

## **SEXUAL MISCONDUCT/HARASSMENT POLICY AND PROCEDURE** **(Revised August 2020)**

### INTRODUCTION

This publication is designed to help students, staff, faculty, and administrators of Northwestern State University understand and comply with the prohibitions against sexual harassment established by Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1962, as amended, and state laws. Central to these laws is the fact that all individuals are to be treated with dignity and respect to foster a professional and productive workplace.

The possibility of sexual harassment exists in relationships between people of the same or different gender. It may occur in various relationships at the University (i.e., between a supervisor and employee, faculty and student, student and student, employee and employee, between members of student organizations, or other University entities, etc.). It also may occur with campus visitors, third-party vendors, and contractors.

Contained in this document is the University's policy regarding sexual harassment and procedures for reporting allegations of sexual harassment. Also, employees will participate in mandatory Preventing Sexual Harassment Training and Preventing Sexual Harassment for Supervisors on an annual basis each calendar year. This education is provided through the State of Louisiana State Civil Service LEO (Louisiana Employees Online) portal.

### NORTHWESTERN STATE UNIVERSITY'S POLICY ON SEXUAL HARASSMENT

No employee or student or visitor at Northwestern State University shall be subjected to unsolicited and unwelcome sexual conduct, either verbal or physical. Sexual harassment violates University policy, as well as state and federal laws and is specifically prohibited. It is neither permitted nor condoned, as hostile work environments ensue when people feel unsafe.

Members of the University community - students, staff, faculty, and administrators - are entitled to a professional environment free of harassment or interference for reasons unrelated to the performance of their duties. Since some members of the community hold positions of authority that may involve the legitimate exercise of power over others, it is their responsibility to be sensitive to that power, to avoid actions that are abusive or unprofessional. Faculty and supervisors in their relationships with students and fellow employees, need to be aware of potential conflicts of interest and the possible compromise of their evaluative capacity. Because there is an inherent power difference in these relationships, the potential exists for the less powerful person to perceive a coercive element in suggestions regarding activities outside those appropriate to a strictly professional relationship. It is the responsibility of faculty, staff, and students to behave in such a manner that their words or actions will not reasonably be perceived as suggestive or coercive.

It is also a violation of this policy for any employee or student at the University to attempt in any way to **retaliate** a person who makes a claim of sexual harassment.

## DEFINITION

Sexual harassment has been defined by the Equal Employment Opportunity commission as unwelcome sexual advances, including requests for sexual favors and other verbal or physical conduct of a sexual nature, when:

- 1) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's education or employment; or
- 2) Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions (hiring, firing, advancement, passing courses, etc.) affecting the individual; or
- 3) Such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating an intimidating, hostile, or offensive employment, educational, or living environment, or adversely affecting any student.

## PROHIBITED CONDUCT

Sexual harassment has many forms and not all conduct is sexual in nature or explicitly demonstrated. Additionally, a person who witnesses what they perceive to be sexual harassment may experience third-party sexual harassment. Below are examples of sexual harassment:

- 1) Verbal: sexual advances, derogatory comments, vulgar or sexually offensive jokes, sexually insulting noises, sexual innuendo and inquiries, etc.
- 2) Non-Verbal: sexual gestures, lustful staring or leering, sexually suggestive or revealing pictures, drawings, magazines, etc., sexually oriented mail (including electronic), etc.
- 3) Physical: unwanted physical contact such as kissing, touching, fondling groping, etc., sexual assault, battery, and rape, etc.

## PROCEDURES FOR RESOLUTION OF SEXUAL HARASSMENT COMPLAINTS

Any University employee, student, staff member, faculty member, administrator, or other member of the University community who believes they were sexually harassed may seek to resolve the matter through the formal procedure described below.

To report, contact the Title IX Coordinator for Employees, Veronica M. Biscoe, at [ramirezv@nsula.edu](mailto:ramirezv@nsula.edu) or 318-357-6359. Or, use the *Title IX Reporting Form* found at: [https://cm.maxient.com/reportingform.php?NorthwesternStateUnivLA&layout\\_id=1](https://cm.maxient.com/reportingform.php?NorthwesternStateUnivLA&layout_id=1)

The University recognizes that matters of this sort may often be awkward or embarrassing to individuals and that in some cases the employee may find it difficult to discuss these matters with the designated official. Therefore, in addition, the employee also may seek the assistance of the Human Resources Director or any other supervisory personnel.

## INFORMAL COMPLAINT

If the complaint is an informal or noncriminal in nature, and both parties understand and acknowledge the substance of the complaint and the requested resolution, the complaint may be resolved informally if appropriate. Physical conduct that may be criminal in nature may be inappropriate for Informal Resolution. If the complainant chooses to file an informal complaint, the complainant must be notified of the right to end the informal process at any time and the right to pursue a Formal Complaint and/or take legal action.

## FORMAL COMPLAINT RESOLUTION

- The Title IX Coordinator receives and reviews the complaint. The *Complaint Form* should be completed and signed by either the complainant or the Title IX Coordinator on behalf of the complainant.
- A “formal complaint” is defined as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.
- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.
- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator.
- The phrase “document filed by a complainant” means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the school) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process and must comply with requirements for Title IX personnel to be free from conflicts and bias.
- Once the Title IX Coordinator receives a complaint, the Respondent will be called to a meeting with the Title IX Coordinator and informed of the complaint. The Complainant and Respondent may be issued supportive measures, including but not limited to, a mutual no contact order, classroom accommodations, etc., as an interim measure although this is not a judicial finding.
- The burden of gathering evidence and burden of proof must remain on the school, not on the parties.

## INVESTIGATION

- The Title IX Coordinator conducts the Investigation. The Investigation is a review of the incident description, file history, evidence, and patterns. The Title IX Coordinator will interview the complainant, respondent, and witnesses, and ask for supporting written documentation.
- School must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- School must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”).
- Parties must have the same opportunity to select an advisor of the party’s choice who may be, but need not be, an attorney.
- School must send written notice of any investigative interviews, meetings, or hearings.

- School must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.
- School must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.
- School must dismiss allegations of conduct that do not meet the Final Rule's definition of sexual harassment or did not occur in a school's education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate.
- School may, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
- School must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
- School may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts.
- The Final Rule protects the privacy of a party's medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party's voluntary, written consent to do so.
- Both parties will be instructed not to conduct their own Investigation and to provide any relevant information, such as a list of potential witnesses, to the Title IX Coordinator. Instructions are also provided regarding the confidentiality of information and how to review files.
- A trained and unbiased investigator will conduct all Title IX investigations.

#### HEARING

- The decision, by the Chief Executive Hearing Officer, will be substantiated using the preponderance of evidence standard. A Determination can also be made that the allegations, while made in good faith, were not true.
- The Chief Executive Hearing Officer (who cannot be the same person as the Title IX Coordinator or the Investigator) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.
- The written documentation must be sent simultaneously to the parties along with information about how to file an appeal.

## APPEAL

- School must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter or that sanction was disproportionate to the violation.
- Either party may Appeal. Appeals shall be in writing and provided to the next appellate within five (5) University business days of receipt of the Letter of Determination.
- If either party submits a written Appeal of the Determination Letter, an Intent to Appeal Letter will be sent to both parties by the appropriate appellate within two (2) University business days.

## SUPPORTIVE MEASURES

- According to the Final Rule, "supportive measures" are defined as individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designated to ensure equal educational access, protect safety, or deter sexual harassment.
- The Final Rule evaluates a school's selection of supportive measures and remedies based on what is not clearly unreasonable in light of the known circumstances, and does not second guess a school's disciplinary decisions, but requires the school to offer supportive measures, and provide remedies to a complainant whenever a respondent is found responsible.
- Examples of supportive measures include, but are not limited to, supportive counseling services, mutual no contact orders, class/work accommodations, residential accommodations, etc.

## CONFIDENTIALITY

To the extent possible, confidentiality will be maintained to protect the privacy of all individuals involved. Only those individuals involved in the resolution of such a case will be given access to information about the case. However, complainants are advised that confidentiality can only be respected insofar as it does not interfere with the University's obligation to investigate allegations of misconduct which, when brought to the University's attention, require it to take corrective action.

NOTE: Any individual who believes they have been sexual harassed are encouraged to report the incident(s) promptly, as this leads to a more efficient time to resolution.