

# Board of Trustees of the Nebraska State Colleges

## STUDENT AFFAIRS

**POLICY NAME:** Sexual Harassment & Sex Discrimination

**POLICY NUMBER:** 3020

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### **A. PURPOSE**

The Colleges prohibit discrimination on the basis of sex and are committed to providing an environment free from sexual harassment and sex discrimination. The Colleges take reports of sexual harassment seriously and are committed to providing an impartial and fair process to all parties.

Colleges and universities receiving federal funding, including the Nebraska State Colleges, 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.<sup>1</sup>

This policy constitutes the Nebraska State Colleges' 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 to prevent, correct, and discipline behavior found to violate this policy or principles of equal opportunity and access and to provide individualized supportive measures to all impacted students.

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<sup>1</sup> The Office for Civil Rights can be contacted by the following methods: Email – [OCR@ed.gov](mailto: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

## **B. DEFINITIONS**

1. **Advisor:** An individual selected by the Complainant and/or Respondent to guide them through the grievance process and accompany them to all meetings, including the hearing.
2. **Complainant:** An individual who is alleged to be the victim of sexual harassment.
3. **Confidential Employee:** A College employee who does not have an affirmative duty to report incidents of Sexual Harassment to the Title IX Coordinator, including but not limited to medical or mental health professionals, licensed student counselors, nurses and athletic trainers.
4. **Education Program or Activity:** The College's education programs or activities include locations, events, or circumstances in 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 official recognized by the College.
5. **Employee:** An individual paid by the College to perform specific duties, including faculty and staff, whether employed part-time or full-time. This definition excludes student-employees and third-party contractors unless otherwise noted.
6. **Forcible Sex Offense:** Any sexual act directed against another person without the consent of that person including instances in which the person is incapable of giving consent.
7. **Formal Complaint:** A statement filed and signed by a Complainant or the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting the College investigate the allegation(s) of Sexual Harassment.
8. **Incapacitation:** Incapacitation refers to a state in which a person is mentally or physically incapable of resisting or appraising the nature of their conduct.<sup>2</sup>
9. **Preponderance of the Evidence Standard:** A preponderance of the evidence is the greater weight of the evidence indicating it is more likely than not the alleged conduct occurred. This is the standard of review used by the decision-maker to determine whether a respondent has violated this policy.
10. **Respondent:** An individual who is alleged to have engaged in conduct constituting sexual harassment.
11. **Student:** An individual currently enrolled or registered in the College's education program or activity or who has completed the immediately preceding term and is eligible for re-enrollment.
12. **Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available and without fee or charge to the

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<sup>2</sup> Neb. Rev. Stat. §28-319(1)(b).

Complainant and Respondent before or after the filing of a report of sexual harassment or Formal Complaint.

**13. Title IX Coordinator:** The College employee or contractor responsible for responding to reports of Sexual Harassment and conducting investigations of Formal Complaints. For purposes of this policy, references to Title IX Coordinator also refers to a designee assigned to assume all or some of the responsibilities of the Title IX Coordinator.

**14. Witness:** An individual who has relevant information regarding allegations of Sexual Harassment.

## **C. POLICY**

### **1. Scope**

1.1. 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, regardless of whether the other party involved is a fellow student, an employee, or a third party. Policy 5011 applies to employees alleged to have committed sexual harassment.

1.2. This policy applies to students and conduct occurring within the Colleges' education programs and activities, which include:

- The physical campus of the College;
- Areas owned or controlled by the College;
- Locations, events, or circumstances in which the College exercises substantial control over both the Respondent and the context in which the sexual harassment occurs; and
- Any building owned or controlled by a student organization officially recognized by the College.

### **2. Prohibited Conduct**

Sexual Harassment is prohibited and includes the following types of conduct set forth below.

2.1. Quid Pro Quo Harassment occurs when an employee of the College conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.

2.2. Severe, Pervasive, and Objectively Offensive and Unwelcome conduct occurs when an individual's unwelcome conduct is 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(s) occurred and any similar previous patterns that may be evidenced.
- 2.3. Sexual Assault is an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation <sup>3</sup> which includes:
- 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 that person.
  - 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 person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - 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 person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - Forcible Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, including, but not limited to, the buttocks, groin, and breasts, forcibly and/or against that person's will, or not forcibly or against the person's will in instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

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<sup>3</sup> The 2020 Department of Education's Title IX Regulations 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.

- Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Nebraska State law.<sup>4</sup>
- Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent of 16.<sup>5</sup>

#### 2.4. Dating Violence

Violence committed by a person who is or has been in a social relationship or a romantic or intimate nature with that person.

- The existence of such a relationship shall be determined based on a consideration of the length and type of relationship and the frequency of interaction between the individuals involved in the relationship.
- 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 Domestic Violence.

#### 2.5. Domestic Violence

A felony or misdemeanor crime of violence committed by:

- A current or former spouse or intimate partner of a person;
- A person with whom the person shares a child in common;
- A person who is cohabitating with, or has cohabitated with, another person as a spouse or intimate partner;
- A person similarly situated to a spouse of the other person under the domestic or family violence laws of Nebraska;
- Any other person against an adult or youth the Complainant who is protected from the person's acts under the domestic or family violence laws of Nebraska

#### 2.6. Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of other or suffer substantial emotional distress.

- 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.

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<sup>4</sup> Neb. Rev. Stat. § 28-702

<sup>5</sup> Neb. Rev. Stat. § 28-319.01

- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

## 2.7. Sexual Exploitation

Engaging in conduct where one party takes non-consensual or abusive sexual advantage of another person for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Prostituting another person;
- Non-consensual visual or audio recording of sexual activity;
- Non-consensual display or distribution of photos, images, or information of an individual's sexual activity or private body parts;
- Non-consensual voyeurism;
- Coercing someone against their will to engage in sexual activity, or
- Knowingly transmitting a sexually transmitted disease (STD) without disclosing STD status.

## 2.8. 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.

## 3. Consent

3.1. Consent is positive cooperation in an act or an expression of the intent to engage in an act. The presence or absence of consent must be based on the totality of the circumstances, including the context in which the conduct occurred.

- Consent to a sexual act must be given by an individual voluntarily, and with knowledge and understanding of the nature of the act and their participation in it.
- A person may express their consent or lack of consent verbally, physically, or through conduct in a manner understood by a reasonable person under the circumstances.
- Consent can be withdrawn by any party at any time through words or conduct.
- Consent cannot be inferred from silence or passivity alone.

- A person need not resist verbally or physically when it would be futile to do so as understood by a reasonable person under the circumstances.
  - Consent to one type of sexual activity does not necessarily constitute consent to another type of sexual activity.
- 3.2. A person lacks the capacity to consent when they:
- Are incapacitated by drugs or alcohol;
  - Are unconscious, passed out, asleep, coming in and out of consciousness;
  - Have a mental or physical disorder, illness, or disability that renders them incapacitated; or
  - Are forced, coerced, intimidated, or deceived into providing consent.

#### **4. Reporting Sexual Harassment**

- 4.1. Any person may report sex discrimination, including Sexual Harassment, to the College by contacting the Title IX Coordinator. Such contact may be made verbally either in person or by telephone or in writing by delivering a written document in person, by mail, or by email.
- 4.2. For purposes of this policy, the following employees are required to report incidents of sexual harassment to the Title IX Coordinator.
- President
  - Vice Presidents
  - Academic Deans
  - Title IX Coordinator and designees
  - Deans of Students and Associate Vice Presidents for Student Affairs
  - Housing/Residence Life Staff including:
    - Directors
    - Managers
    - Assistant Directors
    - All Residence Hall Advisors
  - Athletic Directors and Associate Athletic Directors
  - All Coaches
  - Campus Security Officers
- 4.3. Medical or mental health professionals employed by the College, including 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.

- 4.4. A confidential employee may report sexual misconduct to the Title IX Coordinator without identifying the person(s) affected by the sexual misconduct or providing other confidential information and may offer to the affected person(s) information, resources, and reporting options.
- 4.5. 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 person eighteen (18) years of age or younger, to either law enforcement or the Department of Health and Human Services. The Child Abuse and Neglect Hotline is (800) 652-1999.
- 4.6. Law Enforcement and Judicial Involvement
  - A Complainant can choose to report the conduct only to the College, only to law enforcement, or to both the College and law enforcement.
  - If a report to law enforcement is made, the College will cooperate with any law enforcement investigation.
  - Regardless of whether law enforcement chooses to prosecute a reported offense, the College may pursue disciplinary action against a student or employee alleged to have committed Sexual Harassment.
  - A Complainant may obtain medical care for the purpose of collecting and preserving physical evidence of an alleged offense.
    - 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.<sup>6</sup>
    - Additional information about the options for reporting to law enforcement and evidence collection is available in the [Nebraska Medical Sexual Assault Protocol](#).
  - Parties may also pursue judicial remedies such as orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal, civil, or tribal courts.
    - Parties are responsible for notifying the College of any orders issued by criminal, civil, or tribal courts and should provide a copy of such order to the Title IX Coordinator as soon as reasonably possible.

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<sup>6</sup> *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>



- The Title IX Coordinator may discuss with the party options regarding enforcing the order within a College Educational Program or Activity.

#### 4.7. Student Privacy and Disclosure of Information

- The College appreciates the privacy concerns inherent in allegations of Sexual Harassment and will take reasonable steps to avoid disclosure of the names of students or other identifying information to third parties. Disclosure may be made consistent with Board Policy 3650 or if:
  - Prior written permission is given by the student;
  - The disclosure is necessary to conduct an investigation;
  - The disclosure is necessary to implement a Supportive Measure;
  - The disclosure is necessary to pursue disciplinary action; or
  - The disclosure is otherwise required by law.
- The College is required by the Clery Act, 20 U.S.C. § 1092(f) to include information about reports of criminal sexual misconduct in annual security report statistics. These reports do not identify the individuals involved.
- Student Athletes are subject to disclosure requirements set forth in Board Policy 3740.

### 5. Role of the Title IX Coordinator

5.1. Each College is required to designate one or more employees as Title IX Coordinator. The names and contact information for each College's Title IX Coordinator are:

- Chadron State College  
Morgan Cullan  
Email: [mcullan@csc.edu](mailto:mcullan@csc.edu)  
Phone: (308) 430-0980  
Address: Crites Hall 341  
1000 Main Street, Chadron, NE 69337  
<https://www.csc.edu/titleix/>
- Peru State College  
Eulanda Cade  
Email: [eucade@peru.com](mailto:eucade@peru.com)  
Phone: (402) 209-3797  
Address: Administration 312  
P.O. Box 10, Peru, NE 68421  
<https://www.peru.edu/titleix/>

- Wayne State College  
Alicia Dorcey McIntosh  
Email: [aldorce1@wsc.edu](mailto:aldorce1@wsc.edu)  
Phone: (402) 375-7321  
Address: Student Center 103C  
1111 North Main Street, Wayne, NE 68787  
<http://www.wsc.edu/titleix/>
- 5.2. The Title IX Coordinator is responsible for responding to reports of Sexual Harassment at the College by ensuring:
- The coordination of supportive measures;
  - The facilitation of informal resolutions of Formal Complaints, when appropriate;
  - The investigation of Formal Complaints of Sexual Harassment; and
  - The creation of an investigative report which summarizes and assesses the credibility of the available evidence and synthesizes the areas of dispute and agreement.
- 5.3. The Title IX Coordinator may utilize the services of designees, other employees, and/or contracted services to satisfy the requirements of this policy.

## **6. Response to Reports of Sexual Harassment**

- 6.1. Upon receipt of a report of Sexual Harassment, the Title IX Coordinator will promptly meet with the Complainant for the following purposes:
- To discuss the report, review the availability of Supportive Measures, and determine the Complainant's wishes regarding Supportive Measures;
  - To listen to the Complainant's account and ask questions to gain a better understanding of the nature of the alleged incident;
  - To explain the policy, the definition of Sexual Harassment, and the Grievance Process; and
  - To discern the Complainant's wishes for next steps with respect to the Grievance Process.
- 6.2. The Title IX Coordinator must determine whether the alleged conduct can be addressed under this policy or whether the alleged conduct may be more appropriately addressed pursuant to a different Board or College policy or process.
- If the determination cannot be made based upon the information available, the Title IX Coordinator may seek additional information for purposes of making the determination; however, the Title IX

Coordinator cannot conduct an investigation unless a Formal Complaint has been submitted.

- If the alleged conduct is determined not to fall within this policy, the Title IX Coordinator will refer the Complainant and the report to the appropriate College official. The responsibility for facilitating any Supportive Measures will depend upon the circumstances.

### 6.3. Supportive Measures

- Supportive Measures must be reasonable and are offered to restore and preserve equal access to the College's education programs and activities without unreasonably burdening the other party, to protect the safety of all parties or the educational environment, and/or to deter Sexual Harassment.
- All parties are treated equitably when offered Supportive Measures.
- The College may also utilize Supportive Measures as supplemental tools in disciplinary action, sanctions, or Informal Resolutions.
- Requests for Supportive Measures must be made directly to the Title IX Coordinator, who will facilitate implementation.
- Supportive Measure may include, but are not limited to the following:
  - Referral to counseling services;
  - Reasonable academic accommodations;
  - Changes to on-campus housing;
  - Changes to employment situations;
  - Use of Campus Security escort services;
  - Bi-lateral no contact orders; and
  - Other similar measures.

### 6.4. Emergency Removal of Respondents

- The College may remove a Respondent from the College's education program or activity on an emergency basis if, after conducting an individualized safety and risk assessment, it determines that the Respondent presents an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment.
- Decisions to remove a Respondent on an emergency basis will be made by the Vice President, Associate Vice President, or Dean responsible for Student Affairs as designated by the President based upon the outcome of the individualized safety and risk assessment.
- If removal is deemed appropriate, the party can challenge the decision by submitting a written appeal per Section 7.10 of this policy.

## 7. Grievance Process

### 7.1. Formal Complaint

- In order to commence the Grievance Process, the Complainant must submit a signed Formal Complaint alleging Sexual Harassment against a Respondent(s) and requesting the College investigate the allegations.
- At the time of filing the Formal Complaint, the Complainant must be participating in or attempting to participate in the College's education program or activity.
- The Title IX Coordinator may sign a Formal Complaint on behalf of the Complainant. However, the Title IX Coordinator does not become a party to the Formal Complaint.

### 7.2. Notice of Allegations

- Upon receipt of a Formal Complaint, the Title IX Coordinator will provide the Complainant and Respondent a Notice of Allegations and Investigation.
- The Respondent's notice must include sufficient detail known at the time for the Respondent to respond. The Title IX Coordinator will provide the Respondent with sufficient time to review the Notice of Allegations prior to Respondent's initial investigatory interview.

### 7.3. Advisor:

- Parties are entitled to select an Advisor of their choice at any time throughout the Grievance Process. Parties must have an Advisor during the hearing on a Formal Complaint, as the Advisor is responsible for asking the other party and all witnesses any relevant questions on behalf of their advisee. In all other instances throughout the grievance process (including interviews, meetings, and correspondence), the party will speak for themselves.
  - The College will maintain a list of employees who may be available to act as an Advisor.
  - If a party has selected an Advisor, the party should notify the Title IX Coordinator of the individual's name and contact information. The party will be asked to sign a FERPA waiver to allow information to be shared. A party's Advisor may accompany them to any meetings and assist in guiding the party through the Grievance Process.
  - The Title IX Coordinator provides information and updates to the parties involved. It is each party's responsibility to share information and updates with their Advisor as needed throughout the Grievance Process. However, circumstances may arise in

which communications from the Title IX coordinator may need to include the Advisor.

- If an Advisor is an attorney, their participation is subject to the same limitations as any non-attorney Advisor.
- If at the time the Pre-Hearing Meeting is scheduled, a party does not yet have an Advisor, the College will appoint one for them without any fee or charge to the party.

#### 7.4. Grievance Process Overview

- The Grievance Process is a fair and impartial process during which all parties will have an opportunity to provide their account of the alleged incident, respond to the other party's account, and review evidence directly related to the allegations. All relevant inculpatory and exculpatory evidence will be objectively evaluated.
- Individuals cannot be required to participate in the Grievance Process.
- A Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process.
- The burden of proof and the responsibility for gathering evidence rests on the College, not the parties.
- Credibility determinations are not based on a person's status as a Complainant, Respondent, or Witness.
- Parties are prohibited from knowingly making false statements or submitting false information during the Grievance Process.
- The Complainant has two (2) options to resolve a Formal Complaint of Sexual Harassment:
  - The College investigates the allegations and completes an investigatory report, and after a hearing, a determination regarding responsibility is made; or
  - At any point during the process prior to a determination regarding responsibility, the Complainant and Respondent both agree to Informal Resolution.
- The College strives to complete the Grievance Process within sixty (60) business days from the date the Respondent receives Notice of the Allegations and Investigation unless good cause exists to extend this timeline under Section 7.12.

#### 7.5. Investigation

- The Title IX Coordinator assigned to the matter may conduct the investigation or assign the investigation to a Designee, another College employee sufficiently trained to conduct the investigation, or a third-

party investigator, all of whom are referred to as the “Investigator” for purposes of this policy.

- The Investigator will endeavor to complete the investigation in a timely manner.
- The Investigator is responsible for gathering evidence through:
  - Interviews of the Complainant, Respondent, and any Witness(es);
  - Collecting physical, written, video, recorded, text messages, and similar information, regardless of the format, that may provide relevant information regarding the allegations set forth in the Formal Complaint.
  - 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 provided to the College.
- Once the evidence has been gathered, the Investigator will provide both parties with electronic copies of the evidence obtained from the investigation that is directly related to the allegations, including both inculpatory and exculpatory evidence. If the Investigator is a person other than the Title IX Coordinator, the Investigator will also provide the evidence to the Title IX Coordinator.
  - The parties will have ten (10) calendar days to submit a written response to the Investigator for purposes of correcting or clarifying the evidence or provide additional relevant information.
  - Any written responses received from the parties will be included in the Investigative Report.
  - A party’s failure to respond will be taken as their confirmation that the evidence provided is accurate and complete for purposes of the Grievance Process.
- The Investigator will then prepare the Investigative Report that organizes and fairly summarizes the relevant evidence and synthesizes areas of dispute and agreement between the parties.
- The Investigator will provide the Investigative Report and any additional evidence not previously provided to the parties to the parties electronically at least ten (10) calendar days prior to the Hearing. If the Investigator is a person other than the Title IX Coordinator, the Investigator must also provide the Investigative Report and evidence to the Title IX Coordinator. The parties shall have ten (10) calendar days to provide a written response to the Investigative Report to the Investigator.

## 7.6. Pre-Hearing

- After the completion of the Investigation Report, the Title IX Coordinator shall designate a hearing chairperson. The College has the discretion, but is not required, to designate two (2) additional hearing panelists to conduct the hearing with the hearing chairperson.
- Once a designation is made, the Title IX Coordinator will:
  - Provide written notice to the parties of the designated hearing chairperson and additional panelists when applicable.
  - Provide the Investigative Report and evidence electronically to the hearing chairperson.
  - Schedule a tentative hearing date, time, and location for the hearing.
- If a party has a concern regarding bias or conflict of interest with respect to the hearing chairperson or a panelist, the party must inform the Title IX Coordinator in writing of the basis for the concern.
  - The Title IX Coordinator will provide notice of the concern raised to the other party.
  - The Title IX Coordinator is responsible for determining whether a bias or conflict of interest exists.
  - The Title IX Coordinator will inform both parties in writing of their decision regarding whether the hearing chairperson or panelist will be retained or removed and if applicable the individual appointed to replace them.
- The Title IX Coordinator will assist the hearing chairperson in scheduling a pre-hearing meeting with the parties and Advisors for purposes of determining a date, time, and location of the hearing, identifying witnesses, reviewing the conduct of the hearing, and the relevancy of evidence.
  - The pre-hearing meeting may take place remotely via electronic means or in-person.
  - The hearing chairperson, in consultation with the Title IX Coordinator, may choose to conduct separate pre-hearing meetings with the parties if warranted by the circumstances or requested by one or both of the parties.
  - If the parties wish to call specific witnesses, beyond those the hearing chairperson intends to call, the parties must provide the hearing chairperson with the names and contact information of the witnesses.

- The hearing chairperson, with the assistance of the Title IX Coordinator, is responsible for providing notices and summoning witnesses for the hearing.
- If the College has elected to use a hearing panel, the hearing chairperson, with the assistance of the Title IX Coordinator, will provide the Investigatory Report, evidence, witness lists, and hearing information to the hearing panelists.
- The hearing panelists may also request the attendance of witnesses at the hearing.

#### 7.7. Hearing

- The College will conduct a live hearing as soon as practicable after the pre-hearing meeting.
  - The College shall create an audio, audio-visual recording, or transcript of any Hearing and make it available to the parties for inspection and review.
  - The hearing chairperson is responsible for directing the conduct of the hearing.
  - The Title IX Coordinator shall provide logistical assistance with respect to the hearing and be present at the hearing to provide clarification regarding policy and process.
  - The Investigator must be present at the hearing to answer questions or clarify information with the Investigatory Report.
- Each party's Advisor will be permitted to present relevant evidence and ask relevant questions of the other party and witnesses.
  - The hearing chairperson and any hearing panelists are also entitled to ask questions of witnesses during the hearing.
  - The hearing chairperson and any hearing panelists are also entitled to ask questions of witnesses during the hearing.
  - After each question asked by an Advisor or hearing panelist, the hearing chair must determine whether the question is relevant and instruct the individual whether they may answer. If a question or evidence is excluded based upon relevance, the hearing chairperson must provide a reason in the written Determination of Responsibility.
- With respect to determining relevance, questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
  - Offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant;



- Concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent; or
- All parties, advisors, witnesses, and other participants are expected to conduct themselves in a respectful and civil manner. The hearing officer can require the removal of any person who fails to do so; however, the hearing officer must take steps to ensure that the removal of the individual does not negatively affect the fairness of the process.

#### 7.8. Deliberations and Determination of Responsibility

- In determining whether Sexual Harassment occurred and whether a Respondent is responsible for the Sexual Harassment, the decision-maker(s) shall use the preponderance of the evidence standard.
- If a hearing panel is being utilized, the hearing panel will convene within forty-eight (48) hours of the end of the hearing to reach a decision as to responsibility.
- If a hearing panel is being utilized, the decision will be based upon majority vote, with the hearing chairperson and each hearing panelist having a vote.
- The hearing chairperson is responsible for providing a written determination regarding responsibility including any sanctions or disciplinary action within ten (10) calendar days of the conclusion of the hearing.

#### 7.9. Sanctions and Remedies

- 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.
- Remedies including disciplinary action and informal resolutions are designed to restore or preserve the Complainant's equal access to the College's education programs and activities.

#### 7.10. Appeal

- The Complainant and/or the Respondent may appeal decisions to the President, including a determination regarding responsibility; a decision regarding dismissal of a Formal Complaint; and/or a decision to remove a student on an emergency basis. Appeals must be submitted to the President and Title IX Coordinator in

writing within five (5) calendar days of the hearing chairperson sending their decision.

- The Title IX Coordinator will provide written notice to both parties of the appeal and provide them both five (5) calendar days to submit to the President and Title IX Coordinator a written statement in support of or challenging the decision being appealed.
- The Title IX Coordinator will provide the President the record of the investigation and hearing.
- A Party may challenge a decision to remove them on an emergency basis under Section 6.4 of this policy that the Vice President, Associate Vice President or Dean responsible for Student Affairs as designated by the President erred in determining that they represented an immediate threat to the physical health or safety of any student or other individual.
- The permissible bases for appeal of a determination of responsibility or dismissal of a Formal Complaint are:
  - Procedural irregularity that affected the outcome;
  - New evidence that was not reasonably available at the time the determination was made that could have affected the outcome; or
  - The Title IX Coordinator, designee, hearing chairperson, or hearing panelist had a conflict of interest or bias for or against a party or Complainants or Respondents generally that affected the outcome.
- The President, or when appropriate his designee, will send or cause to be sent a written decision regarding the appeal and the rationale for the decision as soon as practicable.
- If an appeal is filed, the determination of responsibility does not become final unless and until it is upheld by the President. If no appeal is filed, the determination of responsibility becomes final after the period for appeal has passed.

#### 7.11. Informal Resolution

- At any time after a Formal Complaint is filed but prior to reaching a determination regarding responsibility, the parties may request to engage in an Informal Resolution process established by the College.
- Both parties must provide voluntary, written consent to participate in Informal Resolution.
- Informal Resolution cannot be used to resolve allegations that an employee sexually harassed a student, including allegations involving a student-employee if the alleged conduct occurred in the context of their employment.

- The Title IX Coordinator assigned to the matter may facilitate the Informal Resolution process or assign a Designee, another College employee or a third-party, all of whom are referred to as the Facilitator for purposes of this section.
- The Facilitator will provide the parties with written notice disclosing the allegations, the requirements of the Informal Resolution process, and the consequences resulting from participation in the process.
- The Facilitator can present a framework of potential remedies to guide the parties in negotiation, facilitate the process, and assist in reducing any agreement to writing, but the parties themselves must come to an agreement.
- The parties may not bind the College to a resolution that the College does not deem appropriate. The Title IX Coordinator, in consultation with appropriate College officials, is responsible for reviewing and determining whether any agreement reached through the Informal Resolution process is appropriate.

#### 7.12. Temporary Delays and Extensions of Time

- The College may temporarily delay the grievance process or provide limited extensions of time for good cause.
- Either party may request a temporary delay of the grievance process or an extension of time for good cause by submitting a written request to the Title IX Coordinator.
- For purposes of this section, good cause may include, but not be limited to:
  - The absence or unavailability of a party, an Advisor, a Witness, or other person necessary to the grievance process;
  - Concurrent law enforcement activity; or
  - The need for language assistance or disability accommodation.
- The Title IX Coordinator will notify the parties in writing of any delay in the process or extensions of time and the reasons for any such delay or extension.

#### 7.13. Dismissal of a Formal Complaint

- Mandatory Dismissal: The College is required to dismiss a Formal Complaint if:
  - The alleged conduct, if proven, would not constitute Sexual Harassment as defined in this policy.
  - The alleged conduct did not occur in the College's education program or activity; or

- The alleged conduct did not occur against a person in the United States.
- Permissive Dismissal: The College may dismiss a Formal Complaint if:
  - The Complainant withdraws a Formal Complaint in writing;
  - The Respondent is no longer enrolled in or employed by the College; or
  - Specific circumstances prevent the College from gathering evidence sufficient to reach a determination.
- The parties will receive written notice of any dismissal including the basis for the dismissal.
- Parties may appeal the dismissal of a Formal Complaint pursuant to Section 7.10 of this policy.
- Allegations dismissed under a mandatory dismissal may be addressed pursuant to Board Policy 3100 under the Student Code of Conduct.

**FORMS/APPENDICES:**

None

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**SOURCE:**

|                         |                             |  |
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| <b>Legal Reference:</b> | Neb. Rev. Stat. 28-319      | Sexual assault; first degree; penalty.                                   |
|                         | Neb. Rev. Stat. 28-319.01   | Sexual assault of a child; first degree; penalty.                        |
|                         | Neb. Rev. Stat. 28-702      | Incestuous marriages; declared void.                                     |
|                         | Neb. Rev. Stat. 28-711      | Child subjected to abuse or neglect; report; contents; toll-free number. |
|                         | Clery Act 20 U.S.C. 1092(f) |  |
|                         | 34 CFR 106.45(3)(i)         |  |

**Policy Adopted:** June 2012 (Effective July 2012)

**Policy Revised:** July 2013, December 2013, April 2014 (Effective July 2014), November 2014, January 2015, March 2015 (Effective July 2015), August 2015, March 2016, October 2016, June 2017, July 2017, June 2018, July 2020, August 2020, February 2021, June 2021, October 2021, February 2022, September 2022