

# NEBRASKA WESLEYAN UNIVERSITY

## Resolution Procedures for Addressing Sex Discrimination and Sex-Based Harassment under the 2024 Final Rule for Federal Title IX Regulations

These procedures pertain to acts of sex discrimination and sex-based harassment (“Prohibited Conduct”), as described in the University’s 2024 Federal Title IX Policy Governing Sex Discrimination and Sex-based Harassment Policy (“Title IX Policy”).

Sex Discrimination includes:

- Assigned sex at birth
- “Biological” sex
- Sex stereotypes
- Sex characteristics
- Pregnancy and pregnancy-related conditions
- Sexual orientation
- Gender identity

Sex-based Harassment includes:

- Quid Pro Quo Harassment
- Hostile Environment Harassment
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking
- Retaliation related to sex discrimination and sex-based harassment

Hereinafter, Nebraska Wesleyan University will be referred to as “the University.” Faculty and Staff Employees will be referred to as “Employees,” unless uniquely specified.

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## I. Definitions of Key Terms

**Advisor of Choice:** an individual selected by a Complainant or Respondent to assist them during any part of the Formal Resolution process addressed under Title IX, including the Reporting, Assessment, Investigation, Hearing, and Appeal process. An Advisor of Choice may be a staff member, student, friend, family member, community member, or an attorney. A University-selected Advisor of Choice will be provided for the Hearing if the Complainant or Respondent has not appointed one for themselves, but the University-selected Advisor will not be an attorney. Each party must bear their own expense of choosing an attorney as an Advisor of Choice. Any involved party may change their Advisor of Choice at any point. The Advisor of Choice may also serve as the Support Person.

**Complainant:** an individual who is alleged to be the Harmed Party of conduct that could constitute sex discrimination or sex-based harassment.

**Complaint:** is a verbal or written accusation against an individual for violation of the University’s sex discrimination and sex-based harassment policy that is submitted by a:

- Harmed Party; or
- Parent, guardian, or other authorized individual with the legal right to act on behalf of an of the Harmed Party; or
- Title IX Coordinator.

Note: For sex discrimination other than sex-based harassment, any student or employee, or other person who was participating or attempting to participate at the time of the alleged discrimination, can submit a Complaint.

**Confidential Employee:** an individual designated by the University working in their confidential capacity to provide support to Students and Employees without being required to report to a Title IX Coordinator. A report to a Confidential Employee will not be acknowledged or considered notice to the University about the alleged occurrence of sex discrimination and sex-based harassment and will not trigger the University’s response obligations.

**Day:** University working day, not including Saturday, Sunday, or University holidays. The University will make all reasonable efforts to comply with all time frames set forth in these procedures, but all applicable timelines may be extended depending on the complexity of the circumstances of each case.

**Decisionmaker:** a trained professional designated by the University who is responsible for reviewing all relevant information, determining responsibility for “violation” or “not in violation” of a University policy, and assigning sanctions, if necessary. Decisionmakers also review approved appeal requests.

**Disparate Impact:** is a type of unintentional discrimination that occurs when a seemingly neutral policy or practice negatively affects a protected group of people, under the Title IX Policy and these procedures.

**Disparate Treatment:** is a type of discrimination that occurs when a person is treated differently or adversely based on a protected characteristic, such as sex, as protected under the Title IX Policy and these procedures.

**Education Program or Activity:** includes all campus operations, including off-campus settings that are operated or overseen by the University, including, for example, field trips, online classes, and athletic programs; conduct subject to the University's disciplinary authority that occurs off-campus; and conduct that takes place via University-sponsored electronic devices, computer and internet networks and digital platforms operated by, or used in the operations of, the University. Conduct that occurs outside of the education program or activity may contribute to a hostile environment within the program or activity.

**Employee Reporting Obligations:** All Employees and Student Employees have required reporting obligations based on their job responsibilities. Specific jobs in Category A, listed in Table 1: Employee Reporting Obligations (Section III of these procedures), will be required to promptly report disclosures of Prohibited Conduct that reasonably could be sex discrimination or sex-based harassment directly to the Title IX Coordinator. All other Employees not specifically identified and all Student Employees as noted in Category B will be required to address disclosures of Prohibited Conduct using either Option 1 or Option 2. Option 2 requires Employees and Student Employees to provide contact information for the Title IX Coordinator **and** information about how to make a report and file a complaint to anyone who provides a disclosure. The two options that meet Employee Reporting Obligations are:

- Option 1: Report all information disclosed and/or made available to the employee about sex discrimination and sex-based harassment to a Title IX Coordinator.
- Option 2: Provide contact information for the Title IX Coordinator to anyone who provides a disclosure **and** information about how to make a report and file a complaint.

**Employees:** any person who works for the University in return for financial or other compensation. This includes full-time and part-time faculty, full-time and part-time staff, adjunct faculty, visiting faculty, and student employees\*.

**Faculty Employee:** any person who works for the University in return for financial or other compensation who has faculty rank for the primary position of the employee's job. This includes full-time, part-time, adjunct and temporary faculty employees.

**Staff Employee:** any person who works for the University in return for financial or other compensation who does not have faculty rank for the primary position of the employee's job. This includes full-time, part-time, and temporary staff employees.

**\*Student/employee crossover:** Students who work on campus as an employee and employees who are registered in courses at the University fall under the jurisdiction of the Title IX Policy and these procedures. Details of the student/employment status will be assessed by the Title IX coordinator for appropriate application of procedures.

**Expert Witness:** a person who is permitted to participate in an investigation or hearing because of special knowledge or proficiency in a particular field that is relevant to the Complaint.

**Finding:** a written conclusion by a preponderance of the evidence, issued by a Decisionmaker, that the conduct did or did not occur as alleged.

**Harmed Party:** an individual or group of individuals who experienced sex discrimination and sex-based harassment. Once a Harmed Party makes a report, or files a complaint, alleging an occurrence of sex discrimination or sex-based harassment, they are referred to as a “Complainant” as defined herein.

**Investigator:** one or more trained University-appointed individuals who conduct an investigation and prepare the official written reports (Preliminary and Final Investigative Reports) after a Complaint is made.

**Mandatory Reporter:** all Employees, including Confidential Employees, are mandatory reporters of abuse or neglect of a vulnerable adult or abuse of a minor by an adult. In Nebraska, minors are considered all persons under the age of 19.

**Remedies:** are measures provided, as appropriate, to a Complainant or any other person the University identifies as having had their equal access to a University’s education program or activity limited or denied by sex discrimination or other Prohibited Conduct covered by the Title IX Policy and these procedures. These measures are provided to restore or preserve that person’s access to the education program or activity after the University determines that sex discrimination occurred.

**Reporting Party:** an individual, or group of individuals, who reports information to the Title IX Coordinator. Reporting Parties can include, but are not limited to, the person who experienced the sex discrimination or sex-based harassment, Employees, parents, bystanders, witnesses, friends, other community members, or someone who has otherwise been made aware of an incident of sex discrimination or sex-based harassment.

**Respondent:** an individual, or group of individuals such as a student organization, who has been reported to have engaged in conduct that could constitute Prohibited Conduct or retaliation for engaging in a protected activity.

**Sanctions:** disciplinary steps that may be imposed on a Respondent who is found responsible for a violation of the University’s policies.

**Students:** any person registered in courses at the University, either full-time or part-time, pursuing undergraduate or graduate studies, including those who audit courses. For Employees who are enrolled and taking classes, refer to the Student/Employee Crossover definition.

**Support Person:** an individual selected by a Complainant or Respondent to assist them during any part of the Formal or Informal Resolution processes, including the Reporting, Assessment, Informal Resolution, Investigation, Hearing, and Appeal process. A Support Person may be a staff member, student, friend, family member, community member, or an attorney. The University will not bear the expense of an attorney acting as a Support Person retained by any involved party. Any involved party may change their Support Person at any point.

**Title IX Assessment Report:** a record of the relevant details as reported to the Title IX Coordinator during the Title IX Assessment, including factors related to any threat of imminent danger or ongoing safety concerns for the campus.

**Witness:** an individual who personally sees or perceives a detail or event and is willing to attest to that detail. Information from witnesses whose sole purpose is to provide character information will not be considered as part of an investigation.

## II. Role of Title IX Coordinator

### Title IX Coordinators

The Title IX Coordinators oversee the University's assessment, investigation, and resolution of reports of sex discrimination and sex-based harassment ensuring compliance with Title IX and other relevant state and federal laws. A report can be made at any time via email/electronically, phone, or physical mail, or in person during regular business hours.

Director of Title IX Services and Title IX Coordinator: Maria Harder, Nebraska Wesleyan University, Smith Curtis 202E, 5000 Saint Paul Ave., Lincoln, NE 68504 (402) 465-2117, [mharder@nebrwesleyan.edu](mailto:mharder@nebrwesleyan.edu)

Assistant Director of Title IX Services and Title IX Coordinator: Natasha Moreno, Nebraska Wesleyan University, Burt Hall 112, 5000 Saint Paul Ave., Lincoln, NE 68504 (402) 465-2356, [nmoreno@nebrwesleyan.edu](mailto:nmoreno@nebrwesleyan.edu) or [titleix@nebrwesleyan.edu](mailto:titleix@nebrwesleyan.edu)

### The Title IX Coordinators are:

- Responsible for oversight of the assessment, investigation, and resolution of all reports of sex discrimination and sex-based harassment;
- Committed to supporting all parties involved in understanding and assessing all rights, options, and resources;
- Knowledgeable and trained in relevant state and federal laws and University policy and procedures;
- Responsible for oversight of annual training programs for Title IX personnel and all members of the campus community. Trainings include, but are not limited to, the definition of sex discrimination and sex-based harassment, the scope of the University's education program or activity, how to conduct an investigation and resolution process including hearings, appeals, and how to serve impartially, including to avoid prejudgment of the facts at issue, conflicts of interest, and bias. Additionally, training ensures that Title IX personnel do not rely on sex stereotypes and promotes impartial investigations and adjudications of Complaints of sex discrimination and sex-based harassment;
- Available to provide information to any involved party about the courses of action available at the University;
- Available to assist any party regarding how to respond appropriately to reports of sex discrimination and sex-based harassment;
- Responsible for oversight of sexual violence prevention education;
- Responsible for monitoring full compliance with all requirements and timelines specified in the reporting and complaint procedures;

- Responsible for ensuring resolution procedures are in compliance with Federal and University policies and regulations;
- Collaborate with the Provost, or designee, when disclosures or supportive measures are related to issues of academic freedom or instructional methods;
- Responsible for ensuring the timely completion of any remedies or sanctions, and;
- Responsible for compiling annual reports.

### III. Employee Reporting Obligations

The 2024 Federal Title IX Regulations require employees with specific job responsibilities that include the authority to institute corrective measures, individuals who serve the institution in a supervisory capacity, administrators, faculty/instructors, advisors, and other positions as noted below in Table 1, to promptly report directly to the Title IX Coordinator conduct that reasonably could be sex discrimination or sex-based harassment using **ONLY** Option 1.

Employees and student employees whose job responsibilities are not listed under Category A are required to address disclosures of Prohibited Conduct using either Option 1 or Option 2. Option 2 allows employees listed under Category B to provide contact information for the Title IX Coordinator **and** information about how to make a report and file a complaint to anyone who provides a disclosure. Option 2 requirements can be met using the Title IX Resource card or email template, which are both located on the Title IX webpage.

The two options that meet employee reporting obligations are:

- Option 1: Report all information disclosed and/or made available to the employee about sex discrimination and sex-based harassment to a Title IX Coordinator.
- Option 2: Provide contact information for the Title IX Coordinator to anyone who provides a disclosure **and** information about how to make a report and file a complaint.

Table 1: Employee Categories of Reporting Obligations

<u>Reporting</u>	<u>Choice of Reporting or Providing Information</u>
Employees in this category can <b><u>ONLY</u></b> use Reporting (Option 1) to meet this reporting obligation.	Employees in this category may use Reporting (Option 1) <b><u>OR</u></b> Providing Resource Information (Option 2) to meet this obligation.
<p style="text-align: center;"><u>Job Category A</u></p> <ol style="list-style-type: none"> <li>1. Advisors, Academic and Club</li> <li>2. Chief of Staff</li> <li>3. Coaches (All)</li> <li>4. Deans, Assistant Deans</li> <li>5. Department Chairs, Program Directors</li> <li>6. Directors, Assistant Directors</li> <li>7. Faculty, full-time, part-time, adjuncts</li> <li>8. Provost/Vice Presidents</li> <li>9. Student Life/Affairs Personnel</li> <li>10. Supervisors</li> <li>11. Title IX Personnel</li> <li>12. University President</li> </ol>	<p style="text-align: center;"><u>Job Category B</u></p> <ol style="list-style-type: none"> <li>1. All other employees, including student employees, not listed in Obligation 1</li> <li>2. Confidential Employees (exempt from Option 1)</li> </ol>

Instances of disclosures may occur through various communications that include, but are not limited to, conversation, emails, classroom assignments, social media, and public awareness events and must be addressed in accordance with the University's Title IX procedures.

## **IV. Reporting Sex Discrimination and Sex-Based Harassment**

### **Individual disclosure**

An individual may choose to report to the University, including the Title IX coordinator, a Confidential Resource, or through anonymous reporting. An individual may choose to report to law enforcement. These reporting options through the University and law enforcement are not exclusive. An individual may simultaneously pursue a civil or criminal investigation off campus and the University sex discrimination and sex-based harassment resolution process.

### **How to Make a Report vs. Filing a Complaint to the University**

All reports and Complaints of sex discrimination and sex-based harassment will be taken seriously and in good faith. While there is no time limit for reporting sex discrimination and sex-based harassment to the University, the University's ability to respond may diminish over time, as evidence may erode, memories fade, and individuals may no longer be affiliated with the University. If an individual is no longer affiliated with the University, the University will provide reasonably appropriate supportive measures, assist individuals in identifying external and/or other internal reporting options.

**Making a Report** is the notification of an incident of sex discrimination and sex-based harassment to a Title IX Coordinator by any Reporting Party. A report may be accompanied by a request for any of the following: resources, no further action, supportive measures, and/or initiation of the Complaint process. The University recognizes that not every individual will be prepared to request supportive measures or to file a Complaint; therefore, Reporting Parties may pursue these options any time in the future. Individuals are not expected or required to pursue any specific course of action.

The University will make a reasonable effort to respect the wishes of the person who experienced sex discrimination and sex-based harassment. The University reserves the right to file a Complaint over the Complainant's objection if the University deems it in the University's best interest to do so. This is done by the Title IX Coordinator signing a Complaint, on behalf of the University, and can be done with or without consent/permission of the original Complainant. Upon the filing of the Complaint, the Title IX Coordinator will not become a party to the procedure.

A report can be made at any time via email/electronically, phone, or physical mail, or in person during regular business hours.

**Filing a Complaint** is defined as the request to the Title IX coordinator to initiate the University's formal and informal resolution processes regarding incidents of sex discrimination and sex-based harassment. The decision to file a Complaint may be made at any time via email/electronically, phone, or physical mail, or in person during regular business hours. The

Title IX coordinator will provide assistance about what course of action may best support the individual(s) involved and how best to address the complaint.

There are four situations in which the Complaint may be signed.

1. A Harmed Party may sign the Complaint.
2. A parent, guardian, or other authorized individual with the legal right to act on behalf of the Harmed Party may sign the Complaint in the event a Harmed Party does not wish to file the Complaint.
3. A Title IX Coordinator may sign the Complaint:
  - a. In the event a Harmed Party does not wish to file the Complaint.
  - b. When the Prohibited Conduct presents an imminent threat to campus safety or the safety of an individual on campus.

The University reserves the right to file a Complaint over the Complainant's objection if the University deems it in the University's best interest to do so, including without limitation in order to render the respondent eligible for potential disciplinary sanction following the completion of a resolution process that complies with §§ 106.45 and 106.46 of the Federal Regulations.

4. For sex discrimination other than sex-based harassment, any student or employee, or other person who was participating or attempting to participate at the time of the alleged discrimination.

When someone other than the Harmed Party signs the Complaint, that party does not become the Complainant. Only the Harmed Party is allowed to become the Complainant.

It is important for Reporting Parties to note that the University will consider amnesty protections as outlined below. **Amnesty** is protection granted to individuals for participating in minor policy violations without fear of a personalized conduct proceeding.

- **For Complainants:** The University provides amnesty to harmed parties who may be hesitant to report to University officials because they fear that they themselves may be accused of minor policy violations.
- **For Those Who Offer Assistance:** To encourage Students and Employees to offer help and assistance to others, the University pursues a policy of amnesty for minor violations when Students or Employees offer help to others in need. At the discretion of the Student Conduct System Administrator, Assistant Vice President of Human Resources, or designee, amnesty may also be extended on a case-by-case basis to the person receiving assistance.
- **For Those Who Report Serious Violations:** Students and Employees who are engaged in minor violations but who choose to bring related serious violations by others to the attention of the University may be offered amnesty for their minor violations.
- **For Those Who Witness Serious Violations:** Students and Employees who witness serious violations by others may be offered amnesty for any minor violations if they are called on as a witness to a serious violation but will not be provided amnesty if they participated in, facilitated or condoned the misconduct through a failure to act.



In any of the circumstances listed above, a coaching opportunity related to minor violations may occur, but no conduct proceedings will result.

Abuse of amnesty protections can result in a decision by the Student Conduct System Administrator, Assistant Vice President for Human Resources, or designee, not to extend amnesty.

### **Reporting to Confidential Employees**

Confidential Employees are exempt from Employee Reporting Obligations Option 1, listed in Section III of this document. A Confidential Employee is an individual designated by the University to provide support to Students and Employees without being required to report to a Title IX Coordinator.

When an individual shares information with a Confidential Employee or a community professional with the same legal protections, the Confidential Employee cannot reveal the information to any third party except when an applicable law or court order requires or permits disclosure of such information. For example, information will be disclosed when:

1. The individual gives written consent for the disclosure;
2. There is concern that the individual will likely cause serious physical harm to self or others; or
3. The information concerns conduct involving suspected abuse or neglect of a vulnerable adult or abuse of a minor by an adult. In Nebraska, minors are considered anyone under the age of 19.

Additionally, Confidential Employees must share non-identifying statistical information related to crimes found in the Annual Security Report with a Clery Compliance Officer, as required by the Clery Act.

### **Anonymous Reporting to the University**

Anonymous reports of sex discrimination and sex-based harassment concerns can be submitted to the University through the University website by clicking on the link [Report a Concern](#), located at the bottom of every webpage. Please note, the University may be limited in its ability to respond to concerns reported anonymously, or reports without sufficient details. Reporting anonymously does not fulfil Employee Reporting Obligations.

### **Reporting to Law Enforcement**

Individuals have the right to notify or decline to notify law enforcement. Police have legal authority to criminally investigate reports of sexual assault, domestic abuse, and stalking, collect evidence, make arrests, and assist in seeking emergency protective measures. The University will assist individuals in notifying law enforcement if they choose to do so.

To Contact Lincoln Police Department:

- 911 (for emergencies).
- To make a non-emergency police report, call the non-emergency line or visit a team station Monday-Friday between 8:00 AM and 4:00 PM.
  - LPD Non-Emergency Line: (402) 441-6000.

### **Anonymous Reporting to Law Enforcement:**

There are options to report a sexual assault or other crimes to law enforcement anonymously. These processes vary depending on the police department receiving the report. Please note, law enforcement may be limited in their ability to respond to anonymous reports or reports without sufficient details.

- To make an anonymous report of sexual assault to the Lincoln Police Department, visit <https://lincoln.ne.gov/city/police/anonfrm.htm> or call (402) 441-3866. Individuals can choose to report as much information as they would like.

Victims who choose to receive a forensic examination by a sexual assault nurse examiner may request that the evidence be collected anonymously, meaning they can choose whether to report their name and other information to law enforcement.

## V. Conflict of Interest

Any individual carrying out any part of the Title IX Policy or these procedures shall be free from any actual conflict of interest or demonstrated bias that would impact the handling of a matter. Should the Title IX Coordinator have a conflict of interest, the Title IX Coordinator shall immediately notify the Director of Title IX Services who will either take, or reassign to an appropriate designee, the role of Title IX Coordinator for purposes of carrying out the handling and finalization of the matter at issue. A conflict or objection involving the Director of Title IX Services on the grounds of a demonstrated bias or actual conflict of interest are to be made, in writing, to the University President.

Objections regarding the Title IX Coordinator are to be made, in writing, to the Director of Title IX Services. All objections will be considered, and changes made as appropriate. Any change will be communicated in writing.

## VI. Response to a Report

The following steps will be used following the receipt of a report of Prohibited Conduct to the Title IX Coordinator.

### Initial Contact

Following receipt of a report alleging a potential violation of the Title IX Policy, the Title IX Coordinator will contact the Reporting/Harmed Party to offer an initial intake and assessment meeting. Initial contact includes related rights, options, and resources. The Title IX coordinator will assess available information for imminent or ongoing threats, immediate physical safety, and emotional well-being to the Harmed Party or campus community. If the individual bringing forward information about sex discrimination and sex-based harassment is not the actual Harmed Party/Complainant, the Title IX Coordinator will limit communication to general information on policies and processes.

### Title IX Assessment

After the initial outreach, an involved party may agree to meet with the Title IX coordinator. The purpose of this initial meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full investigative interview.

During this meeting, the Title IX coordinator will provide the following:

1. Written explanation of rights, options, and resources, and the difference between privacy and confidentiality;

2. Overview of related University policy;
3. Identify any concerns about discrimination or harassment based on other protected classes;
4. Information regarding available confidential and non-confidential campus and community resources, including: counseling, health care, mental health, or victim advocacy. Upon request, information regarding legal assistance, visa and immigration assistance, student financial aid and other available services may be provided;
5. Availability of Supportive Measures regardless of whether a complaint is filed and/or any resolution process is initiated;
6. Options for resolution (no action, prevention, agreement, investigation) and how to initiate such resolution processes;
7. Explanation of the University's evidentiary standard ("preponderance of evidence");
8. Right to notify law enforcement as well as the right not to notify law enforcement;
9. Information about the importance of preserving evidence and, in the case of potential criminal misconduct, how to get assistance from the Title IX coordinator or local law enforcement in preserving evidence;
10. Right to a Support Person/Advisor of Choice, if applicable, during the University proceedings including the initial meeting with the Title IX Coordinator;
11. Statement about retaliation protections for filing a complaint, or participating in the complaint process, which is prohibited; and
12. Information on how to file a Complaint, as well as documentation on the Reporting Party's preferred course of action.

The Title IX Coordinator will document all information provided by the Reporting Party during a Title IX Assessment in a Title IX Assessment Report. The purpose of this Report is to record the relevant details as reported to the Title IX Coordinator. This Assessment Report will be shared with the Investigator(s) should a Complaint be filed. The Title IX Coordinator will also enter non-identifying statistical information about the report into the University's daily crime log.

The University will make a reasonable effort to respect the wishes of the person who experienced sex discrimination and sex-based harassment. In all cases, the Title IX coordinator will continue to assess imminent or ongoing threat, immediate physical safety, and emotional well-being to Harmed Party or campus community to comply with the need of a timely warning or emergency notification as required under federal law.

If the reported incident constitutes an imminent or ongoing threat to campus safety, the Title IX Coordinator may sign a Complaint, beginning the resolution process. In making this decision, the Title IX Coordinator will consider, but is not limited by, the following factors: whether the person who experienced sex discrimination and sex-based harassment has requested that no action be taken; whether they are willing to participate in additional steps; whether the University can undertake any action without their participation; the severity and impact of the sex discrimination and sex-based harassment; whether there exists a pattern of sex discrimination and sex-based harassment; the existence of independent evidence; the existence of relational power differentials; and any legal obligation to proceed based on the nature of the conduct, including sex discrimination and sex-based harassment involving vulnerable adults and involving minors by an adult. The Title IX Coordinator, in their discretion, upon receipt of a report of an alleged occurrence of sex discrimination and sex-based harassment, may determine to

sign a Complaint, and commence the formal resolution process (after taking account of the aforementioned factors), with or without approval of the original Reporting Party.

The University will balance the Reporting Party's requests with its responsibility to provide a safe and non-discriminatory environment for all University community members. Participation in the sex discrimination and sex-based harassment resolution process is voluntary and supportive measures are available at any time for all involved parties. Where a Reporting Party requests that a name or other identifiable information not be shared with the Respondent and/or that no action be taken, the University may be limited in its ability to fully respond to the matter.

The Title IX Coordinator will document each report of sex discrimination and sex-based harassment and will review and retain copies of all reports or documentation as per the University's Record Retention Policy. These records will be kept private to the extent permitted by law.

### **Requests for Confidentiality or No Further Action**

When a Harmed Party requests confidentiality from a Confidential Resource, the University will follow the guidelines outlined in Section IV of this procedure.

When a Harmed Party requests that the Title IX coordinator not use their name as part of any resolution process, or that the University not take any further action, the University will generally try to honor those requests. However, there are certain instances in which the University has a broader obligation to the community and may need to act against the wishes of the Harmed Party. In such circumstances, the Title IX Coordinator will notify the Harmed Party in writing of the need to take action. The factors the Title IX Coordinator will consider when determining whether to act against the wishes of a Harmed Party include:

1. The Harmed Party's request not to proceed with initiation of a complaint;
2. The Harmed Party's reasonable safety concerns regarding initiation of a Complaint;
3. The risk that additional acts of Prohibited Conduct would occur if a Complaint is not initiated;
4. The severity of the alleged Prohibited Conduct, including whether the sex discrimination or sex-based harassment, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the sex discrimination or sex-based harassment and prevent its recurrence;
5. The relationship of the parties, including whether the Respondent is an Employee;
6. The scope of the alleged Prohibited Conduct, including information suggesting a pattern, ongoing nature, or is alleged to have impacted multiple individuals;
7. The availability of evidence to assist a Decisionmaker in determining whether sex discrimination or sex-based harassment occurred;
8. Whether the University could end the alleged sex discrimination and sex-based harassment and prevent its recurrence without initiating its resolution procedures under the Title IX Policy; and
9. Whether the conduct as alleged presents an imminent and serious threat to the health or safety of the Harmed Party or other persons, or that the conduct as alleged prevents the University from ensuring equal access on the basis of sex to its Education Program or Activity.

### **Emergency Removal**

At times, the University may take action to ensure the physical or emotional safety and well-being of the University community. For sex discrimination and sex-based harassment, the University retains the authority to remove a Respondent from the University's Education Program or Activity on an emergency basis, where the University:

1. Completes an individualized safety and risk analysis;
2. Determines that an immediate and serious threat to the health or safety of a Complainant or any student, employee, or other individual arising from the allegations of sex discrimination justifies a removal; and
3. Provides the Respondent with notice of and an opportunity to appeal the decision immediately following the removal.

Removal of a person will initiate the University's resolution process. Interim actions may include a no-trespass or other no-contact order to be issued.

The Respondent may appeal the decision immediately following the removal, by notifying the Title IX Coordinator in writing through the Title IX webpage. An impartial individual, not otherwise involved in the case, will consider the appeal and determine if the emergency removal was reasonable. For all other Prohibited Conduct, the University may defer to its interim suspension policies for students and administrative leave for Employees.

### **Administrative Leave**

The University retains the authority to place an Employee who is a Respondent on administrative leave during a pending complaint process, with or without pay, as appropriate. Administrative leave implemented as a supportive measure or as emergency removal is subject to the procedural provisions above, including the right to appeal the decision.

Faculty members may refer to the [Faculty Handbook](#), Article VII for additional information regarding faculty procedures.

### **Student Withdrawal or Employee Resignation With Pending Complaint(s)**

If a Student or Employee Respondent permanently withdraws or resigns from the University with unresolved allegations pending, the University will consider whether and how to proceed with the resolution process. The University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s) and any ongoing effects of the alleged Prohibited Conduct.

A Student who is a Respondent who withdraws or leaves while the process is pending may not return to the University without first resolving any pending complaints, which applies to all University programs. Records will be retained by the Title IX Coordinator and the Student Conduct Administrator will place a registration hold on the Respondent's account.

An Employee who is a Respondent who resigns with unresolved allegations pending is not eligible for rehire with the University and the records retained by the Title IX Coordinator will reflect that status. Employment references made to the Human Resources office for that individual will include that the former employee resigned during a pending complaint process.

### **Dismissal of a Report/Complaint under the Corresponding Title IX Policy**

Before dismissing a report/Complaint under the corresponding Title IX Policy, the University will make reasonable efforts to clarify all available information and the allegations with the Complainant.

The University may dismiss a report/Complaint if:

1. The University is unable to identify the Respondent after taking reasonable steps to do so;
2. The Respondent is not participating in the University's Education Programs or Activities and/or is not employed by the University;
3. The Complainant voluntarily withdraws their complaint in writing and the Title IX Coordinator declines to initiate a Complaint;
4. The Complainant voluntarily withdraws some but not all allegations in a Complaint [in writing] and the University determines that the conduct that remains alleged in the complaint would not constitute Prohibited Conduct; or
5. The University determines the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct under the corresponding Title IX Policy.

Upon dismissal, the University will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the University will notify the parties simultaneously, in writing. If a dismissal of one or more allegations changes the appropriate decision-making process under these procedures, the Title IX Coordinator will include that information in the notification. The Title IX Coordinator will provide the Complainant details in the written notice about any matter that is being referred for handling under a different policy, and/or being referred to another appropriate office for handling.

The University will notify the Complainant that a dismissal may be appealed on the basis outlined in the Appeals section. If dismissal occurs after the Respondent has been notified of the allegations, then the University will also notify the Respondent that the dismissal may be appealed on the same basis. If a dismissal is appealed, the University will follow the procedures outlined in the Appeals section of these procedures.

When a report/Complaint is dismissed, the University will, at a minimum:

1. Offer supportive measures to the Complainant as appropriate;
2. If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
3. Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to determine that sex discrimination and sex-based harassment does not continue or recur within the University Education Program or Activity.
4. Provide the Complainant details in the written notice about any matter that is being referred to another appropriate office for handling under a different policy or code. The University may also send evidence already gathered as part of the referral.

A Complainant who decides to withdraw a Complaint or any portion of it may later request to reinstate it or refile it.

## **VII. Consolidation of Complaints**

The University may consolidate Complaints for allegations of sex discrimination and sex-based harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sex discrimination and sex-based harassment arise out of the same facts or circumstances. Where a resolution process involves more than one party, references in this section to the singular

“party,” “Complainant,” or “Respondent” may be considered plural, as applicable. Where multiple policies may be implicated by the same set of facts or circumstances, the University may separate the proceedings in accordance with the requirements of the individual policies.

The University also reserves the right to use the University’s Title IX Policy and these procedures to adjudicate other allegations and conduct violations that are outside of the scope of the Title IX Policy in instances when the conduct is associated with or intertwined with an alleged issue of Prohibited Conduct under the Title IX Policy. The Title IX Coordinator will address these consolidated Complaints in collaboration and coordination with other appropriate offices, such as Student Conduct and Human Resources. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements for Title IX.

## **VIII. Options for Resolution**

There are multiple ways to resolve a complaint or report of sex discrimination and sex-based harassment.

### **Supportive Measures**

After a disclosure, requests for supportive measures may be made to the Title IX Coordinator who will determine whether to implement reasonable supportive measures designed to assist involved parties and community members in maintaining access to and participation in the University’s Educational Programs and Activities and services during the resolution process. Supportive measures will be reasonable and appropriate to facilitate continued access to University employment or Education Programs and Activities for all involved parties. Non-disciplinary, non-punitive individualized services will be offered as appropriate, as reasonably available, and without fee or charge to the involved parties regardless of making a report or Complaint.

A resolution using only supportive measures is an option for a Complainant who does not wish to take any further steps to address their concern, and when the Title IX Coordinator determines that no further action is required. Some types of support that may be appropriate include but are not limited to: facilitation of connections to on- and off-campus resources, issuance of a No Contact/Limited Contact Order, change of work or class assignment/location/schedule, change of on-campus living space, change of class schedule, and/or security escort.

Supportive measures do not preclude later use of another resolution method. For example, if new information becomes available to the University and the Title IX Coordinator determines there is need for additional steps to be taken, or the Complainant later decides to pursue another resolution method.

### **Informal Resolution**

The informal resolution process involves a facilitated resolution that is voluntary and acceptable to the Complainant, Respondent, and the University after receipt of a Complaint. All parties must voluntarily agree in writing to participate in the informal resolution process. The Title IX Coordinator has the discretion to determine whether to offer informal resolution at all, or only in certain cases; generally allowing only one informal resolution per Respondent. Parties are entering into this process freely, voluntarily, and because each party believes that entering this process is in their best interest. Participation in the informal resolution process is not required, not a product of coercion, nor is it a condition of continued enrollment, employment or any other

right from the party's educational or employment opportunities (e.g., admission to University events, use of University resources and facilities, Tuition Remission).

Informal resolution does not include a full investigation and does not include any finding of responsibility nor an admission of the falsehood of the allegations and is a voluntary, structured interaction between or among affected parties that balances support and accountability. This is separate and distinct from the institution's hearing process. Regardless of entering into the informal resolution process, the Title IX Coordinator must still take other prompt and effective steps as needed to determine that sex discrimination and sex-based harassment does not continue or recur within the University's employment, or Education Programs and Activities.

For some types of reported sex discrimination and sex-based harassment, informal resolution may offer parties resolution in a timeframe that is shorter than a formal resolution; it is a confidential, non-adversarial manner that allows the parties to discuss the issues and clear up misunderstandings. However, informal resolution may not be an appropriate option for all cases of sex discrimination and sex-based harassment.

An informal resolution can be requested by a Complainant or Respondent at any time, even if the parties have previously entered the formal resolution process, up to the beginning of the Decisionmaker review. Any of the parties can withdraw from the informal resolution process and resume the formal resolution process, for addressing allegations under this procedure, at any time prior to reaching a determination regarding a policy violation. However, the University may proceed to address the matter, as it deems appropriate, if there is an imminent threat of safety to the campus community.

Prior to entering the informal resolution process, the University must provide written notice to the Complainant and Respondent that includes:

1. The specific allegation and the specific conduct that is alleged to have occurred;
2. The requirements of the informal resolution process;
3. The consequences of participating in the informal resolution process, including record-keeping and potential sharing of information, and the University's ability to disclose this information for future resolution processes, including investigations arising from the same or different allegations;
4. Notice that an agreement resulting from the informal resolution process is binding only on the parties and is not subject to appeal;
5. Notice that once the Informal Resolution Agreement is finalized and signed by the Parties, they cannot initiate or continue an investigation procedure arising from the same allegations;
6. A statement indicating that the decision to participate in the informal resolution process does not presume that the conduct at issue has occurred;
7. A statement that the Respondent is presumed not in violation of a policy, unless Respondent admits to violations of a policy;
8. An explanation that all parties may be accompanied by a Support Person or an Advisor of Choice;
9. A statement that any party has the right to withdraw from the informal resolution process and initiate or resume resolution procedures at any time before agreeing to a resolution;



10. The facilitator's inability to be called as a Witness if a formal resolution process is pursued;
11. Information regarding supportive measures, which are available equally to all parties.

Engaging in the informal resolution process is not an admission of responsibility for the allegation or an admission of the falsehood of the allegations. The existence of an informal resolution is not viewed as a "Finding of a Policy Violation". The terms and outcome of the informal resolution are negotiable and may result in party-imposed corrective or punitive measures.

Once a report has been resolved through the informal resolution process, the agreements are binding according to the resolution terms and the outcome will be enforced by the University. Due to the voluntary nature of entering into an informal resolution process, there is no right to appeal the signed resolution agreement.

If the terms of the informal resolution agreement are violated, not met, or left incomplete, it is considered a Conduct Violation and will be addressed under the Code of Student Conduct for Students, or under University conduct policies for Employees.

NWU's informal resolution process is conducted by a neutral third party ("facilitator") who will collect information about the incident without performing a full investigation, facilitate discussion, and propose solutions for a resolution between the parties. Informal resolution facilitators do not have a conflict of interest or bias in favor of or against Complainants or Respondents generally or regarding the specific parties in the matter. The facilitator may not act as the Investigator or Decisionmaker for the same matter in any other resolution method.

#### Facilitating an Informal Resolution Agreement

The facilitator will schedule an advance call with each party, separately, prior to the informal resolution meeting. The facilitator will explain the process, goals, and options for the meeting. Following the call, if all parties have agreed to explore informal resolution, the facilitator will send the Meeting Decorum electronically to both parties. The date and time of the initial meeting will be set by the facilitator or the Title IX Coordinator and all parties will be notified with advance notice.

Each party may have a Support Person/Advisor of Choice present during any part of the informal resolution process. When the Support Person/Advisor of Choice is an attorney, the facilitator must be given two (2) days advance notice. The Support Person/Advisor of Choice cannot direct questions or comments to the facilitator, but they may consult with the party they are assisting. The facilitator will not allow a Support Person's/Advisor of Choice's presence to unduly inhibit their ability to gather information.

At the beginning of the informal resolution meeting, which is held separately with each party, the facilitator will establish facts that are not in dispute and identify what the parties hope to accomplish and why it is important to reach an agreement. The facilitator will navigate a conversation that attempts to move toward a resolution that will be agreed to and signed by both parties.

Any party may craft or create the terms of their agreement and will be asked for their suggestions or ideas during the process. Examples of agreements may include but are not limited to:

1. An agreement that the Respondent will change classes or housing assignments;
2. An agreement that the Parties will not communicate or otherwise engage with one another;
3. Completion of a training or educational project by the Respondent;
4. Completion of a community service project by the Respondent;
5. An agreement to engage in a facilitated dialogue; and/or
6. Discipline agreed upon by all parties.

### Finalizing the Informal Resolution Agreement

Once the final terms of the Informal Resolution Agreement have been agreed upon by all parties, in writing, and approved by the Title IX Coordinator, the matter will be considered closed, and no further action will be taken. Once signed, no appeal is permitted. The informal resolution process is generally expected to be completed within thirty (30) days and may be extended by the Title IX Coordinator as appropriate. All parties will be notified, in writing, of any extension and the reason for the extension.

No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any outside person by the Complainant or Respondent. Information from an informal resolution process can be shared with other offices as appropriate by the Title IX Coordinator.

If an agreement cannot be reached, either because the Parties do not agree, determine they no longer wish to participate in the informal resolution process, or the facilitator does not believe that the terms of the agreement or continuing the informal resolution process is appropriate, the facilitator may recommend that the reported conduct be addressed through another resolution method. The Title IX Coordinator will inform the parties of such decision, in writing.

Any violations of the terms of the Informal Resolution Agreement or procedural expectations, including Meeting Decorum rules, may result in disciplinary action.

### **Formal Resolution**

These procedures include two methods that will be utilized for formal resolution based on the following conditions:

1. Sex discrimination involving employees, students, and third parties **OR** sex-based harassment involving any party **except** when a University Student is a Complainant or Respondent, as required by Federal Regulations §106.45.
2. Sex-based harassment involving a University Student as a Complainant or Respondent, as required by Federal Regulations §106.46.

**The following information applies to both methods of formal resolution (§§106.45, 106.46):**

### Acceptance of Responsibility

If a Respondent accepts responsibility for all or part of the Prohibited Conduct alleged, the Title IX Coordinator, or designee, will work in consultation with Student Conduct System Administrator or the Assistant Vice President of Human Resources in assigning appropriate sanctions. The Title IX Coordinator will continue processing remaining allegations of Prohibited Conduct, if any.

#### Assignment of the Investigator, Decisionmaker, and/or Appellate Decisionmaker

The University has designated individuals as Investigators, Decisionmakers, and Appellate Decisionmakers who receive annual training. Training programs include, but are not limited to, the definition of sex discrimination and sex-based harassment, the scope of the University's Education Program or Activity, how to conduct an investigation, and how to serve impartially, including how to avoid prejudgment of the facts at issue, conflicts of interest, and bias. Moreover, any materials used to train Investigators, Decisionmakers, and Appellate Decisionmakers do not rely on sex stereotypes and promote impartial investigations, adjudications, and appeal decisions related to the resolution of reports and Complaints of sex discrimination and sex-based harassment.

The University will assign an Investigator, Decisionmakers, and, if applicable, Appellate Decisionmakers, to conduct an adequate, reliable, and impartial investigation and determination, as applicable, in a reasonably prompt timeframe. The University reserves the right to utilize internal or external Investigators and Decisionmakers.

#### Conflict of Interest or Bias

After a Notice of Complaint (as described below) is issued to all parties, any party may object to the participation of the Title IX Coordinator, Investigator, Decisionmaker, and Appellate Decisionmaker on the grounds of a demonstrated bias or actual conflict of interest. Objections regarding the Title IX Coordinator are to be made, in writing, to the Director of Title IX Services. Objections to the Director of Title IX Services on the grounds of a demonstrated bias or actual conflict of interest are to be made, in writing, to the University President. Objections to the appointment of the Investigator, Decisionmaker, and Appellate Decisionmaker are to be made in writing, to the Title IX Coordinator. All objections will be considered, and changes made as appropriate. Any change will be communicated in writing.

#### Rights and Requirements

The University **requires** Employees to participate as a witness in, or otherwise assist with, an investigation, proceeding, hearing, or appeal involving sex discrimination and sex-based harassment.

All other parties are expected and encouraged to participate in the investigation, and each have the same rights during the resolution process including the right to a Support Person/Advisor of Choice, to submit relevant witness names and evidence, and to review the evidence gathered by the Investigator prior to the provision of the Final Investigative Report to the Decisionmaker.

All individuals will be treated with appropriate respect, and in a manner considerate of their privacy.

#### Investigative Timeline

The Investigator will conduct a thorough, prompt, impartial, and unbiased investigation. The Investigator will make a reasonable effort to complete the investigation within thirty (30) days, but this time frame may be extended depending on the complexity of the circumstances of each case. Scheduling, University closures, period of examinations, law enforcement investigations or other good cause reasons may affect this timing. Good cause reasons may include availability of witnesses and other participants and providing participants reasonable time to review materials. Any significant delays in the process will be communicated in writing, simultaneously, to the Complainant and the Respondent.

The University will consider an involved party's request for an extension of a deadline related to a Complaint.

The Title IX Coordinator will ensure that the parties will be provided access to periodic status updates.

#### Burden of Evidence

Throughout the investigation of a report or Complaint, the University has the burden of conducting an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. This burden does not rest with any involved party, and any party may decide to limit their participation in part or all of the process, or to decline to participate. A party's participation, or lack thereof, does not shift the burden of proof away from the University and does not indicate whether or not someone is in violation of the policy or acceptance of responsibility.

#### Management of Information

To maintain the privacy of evidence gathered as part of any resolution process, access to materials under these procedures for the corresponding policy will be provided only by a secure method. Involved parties and advisors are not permitted to make copies of any documents shared or make use of the documents outside of the processes described, unless given explicit permission by the Title IX coordinator. Parties may request to review a hard copy of materials, and the University will make that available in a supervised or monitored setting. Inappropriately sharing materials provided during this process may constitute retaliation and subject the individual to separate disciplinary sanctions.

#### Standard of Proof

The standard of proof used in any investigation and decision-making process is the preponderance of the evidence standard, which means that the allegation(s) are more likely than not to have occurred.

#### Written Notice of Meetings

The University will provide the involved parties whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time to prepare to participate.

#### University Discretion to Address Noncompliance

The University has the discretion to remove, with or without prior warning, from any meeting or proceeding an involved party or Support Person/Advisor of Choice who does not comply with meeting expectations or decorum and any other applicable part of the resolution process.

### Evidence Gathering

#### **A. Interviews**

The Investigator will interview all parties and relevant witnesses and gather relevant documentary evidence provided by the parties and any identified witnesses. Interviews may be conducted in person or virtually. When a party meets with an Investigator, the Investigator will ask questions related to the allegations in the report or Complaint and a party is given the opportunity to speak to the allegations and related events. Parties may identify fact witnesses and provide evidence that is relevant to the allegations and not otherwise impermissible. This will include inculpatory evidence (that tends to show it more likely that someone committed a violation) and exculpatory evidence (that tends to show it less likely that someone committed a violation). The Investigator ultimately determines whom to interview to determine the facts relevant to the complaint.

#### **B. Impermissible Evidence**

The following types of evidence and related questions are impermissible, meaning the information will not be accessed or considered, except to determine whether one of the exceptions listed below applies. Impermissible evidence will not be disclosed or otherwise used, regardless of relevance:

1. Evidence that is protected under a privilege recognized by Federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
2. Evidence provided to a Confidential Resource, unless the person who made the disclosure or otherwise provided evidence to the Confidential Resource has voluntarily consented to re-disclosure;
3. An involved party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the University obtains that party's or witness's voluntary, written consent for use in these procedures; and
4. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to alleged sex-based harassment. The fact of prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant's consent to other sexual activity or preclude a determination that Prohibited Conduct occurred.

### Appeal Procedure

The University recognizes the following procedural steps where University decisions can be appealed by a Complainant or Respondent:

- Supportive measure decisions
- Emergency removals
- Dismissals of Complaints
- Notice of Determination – ONLY on the following grounds:

- **Procedural Error:** A procedural error occurred and the error would change the outcome. A description of the error and its impact on the determination of the case must be included in the written appeal; and/or
- **New Evidence:** New evidence or information has arisen that was not available or known to the party during the investigation, that would change the outcome. Information that was known to the party during the resolution process but which they chose not to present is not considered new information. The new evidence, an explanation as to why the evidence was not previously available or known, and an explanation of its potential impact on the investigation findings must be included in the written appeal; and/or
- **Actual Conflict of Interest or Demonstrated Bias:** The Title IX Coordinator, Investigator, or others with a role in the process has an actual conflict of interest or demonstrated bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that would change the outcome. Any evidence supporting the alleged conflict of interest or demonstrated bias must be included in the written appeal.

A Complainant or Respondent may individually submit one appeal for any of the decisions made by the University at the procedural steps outlined above. All concerns about each procedural step must be addressed in one appeal submission at each appeal opportunity.

Appeals must be submitted within three (3) days of a Notice following any specified procedural step. Directions regarding how to submit an appeal can be found on the Title IX webpage and in the letters of Notice.

Faculty members who want to submit an appeal regarding a Notice of Determination on specified conditions will follow the appeal process outlined in the [Faculty Handbook](#), Section VIII.

Upon receipt of an appeal, the Title IX Coordinator will provide a Notice of Appeal, including sufficient details about the appeal, the name of the assigned Appellate Decisionmaker, and a link to the Appeal Response Form, to both the Complainant and Respondent, allowing three (3) days for the non-appealing party to respond.

Following the 3-day response period, the Title IX Coordinator will forward the appeal, along with all relevant information regarding the appeal, to the Appellate Decisionmaker, or designee(s), for review.

The Appellate Decisionmaker, or designee(s), will consider all available documentation related to the appeal. Based on the information provided, the Appellate Decisionmaker, or designee(s), will:

- Affirm the decision or Findings determined by the Decisionmaker/University Administrator; or
- Modify or reverse the decision or Findings determined by the Decisionmaker/University Administrator.

The Appellate Decisionmaker, or designee(s), will prepare the Final Determination of Appeal stating their decision, which is final and binding. The document will include the rationale for the decision. The Appellate Decisionmaker will make a reasonable effort to complete the appeal process within five (5) days, which may be extended for good cause. The document will be provided to the Title IX Coordinator, who will communicate the final decision to the Complainant and the Respondent in writing. The Final Determination of Appeal will also be shared with the University Administrator, if applicable.

## **IX. Formal Resolution Procedures For All Prohibited Conduct Except Sex-Based Harassment Involving A Student Party (§106.45)**

This procedure is for all allegations of Prohibited Conduct pertaining to sex discrimination involving employees, students, and third parties **OR** sex-based harassment involving any party **except** when a University Student is a Complainant or Respondent, as required by Federal Regulations §106.45.

### **A. Notice of Complaint**

Upon receipt of a Complaint, the Title IX Coordinator will send the Notice of Complaint to both the Complainant and the Respondent, simultaneously, communicating the initiation of an investigation. Should additional allegations be brought forward, or information regarding location or date of the incident(s), a revised written Notice of Complaint shall be provided to all parties as needed or after the jurisdiction review is completed by the Title IX coordinator.

The Notice will include, at a minimum:

1. The University's resolution procedures, and any alternative resolution process (informal or supportive measures), including a link to these procedures;
2. Sufficient information available at the time to allow the parties to respond to the allegations, including the specific allegation(s), identities of the parties involved in the incident(s), the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
3. A statement that Retaliation is prohibited;
4. Contact information for the assigned Investigator and Decisionmaker, as well as the process for appealing the appointed Investigator, Decisionmaker, or Title IX Coordinator, and the deadline (if not previously completed);
5. A statement indicating the expected length of the major stages of the resolution process, as well as any applicable deadlines;
6. A statement that the Respondent is presumed "not in violation" of a University policy until a determination is made at the conclusion of the investigation and decision-making procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Investigator and Decisionmaker;
7. A statement indicating that the parties may have a Support Person/Advisor of Choice (as defined in Section I);
8. A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence, and to provide a response;

9. A statement that the University prohibits knowingly making false statements or knowingly submitting false information during resolution procedures, with a link to the relevant policy(ies); and
10. A statement indicating the investigator's process of communication will be in writing and includes any investigation deadlines and schedule for investigative meetings. Investigators will provide reasonable notice for meetings.

#### **B. Individual Interviews with Investigator**

The Investigator will hold individual interviews with the Complainant, Respondent, and relevant witnesses ("Involved Parties"), to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility. Investigators reserve the right to hold meetings with Expert Witnesses. Character evidence is not relevant evidence, and therefore will not be considered.

The Investigator will contact the involved parties to schedule interviews. All involved parties may bring a Support Person/Advisor of Choice to this meeting. When the Support Person/Advisor of Choice is an attorney, the Investigator must be given two (2) days advance notice. The Support Person/Advisor of Choice cannot direct questions or comments to the Investigator, but they may consult with the person they are assisting. The Investigator will not allow a Support Person's/Advisor of Choice's presence to unduly inhibit their ability to gather information. Either involved party may change their Support Person/Advisor of Choice at any time.

Additional attendees may be permitted at the discretion of the Title IX Coordinator in connection with an approved disability-related or language barrier accommodation, or for other related accessibility concerns. All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of those proceedings and may be subject to further University discipline for failure to do so.

The individual interviews may be conducted with all participants physically present in the same geographic location, or, at the University's discretion, with all participants joining virtually through a video conferencing option. The Investigator is solely responsible for all aspects of the investigation, including meeting rules and whether or not to record the investigation interviews. If the Investigator chooses to record the interviews, there will be a single record of the meetings with the Investigator kept in the form of an audio or video recording. The record is the property of the University and will be maintained by the University and not shared outside the University. No other parties are permitted to record the interviews.

The Investigator will seek to obtain evidence including text messages, email, photos, social media posts, screen shots, etc. The Investigator may also require access to campus facilities, including residence halls, to gather information and take photos, if necessary. The Complainant and Respondent will have an equal opportunity to provide statements, submit additional information, and/or identify witnesses who may have relevant information. The Complainant, Respondent and any witnesses shall not destroy evidence, including but not limited to the deletion of texts, emails, photos, etc., during the resolution process.

#### Evaluation Considerations

In cases where alcohol and/or other intoxicants are a factor, evaluating incapacitation will require an assessment of whether the involved parties should have been aware of the



incapacitation of either party based on an objective and subjective evaluation of the behavior when viewed from the perspective of a sober, reasonable person. Evidence of incapacitation may require evaluating normal and abnormal behaviors of all parties involved, such as vomiting, sleeping, blacking out, and unconsciousness.

An investigation may also require an evaluation of whether consent for sexual behavior was given. An essential element of consent is that it be freely given. Freely given consent might not be present, or may not even be possible, in relationships of a sexual or intimate nature between individuals where one individual has power, supervision or authority over another.

In evaluating whether consent was given, consideration will be given to the totality of the facts and circumstances. This includes, but is not limited to, the extent to which a Complainant affirmatively uses words or actions indicating a willingness to engage in sexual contact, free from intimidation, fear, or coercion; whether a reasonable person in the Respondent's position would have understood such person's words and acts as an expression of consent; and whether there are any circumstances, known or reasonably apparent to the Respondent, demonstrating incapacitation or fear.

In evaluating whether or not sex discrimination has occurred with Disparate Impact, Investigators will consider the following elements:

- Evidence that a neutral policy disproportionately affects members of a protected class;
- Statistical evidence; and
- Discriminatory impact resulting from a specific practice or policy.

In evaluating whether or not sex discrimination has occurred with Disparate Treatment, Investigators will consider the following elements:

- Whether the Respondent's actions were based on a discriminatory motive;
- Direct evidence or indirect (circumstantial) evidence that builds a "prima facie" case, meaning evidence of discrimination or adverse action has occurred which occurred because of membership in a protected class; and
- A comprehensive review comparing experiences, personnel files, student records, and interviews relevant to the Complaint.

Intentional falsification, distortion, or misrepresentation of information as part of the resolution procedures is a violation of University policy. Any person who abuses the University conduct processes in this way may face disciplinary action for that violation.

Participation in the resolution process is addressed in Section VIII-Options To Respond, Subsection "Rights and Requirements". The investigation will continue and decisions will be made with the available information.

### **C. Evidence Review**

#### **Interview Summary Review**

The Investigator will prepare a summary of each interview. All those interviewed will have an opportunity to review their interview summary for accuracy and submit suggested modifications or additional information within three (3) days of receipt of the summary from the Investigator.

### **Preliminary Investigative Report and Review**

Once the Investigator has gathered all relevant information and after the interview summary review period, the Investigator will prepare a Preliminary Investigative Report.

This Report will include relevant information, excluding impermissible evidence, gathered during the investigation. The Investigator may also include prior allegations of, or findings of, violations for similar conduct by the Respondent. At this point in the process, the Investigator will send the Preliminary Investigative Report to the Title IX Coordinator for the jurisdictional review to determine appropriate procedural application. At the discretion of the Title IX Coordinator, a third-party reviewer, or designee, may be utilized. Based on the determination, the Complaint will be resolved utilizing the appropriate sex discrimination and sex-based harassment procedure (§106.45).

The Preliminary Report will then be provided to the Complainant and Respondent, simultaneously. If applicable or directed by the Complainant or Respondent, the Report will be shared with any identified Support Person/Advisor of Choice by the Title IX coordinator. Both the Complainant and the Respondent will have three (3) days to review the Preliminary Investigative Report and provide follow-up responses or information to the Investigator. The purpose of the inspection and review process is to allow each party the equal opportunity to respond to the evidence prior to conclusion of the investigation, to submit any additional relevant evidence, and the names of any additional witnesses with relevant information. This is the final opportunity to offer evidence, or the names of witnesses. Relevant responses submitted during the preliminary review period will be included in the Final Investigative Report.

Given the sensitive nature of the information provided, the University will facilitate this review in a secure manner. None of the parties nor their advisors may copy, remove, publicize, share, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any Student or Employee who fails to abide by this may be subject to discipline. Any advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The Title IX Coordinator shall have the discretion to extend the evidence review period based on the volume and nature of the evidence. At the conclusion of the evidence review, when deemed appropriate by the Investigator, the Investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence is gathered during this second fact-gathering period, the new evidence will be made available for review by the parties and their advisors. The parties shall have three (3) days to provide a response to the newly gathered evidence. The Investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

After the preliminary three-day (3) review period, the Investigator will review follow-up responses and incorporate relevant information into the Final Investigative Report.

### **Final Investigative Report**

The Investigator will prepare a Final Investigative Report including all of the relevant information gathered and steps taken during the investigation process, excluding impermissible evidence. The Investigator will include as an attachment all relevant evidence gathered during the investigation.

The Final Investigative Report will include:

1. A description of the allegations of Prohibited Conduct;
2. Information about the policies and procedures used to evaluate the allegations;
3. A description of the procedural steps taken by the investigator, including any notifications to the parties, interviews with parties and witnesses, and methods used to gather other evidence;
4. An evaluation of the relevant evidence, excluding impermissible evidence, and the rationale for that evaluation; and
5. Findings of fact for each allegation.

The Investigator will forward the Final Investigative Report to the Title IX Coordinator, who will provide the Report to the Complainant and Respondent simultaneously, and the Decisionmaker. If applicable or directed by the Complainant or Respondent, the Report will be shared with any identified Support Person/Advisor of Choice by the Title IX coordinator.

### **Decisionmaker Review**

The Decisionmaker will evaluate the relevant evidence, excluding impermissible evidence, and will make factual determinations regarding each allegation, and also determine whether a violation of the Title IX Policy occurred. The Decisionmaker may question the Complainant, the Respondent, any witness, any other administrators involved to seek clarification on relevant information. The Decisionmaker may choose to place less or no weight upon statements by a party or witness who refused to respond to questions deemed relevant and not impermissible or declined to participate. Evidence not provided during the investigation process will not be considered by the Decisionmaker. The Decisionmaker will not draw an inference about whether sex discrimination or sex-based harassment occurred based solely on a party's or witness's refusal to respond to questions.

The Decisionmaker will make a reasonable effort to conduct their review within five (5) days. The Decisionmaker will prepare a Notice of Determination and provide the Notice to the Title IX Coordinator. The Title IX Coordinator will then provide the Complainant and Respondent and their Advisor of Choice, if any, with the Notice of Determination. If necessary, the Decisionmaker may work in consultation with Student Conduct System Administrator, the Assistant Vice President of Human Resources, and/or University Counsel in assigning sanctions.

### **D. Notice of Determination**

The Notice of Determination will include:

1. A description of the allegations of Prohibited Conduct;
2. Information about the policies and procedures used to evaluate the allegations;
3. A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, and methods used to gather other evidence;
4. An evaluation of the relevant and not otherwise impermissible evidence and the rationale for that evaluation;
5. Findings of fact for each allegation, with rationale;
6. Conclusions regarding which section of the Title IX Policy or other University policy, if any, the Respondent has or has not violated, with rationale;
7. Sanction(s), if applicable; and
8. Appeal procedures.

### **E. Written Impact Statement Option**

The Complainant and Respondent may each submit a written impact statement prior to the conclusion of the resolution process. The impact statement is not evidence and will be reviewed only after a determination is reached.

### **F. Conclusion of Decisionmaker Review**

The Notice of Determination and applicable sanctions becomes effective on the date that the appeal process is finalized. If no party appeals, the determination and applicable sanctions become final on the date that the time period to appeal ends (three [3] days after the dissemination of the Notice of Determination).

## **X. Formal Resolution Procedures For Prohibited Conduct Of Sex-Based Harassment Involving Students (§106.46)**

This procedure is for allegations of Prohibited Conduct pertaining to sex-based harassment involving a University Student as a Complainant or Respondent, as required by Federal Regulations §106.46.

### **A. Notice of Complaint**

Upon receipt of a report or Complaint, the Title IX Coordinator will send the Notice of Complaint to both the Complainant and the Respondent, simultaneously, communicating the initiation of an investigation. Should additional allegations be brought forward, or new information regarding location or date of the incident(s), a revised written Notice of Complaint shall be provided to all parties as needed or after the jurisdiction review is completed by the Title IX Coordinator.

The Notice will include, at a minimum:

1. The University's resolution procedures, and any alternative resolution process (informal or supportive measures), including a link to these procedures;
2. Sufficient information available at the time to allow the parties to respond to the allegations, including the specific allegation(s), identities of the parties involved in the incident(s), the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
3. A statement that Retaliation is prohibited;
4. Contact information for the assigned Investigator and Decisionmaker, as well as the process for appealing the appointed Investigator, Decisionmaker, or Title IX Coordinator, and the deadline (if not previously completed);
5. A statement indicating the expected length of the major stages of the resolution process, as well as any applicable deadlines;
6. A statement that the Respondent is presumed "not in violation" of a University policy until a determination is made at the conclusion of the investigation and decision-making procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Investigator and Decisionmaker;
7. A statement indicating that the parties may have a support person or an advisor of their choice (as defined in Section I);
8. A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence, and to provide a response;

9. A statement that the University prohibits knowingly making false statements or knowingly submitting false information during resolution procedures, with a link to the relevant policy(ies); and
10. A statement indicating the investigator's process of communication will be in writing and includes any investigation deadlines and schedule for investigative meetings. Investigators will provide reasonable notice for meetings.

#### **B. Individual Interviews with Investigator**

The Investigator will hold individual interviews with the Complainant, Respondent, and relevant witnesses ("Involved Parties"), to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility. Investigators reserve the right to hold meetings with Expert Witnesses. Character evidence is not relevant evidence, and therefore will not be considered.

The Investigator will contact the involved parties to schedule interviews. All involved parties may bring a Support Person/Advisor of Choice to this meeting. When the Support Person/Advisor of Choice is an attorney, the Investigator must be given two (2) days advance notice. The Support Person/Advisor of Choice cannot direct questions or comments to the Investigator, but they may consult with the person they are assisting. The Investigator will not allow a Support Person's/Advisor of Choice's presence to unduly inhibit their ability to gather information. Either involved party may change their Support Person/Advisor of Choice at any time.

Additional attendees may be permitted at the discretion of the Title IX Coordinator in connection with an approved disability-related or language barrier accommodation, or for other related accessibility concerns. All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of those proceedings and may be subject to further the University discipline for failure to do so.

The individual interviews may be conducted with all participants physically present in the same geographic location, or, at the University's discretion, with all participants joining virtually through a video conferencing option. The Investigator is solely responsible for all aspects of the investigation, including meeting rules and whether or not to record the investigation interviews. If the Investigator chooses to record the interviews, there will be a single record of the meetings with the Investigator kept in the form of an audio or video recording. The record is the property of the University and will be maintained by the University and not shared outside the University. No other parties are permitted to record the interviews.

The Investigator will seek to obtain evidence, including text messages, email, photos, social media posts, screen shots, etc. The Investigator may also require access to campus facilities, including residence halls, to gather information and take photos, if necessary. The Complainant and Respondent will have an equal opportunity to provide statements, submit additional information, and/or identify witnesses who may have relevant information. The Complainant, Respondent and any witnesses shall not destroy evidence, including but not limited to the deletion of texts, emails, photos, etc., during the resolution process.

In cases where alcohol and/or other intoxicants are a factor, evaluating incapacitation will require an assessment of whether the involved parties should have been aware of the incapacitation of either party based on an objective and subjective evaluation of the behavior when viewed from the perspective of a sober, reasonable person. Evidence of incapacitation

may require evaluating normal and abnormal behaviors of all parties involved, such as vomiting, sleeping, blacking out, and unconsciousness.

An investigation may also require an evaluation of whether consent for sexual behavior was given. An essential element of consent is that it be freely given. Freely given consent might not be present, or may not even be possible, in relationships of a sexual or intimate nature between individuals where one individual has power, supervision or authority over another.

In evaluating whether consent was given, consideration will be given to the totality of the facts and circumstances. This includes, but is not limited to, the extent to which a Complainant affirmatively uses words or actions indicating a willingness to engage in sexual contact, free from intimidation, fear, or coercion; whether a reasonable person in the Respondent's position would have understood such person's words and acts as an expression of consent; and whether there are any circumstances, known or reasonably apparent to the Respondent, demonstrating incapacitation or fear.

Intentional falsification, distortion, or misrepresentation of information as part of the resolution procedures is a violation of University policy. Any person who abuses the University conduct processes in this way may face disciplinary charges for that violation.

Participation in the resolution process is addressed in Section VIII-Options To Respond, Subsection "Rights and Requirements". The investigation will continue and decisions will be made with the available information.

### **C. Evidence Review**

#### **Interview Summary Review**

The Investigator will prepare a summary of each interview. All those interviewed will have an opportunity to review their interview summary for accuracy and submit suggested modifications or additional information within three (3) days of receipt of the summary from the Investigator.

#### **Preliminary Investigative Report and Review**

Once the Investigator has gathered all relevant information and after the interview summary review period, the Investigator will prepare a Preliminary Investigative Report.

This Report will include relevant information, excluding impermissible evidence, gathered during the investigation. The Investigator may also include prior allegations of, or findings of, violations for similar conduct by the Respondent. At this point in the process, the Investigator will send the Preliminary Investigative Report to the Title IX Coordinator for the jurisdictional review to determine appropriate procedural application. At the discretion of the Title IX Coordinator, a third-party reviewer, or designee, may be utilized. Based on the determination, the Complaint will be resolved utilizing the appropriate sex discrimination and sex-based harassment procedure (§106.46)

The Preliminary Report will then be provided to the Complainant and Respondent, simultaneously. If applicable or directed by the Complainant or Respondent, the Report will be shared with any identified Support Person/Advisor of Choice by the Title IX coordinator. Both the Complainant and the Respondent will have three (3) days to review the Preliminary Investigative

Report and provide follow-up responses or information to the Investigator. The purpose of the inspection and review process is to allow each party the equal opportunity to respond to the evidence prior to conclusion of the investigation, to submit any additional relevant evidence, and the names of any additional witnesses with relevant information. This is the final opportunity to offer evidence or the names of witnesses. Relevant responses submitted during the preliminary review period will be included in the Final Investigative Report.

Given the sensitive nature of the information provided, the University will facilitate this review in a secure manner. None of the parties nor their advisors may copy, remove, publicize, share, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The Title IX Coordinator shall have the discretion to extend the evidence review period based on the volume and nature of the evidence. At the conclusion of the evidence review, when deemed appropriate by the Investigator, the Investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence is gathered during this second fact-gathering period, the new evidence will be made available for review by the parties and their advisors. The parties shall have three (3) days to provide a response to the newly gathered evidence. The Investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

After the preliminary three-day (3) review period, the Investigator will review follow-up responses and incorporate relevant information into the Final Investigative Report.

### **Final Investigative Report**

The Investigator will prepare a Final Investigative Report including all of the relevant information gathered and steps taken during the investigation process, excluding impermissible evidence. The Investigator will include as an attachment all relevant evidence gathered during the investigation.

The Final Investigative Report will include:

1. A description of the allegations of Prohibited Conduct;
2. Information about the policies and procedures used to evaluate the allegations;
3. A description of the procedural steps taken by the investigator, including any notifications to the parties, interviews with parties and witnesses, and methods used to gather other evidence;
4. An evaluation of the relevant evidence, excluding impermissible evidence, and the rationale for that evaluation; and
5. Findings of fact for each allegation.

The Investigator will forward the Final Investigative Report to the Title IX Coordinator, who will provide the Report to the Complainant and Respondent simultaneously. If applicable or directed by the Complainant or Respondent, the Report will be shared with any identified Support Person/Advisor of Choice by the Title IX coordinator.

### **D. Title IX Hearing Procedures**

The Title IX Coordinator will notify a University Administrator, or designee, who will schedule the Title IX Hearing. The Title IX Hearing will be scheduled within ten (10) days after the Complainant and the Respondent have received the Final Investigative Report and the timeframe may be extended by the Title IX Coordinator only for demonstrated good cause.

The purpose of a hearing is for a Decisionmaker to determine whether the conduct occurred as alleged and, if so, whether that conduct violates the Title IX policy. The University expects that all individuals who participate in the hearing process do so truthfully and that all who have a responsibility for carrying out one or more aspects of the hearing process do so fairly and without prejudice or bias. Hearings may be conducted in person or via videoconferencing. The Title IX Coordinator may determine that the hearing will continue in the absence of any party or any witness.

The Title IX coordinator will appoint a Decisionmaker, who will determine whether a violation of policy has occurred. The Decisionmaker will have the authority to determine the relevance of evidence submitted, and of questions asked, to limit the time allotted to any phase of the hearing, and/or to limit the time allotted to the full hearing. The Decisionmaker will not draw an inference about the determination regarding responsibility based solely on a Complainant or Respondent's absence from the hearing or refusal to answer questions posed.

Each hearing will be recorded by the University and this recording will be considered the only official recording of the hearing. No other individual is permitted to record while the hearing is taking place. The recording is the property of the University but shall be available for listening until the conclusion of the appeals process to Complainant, Respondent, their Advisor of Choice, Decisionmaker, and Appeal Officer by contacting the Title IX Coordinator. The recording will not be shared with any parties outside the University.

### Prior to the Hearing

The Complainant, Respondent, and the Decisionmaker all have the right to call witnesses. Witnesses participating in the hearing must have information relevant to the allegations. Only witnesses who participated in the investigation will be permitted to participate in the hearing, unless the witness was otherwise unknown or not known to have relevant information during the course of the investigation. If the witness did not participate in the investigation, the party must also provide the reason the witness was not interviewed by the investigator, and what information the witness has that is relevant to the allegations. The Complainant and Respondent who wish to call any new witnesses must submit the name of the witness at least three (3) days in advance of the hearing to the Decisionmaker.

The Decisionmaker will then determine whether the witness has relevant information and if there is sufficient justification for permitting the witness to participate. A list of witnesses approved by the Decisionmaker will be provided to the Complainant and Respondent prior to the hearing. The Decisionmaker may choose to hold a pre-hearing conference with the parties jointly or individually, if the Decisionmaker determines the process would benefit from a pre-hearing conference to address in advance procedural or evidentiary issue that may arise during the hearing.

Three (3) days prior to the hearing, each party shall submit to the Decisionmaker a proposed list of questions they wish to pose to the other party, or to a witness (note: this is the same day in



which additional witness lists must be submitted). If the Decisionmaker determines that any questions are not relevant or seek otherwise impermissible evidence, the Decisionmaker shall exclude the question and explain the reason for the exclusion of the question at the hearing. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The Decisionmaker must give a party an opportunity to clarify or revise any question that the Decisionmaker has determined is unclear or harassing and, if the party sufficiently clarifies or revises a question, and the question is relevant, the question will be asked.

#### Advisor of Choice

The Complainant and Respondent are entitled to be accompanied by an Advisor of Choice at the hearing. The role of the Advisor of Choice is to assist the Complainant or Respondent with understanding and navigating the proceedings. The Advisor of Choice may not advocate for, respond for, or otherwise speak on behalf of the party they are assisting during the hearing. In the event that a Complainant or Respondent does not appear for the hearing, the Advisor of Choice for that party may not participate in the hearing or submit questions to be asked on behalf of the party they are assisting.

#### Hearing Participation Guidelines

The Decisionmaker will have the authority to maintain order and decorum at the hearing, including responding to disruptive or harassing conduct and, when necessary, to adjourn the hearing or exclude the disruptive person. In the event the Decisionmaker removes an Advisor of Choice, the Decisionmaker will have the discretion to appoint another Advisor of Choice for the remainder of the hearing. The Decisionmaker also has the authority to determine whether any questions are not relevant, abusive, intimidating, or disrespectful, and will not permit such questions. The Decisionmaker cannot draw an inference about the determination regarding responsibility based solely on a Complainant or Respondent's absence from the live hearing.

#### Statements, Questioning and Presentation of Evidence

The Decisionmaker will initiate the hearing to begin questioning of the Complainant, Respondent, and Witnesses. The order of questioning will be determined by the Decisionmaker. The Decisionmaker will pose questions to the involved parties including the questions the Decisionmaker approved to be asked that were submitted by each party prior to the hearing. The Complainant and Respondent will then be provided an opportunity to submit follow-up written questions to the Decisionmaker to ask the other party or witnesses. If the Decisionmaker determines that any questions are not relevant to the allegations, or seek otherwise impermissible evidence, the Decisionmaker will exclude the question and explain the reason for the exclusion of the question at the hearing and offer an opportunity for that party to reframe or resubmit the question. Questions that are unclear or harassing will not be permitted.

Only the Decisionmaker is permitted to ask questions of Complainants, Respondents, and Witnesses. Advisors of Choice are not permitted to directly or indirectly question the other party or Witness.

#### **E. Notice of Determination**

The Decisionmaker will make a reasonable effort to conduct their review within five (5) days following the Hearing. The Decisionmaker will prepare a Notice of Determination and provide the Notice to the Title IX Coordinator. All findings will be made using the preponderance of the

evidence standard, which means that the allegation(s) are more likely than not to have occurred. To the extent credibility determinations need to be made, such determinations will not be based on a person's status as Complainant, Respondent, or Witness. If necessary, the Decisionmaker may work in consultation with the Student Conduct System Administrator, the Assistant Vice President of Human Resources, and/or University Counsel in assigning sanctions.

The Notice of Determination will include:

1. A description of the allegations of Prohibited Conduct;
2. Information about the policies and procedures used to evaluate the allegations;
3. A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, and methods used to gather other evidence;
4. An evaluation of the relevant and not otherwise impermissible evidence and the rationale for that evaluation;
5. Findings of fact for each allegation, with rationale;
6. Conclusions regarding which section of this Policy or other University policy, if any, the Respondent has or has not violated, with rationale;
7. Sanction(s), if applicable; and
8. Appeal procedures.

#### **F. Written Impact Statement Option**

The Complainant and Respondent may each submit a written impact statement prior to the conclusion of the resolution process. The impact statement is not evidence and will be reviewed only after a determination is reached.

#### **G. Conclusion of Hearing/Decisionmaker Review**

The Notice of Determination will be provided to the Title IX Coordinator and University Administrator. The Title IX Coordinator will communicate the findings to the Complainant and Respondent, and their Advisor of Choice should the party wish the Advisor to receive it, along with reiterating with procedures for appeal. If applicable, sanctions become effective on the date that the appeal process is finalized. If no party appeals, the determination and applicable sanctions become final on the date that the time period to appeal ends (three [3] days after the dissemination of the Notice of Determination).

## **XI. Remedies and Sanctions**

Remedies must be designed to restore or preserve equal access to the University's Education Program or Activity. Remedies and Sanctions will be determined based on the nature and severity of the policy violation(s) and in consideration for the safety of the campus community. Conduct history will also be considered as part of the sanctioning process. Possible Sanctions may include, but are not limited to, protective measures, restrictions, letters of reprimand, action plans, reference to counseling, performance improvement plans, apology letter, reflection statements, targeted educational projects, coaching, probation, suspension, expulsion, and/or separation.

If applicable, Sanctions become effective on the date that the appeal process is finalized. If no party appeals, the determination and applicable Sanctions become final on the date that the time period to appeal ends three (3) days after the dissemination of the Notice of Determination).

The Title IX Coordinator is responsible for ensuring the timely completion of any Remedies or Sanctions.

### **Failure to Complete Sanctions/Comply with Responsive Actions**

All responding parties are expected to comply with sanctions/responsive actions/ corrective actions within the timeframe specified by the University. Responding parties needing an extension to comply with their Sanctions must submit a written request to the Title IX Coordinator stating the reasons for needing additional time.

Failure to follow through on conduct sanctions/responsive actions/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive actions/corrective actions listed above.

## **XII. Record Retention**

In order to comply with laws protecting the privacy of employment records and to provide a process for the consideration of relevant evidence free of intimidation or pressure, documentation related to the sex discrimination and sex-based harassment resolution process, including, but not limited to, the Title IX Assessment Report, Investigative reports, written testimony, oral testimony, recordings, or other evidence introduced, will not be disseminated to Third Parties or law enforcement, except as required by law. The University will maintain these records for seven (7) years from the date of the incident, or indefinitely in cases involving a sanction of separation. All records will be afforded the confidentiality protections required by law, including but not limited to the Family Educational Rights and Privacy Act (FERPA) governing confidentiality of student information.

## **XIII. Additional Enforcement Information**

The U.S. Equal Employment Opportunity Commission (EEOC) investigates reports of unlawful harassment, discrimination, and retaliation, including sex-based harassment, in employment.

- U.S. Equal Employment Opportunity Commission (EEOC)  
<https://www.eeoc.gov/contact-eeoc>

The U.S. Department of Education, Office for Civil Rights (OCR) investigates complaints of unlawful discrimination and harassment of students and employees in education programs or activities.

Other questions about Title IX may be referred to the assistant secretary for civil rights:

Office for Civil Rights,  
Lincoln Commission on Human Rights  
555 S.10<sup>th</sup> Ste. 304  
Lincoln, NE 68508  
402-441-7624

Nebraska Equal Opportunity Commission  
1526 K Street Ste. 310

Lincoln, NE 68508  
402-471-2024  
1-800-642-6112

Any person may report conduct prohibited by the Title IX Policy to the Title IX Coordinator:

- Assistant Director of Title IX Services and Title IX Coordinator: Natasha Moreno, Nebraska Wesleyan University, Burt Hall 112, 5000 Saint Paul Ave., Lincoln, NE 68504 (402) 465-2356, [nmoreno@nebrwesleyan.edu](mailto:nmoreno@nebrwesleyan.edu) or [titleix@nebrwesleyan.edu](mailto:titleix@nebrwesleyan.edu)

A complaint about the Title IX Coordinator may be made to:

- Director of Title IX Services and Title IX Coordinator: Maria Harder, Nebraska Wesleyan University, Smith Curtis 202E, 5000 Saint Paul Ave., Lincoln, NE 68504 (402) 465-2117, [mharder@nebrwesleyan.edu](mailto:mharder@nebrwesleyan.edu)

## **XIV. Clery-Reportable Crimes and Disclosure Obligations**

The Clery Act is a federal crime and incident disclosure public safety law. It requires, among other things, that the University report the number of incidents of certain crimes, including some of the Prohibited Conduct in the Title IX Policy and these procedures, that occur in particular campus-related locations. The Clery Act also requires the University to issue warnings to the community in certain circumstances.

In the statistical disclosures and warnings to the community, the University will ensure that a Complainant's name and other identifying information are not disclosed. The Title IX Coordinator will refer information to the Clery Compliance Administrator when appropriate for disclosing crime statistics or sending campus notifications.

For additional information of Clery-reportable crimes, please refer to the [Campus Safety](#) page.

## **XV. Policy Review and Revision**

The corresponding policy and these procedures will be reviewed and updated regularly by the University. Modifications to the corresponding Title IX policy and these procedures will be made in a manner consistent with institutional policy upon determining that changes to law, regulation or best practices require policy or procedural alterations not reflected herein. Procedures in effect at the time of its implementation will apply. The Title IX Policy definitions in effect at the time of the conduct will apply even if the Policy is changed subsequently, unless the Complainant and Respondent consent to be bound by the current Policy.

This Policy may be revised at any time without notice. All revisions supersede prior policy and are effective immediately upon posting to the University website.

This procedure is effective as of August 1, 2024 and was approved by NWU's Board of Governors.