3) exceptions:

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 18 of 21

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- i. Such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant;
 - ii. If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent;
 - iii. If the questions and evidence concern specific incidents of the Respondent's prior sexual behavior with respect to the Complainant and are offered to prove consent.
 - f. Exclusion of such questions or evidence will be explained and documented in the Pre-Hearing Conference Summary.
 - g. Questions or evidence that constitute or seek disclosure of information protected by a legally recognized privilege are not permitted at the Hearing, unless the person holding the privilege waives it. This may include information protected by doctor-patient or attorney-client privilege. The exclusion of such questions or evidence will be explained and documented in the Pre-Hearing Conference Summary.
 - h. The parties and their Advisors will be informed that they may still resolve the matter informally at this point in the grievance process. See Section VII. D. for information about Informal Resolutions. If the parties wish to continue to a Hearing, the Hearing Chairperson will review Hearing procedures with each party.
 - i. The Hearing Chairperson will write a Pre-Hearing Conference Summary that includes documentation of relevancy based exclusions of questions or evidence and the list of approved questions or evidence. The Hearing Chairperson will provide it to the parties in writing before the Hearing and it will become part of the record provided to the Hearing Panel.
10. Hearing:
- a. The College will conduct a live Hearing to determine whether the Respondent is responsible for the alleged conduct, and if so, what disciplinary measures or sanctions will be imposed. The Hearing Panel is the decision maker and will use the preponderance of the evidence standard, which means the greater weight of the evidence.
 - b. The Hearing Panel will consist of a minimum of three individuals, who each have a vote. Students will not serve on the Hearing Panel. The Hearing Chairperson will direct the hearing and the determination will be made by the majority vote. At its discretion, the College may employ a third party to conduct the hearing.
 - c. The Title IX Coordinator or Designee (who conducted the investigation) will be present at the Hearing to answer questions or clarify information, but will have no other role in the grievance process.
 - d. The Hearing Panel will be permitted to call witnesses. Each party's Advisor will be permitted to present evidence and ask the other party and any witnesses all relevant questions and follow-up questions, including those that challenge credibility.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 19 of 21

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- e. Before a party or Witness responds to a question or evidence presented, the Hearing Chairperson must first determine whether it is relevant and explain any decision to exclude a question or evidence presented as not relevant, unless the question or evidence presented was approved as relevant during the Pre-Hearing Conference.
 - f. If a party or Witness does not submit to cross-examination at the Hearing, the Hearing Panel must not rely on any statement that party or Witness made (during the investigation and/or the Hearing) in reaching a determination regarding responsibility. However, the hearing panel cannot draw an inference about the determination regarding responsibility based solely on a party's or Witness's absence from the Hearing or refusal to answer cross-examination or other questions.
 - g. Either party may request to be located in separate rooms during the Hearing, with technology enabling the Hearing Panel and parties to simultaneously see and hear the party or Witness answering questions.
 - h. The College shall create an audio or audio-visual recording of any Hearing and make it available to the parties for inspection and review. After the Hearing is complete the Hearing Panel will convene in private within forty-eight (48) hours of the end of the hearing to vote.
11. Parties Receive Written Determination Regarding Responsibility:
- a. The Hearing Chairperson will simultaneously provide the parties a written determination regarding responsibility and any recommended disciplinary action within ten (10) calendar days of the Hearing's conclusion.
 - b. If an appeal is filed, the determination will become final on the date that the College provides the parties with the written determination of the result of the appeal. If no appeal is filed, the determination will become final on the date that an appeal would no longer be timely.
12. Appeal:
- a. The Complainant and/or the Respondent may appeal to the President a determination regarding responsibility or the College's dismissal of a Formal Complaint.
 - b. Appeals must be submitted to the President in writing within five (5) calendar days of the determination regarding responsibility or within five (5) calendar days of the dismissal of the Formal Complaint. The Title IX
 - c. Coordinator/Designee will provide the President the record of the investigation and Hearing.
 - d. When an appeal is filed the Title IX Coordinator/Designee will notify the other party in writing. Both parties will have five (5) calendar days to submit to the President a written statement in support of, or challenging, the outcome.
 - e. The permissible bases for appeal are:
 - i. Procedural irregularity that affected the outcome of the matter;

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 20 of 21

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- ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
 - iii. The Title IX Coordinator, Designee, Hearing Chairperson or Hearing Panel member had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that affected the outcome of the matter.
 - f. The parties will simultaneously receive a written decision describing the result of the appeal and the rationale for the result.
 - g. If an appeal is filed, the determination will become final on the date that the College provides the parties with the written determination of the result of the appeal. Any sanctions imposed by the initial determination of responsibility will go into effect *after* the five (5) day window for appeals closes, and if an appeal occurs, after it is complete. However, existing Supportive Measures may remain in place.

D. Informal Resolution

- 1. At any time prior to reaching a determination regarding responsibility the College may facilitate an Informal Resolution process that does not involve a full investigation and Hearing. A Formal Complaint is a prerequisite of an Informal Resolution, and both parties must provide voluntary, written consent to participate in the Informal Resolution process.
 - a. The College will provide the parties with written notice disclosing the allegations, the requirements of the Informal Resolution process, and any consequences resulting from participating in the Informal Resolution process, including records that will be maintained or shared.
 - b. The Title IX Coordinator/Designee can present a framework of potential remedies to guide the parties in negotiation, but the parties themselves must come to an agreement. The Title IX Coordinator/Designee will facilitate this process, and will use their discretion to ensure that the Informal Resolution is appropriate for the College. The parties may not bind the College to a resolution that the College does not deem appropriate.
 - c. Informal Resolution may be accomplished through mediation and other forms of facilitation, such as the parties communicating through the Title IX Coordinator/Designee to minimize contact with each other, or the parties communicating directly with each other and the Title IX Coordinator/Designee.
 - d. At any time prior to agreeing on a resolution, any party may withdraw from the Informal Resolution process and the investigation and Hearing Formal Resolution process will resume. The Title IX Coordinator/Designee may use their discretion in determining whether or not an Informal Resolution is appropriate. If Informal Resolution is not working (lack of good faith effort by the parties, at an impasse, etc.) the Title IX Coordinator/Designee may require the matter to be resolved via a Hearing.

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

Page 21 of 21

- e. The Informal Resolution process cannot be used to resolve allegations that an employee (including a student-employee) sexually harassed a student if the alleged harassment occurred in the context of their employment.

VIII. Retaliation

A. Retaliation is Prohibited

1. The College will not tolerate or engage in intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured under Title IX or 34 CFR Part 106 or because the individual made a complaint or report, testified, assisted, participated, or refused to participate in an investigation, proceeding, or Hearing under this policy.
2. The exercise of First Amendment rights does not constitute retaliation.
3. Complaints alleging retaliation may be filed and resolved per this policy.

IX. Disciplinary Sanctions & Remedies

A. Range of Options

1. Subsequent to a determination of responsibility, the College may take disciplinary action, impose sanctions and apply remedies per Board policies and/or Collective Bargaining Agreement requirements, which may include, but are not limited to: warnings, disciplinary probation, loss of privileges, restitution, remedial work assignments, remedial education requirements, service requirements, remedial behavioral requirements, College housing relocation or suspension, removal from College housing, suspension, and expulsion.
2. Remedies, including disciplinary action and informal resolutions, are designed to restore or preserve the Complainant's equal access to the Colleges' Education Programs and Activities.

Policy Adopted: