

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5011

Sexual Harassment and Sex Discrimination Policy

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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

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.

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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.

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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

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.

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.

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.

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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.

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.

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)

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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: Megan Northrup E-mail: mnorthrup@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: David McMahan E-mail: damcmah1@wsc.edu Phone: (402) 375-7213 Address: Student Center 201D 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)

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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>

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

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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.

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:

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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.

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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:

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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.

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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;

- 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.

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- 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.

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