

STUDENT AFFAIRS, NEBRASKA STATE COLLEGE SYSTEM

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

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BOARD POLICY

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

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

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

Scope

1. *To Whom Does this Policy Apply?*

a. Students

This policy applies to all students, including traditional students, online or distance education students, and students participating in dual enrollment programs.

2. *Where Does this Policy Apply?*

This policy applies to the following:

- a. The campuses of the Nebraska State Colleges
- b. Areas owned or controlled by the Colleges
- c. Off campus, to the extent that the conduct occurring off campus has continuing adverse effects on campus or creates a hostile environment for a student. College educational programs or activities (whether on or off campus), including, but not limited to, internship and clinic programs and placements and College sponsored study-abroad programs.

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Conduct Prohibited by Board Policy 3020 and Definitions

Note: Being impaired by drugs or alcohol is not a defense to any violation of this policy.

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

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

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

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

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

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

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

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

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Sex/Gender Harassment: Sex/gender harassment is unwelcome conduct of a sexual nature that is sex or gender-based. Sex/gender harassment can include (but is not limited to) the following:

- Unwelcome sexual advances
- Requests for sexual favors
- Cyberbullying
- Other verbal, nonverbal, online, or physical conduct of a sexual nature
- Physical aggression, intimidation, or hostility based on sex or sex-stereotyping, sexual orientation and/or gender identity, even if those acts do not involve conduct of a sexual nature.

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

i. *Quid Pro Quo Harassment*

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

ii. *Hostile Environment Harassment*

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

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

iii. *Retaliatory Harassment*

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

Sexual Violence: Any intentional act of sexual contact (touching or penetration) that is accomplished toward another without their consent. Such acts may include, but are not limited to, forced oral sex, forced anal penetration, insertion of foreign objects into the body, and any act of sexual intercourse "against someone's will." This includes, but is not limited to, the use of a weapon, physical violence or restraint, verbal threats, intimidation, and threats of retaliation or harm. Sexual Violence includes Sexual Assault as defined in this policy. *Note:* It is never appropriate for allegations of sexual violence to be resolved by mediation.

Stalking: Stalking shall mean engaging in a course of conduct directed at a specific person that would cause a reasonable person to; (a) fear for their safety or the safety of others; or, (b) suffer substantial emotional distress.

- i. "Course of conduct" is defined as two or more acts (including, but not limited to) acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

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- ii. “Reasonable Person” is defined as a reasonable person under similar circumstances and with similar identities to the victim.
 - iii. “Substantial emotional distress” is defined as significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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

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

Additional Definitions

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

Employee: 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.

Responsible Employee/Mandatory Reporter:

Any employee who has been tasked with reporting incidents of sexual misconduct by students to the Colleges’ Title IX Coordinator. This includes employees who have the authority to take action to address sexual violence, and employees whom a student could reasonably believe has this authority or duty. *See “Reporting a Policy Violation to the Colleges” on page 5 for additional information.*

Confidential Employee: A College employee who does not have a duty to report incidents of sexual misconduct to the College’s Title IX Coordinator. Medical or mental health professionals employed by the Colleges (Licensed Student Counselors and Nurses) are Confidential Employees and respect and protect confidential communications from students, faculty, and staff to the extent they are legally able to do so. Employees may have to breach a confidence, however, when they perceive an immediate and serious threat to any person or property.

Reporting Party: An individual that makes a report to the College of a potential policy violation. This may be the alleged victim or a third party.

Alleged Victim: An individual who alleges to have been the victim in an incident(s) of sexual misconduct in violation of this policy.

Alleged Perpetrator/Responding Party: An individual who is alleged to have committed an act of sexual misconduct in violation of this policy.

Consent:

a. Definition

Consent is positive cooperation in an act or expressing intent to engage in an act. Consent is indicated through words or conduct. An absence of words or conduct does not constitute consent. 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. Consent to one type of sexual activity does not necessarily constitute consent for another type of sexual activity. Consent can be withdrawn by any party at any time through words or conduct.

b. Capacity to Consent

Consent can be invalidated (in other words, a person cannot give consent) in a number of situations.

- A person cannot give consent if they are incapacitated by drugs or alcohol, unconscious, passed out, asleep, coming in and out of consciousness, or if they have a disorder, illness, or disability that would impair their understanding of the act and their ability to make decisions.
- A person cannot give consent if they are under the threat of violence, injury, or other forms of coercion or intimidation.
- A person cannot give consent if they are forced, coerced, intimidated, or deceived into providing consent. Consent cannot be inferred from silence or passivity alone.

The fact that the alleged victim was under the influence of drugs/alcohol may be considered in determining whether that person had the capacity to consent to the act in question. If the person was incapacitated, the question of whether the alleged perpetrator knew, or should have known, that the alleged victim was incapacitated will be considered.

c. Lack of Consent

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. 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.

Hostile Environment: Sex and/or gender harassment creates a hostile environment for a student-victim when it is so severe, pervasive, or persistent that it interferes with or limits the student's ability to participate in or benefit from the Colleges' services, activities, or opportunities because of their sex or gender.

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

Reporting a Policy Violation to the Colleges

There are multiple options available to an individual who wishes to report a policy violation to the College. Reports can be filed by the alleged victim or a third party. Reports can be made to the College's Title IX Coordinator, or to designated employees who are "Mandatory Reporters" (also known as "Responsible Employees"). Mandatory Reporters shall communicate the report to the College's Title IX Coordinator.¹ Pursuant to federal law, the College has a legal responsibility for documenting and reporting an incidence of sexual violence and sex harassment.

¹ An individual considering making a report to a Mandatory Reporter should be aware that any personally identifiable details they share with the Mandatory Reporter will be communicated to the Title IX Coordinator.

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<u><i>Title IX Coordinator</i></u>	<u><i>Mandatory Reporters</i></u>
<p>Ted Tewahade Chadron State College 1000 Main Street Chadron, NE 69337 (308) 430-0980</p> <p>Eulanda Cade Peru State College PO Box 10 Peru, NE 68421-0010 (402) 872-2230</p> <p>David McMahan Wayne State College 1111 North Main Street Wayne, NE 68787 (402) 375-7213</p>	<ul style="list-style-type: none"> • President • Vice Presidents • Deans • College Title IX Coordinator and Designees (<i>contact information is listed to the left</i>) • Dean of Students • Housing/Residence Life Staff to include: <ul style="list-style-type: none"> ○ Directors ○ Managers ○ Assistant Directors ○ Senior Residence Hall Advisors ○ Residence Hall Advisors • Coaches and Assistant Coaches • Campus Security Officers <p>Reports to the above designated employees will constitute “notice” to the College for the purposes of considering an investigation and institutional response in conjunction with the Title IX Coordinator.</p> <p>College employees (even medical or mental health professionals identified below) are required by law to report any allegations of sexual abuse or assault of a minor to either law enforcement or the Department of Health and Human Services.</p> <p><i>Exception Regarding Employee Reporting:</i> The law recognizes and protects the confidentiality of communications between a person seeking care and a medical or mental health professional. Medical or mental health professionals employed by the College (Licensed Student Counselors and Nurses) respect and protect confidential communications from students, faculty, and staff to the extent they are legally able to do so. Employees may have to breach a confidence, however, when they perceive an immediate and serious threat to any person or property.</p>

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i. No Time Limit on Reporting

There is no time limit for reporting a policy violation to the College. However, the more time that passes between the alleged policy violation and the report to the College the more difficult it becomes for the College to respond and/or investigate the matter to determine whether the alleged perpetrator is responsible for the alleged behavior. Additionally, if the alleged perpetrator graduates or otherwise leaves the College, the College will not have the ability to hold them accountable if they are found responsible for sexual misconduct. Therefore, the College encourages early reporting of incidents that may be policy violations.

ii. Requests for Confidentiality, No Investigation, or Informal Resolution

An alleged victim may request the following: (1) for their name to be kept confidential, (2) for there to be no investigation into the alleged incident, or (3) for an informal resolution process. The College will take all reasonable steps to investigate and respond to the report consistent with the alleged victim's request. In determining whether it is possible to grant a request, the Title IX Coordinator must balance the request with their overall duty of providing a safe and non-discriminatory campus environment. Alleged victims who make these requests should understand that their request may limit the College's ability to respond fully to their concern. The College will offer appropriate resources and support to the alleged victim.

iii. Interim Measures

A range of interim measures are available to protect the alleged victim, as necessary, throughout the Title IX investigation. Any interim measures required will be put in place as soon as reasonably possible. The following are examples of interim measures that the College can implement: a no-contact order; a no-trespass order; a temporary suspension; a change in academic or living situations; access to counseling and academic support; the option to complete courses online, via independent study, or from a distance; the option to re-take a course or withdraw without penalty; and assistance working with professors to make up tests or assignments. Interim measures will be taken at no cost to the alleged victim.

Reporting Conduct to Law Enforcement

Violations of this policy that constitute criminal conduct may be reported to law enforcement. Reporting conduct to the College and reporting conduct to law enforcement are two separate processes. A reporting party can choose to report the conduct only to the College,² or only to law enforcement, or to both the College and law enforcement.

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

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

If a report is made to law enforcement and the agency pursues an investigation, the College will cooperate with the law enforcement agency.

² There is one exception: employees (even medical or mental health professionals who are Confidential Employees) are required by law to report any allegations of sexual abuse or assault of a minor to either law enforcement or the Department of Health and Human Services. In Nebraska, the age of majority is 19.

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Confidentiality

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

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

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

Disciplinary Processes and Consequences

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

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

Investigation Procedures

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

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

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

The investigation shall consist of:

- Reviewing all related written statements or reports;
 - Interviewing the alleged victim, alleged perpetrator and other witnesses;
 - Reviewing applicable College records; and,
 - Reviewing other relevant material and evidence.
- 5) The Title IX Coordinator or designee will provide parties involved in the investigation with periodic updates while an investigation is pending, consistent with Family Educational Rights and Privacy Act (FERPA) restrictions.
- 6) At the conclusion of the investigation, the Title IX Coordinator or designee will make a determination regarding the report using a "preponderance of the evidence" standard (which means he or she will assess whether it is more likely than not that alleged sexual violence or harassment occurred) and will provide the recommendation to the Vice President responsible for Student Affairs and the President. The Title IX Coordinator will also issue separate written statements to the alleged perpetrator and the alleged victim, informing them of the determination and recommendation to the Vice President for Student Affairs and the President.
- 7) Within ten (10) working days from receipt of the Title IX Coordinator's or designee's recommendation, the Vice President will issue a written statement to the alleged victim, the alleged perpetrator and the Title IX Coordinator regarding the outcome of the investigation and a decision as to whether or not disciplinary proceedings will commence in accordance with Board Policies 3100 and 3200. In the event that disciplinary proceedings commence at the conclusion of the investigation, the College has an obligation to disclose the outcome of the disciplinary proceedings to the student who reports being the victim of sexual violence.
- 8) If the alleged victim and alleged perpetrator agree with the decision of the Vice President, the matter is considered resolved without any further rights of appeal by either party. If either the alleged victim or the alleged perpetrator object to the decision of the Vice President, either individual may appeal the decision in writing to the President within seven (7) calendar days. (Any sanctions imposed during the disciplinary process will go into effect *after* the 7-day window for appeals closes, and if an appeal occurs, after it is complete. However, existing interim measures [such as a temporary suspension] may remain in place.)

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Requests to extend the 7-day window for appeals for good cause must be submitted in writing to the Vice President and will be decided on a case-by-case basis. The President will review the matter and then issue his/her decision to; (a) affirm the Vice President's decision; (b) refer the matter for further investigation; or, (c) refer the matter for disciplinary proceedings. The President's decision will be final.

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

Conflicts of Interest in Investigations

Conflicts of interest (whether real or perceived) by those handling a Title IX investigation or response will not be permitted. A party who wishes to raise a concern regarding a conflict of interest in the investigation or response process may submit their concern in writing as soon as possible to the Vice President for Student Affairs.

Resources and Assistance

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

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