

WESTERN NEBRASKA COMMUNITY COLLEGE

SEXUAL HARASSMENT GRIEVANCE AND INVESTIGATION PROCEDURES

TABLE OF CONTENTS

POLICY STATEMENT 4

GLOSSARY 4

APPLICABLE SCOPE..... 8

TITLE IX COORDINATOR 8

CONFLICT OF INTEREST 9

ADMINISTRATIVE CONTACT INFORMATION 9

NOTICE / COMPLAINTS OF SEXUAL HARASSMENT / RETALIATION 11

SUPPORTIVE MEASURES 12

EMERGENCY REMOVAL..... 13

PROMPTNESS..... 15

PRIVACY 15

JURISDICTION OF THE COLLEGE 16

TIME LIMITS ON REPORTING 18

ONLINE SEXUAL HARASSMENT AND/OR RETALIATION..... 18

POLICY ON NONDISCRIMINATION 19

DEFINITION OF PROHIBITED CONDUCT: SEXUAL HARASSMENT AND
RELATED TERMS 19

RETALIATION 24

REPORTING BY COLLEGE EMPLOYEES 25

 A. RESPONSIBLE EMPLOYEES / MANDATED REPORTS..... 25

 B. ALL OTHER EMPLOYEES27

 C. CONFIDENTIAL RESOURCES27

 D. ANONYMOUS NOTICE TO MANDATED REPORTERS 28

WHEN A COMPLAINANT DOES NOT WISH TO PROCEED..... 29

FEDERAL TIMELY WARNING OBLIGATIONS 30

FALSE ALLEGATIONS / REPORTS / EVIDENCE..... 30

AMNESTY 31

REPORTING TO LAW ENFORCEMENT	32
FEDERAL STATISTICAL REPORTING OBLIGATIONS	33
PROCESS “A”: RESOLUTION PROCESS OF ALLEGED VIOLATIONS OF THE POLICY ON SEXUAL HARASSMENT	33
OVERVIEW	33
NOTICE / COMPLAINT	34
INITIAL ASSESSMENT	34
A. VIOLENCE RISK ASSESSMENT	35
B. DISMISSAL (MANDATORY AND DISCRETIONARY)	36
COUNTERCLAIMS	37
RIGHT TO AN ADVISOR	37
RESOLUTION PROCESSES	41
GRIEVANCE PROCESS POOL.....	43
FORMAL GRIEVANCE PROCESS: NOTICE OF INVESTIGATION AND ALLEGATIONS.....	45
RESOLUTION TIMELINE	46
APPOINTMENT OF INVESTIGATORS.....	46
ENSURING IMPARTIALITY.....	46
INVESTIGATION TIMELINE.....	47
DELAYS IN THE INVESTIGATION PROCESS	47
STEPS IN INVESTIGATION PROCESS	47
ROLE AND PARTICIPATION OF WITNESSES IN THE INVESTIGATION	49
RECORDING OF INTERVIEWS.....	49
EVIDENTIARY CONSIDERATIONS.....	49
REFERRAL FOR HEARING	50
HEARING DECISION-MAKER COMPOSITION.....	50
EVIDENTIARY CONSIDERATIONS IN THE HEARING.....	50
NOTICE OF HEARING.....	51
ALTERNATE HEARING PARTICIPATION OPTIONS.....	52
PRE-HEARING PREPARATION	52
PRE-HEARING MEETINGS.....	53
HEARING PROCEDURES	54
JOINT HEARINGS	54

THE ORDER OF THE HEARING	54
INVESTIGATOR PRESENTS THE FINAL INVESTIGATIVE REPORT	55
TESTIMONY AND QUESTIONING.....	55
REFUSAL TO SUBMIT TO CROSS-EXAMINATION / INFERENCES	56
RECORDING HEARINGS	56
DELIBERATION, DECISION-MAKING AND STANDARD OF PROOF	56
NOTICE OF OUTCOME.....	57
STATEMENT OF THE RIGHTS OF THE PARTIES	58
SANCTIONS	58
A. STUDENT SANCTIONS	
B. EMPLOYEE SANCTIONS / RESPONSIVE ACTIONS	
WITHDRAWAL OR RESIGNATION WHILE ALLEGATIONS PENDING.....	60
APPEALS	61
LONG-TERM REMEDIES / OTHER ACTIONS	63
FAILURE TO COMPLY	64
RECORDS RETENTION.....	64
DISABILITY ACCOMMODATIONS IN THE RESOLUTION PROCESS.....	64
TRAINING	65
PERMISSIVE USE / LICENSE.....	66
REVISIONS OF THIS POLICY AND PROCEDURE.....	66
APPENDICES	68
• APPENDIX A: TITLE IX GRIEVANCE REPORTING FORM	
• APPENDIX B: STATEMENT OF RIGHTS OF THE PARTIES	
• APPENDIX C: VIOLENCE RISK ASSESSMENT (VRA)	

1. **POLICY STATEMENT:**

Western Nebraska Community College is committed to providing an environment free from discrimination on the basis of sex and provides resources and services to assist students, faculty and staff in addressing issues involving sex discrimination. The College strictly prohibits any form of sexual harassment, which includes sexual harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation (also referred to herein collectively as Prohibited Conduct). All reported incidents will be thoroughly investigated and those found responsible dealt with as necessary, whether criminally charged or handled through the College's Sexual Harassment Grievance and Investigation Procedure. Consistent with state and federal laws, this policy prohibits retaliation against a person for reporting discrimination and sexual harassment; or participating in the investigation or adjudication of such a complaint.

2. **GLOSSARY**

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- Alternate Resolution Mechanism refers to an informal mechanism, including mediation, conference process, shuttle negotiation, etc., by which the parties reach a mutually agreed upon resolution of an allegation.
- *College* means the Western Community College Area which does business as Western Nebraska Community College and/or WNCC. Also referred to in Title IX regulations as the "Recipient".
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that the recipient investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when the College is in normal operation.
- *Education program or activity* means locations, events, or circumstances where the College exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College.

- *Final Determination*: A conclusion by a preponderance of the evidence that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* means “Process A,” a method of formal resolution designated by the College to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-maker or Panel* refers to those who have decision-making and sanctioning authority within the College’s Formal Grievance process.
- *Hearing Officer* refers to the Chair of the Hearing Panel. The Hearing Officer may be a voting member of the panel or may be a non-voting member of the panel charged with conducting the hearing. The College reserves the right to utilize an external Hearing Officer.
- *Investigator* means the person or persons charged by the College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence. The College reserves the right to utilize an external investigator.
- *Mandated Reporter* means an employee of the College who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator.¹ See, also, Responsible Employee set forth below.
- *Mandatory Reporting Laws* mean a specific Nebraska state law mandating the reporting of specified cases of abuse or neglect against minors. See, Neb. Rev. Stat. §28-711 (Child subjected to abuse or neglect; report; contents; toll-free number).
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of the College explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the Recipient. Also known as a “Responsible Employee” in Title IX regulations and herein.

¹ Not to be confused with Nebraska’s mandatory reporting law which mandates the reporting of specified cases of abuse or neglect against minors (See, Neb. Rev. Stat. §28-711), though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Preponderance of the Evidence* is the standard of proof used by the College. The Respondent is presumed to be not responsible. This presumption may be overcome when there is a sufficient basis, by a preponderance of the evidence, to support a finding that a Respondent violated the policy. A preponderance of evidence means that it is more likely than not, based upon the totality of all relevant evidence and the reasonable inferences from that evidence, that the Respondent violated the policy.
- *Process A* means the Resolution Process for Alleged Violations of the Policy on Sexual Harassment as detailed below.
- *Process B* means any process designated by the College to apply only when Process A does not, as determined by the Title IX Coordinator.
- *Prohibited Conduct* is the umbrella term including the offenses of sexual harassment, sexual assault, stalking, dating violence and domestic violence and retaliation.
- *Recipient* means Western Nebraska Community College, WNCC, or the College; a postsecondary education program that is a recipient of federal funding.
- *Remedies* are post-finding actions directed to the Complainant and/or the College community as mechanisms to address safety, prevent recurrence, and restore access to the College's educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- *Responsible Employee* means an employee of the College explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the Recipient.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by the Recipient on a Respondent who is found to have violated this policy.
- *Sexual Harassment* (or Prohibited Conduct) is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.
- *Title IX Coordinator* is at least one official designated by the College to ensure compliance with Title IX and the Recipient's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

- *Title IX Team* refers to the Title IX Coordinator, any deputy coordinators and any member of the Grievance Process Pool. The College reserves the right to utilize outside or external investigators and/or hearing officers.
- *Victim Advocate* means any employee or supervised volunteer of a domestic violence and sexual assault victim assistance program or of any other agency, business, or organization that is not affiliated with a law enforcement or prosecutor's office whose primary purpose is assisting domestic violence and sexual assault victims. See, Nebraska Victim Advocate confidentiality statutes at Neb. Rev. Stat. §§29-4301 to 29-4304.

3. APPLICABLE SCOPE

The core purpose of this policy is the prohibition of sexual harassment and retaliation (Prohibited Conduct). When an alleged violation of this policy is reported, the allegations are subject to resolution using the College's "Process A" or "Process B," as determined by the Title IX Coordinator, and as set out in further detail below.

- **Process A** is a method of formal resolution designated by the College to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- **Process B** means any process designated by the College to apply only when Process A does not, as determined by the Title IX Coordinator. At all times, it is within the College's discretion to determine which policies apply and whether action will be taken under multiple policies. Some Prohibited Conduct may result in separate investigations and potential separate and additional sanctions under multiple College policies. For example, WNCC students are subject to the College's Student Code of Conduct Policy and Procedure and, depending on the nature of the Prohibited Conduct at issue, the College may proceed with procedures under both the Sexual Harassment Policy and the Student Code of Conduct separately or concurrently.

When the Respondent is a member of the College community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the College community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers.

The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

4. TITLE IX COORDINATOR

In accordance with Title IX regulations, WNCC has a designated Title IX coordinator. The Title IX Coordinator may be contacted by telephone, email or in person at the following:

Kathy Ault, Title IX Coordinator
Human Resources
1601 E. 27th Street
Scottsbluff, NE 69361
Phone: 308.635.6350
Fax: 308.635.6161
aultk@wncc.edu

The College's Title IX Coordinator oversees the implementation of the College's Sexual Harassment Policy and Procedure and has the primary responsibility for coordinating the College's efforts related to intake, investigation, resolution, and implementation of supportive

measures to stop, remediate, and prevents sexual harassment, and retaliation under this procedure.

5. CONFLICT OF INTEREST

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflict of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures.

The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest or misconduct by the Title IX Coordinator, contact the following:

Lynne Koski
Vice President of Administrative Services and
Chief Financial Officer
1601 E. 27th Street
Scottsbluff, NE 69361
308.635.6792
koski1@wncc.edu

Concerns of bias, a potential conflict of interest, or reports of misconduct by any other Title IX Team member should be raised with the Title IX Coordinator.

6. ADMINISTRATIVE CONTACT INFORMATION

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Kathy Ault, Title IX Coordinator
Human Resources
1601 E. 27th Street
Scottsbluff, NE 69361
Phone: 308.635.6350
Fax: 308.635.6161
[**aultk@wncc.edu**](mailto:aultk@wncc.edu)

In addition, Institutional Officers listed below are designated as Title IX Deputy Coordinators and may be contacted for assistance:

- **Title IX Deputy Coordinator, Norman Coley, Jr.**, Dean of Students, WNCC 1601 East 27th Street, Scottsbluff, NE, 69361, 308.635.6123 or [**coleyn@wncc.edu**](mailto:coleyn@wncc.edu)

- **Title IX Deputy Coordinator, Ryan Burgner**, Athletic Director, WNCC 1601 East 27th Street, Scottsbluff, NE, 69361 308.635.6798 or burgnerr@wncc.edu
- **Title IX Deputy Coordinator, Paula Abbott**, Partnership & Inclusion Executive Director, WNCC 371 College Drive, Sidney, Nebraska 69162 308.254.7404 or abbottp@wncc.edu
- **Title IX Deputy Coordinator, Lisa Gion**, HR Generalist (Recruitment), Title IX Deputy Coordinator, WNCC 1601 East 27th Street, Scottsbluff, Nebraska 69361 | 308.635.6105 or gionl0@wncc.edu

The College has classified many employees as Responsible Employees who are Mandatory Reporters of any knowledge they have that a member of the community is experiencing sexual harassment and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries regarding Title IX / Sexual Harassment may be made externally to:

Office for Civil Rights (OCR)

U.S. Department of Education
 400 Maryland Avenue, SW
 Washington, D.C. 20202-1100
 Customer Service Hotline #: (800) 421-3481
 Facsimile: (202) 453-6012
 TDD#: (877) 521-2172
 Email: OCR@ed.gov
 Web: <http://www.ed.gov/ocr>

-or-

Kansas City Office:

U.S. Department of Education
 Office for Civil Rights
 One Petticoat Lane
 1010 Walnut Street, Suite 320
 Kansas City, Missouri 64106
 Telephone: (816) 268-0582

For complaints involving employees:

Nebraska Equal Opportunity Commission:

Lincoln — Main Office

Nebraska State Office Building
 301 Centennial Mall South, 5th Floor
 P.O. Box 94934
 Lincoln, NE 68509-4934
 Phone: (402) 471-2024
 Toll Free Number: (800) 642-6112

Scottsbluff

Panhandle State Office Complex
 505A Broadway
 Suite 600
 Scottsbluff, NE 69363-3515
 Telephone: (308) 632-1340
 Toll Free: (800) 830-8633

Equal Employment Opportunity Commission (EEOC):

EEOC's Kansas City Area Office
Gateway Tower II
400 State Ave., Suite 905
Kansas City, KS 66101
Phone: 1-800-669-4000
TTY: 1-800-669-6820

7. NOTICE/COMPLAINTS OF SEXUAL HARASSMENT AND/OR RETALIATION

Notice or complaints of any form of Prohibited Conduct, including sexual harassment and/or retaliation may be made using any of the following options:

- 1) File a complaint with, or give verbal notice to, the Title IX Coordinator or any Deputy Title IX Coordinator at the following contact information:

Kathy Ault, Title IX Coordinator

Human Resources
1601 E. 27th Street
Scottsbluff, NE 69361
Phone: 308.635.6350
Fax: 308.635.6161
aultk@wncc.edu

Norman Coley, Jr., Deputy Title IX Coordinator

Dean of Students
1601 East 27th Street
Scottsbluff, NE, 69361
308.635.6123
colevn@wncc.edu

Ryan Burgner, Deputy Title IX Coordinator

Athletic Director
1601 East 27th Street
Scottsbluff, NE, 69361
308.635.6798
burgnerr@wncc.edu

Paula Abbott, Deputy Title IX Coordinator

Partnership & Inclusion Executive Director
371 College Drive
Sidney, Nebraska 69162
308.254.7404
abbottp@wncc.edu

Lisa Gion, Deputy Title IX Coordinator

HR Generalist (Recruitment)

1601 East 27th Street
Scottsbluff, Nebraska 69361
308.635.6105
gionl0@wncc.edu

Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.

- 2) Report online, using the Incident Reporting Form posted at https://cm.maxient.com/reportingform.php?WesternNebraskaCC&layout_id=10

Anonymous reports are accepted but can give rise to a need to investigate. The College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the Recipient to discuss and/or provide supportive measures.

A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the Recipient investigate the allegation(s).

A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the Recipient) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the Recipient investigate the allegations. A paper copy of the Title IX Grievance Form is also available upon request from the Title IX Coordinator.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

8. SUPPORTIVE MEASURES

The College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged Prohibited Conduct.

Supportive measures are those services, accommodations, and other assistance the College puts in place after receiving notice of Prohibited Conduct, but before any final outcomes (investigatory, disciplinary, or remedial) have been determined. They include individualized services reasonably available to the College, and without fee or charge to the complainant or respondent, that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the College

will inform the Complainant, in writing, that they may file a formal complaint with the College either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The College will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the supportive measures. The College will act to ensure as minimal an academic/occupational impact on the parties as possible.

The Recipient will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling services
- Referral to the College's Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related Adjustments
- Notices Against Trespass
- Timely Warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- A combination of any of these measures
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

9. EMERGENCY REMOVAL

If a Respondent's actions pose an immediate threat to the physical health or safety of any member of the College community, the College may utilize an Emergency Removal to remove a Respondent from a College education program or activity if:

- The College conducts an individualized safety and risk analysis;

- The College determines that the Respondent poses an immediate (imminent) threat to the physical health or safety of anyone justifying removal;
- The threat arises from allegations of sexual misconduct; and
- The College provides an opportunity for the Respondent to challenge the removal under these procedures.

The individual safety and risk analysis is performed by the Title IX Coordinator in conjunction with the Behavioral Intervention Team (also known as the BIT or CARE Team).

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.

When this meeting is not requested in the time-frame set out in the Notice, objections to the emergency removal will be deemed waived.

A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the Respondent is an employee, existing provisions for interim action are applicable.

10. PROMPTNESS

All allegations are acted upon promptly by the College once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in the College's procedures will be delayed, the College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

11. PRIVACY

Every effort is made by the College to preserve the privacy of reports. The College will not share the identity of any individual who has made a report or complaint of harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

For the purpose of this policy and procedure, privacy and confidentiality have distinct meanings.

Privacy means that information related to a complaint will be shared with a limited number of College employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the Recipient's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the Recipient's Student Records Policy. The privacy of employee records will be protected in accordance with Board of Governor's policies, including but not limited to BP-414, Confidentiality of Employee Records.

Confidentiality exists in the context of laws that protect certain relationships, including those who provide counseling services for the college. The College has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see pages 27-28. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual

will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.

The College reserves the right to determine which College officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Title IX Coordinator, Title IX Deputies, Human Resources Office, Student Affairs, and the Behavioral Intervention Team.

Additionally, information will be shared as necessary with Investigators, Hearing Panel members / Decision-makers, the hearing officer, witnesses, and the parties. The circle of people with this knowledge will be kept as streamlined as possible to preserve the parties' rights and privacy.

The College may contact parents and/or legal guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

12. JURISDICTION OF THE COLLEGE

The Policy and Procedures applies to the education program and activities of the College, to conduct that takes place on a campus or on property owned or controlled by the College, at College-sponsored events, or in buildings owned or controlled by the College's recognized student organizations.

The Respondent must be a member of the College's community in order for its policies and procedures to apply. The College has jurisdiction over a Respondent whenever the Prohibited Conduct occurs:

- In the College's education program or activity, against a person in the United States;
- On campus, including campuses in Alliance, Scottsbluff and Sidney; or
- In off campus buildings owned or controlled by the College;
- In any building owned or controlled by a student organization that is official recognized by the College; or
- Off campus, if Prohibited Conduct occurs under circumstances over which the College exercised substantial control over both the Respondent and the context in which Prohibited Conduct occurs.

Regardless of where the conduct occurred, the College will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial College interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of the College.

If the Respondent is unknown or is not a member of the College community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the Recipient’s community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the College’s Title IX Coordinator or by contacting off-campus assistance for Sexual, Domestic and Dating Violence Services and Prevention at:

The DOVES Program*

Gering Office:

2035 10th Street
Gering, NE 69341

Alliance Office:

212 Box Butte Ave., Ste. B
Alliance, NE 69301

Sidney Office:

941 8th Avenue
Sidney, NE 69162

308-436-HELP (4357)
866-95-DOVES (36837)
515-599-6620 (Text Line)

*Extent of confidentiality set forth in Victim Advocate Confidentiality Statutes found at Neb. Rev. Stat. §29-4301 to 4304.

In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from College property and/or events.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution’s policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences any form of Prohibited Conduct, including sexual harassment or retaliation, in an externship, study abroad program, or other environment external to the College where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

13. TIME LIMITS ON REPORTING

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the College will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

14. ONLINE SEXUAL HARASSMENT AND/OR RETALIATION

The policies of the College are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the Recipient's education program and activities or use College networks, technology, or equipment.

Although the College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the College community.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the College's control (e.g., not on College networks, websites, or between College email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the College only when such speech is made in an employee's official or work-related capacity].

15. POLICY ON NONDISCRIMINATION

Western Nebraska Community College does not discriminate on the basis of race, color, religion, national origin, sex or gender, age, disability, marital status, military veteran status, sexual orientation, gender expression/identity, or political affiliation, in its policies, practices, and activities related to employment, admissions, educational services/programming, student services/activities, or financial aid; as expressly prescribed by Institutional policy, state and federal laws, regulations and executive orders. Inquiries concerning the application of these policies, laws, and/or regulations to the College may be directed to the College's Compliance Officer for the Civil Rights Act(s), Title IX of the Education Amendments of 1972, Americans with Disabilities Act(s), and Section 504 of the Rehabilitation Act of 1973; Kathy Ault, Human Resources Executive Director, WNCC, 1601 East 27th Street Scottsbluff, NE 69361, aultk@wncc.edu; 308.635.6350; or to the Director, Office of Civil Rights, U.S. Department of Education, One Petticoat Lane, 1010 Walnut Street, Suite 320, Kansas City, MO, 64106-2106.

16. DEFINITION OF PROHIBITED CONDUCT (SEXUAL HARASSMENT)

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Nebraska regard Sexual Harassment as an unlawful discriminatory practice.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

The College has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community.

Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

- 1) Quid Pro Quo:
 - a. an employee of the recipient,
 - b. conditions² the provision of an aid, benefit, or service of the recipient,
 - c. on an individual's participation in unwelcome sexual conduct.

- 2) Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to the College's education

² Implicitly or explicitly.

program or activity.³

3) Sexual assault, defined as:

a) Sex Offenses, Forcible:

- Any sexual act⁴ directed against another person⁵,
- without the consent of the Complainant,
- including instances in which the Complainant is incapable of giving consent.⁶

b) Sex Offenses, Non-forcible:

³ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

⁴ Sexual acts include:

Forcible Rape:

- Penetration,
- no matter how slight,
- of the vagina or anus with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the Complainant.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person’s will (non-consensually), or
- not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age[#] or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person’s will (non-consensually),
- or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person’s will (non-consensually),
- or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

⁵ This would include having another person touch you sexually, forcibly, or without their consent.

⁶ This definition set is not taken from SRS/NIBRS verbatim. This definition has substituted Complainant for “victim,” has removed references to his/her throughout, has defined “private body parts,” has removed the term “unlawfully,” and has inserted language clarifying that the Recipient interprets “against the person’s will” to mean “non-consensually.”

- Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by Nebraska law.
 - Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent of 16 years of age.
- 4) Dating Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a person,
 - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.
- 5) Domestic Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a current or former spouse or intimate partner of the Complainant,
 - d. by a person with whom the Complainant shares a child in common, or
 - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Nebraska, or
 - g. by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of Nebraska.

*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 6) Stalking, defined as:
- a. engaging in a course of conduct,
 - b. on the basis of sex,

- c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person’s safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.

For the purposes of this definition—

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

It is Board policy that none of WNCC’s employees (staff/faculty) shall engage in any activity or relationship that places them in a conflict of interest between their official activities and any other interest or obligation. All activities are to be conducted in a manner that is free of real or perceived conflict of interest or favoritism. A conflict of interest requires all employees to disqualify themselves from participating in a decision when a personal interest is present. In addition, employees shall avoid any relationship, influence or activity that may adversely affect or give the appearance of adversely affecting an employee’s independent judgment in making decisions related to their job. Certain activities create a conflict of interest or appearance of favoritism unless they are properly disclosed, approved or managed. These activities can be undertaken only after appropriate disclosures, approvals or management in accordance with BP-410, Conflict of Interest and Code of Ethics (All Employees of Western Nebraska Community College).

The College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

c. Force, Coercion, Consent, and Incapacitation⁷

⁷ The definition of “consent” in the State of Nebraska is not specifically defined, however, the definition of “without consent” in Nebraska law is: (a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;

(b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and

(c) A victim need not resist verbally or physically where it would be useless or futile to do so.

As used in the offenses above, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

See, Neb. Rev. Stat. §28-318(8). This definition is applicable to criminal prosecutions for sex offense in Nebraska but may differ from the definition used on campus to address policy violations. [Included for Clery/VAWA Section 304 compliance purposes].

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM⁸ or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

17. RETALIATION

⁸ Bondage, discipline/dominance, submission/sadism, and masochism.

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

The College and any member of the College's community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

The exercise of rights protected under the First Amendment does not constitute retaliation. A good faith pursuit by either party of civil, criminal or other legal action, internal or external to the College, does not constitute retaliation.

18. REPORTING BY COLLEGE EMPLOYEES

WNCC is required to designate campus community members (Responsible Employees) who are responsible for reporting incidents of sexual misconduct to the Title IX Coordinator for the purpose of conducting an investigation into Prohibited Conduct. Once a Responsible Employee has actual knowledge of sexual misconduct (or allegations of sexual misconduct), the college is deemed to have notice of it, and is obligated to respond. As such, immediate reporting is crucial. Sexual misconduct includes sexual harassment, sexual assault, dating violence, domestic violence and stalking (also referred to herein as Prohibited Conduct) as defined in this procedure.

Not all College Employees are designated as Responsible Employees. Most WNCC faculty and staff members are not Responsible Employees. Only those individuals identified by title in the Responsible Employees section of this procedure are *required* to take action or report incidents of sexual harassment. The college encourages all other college employees and faculty members to: (1) assist a WNCC community member with reporting to the Title IX Coordinator and/or local law enforcement; and/or (2) assist a community member by directing the individual to resource and reporting options; (3) and/or report concerns to your supervisor or the Title IX Coordinator.

A. RESPONSIBLE EMPLOYEES / MANDATED REPORTERS

Responsible employees are mandated reporters who must promptly report any information they learn about suspected Prohibited Conduct to the Title IX Coordinator. Failure by a responsible

employee to timely report a suspected Prohibited Conduct may subject them to appropriate discipline, up to and including removal from their position.

Responsible Employees / Mandated Reporters must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential mandated reporters, as those details must be shared with the Title IX Coordinator.

The following individuals are, for purposes of the Sexual Harassment Grievance and Investigation Procedures, responsible employees:

- **ADVISING/STUDENT SUCCESS**
 - Student Success Director
 - Career Pathways & Advising Director
 - Student Engagement Director
- **ACADEMIC AFFAIRS / WORKFORCE DEVELOPMENT**
 - Dean of Instruction
 - Associate Dean of Instruction
 - Dean of Instruction & Workforce Development
 - Lifelong Learning Director
 - Workforce Development Director
- **ADMINISTRATION**
 - President
 - Executive Vice President
 - Vice President of Administrative Services
 - Vice President of Enrollment and Marketing
 - Human Resources Executive Director / Title IX Coordinator
- **ADMINISTRATIVE SERVICES**
 - Accounting Services Director
 - Assessment and Institutional Research Director
 - Bookstore Operations Director
 - Food Service Director
- **ATHLETICS**
 - Athletic Director
- **ENROLLMENT and MARKETING**
 - Admissions Director

- Financial Aid Director
- Information Technology Director
- Partnerships and Inclusion Executive Director
- Public Relations and Marketing Director
- **FACULTY**
 - Division Chairs
 - Any faculty member leading, coordinating or supervising off-campus academic activities or programs such as special field trips, etc.
- **INSTRUCTIONAL SUPPORT**
 - Associate Dean of Instructional Support
 - Adult Education Director
 - CollegeNOW! Director
 - Academic Testing & Tutoring Director
- **STUDENT SERVICES / RESIDENCE LIFE**
 - Dean of Students / TRIO Director
 - Assistant Dean of Students
 - Residence Life Director

Though this may seem obvious, when a Responsible Employee / Mandated Reporter is engaged in harassment or other violations of this policy / procedure, they still have a duty to report their own misconduct, though the College is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

It is important to clarify that a Mandated Reporter who is themselves the target of harassment or other prohibited conduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

Any questions regarding who is a responsible employee should be directed to the Title IX Coordinator.

B. ALL OTHER EMPLOYEES

Reporting is an important tool to address Prohibited Conduct. Thus, while all other employees who are not designated as Confidential Resources should safeguard an individual's privacy, they are also strongly encouraged to share any information about such conduct with the Title IX Coordinator.

C. CONFIDENTIAL RESOURCES

If a Complainant would like the details of an incident to be kept confidential, the College has designated the Director of Counseling Services (and affiliated on-campus counselors) as a Confidential Resource:

College Counseling Center

Norman J. Stephenson, M.S., LADC, LMHP, CPC, LIMHP
Counseling Director

A Confidential Resource will not share information about an individual (including whether that individual has received services) unless (1) given permission to do so by the person who disclosed the information; (2) there is an imminent threat of harm to self or others; (3) there is reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in abuse or neglect as set forth in Nebraska law; or (4) as otherwise required or permitted by law or court order.

Campus counselors and the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Employees who are confidential resources and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client / patient.

Additionally, there are off-campus confidential resources available to Complainants under Nebraska's Victim Advocate Confidentiality statutes. An example in the region served by the College includes the following:

The DOVES Program*

Gering Office

2035 10th Street
Gering, NE 69341

Alliance Office

212 Box Butte Ave., Ste. B
Alliance, NE 69301

Sidney Office

941 8th Avenue
Sidney, NE 69162

Telephone contact information:

308-436-HELP (4357)
866-95-DOVES (36837)
515-599-6620 (Text Line)

*The extent of confidentiality for resources like the DOVES Program are set forth in Nebraska's Victim Advocate Confidentiality Statutes found at Neb. Rev. Stat. §§29-4301 to 4304.

D. ANONYMOUS NOTICE TO MANDATED REPORTERS

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by the Recipient to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice typically limits the Recipient's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. Mandated Reporters may not be able to maintain requests for anonymity for Complainants who are minors and/or if they fall under Nebraska's mandatory reporting laws. See, for example: Neb. Rev. Stat. §28-711 (Child Subjected to abuse or neglect; report; contents; toll-free number).

19. WHEN A COMPLAINANT DOES NOT WISH TO PROCEED

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The College may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the College's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the College proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that the College's ability to remedy and respond to notice may be limited if the Complainant does not want the College to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the College to honor that request, the College will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the College, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

20. FEDERAL TIMELY WARNING OBLIGATIONS

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the College must issue timely warnings for incidents reported to them that:

- (1) Pose a serious or continuing threat of bodily harm; or
- (2) Danger to members of the campus community.

The College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger. Further information on the College's Campus Timely Warning policies are set forth in the College's Annual Campus Security and Fire Report.

21. FALSE ALLEGATIONS / REPORTS / EVIDENCE

The College presumes that Complaints are filed in good faith. A finding that the behavior at issue does not constitute a violation of the Sexual Harassment Policy or that there is insufficient evidence to conclude that the alleged Prohibited Conduct occurred as reported, does not mean that the report was made in bad faith. The College encourages all individuals who have experienced or witnessed behavior they believe violates the Sexual Harassment Policy and this Procedure to report the matter so it may be addressed, without fear of consequences from the College even if their good faith report cannot be substantiated or the behavior does not constitute a violation of the Policy and Procedure.

Deliberately false and/or malicious accusations under this policy/procedure, however, are a serious offense and will be subject to appropriate disciplinary action. A person who makes a report of Prohibited Conduct to the College that is later found to have been intentionally false or made maliciously without regard for truth may be subject to College disciplinary action (Non-Academic Misconduct section of the Student Handbook and/or Employee Discipline).

This provision does not apply to reports made in good faith, even if an investigation of the incident does not find a Policy violation. Similarly, a person who intentionally provides false information to the College during a College investigation or disciplinary proceeding action may be subject to disciplinary action.

As a general matter, the College does not impose prior restraints on a students' or employees' ability to discuss the allegations under investigation, for example, with a parent, friend, or other source of emotional support, or with an advocacy organization. Witness intimidation or tampering, however, is prohibited under this procedure. A person is considered to have impermissibly tampered with a witness when he or she attempts to induce or otherwise cause a witness to testify or inform falsely or alter or prevent a witness's testimony.

Lastly, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under other institutional policies as applicable.

22. AMNESTY

The College community encourages the reporting of prohibited conduct and crimes by Complainants and witnesses. The College recognizes that there are times complainants or witnesses may be hesitant to report to College officials or participate in a grievance process because they fear that they themselves may be in violation of certain policies. Examples here can include situations like underage drinking or use of illicit drugs at the time of the incident. Respondents may be hesitant to be forthcoming during the process for the same reasons.

It is in the best interests of the College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, the College maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct, while taken seriously, is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

Students: The College recognizes that there are times students may be hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who as experienced sexual assault to a campus security officer or campus official.

The College can offer students who offer help to others in need amnesty from minor policy violations as set forth herein. Although policy violations cannot be wholly overlooked, the College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

Employees: The College recognizes that there may be times employees are hesitant to report sexual harassment or retaliation for fear that they might be subject to discipline themselves. For example, an employee who violated the conflict of interest / code of ethics policy regarding a close relationship and is then assaulted in the course of that relationship might hesitate to report the incident to College officials.

The College may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

23. REPORTING TO LAW ENFORCEMENT

The College encourages anyone who experiences or witnesses Prohibited Conduct to make a report to law enforcement. Prompt reporting allows law enforcement to collect and preserve evidence. Any individual who wishes to pursue a criminal complaint, in addition to, or instead of, making a report to the College for a policy violation may contact law enforcement directly by contacting:

In case of a life-threatening emergency, make the following calls:

1. 911

The 911 operator will assist in directing the necessary response from emergency services, i.e., police, fire and paramedics. Be prepared to give the operator information about the emergency, including:

- Your name, address, and phone number for verification
- Description of suspicious person(s) or vehicle(s) involved (if applicable)
- On a first aid call, determine if the victim is conscious and breathing

Crimes of a non-emergent nature may be reported by calling the following based on your location:

ALLIANCE:

Alliance Police Department: (308) 762-4955

Box Butte County Sheriff: (308) 762-6464

SCOTTSBLUFF:

Scottsbluff Police Department: (308) 630-6261 (during business hours M-F, 7 a.m. to 4:00 p.m.)

(308) 632-7176 (after business hours)

Scotts Bluff County Sheriff: (308) 436-6667

SIDNEY:

Sidney Police Department: (308) 254-5515

Cheyenne County Sheriff: (308) 254-2922

24. FEDERAL STATISTICAL REPORTING OBLIGATIONS

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA-based crimes,⁹ which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with the Dean of Students regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include, but are not limited to:

- Dean of Students
- Director of Athletics
- Team coach
- Faculty advisors to a student group or student organization
- A student resident advisor or assistant
- A student who monitors access to residential environments
- Title IX Coordinator
- Contracted campus security officers

PROCESS A: COLLEGE RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON SEXUAL HARASSMENT

1. Overview

⁹ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

The College will act on any formal or informal notice/complaint of violation of the Policy that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures, known as “Process A.”

The procedures below apply **only** to qualifying allegations of Prohibited Conduct / sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members.

If a dismissal occurs under Process A, the College will determine whether other procedures (known collectively as “Process B”) applicable to the resolution of such offenses apply. Process B can include other institutional policies as applicable.

Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks.

2. Notice / Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the College needs to take.

The Title IX Coordinator will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- 2) An informal resolution (upon submission of a formal complaint); and/or
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

The College uses the Formal Grievance Process to determine whether or not the Policy has been violated. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, or their effects.

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator¹⁰ engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal resolution mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in informal resolution.
 - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate concern, based on the nature of the complaint.
 - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, or referral of the matter for resolution under Process B. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit the Recipient’s authority to address a complaint with an appropriate process and remedies.

a. Violence Risk Assessment

¹⁰ If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Behavioral Intervention Team (BIT) as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer Recipient about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/Notice Against Trespass is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other Behavioral Intervention Team (BIT) Members.

A VRA authorized by the Title IX Coordinator should occur in collaboration with the Behavioral Intervention Team (BIT). Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (i.e., Nebraska Mental Health Commitment Act, Neb. Rev. Stat. §§71-901 to 71-963), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

More about the Recipient’s process for VRA can be found below in Appendix “C”.

b. Dismissal (Mandatory and Discretionary)¹¹

The College must dismiss a formal complaint or any allegations therein if, at any time during

¹¹ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by recognized student organizations), and/or the College does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the recipient.¹²

The College may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the recipient; or
- 3) Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below.

4. Counterclaims

The College is obligated to ensure that the grievance process is not abused for retaliatory purposes. The College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

5. Right to an Advisor

¹² Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

The parties may each have an Advisor¹³ of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.¹⁴

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

The Recipient may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

a. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the College community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the College, the Advisor will be trained by the College and be familiar with the College's resolution process.

If the parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with College policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

b. Advisor's Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The Recipient cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the Recipient is not obligated to provide an attorney.

c. Advisors in Hearings/Recipient-Appointed Advisor

Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

¹³ This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

¹⁴ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, the College will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Questioning of the parties and witnesses may also be conducted by the Decision-maker(s) during the hearing.

d. Advisor's Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The Recipient cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney.

e. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and the College's policies and procedures.

f. Advisor Violations of Recipient Policy

All Advisors are subject to the same College policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address College officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

g. Sharing Information with the Advisor

The College expects that the parties may wish to have the College share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The College also provides a consent form that authorizes the College to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX

Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the College is able to share records with an Advisor.

h. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

i. Expectations of an Advisor

The College generally expects an Advisor to adjust their schedule to allow them to attend College meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The College may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

j. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

For faculty members who are entitled to union representation, the College will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have a second attendee be present for all resolution-related meetings and interviews. Advisors are all subject to the specific rules set forth herein and union representatives may not speak on behalf of their union member or otherwise take an active role in these proceedings unless they are also serving as an Advisor as defined and set forth herein. Witnesses are not permitted to have union representation or Advisors in grievance process interviews or meetings.

k. Assistance in Securing an Advisor

The Nebraska State Bar Association offers a pro bono legal assistance program through a network of attorney volunteers called the Volunteer Lawyers Project (VLP). Someone seeking assistance from the VLP can call the VLP Automated Telephone Information line at (402) 986-6501. Additional information regarding the VLP program can be found on the Nebraska State Bar Association Website at the following:

[https://www.nebar.com/page/VLPPublic#:~:text=The%20Volunteer%20Lawyers%20Project%20\(VLP,eligible%20low%20income%20Nebraska%20residents.](https://www.nebar.com/page/VLPPublic#:~:text=The%20Volunteer%20Lawyers%20Project%20(VLP,eligible%20low%20income%20Nebraska%20residents.)

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with College policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. The College encourages parties to discuss any sharing of information with their Advisors before doing so.

a. Informal Resolution

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism as described below, including mediation, conference process, shuttle negotiation, etc., usually before a formal investigation takes place; see discussion in b., below.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation); see discussion in c., below.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from

participating in such a process, including information regarding any records that will be maintained or shared by the College.

The College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

b. Alternate Resolution Mechanism

Alternate Resolution is an informal mechanism, including mediation, conference process, shuttle negotiation, etc., by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an informal or Alternate Resolution mechanism.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of allegation;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

c. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the College are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX

Coordinator implements the accepted finding that the Respondent is in violation of College policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

d. Negotiated Resolution

The Title IX Coordinator with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the College. Negotiated Resolutions are not appealable.

7. Grievance Process Pool

The Formal Grievance Process relies on a pool of representatives of the College (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees.

The list of Pool members and a description of the Pool may also be obtained from the Title IX Coordinator.

a. Pool Member Roles

Members of the Pool are trained annually, and can serve in in the following roles, at the discretion of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternate Resolution if appropriately trained in appropriate resolution methods (e.g., mediation, shuttle negotiation, conferences, etc.)
- To perform of assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

b. Pool Member Appointment

The Title IX Coordinator, in consultation with the President, appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the College can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. The College also reserves the right to use appropriately trained external individuals to serve as investigators or hearing chairs / facilitators. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

c. Pool Member Training

The Pool members receive annual training jointly or based on their respective roles. This training includes, but is not limited to:

- The scope of the College's Sexual Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the recipient with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and/or retaliation allegations
- Recordkeeping

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors (who are College employees), and Chairs. The College reserves the right to utilize an appropriately trained external hearing Chair. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted on the College's website under Title IX.

d. Pool Membership

The Pool includes representatives from College that shall be reviewed annually by the Title IX Coordinator. The College is able to utilize external investigators, hearing chairs / facilitators, and alternate resolution providers who are appropriately trained as necessary.

8. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the College's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that the College's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to the College's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the

- Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges. If, in the course of the investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the original NOIA, the College shall provide notice of additional allegations to the parties whose identities are known.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, emailed to the parties' College-issued email or designated accounts, or mailed to the address specifically requested by a party. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

9. Resolution Timeline

The College will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

10. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation typically using a team of two investigators, usually within two (2) business days of determining that an investigation should proceed. The College also reserves the right to utilize appropriately trained external investigators.

11. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the College's Executive Vice President.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and

evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

12. Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

13. Delays in the Investigation Process and Interactions with Law Enforcement

The College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The College will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the College will implement supportive measures as deemed appropriate.

College action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

14. Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
 - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) an electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a

determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).

- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator(s) shares the report with the Title IX Coordinator and/or College legal counsel for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report

15. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of the College are expected to cooperate with and participate in the College's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The Recipient will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

16. Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

17. Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other

than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

18. Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Decision-maker—unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker or Decision-makers from the Pool.

19. Hearing Decision-maker Composition

The College will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker may also chair the hearing or a separate hearing chair / facilitator may also be used. With a panel, one of the three members may be appointed as Chair by the Title IX Coordinator or a separate non-voting Chair may be used.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

20. Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that

someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the policy as alleged.

21. Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and

the Recipient will appoint one. Each party must have an Advisor present. There are no exceptions.

- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.¹⁵
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties can or cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

22. Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

23. Pre-Hearing Preparation

The Chair or hearing facilitator after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and

¹⁵ The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

24. Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant.

The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded.

25. Hearing Procedures

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.

Participants at the hearing will include the Chair (who may be the sole member of the panel, one of three (3) panel members, or a separate, non-voting member of the panel), any additional panelists, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and will then be excused.

26. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

27. The Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Chair and/or the hearing facilitator then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing chair or hearing facilitator appointed by the Title IX Coordinator.

The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

28. Investigator Presents the Final Investigation Report

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

29. Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

30. Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-maker(s), as distinguished from questions posed by Advisors through cross-examination.

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with the College's established rules of decorum for the hearing, the Recipient may require the party to use a different Advisor. If a recipient-provided Advisor refuses to comply with the rules of decorum, the Recipient may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

31. Recording Hearings

Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

32. Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is

responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history provided by an appropriate administrator (if applicable) and will determine the appropriate sanction(s) (in consultation with other appropriate administrators as required).

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions.

This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

33. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Notice of Outcome will then be revised by College legal counsel. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 7 business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address provided by the respective party, or emailed to the parties' College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the Recipient is permitted to share such information under state or federal law; any sanctions issued which the College is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the College's educational or employment program or activity, to the extent the College is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

34. Statement of the Rights of the Parties (see Appendix "B")

35. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual Harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

a. Student Sanctions

The following are the usual sanctions¹⁶ that may be imposed upon students singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that

¹⁶ College policies on transcript notation will apply to these proceedings.

further violation of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.

- *Required Counseling*: A mandate to meet with and engage in either College-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *On campus housing relocation / suspension / expulsion*: Moving a student from one room to another and/or from one campus residence hall to another, separation of the student from campus housing for a designated period of time, or permanent removal of a student from any and all campus housing options.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at the College.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason and/or to attend College-sponsored events.
- *Withholding Diploma*: The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including College registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

b. Employee Sanctions/Responsive Actions

Responsive actions for an employee who has engaged in harassment and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Assignment to new supervisor*
- *Restriction of stipends and/or professional development resources*

- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, the College may assign any other responsive actions as deemed appropriate.

Following the appeal rights set forth herein, termination of continuing contract faculty is also subject to Board of Governor’s Non-Reappointment Procedures (Appendix A-4-81) and Neb. Rev. Stat. §85-1528.

36. Withdrawal or Resignation While Charges Pending

a. Students: If a student has an allegation pending for violation of the Policy, the College may place a hold on a student’s ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the College, the resolution process ends, as the College no longer has disciplinary jurisdiction over the withdrawn student.

However, the College will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the College. Such exclusion applies to all campuses of the College. A hold will be placed on their ability to be readmitted. They may also be barred from College property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to College unless and until all sanctions have been satisfied.

b. Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the College no longer has disciplinary jurisdiction over the resigned employee.

However, the College will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the College of any campus of the College, and the records retained by the Title IX Coordinator will reflect that status.

All College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

37. Appeals

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within 5 days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker will Chair the appeal. The Decision-maker will not have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a. Grounds for Appeal

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 7 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as

necessary, who will submit their responses in 7 business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Chair will render a decision in no more than 7 business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, emailed to the parties' College-issued email or otherwise approved account or mailed to the address specifically provided by the parties for this purpose. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

b. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

The College may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

c. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-maker to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such

consultation will be maintained.

- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

38. Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program (EAP)
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by the College to the Respondent to ensure no effective denial of educational access.

The College will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the Recipient's ability to provide these services.

39. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

40. Records Retention

The College will maintain for a period of seven (7) years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the College's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The College will make these training materials publicly available on the College's website; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to the College's education program or activity; and
 - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The College will also maintain any and all records in accordance with state and federal laws.

41. Disabilities Accommodations in the Resolution Process

The College is committed to providing reasonable accommodations and support to qualified

students, employees, or others with disabilities to ensure equal access to the College's resolution process.

Anyone needing such accommodations or support should contact the College's Disability Services Officer (DSO), who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

The College's Disability Services Officer (DSO) can be contacted at the following:

Norman Stephenson
Disability Services Officer
Western Nebraska Community College
1602 East 26th Street
Scottsbluff, NE 69361
Phone: (308) 635-6090
Email: stephens@wncc.edu

42. Training

The College will conduct necessary training for these procedures as set forth in the Title IX Regulations.

a. General Training Requirements

The Title IX Coordinator, investigators, decision-maker(s), hearing panelists and those who facilitate informal resolution process, shall receive training (as applicable):

- On the definition of sexual harassment set forth in this procedure.
- On the scope of the College's education program or activity (jurisdiction).
- On how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes as applicable.
- On how to serve, impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- On the definition of "consent" and how to apply definitions used by the College with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with the other provisions of this procedure.

b. Decision-Makers

In addition to those applicable training requirements set forth above, decision-makers / hearing panelists shall receive training on:

- Any technology to be used at a live hearing.
- On issues of relevance of questions and evidence; including when questions and

evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

c. Investigators

In addition to those applicable training requirements set forth above, investigators shall receive training on:

- Issues of relevance to create an investigative report that fairly summarizes the evidence, as set forth in Section XII of this procedure.

d. Neutrality of Training Materials

Any materials used to train Title IX Coordinators, investigators, decision-makers, or as otherwise set forth herein, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

e. Publication of Training Materials

The College shall make the training materials set forth herein publicly available on its website, or, to the extent the College may be unable to publicize some of its training materials because some of the materials may be owned or licensed by an outside consultant and not by the college itself, the College shall list said materials on its website and make the content of said materials available upon request for inspection by members of the public.

43. Permissive Use / License

The Procedures set forth herein were modeled upon the ATIXA 2020 Interim Model Sexual Harassment Policies and Procedures. The use and adaptation of the model with this citation to ATIXA is permitted through a limited license to Western Nebraska Community College (WNCC). All other rights reserved. @2020. ATIXA.

44. Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective August 14, 2020.

APPENDICES



TITLE IX DISCRIMINATION GRIEVANCE FORM (Sexual Harassment)

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination on the basis of sex at educational institutions which receive federal financial assistance. **When the form has been completed and signed by you, and then signed by the Title IX Coordinator or a Deputy, your complaint has been properly received and noted by the College.** We will provide you with a copy of this form as well as complete information about the Title IX complaint process. **If you require emergency assistance, please call 911 immediately.**

<p>The Title IX Coordinator oversees the College's Sexual Harassment Policy and Procedure and has the primary responsibility for coordinating the College's efforts related to intake, investigation, resolution, and implementation of measures to stop, remediate, and prevent sexual harassment and retaliation at WNCC.</p>	I am filing this complaint as a: check one: (v) <input type="checkbox"/> Anonymous <input type="checkbox"/> Faculty <input type="checkbox"/> Staff <input type="checkbox"/> Student <input type="checkbox"/> (other) _____	
	Name	
	Department (if applicable)	WNCC Campus or Program (if applicable)
	Cell Phone	Home Phone
	Email	
	Work Address / Dorm	
	Home Address	
	Have you brought this matter to the attention of any other department(s) at the College? If so, please list the name(s) and department(s) of all other persons with whom you have discussed this matter.	
	Type of Complaint Check all that apply (v) (complete definitions of each category are set forth in the Sexual Harassment Grievance and Investigation Procedure)	
	<input type="checkbox"/> Quid Pro Quo <input type="checkbox"/> Sexual Harassment <input type="checkbox"/> Sexual Assault <input type="checkbox"/> Dating Violence <input type="checkbox"/> Domestic Violence <input type="checkbox"/> Stalking <input type="checkbox"/> Retaliation <input type="checkbox"/> Other, please explain:	

Complaint: Describe your complaint. Please summarize below and attach additional pages describing your complaint if necessary.

Name of person or persons you believe committed the offense against you and how you have contact with them, e.g. supervisor, co-worker, faculty, student, etc.

Describe the corrective action you are seeking. Attach additional pages if necessary.

For retaliation complaints, please explain why you believe someone retaliated against you:

Witnesses (The relationship information requested means co-worker, supervisor, customer, faculty, fellow student, roommate, etc. Attach additional pages as needed)

1.	Relationship	Telephone
2.	Relationship	Telephone
3.	Relationship	Telephone

I certify the aforementioned is true and correct.



Your signature

Date

For the Title IX Coordinator and/or Designee

Complaint taken by

Signature

Print Name

Date

APPENDIX B

SEXUAL HARASSMENT GRIEVANCE AND INVESTIGATION PROCEDURE

STATEMENT OF RIGHTS OF THE PARTIES

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or retaliation made in good faith to College officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by College officials.
- The right to have College policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by College officials from reporting sexual harassment or retaliation to both on-campus and off-campus authorities.
- The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by College authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by College security officers and/or other College officials.

- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
- The right to a College-implemented no-contact order or a Notice Against Trespass against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of sexual harassment and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
 - Relocating an on-campus student's housing to a different on-campus location
 - Assistance from College staff in completing the relocation
 - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
 - Transportation accommodations
 - Visa/immigration assistance
 - Arranging to dissolve a housing contract and a pro-rated refund
 - Exam, paper, and/or assignment rescheduling or adjustment
 - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
 - Transferring class sections
 - Temporary withdrawal/leave of absence (may be retroactive)
 - Campus safety escorts
 - Alternative course completion options.
- The right to have the College maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the College's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
- The right not to have irrelevant prior sexual history or character admitted as evidence.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.

- The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any College representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.

- The right to be informed in writing of when a decision by the College is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the College.
- The right to a fundamentally fair resolution as defined in these procedures.

APPENDIX C: VIOLENCE RISK ASSESSMENT (VRA)

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A ***Violence Risk Assessment (VRA)*** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Behavioral Intervention Team (BIT) (sometimes also known as CARE teams) members.

A VRA occurs in collaboration with the BIT, CARE, and or threat assessment team and must be understood as an on-going process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization (see, e.g. Nebraska Mental Health Commitment Act, Neb. Rev. Stat. §§71-901 to 71-963), nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

1. an appraisal of ***risk factors*** that escalate the potential for violence;
2. a determination of ***stabilizing influences*** that reduce the risk of violence;
3. a contextual ***analysis of violence risk*** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
4. the application of ***intervention and management*** approaches to reduce the risk of violence.

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the BIT. The BIT will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

The assessor will rely on a consistent, research-based, reliable system that allows for the operationalization of the risk levels.

The VRA is conducted independently from the Title IX process, free from outcome pressure, but is informed by it. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The BIT/CARE team's assigned member conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to health and/or safety of an individual or the community.