



# **NorthWest Arkansas Community College Policy and Procedures for Sex Discrimination, Sexual Harassment and Sexual Misconduct**

## **POLICY STATEMENT**

No person at NorthWest Arkansas Community College will, on the basis of sex, be excluded from participation in, be denied benefit of, or be subjected to sex discrimination, sexual harassment or sexual misconduct under any education program or activity.

## **INTRODUCTION**

Members of the college community, guests and visitors have the right to be free from sexual discrimination, harassment or violence, which means that all members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. NorthWest Arkansas Community College believes in a zero tolerance policy for gender-based misconduct. When an allegation of misconduct is brought to an appropriate administrator's attention, and a responding party is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. These procedures have been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. The policy and procedures are intended to define community expectations and establish a mechanism for determining when those expectations have been violated.

## **JURISDICTION**

Title IX protects the college community from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, in college transportation, at a class or training program sponsored by the school at another location, or elsewhere.

## **DEFINITION OF TERMS**

**Reporting party:** Any party who makes a complaint/grievance against another student, employee, staff member or campus visitor.

**Responding party:** The person(s) against whom a complaint has been made.

**Definition of Status:** A full time employee will be considered as an employee, regardless of student status. A student who is a part-time employee will be considered a student unless the incident under consideration occurred in connection with employment. Allegations of sex discrimination or sexual harassment may require the college to take measures applicable to both students and employees.

**Discrimination (general definition):** Actions that deprive members of the community of educational or employment access, benefits or opportunities. Any distinction, preference, advantage for or detriment to an individual compared to others that is based upon an individual's actual or perceived gender, age, race, color, creed, religion, ancestry, national or ethnic origin, sexual orientation, gender identity,

disability, genetic information, military status, veteran status, or familial status that is so severe or pervasive that it unreasonably interferes with or limits a person's ability to participate in or benefit from the college's educational programs or activities. There can be no discrimination related to pregnancy, child birth, false pregnancy, termination of pregnancy or recovery.

***Discriminatory Harassment:*** Detrimental action based on an individual's actual or perceived gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion, sexual orientation or other protected status that is so severe or pervasive that it unreasonably interferes with or limits a person's ability to participate in or benefit from the college's educational programs or activities.

Not all workplace or educational conduct that may be described as "harassment" affects the terms, conditions or privileges of employment or education. For example, a mere utterance of an ethnic, gender-based or racial epithet which creates offensive feelings in an employee or student would not normally affect the terms and conditions of their employment or education.

***Sexual Harassment:*** Sexual Harassment is unwelcome, gender-based spoken, written or symbolic action or physical conduct of a sexual nature that is sufficiently severe or pervasive that it has the effect of unreasonably interfering with, limiting or denying someone the ability to participate in or benefit from the college's educational programs. It can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature, such as sexual assault or sexual violence. The unwelcome behavior may be based on power differentials, the creation of a hostile environment or retaliation. Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwanted sexual attention; to punish a refusal to comply; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence; stalking; and gender-based bullying.

***Hostile Environment:*** Any situation in which there is harassing conduct that is sufficiently severe, pervasive and objectively offensive that it alters the conditions of employment or limits, interferes with or denies educational benefits or opportunities, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.

***Quid pro Quo Sexual Harassment:*** Exists when there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature and submission to or rejection of such conduct results in adverse educational or employment action.

***Retaliatory Harassment:*** Any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation of discrimination or sexual misconduct. Intentional action taken by an accused individual or allied third party, absent legitimate non-discriminatory purposes, that harms an individual as reprisal for filing or participating in a complaint/grievance procedure.

***Sexual Harassment of a Student by Another Student:*** Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a student toward another student that is so severe or pervasive that it unreasonably interferes with or limits a student's ability to participate in or benefit from the college's educational programs or activities.

***Sexual Harassment of a Faculty/Staff Member by a Student/Another Employee/3<sup>rd</sup> Party Vendor/Campus Visitor:*** Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature directed toward a faculty/staff member that is so severe or pervasive that it unreasonably interferes with employment or living conditions or deprives the individual of employment access or benefits.

***Sexual Harassment of a Student by a Faculty/Staff Member/3<sup>rd</sup> Party Vendor/Campus Visitor:*** Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a faculty or staff member, campus visitor, or vendor/3<sup>rd</sup> party contractor, toward a student are held to constitute sexual harassment when:

- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating an individual's educational development or performance; or
- Such conduct is so severe or pervasive that it unreasonably interferes with or limits a student's ability to participate in or benefit from the college's educational programs or activities.

While a particular interaction must be offensive to both a reasonable person and to the victim to be defined as harassment, faculty or staff members and other persons of authority should be sensitive to questions about mutuality of consent that may be raised and to the conflict of interests that are inherent in personal relationships that result from professional and educational interactions.

Harassment is particularly damaging when it exploits the educational dependence and trust between students and faculty/staff. When the authority and power inherent in faculty/staff relationships with students, whether overtly, implicitly, or through misinterpretation, is abused in any way, there is potentially great damage to the individual student, to the accused individual, and to the climate of the institution. For example, a professor attempts to coerce an unwilling student into having sex with him/her in exchange for a good grade or some other benefit. This is harassment regardless of whether the student accedes to the request and regardless of the student's final grade.

***Non-Consensual Sexual Contact:*** Non-consensual sexual contact is any intentional sexual touching, however slight, with any object by a man or a woman upon a man or a woman that is without consent and/or by force.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

**Non-Consensual Sexual Intercourse:** Non-consensual sexual intercourse is any sexual intercourse however slight, with any object by a man or woman upon a man or a woman that is without consent and/or by force.

Intercourse includes:

- vaginal penetration by a penis, object, tongue or finger
- anal penetration by a penis, object, tongue, or finger
- oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact

**Sexual Exploitation:** Occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

Examples of sexual exploitation include, but are not limited to:

- invasion of sexual privacy;
- prostituting another person;
- non-consensual video or audio-taping of sexual activity;
- going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- engaging in voyeurism;
- knowingly transmitting an STI or HIV to another person; or
- exposing one's genitals in non-consensual circumstances or inducing another to expose his or her genitals.

Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

**Consent:** Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

- In order to give effective consent, one must be at least 16 years old.
- Sexual activity with someone known to be mentally or physically incapacitated, or based on the circumstances, someone who could reasonably be known to be mentally or physically incapacitated, constitutes a violation of this policy.
  - Incapacitation is a state where someone cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of the sexual interaction). Alcohol or other drug use, unconsciousness or blackout is an example of incapacitation.

- This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another person is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>
- Use of alcohol or other drugs will never function as a defense to a violation of this policy.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.

**Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes overt threats, implied threats, intimidation and coercion that overcome resistance or produce consent For example: “Have sex with me or I’ll hit you. Okay, don’t hit me; I’ll do what you want.”

- Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, 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. NOTE: There is no requirement that a party resist the sexual advance or request, but resistance is a clear demonstration of non-consent.

**Domestic Violence:** A pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

Domestic violence can happen to anyone regardless of race, age, sexual orientation, religion, or gender. Domestic violence affects people of all socioeconomic backgrounds and education levels. Domestic violence occurs in both opposite-sex and same-sex relationships and can happen to intimate partners who are married, living together, or dating.

Domestic violence victims by Arkansas Law are defined as “family or household members.” Arkansas defines “family or household members” as current or former spouses; parents and children; persons related by blood; a child living in the household; persons who currently or previously lived together; people who have a child together; and persons who currently or formerly were in a dating relationship.

**Dating Violence:** A pattern of assaultive and controlling behaviors that one person uses against another in order to gain or maintain power and control in the relationship. It is physical, sexual, or psychological/emotional violence within a dating relationship and can occur in person or electronically

by a current or former dating partner. Other terms used include relationship abuse, intimate partner violence, relationship violence, dating abuse, domestic abuse, domestic violence, and stalking.

**Stalking:** A pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear for his or her safety or the safety of others and/or suffer substantial emotional distress.

**Gender Identity:** Refers to one's sense of oneself as male, female or transgender. When one's gender identity and biological sex are not congruent, the individual may identify as transsexual or as another transgender category.

**Sexual Orientation:** Refers to the sex of those to whom one is sexually and romantically attracted. Categories of sexual orientation typically have included attraction to members of one's own sex (gay men or lesbians), attraction to members of the other sex (heterosexuals), and attraction to members of both sexes (bisexuals). While these categories continue to be widely used, research has suggested that sexual orientation does not always appear in such definable categories and instead occurs on a continuum.

#### **POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, or supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of policy.

The college does not wish to interfere with private choices regarding personal relationships when those relationships do not interfere with the goals and policies of the college. However, for the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student or employee) are prohibited except in extraordinary circumstances.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisors. This will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or will shift the student or employee out of being supervised or evaluated by someone with whom he or she has established a consensual relationship. Failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

## **RESPONSIBILITY TO REPORT**

Any student, faculty member, staff member, administrator, or visitor to the campus who has experienced or witnessed sexual harassment is strongly encouraged to report it. In order to maintain a safe environment, the college must know about incidents of sexual harassment in order to stop them, protect victims, and prevent future incidents.

It is the responsibility of college faculty, administrators, and supervisors to report complaints of sexual harassment that they receive and of possible sexual harassment of which they become aware. When there is a relationship that involves legally and/or institutionally recognized professional confidentiality between the reporting party and the person to whom the harassment is reported, the report may be withheld at the request of the reporting party.

## **CONFIDENTIALITY**

Subject to the other provisions of this policy and the requirements of law, every possible effort will be made to ensure that any information received as part of the College's resolution and complaint procedures is treated discreetly. All parties to the complaint will be asked to assist in maintaining the privacy of the parties involved. Because of the college's obligation to investigate allegations of misconduct, it is not possible to guarantee that complaints will be handled confidentially.

Except as compelled by law, in the interest of fairness and problem resolution, disclosure of complaints and their substance and the results of investigations and complaint procedures will be limited to the immediate parties, witnesses and other appropriate administrative officials. Disclosure may also be necessary to conduct a full and impartial investigation.

## **CONFIDENTIAL ADVOCATES**

Confidential advocates are NWACC employees who have been specially trained to provide affirming, empowering, and confidential support for survivors and those who have experienced gendered violence, including sexual harassment, dating and intimate partner violence, sexual assault, stalking, and sexual exploitation. They are not licensed counselors.

Anyone who has a concern may contact an advocate. The advocate will listen and explain options available while providing support.

It is the reporting party's decision to report an incident to the College or to law enforcement. Although rare, there are times when the College may not be able to honor the reporting party's request for confidentiality. If a reporting party discloses an incident to a Confidential Advocate but wishes that no investigation into the incident be conducted or disciplinary action taken, the Advocate must weigh that request against the College's obligation to provide a safe environment for everyone, including the reporting party.

## **AMNESTY**

NWACC recognizes that an individual who has been drinking, using drugs, or engaging in other nonviolent offenses/behavior at the time of an incident may be hesitant to make a report because of potential consequences for his/her own conduct. An individual who reports sexual misconduct, either as a reporting party or a third party witness, will not be subject to disciplinary action by the College for his/her own personal consumption of alcohol or drugs at or near the time of the incident, provided that such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

## **COMPLAINT/GRIEVANCE PROCEDURE**

These procedures are intended to apply to student grievances against employees, employee civil rights grievances against students, and student-on-student civil rights grievances. These procedures may also be applicable in employee civil rights grievances against other employees. All other grievances by students against students or employees will be addressed through other conduct procedures.

The college benefits from formal and informal procedures that encourage prompt resolution of complaints and concerns raised by members of the college community.

### ***Notification***

Students, faculty members, administrators, staff members, or visitors to the college are strongly encouraged to report allegations of discrimination or harassment to a member of the Title IX team. A report of sex discrimination or harassment should be made as soon as possible after the incident in order to facilitate an effective response. The longer a report is delayed, the more difficult it will be for the college to investigate.

A person who raises a complaint may discuss any situation believed to constitute sex discrimination or sexual harassment with any member of the Title IX team. Reports may be made by the person experiencing the discrimination or harassment or by a third party, such as a witness or someone who is told of the discrimination or harassment. A complaint against a student may also be reported through the college's online Student Conduct Reporting Form, Advocate, which can be found on the Student Conduct website or at the following link: [https://nwacc-advocate.symplicity.com/public\\_report/](https://nwacc-advocate.symplicity.com/public_report/). A complaint against an employee may be made through the college's online Ethics Point report line (<https://secure.ethicspoint.com/domain/media/en/gui/15781/index.html>). After selecting the Make a Report tab, the reporting party should look for the Discrimination and Harassment button under the Human Resources arrow.

Upon receipt of a complaint/grievance, the Title IX team will meet to review the information presented and to determine the appropriate course of action. The Title IX team consists of:

**Title IX Team (effective August 2016):**

**Title IX Compliance Officer**

Teresa Taylor (Williamson)  
Ethics & Compliance Officer  
Center for Health Prof 3048  
479-619-4188  
[ttaylor19@nwacc.edu](mailto:ttaylor19@nwacc.edu)

**Title IX Deputy (Student Issues)**

Dale Montgomery  
Dean of Students  
Student Center 225J  
479-619-4234  
[dmontgom@nwacc.edu](mailto:dmontgom@nwacc.edu)

**Title IX Deputy (Employee Issues)**

Beverly Hill  
Employee Relations Manager  
Burns Hall 1128  
479-619-1128  
[bhill3@nwacc.edu](mailto:bhill3@nwacc.edu)

**Director for Student Conduct**

Danielle Schader  
Student Center 225I  
479-619-4237  
[dschader@nwacc.edu](mailto:dschader@nwacc.edu)

**Executive Director for Institutional Policy,  
Risk Management and Compliance**

Ethan Beckcom  
Center for Health Prof 3043  
479-936-5173  
[ebeckcom@nwacc.edu](mailto:ebeckcom@nwacc.edu)

**Director of Human Resources**

Wendi Cadle  
Burns Hall 1128  
479-619-3149  
[wcadle@nwacc.edu](mailto:wcadle@nwacc.edu)

**Dean of Washington County Centers**

Brenda Green  
NWACC Washington County Campus – Springdale  
479-725-4669  
[bgreen@nwacc.edu](mailto:bgreen@nwacc.edu)

The Title IX Team will meet to review the information presented and to determine the appropriate course of action. Possible solutions may include an informal administrative process, an educational conversation, educational sanctions and/or disciplinary actions, separating the parties involved (i.e. class changes, work changes, etc), or other determined best practices.

If it is determined that a formal investigation is warranted, the appropriate deputy or designee will convene an investigation team and will assign 1-3 members of the Investigation and Hearing Board to conduct the investigation. The deputy will determine appropriate accommodations for the reporting party or other necessary remedial short-term actions. In any complaint, the appropriate deputy or designee will play a role in the investigation of the incident and in the enforcement of sanctions, if any. The Title IX Compliance Officer or his or her deputy will apprise the Vice President for the appropriate division of the grievance, or if the grievance is against the student, the Vice President of Student Services.

**Investigation**

1. The Investigative Team will:
  - Be staffed with trained faculty/staff and administrators;
  - Identify the policies allegedly violated;
  - Meet with the reporting party to finalize the grievance;

- Prepare the notice of charges on the basis of initial investigation;
- Develop a strategic investigation plan which may include a witness list, an evidence list, an intended timeframe, and an order of interviews for all witnesses, including the responding party;
- Conduct a thorough, reliable and impartial investigation. Witnesses may or may not be given notice prior to the interview;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- Make a finding on the case, based on a preponderance of the evidence which indicates that a policy violation has or has not occurred; and
- Prepare a complete report on the investigation and its findings to present to the Deputy.

The Title IX Deputy will:

- Present the findings to the individual(s) alleged to have committed discrimination or harassment, who may accept the findings, accept the findings in part and reject the findings in part, or may reject all findings;
  - Share the findings and the outcome with the reporting party.
2. If the findings indicate that the alleged discrimination or harassment has not occurred, the investigation should be closed. The reporting party who filed a complaint may request from the Title IX Deputy an extraordinary decision to refer the complaint to a hearing. A hearing will only be granted by the Deputy in exceptional circumstances.
  3. Where the findings indicate that the alleged discrimination or harassment has occurred, and the responding party(-ies) accepts the findings that s/he violated college policy, an appropriate sanction will be imposed. If the complaint is against a student, the sanction will be determined by the Vice President of Student Services in consultation with Deputy. If the complaint is against an NWACC employee, the Vice President for the appropriate division in consultation with the Human Resources Deputy and the Dean or Director of the appropriate division will determine the sanction. NWACC will act to end the discrimination, prevent its recurrence, and remedy its effects on the person who filed the complaint and on the NWACC community.
  4. Following the investigation, the Deputy will distribute a written Letter of Determination to the affected parties.

### ***Hearing***

1. In the event that the individual(s) alleged to have committed discrimination or harassment rejects the investigation findings in part or entirely, the Deputy will convene a hearing to discuss the contested aspects of the formal complaint. Three members of the Investigation and Hearing pool will be selected for the Hearing Board. At the hearing, the findings of the investigation will

be admitted and the Investigation Team may give evidence. However, the Hearing Board is not bound by the finding(s) of the Investigation Team. The hearing will determine whether it is more likely than not that a violation of policies has occurred. The goal of the hearing is to provide an equitable resolution via an equitable process, respecting the civil and legal rights of all participants.

### **Prior to the Hearing**

The Title IX Deputy or designee will select the hearing board members and provide the investigation report to them for their preparation.

No later than five (5) business days before the hearing,

- The Deputy will notify the reporting party and the responding party of the date, time and place of the hearing and the time that each party should appear;
- The reporting party will notify the deputy if he/she will be accompanied by an attorney or other advocate; and
- The responding party will notify the deputy if he/she will be accompanied by an attorney or other advocate.

No later than three (3) business days prior to the hearing,

- The hearing board members will study the investigation report and determine what witnesses they wish to interview;
- The reporting party and the responding party will have the opportunity to study the investigation report;
- The reporting party and the responding party will provide the Deputy with the names and contact information of any witnesses they wish to have the hearing board interview;
- The Title IX Deputy or designee will notify the witnesses that the board wishes to interview them at the date and time designated;
- The parties will be informed of the names of the witnesses to be called, unless there is a compelling safety reason for nondisclosure;
- The reporting party and the responding party will provide any documents they wish to make available to the hearing board and;
- The reporting party and the responding party may submit questions to the deputy that they would like for the hearing board to ask. Please note that the hearing board is under no obligation to ask those questions during the hearing if they are deemed by the board to be inappropriate or irrelevant.

No later than two (2) business days prior to the hearing, any participant in the hearing who requires special accommodations should notify the Deputy or designee.

### **At the Hearing**

The Title IX Deputy or designee will chair the hearing and oversee the proceedings. The hearing may be recorded so that the proceedings may be reviewed in the event of an appeal.

The following parties may ask questions that are relevant to the complaint:

- The Title IX deputy or designee; and
- The hearing board members.

The reporting party has the right to be interviewed without the responding party present and vice versa. However, each party has the right to know the content of the statements of the other and to respond to them.

Both the reporting party and the responding party will be given the opportunity to make a brief and relevant impact statement.

Witnesses will not be present during the testimony of any party or other witness. If a witness is unable to appear, a statement from the witness may be accepted into the record. Telephone, Skype or other technology may also be used for the convenience of the witness.

1. The hearing board may recall the reporting party, the responding party, or witnesses if clarification is needed.
2. Following the hearing, the hearing board will go into closed session to deliberate and will notify the Deputy or designee in writing of the finding.
3. If the Hearing Board determines a violation has occurred, it will recommend that sanctions for the violation be imposed. The Vice President for the appropriate division of the complaint, or if the complaint is against a student, the Vice President of Student Services, will impose appropriate sanctions for the violation, after consultation with the Dean or Director of the appropriate division and the Deputy. NWACC will act to end the discrimination or harassment, prevent its recurrence, and remedy its effects on the person who filed the complaint and on the NWACC community.

If the Hearing Board determines that no violation has occurred, the case will be closed.

4. Within ten (10) business days, the Title IX Deputy or designee will notify both parties in writing of the determination by the hearing board by sending a second Letter of Determination to them.

## ***Appeals***

### ***a. Appeals Following an Investigation***

In cases where the responding party(-ies) accepted the findings of discrimination or harassment after the investigation, those findings cannot be appealed. Although the findings cannot be appealed, the sanctions that have been imposed post-investigation can be appealed by any party according to the grounds below by contacting the Title IX Deputy within five (5) business days following receipt of the written Letter of Determination as previously defined.

### ***b. Appeals Following a Hearing***

After the hearing, either the reporting party(-ies) or responding party(-ies) may appeal the findings and/or sanctions only under the grounds described below. All sanctions imposed by the original hearing body will be in effect during the appeal. A request may be submitted to the Title IX Deputy for special consideration in exigent circumstances, but the presumptive stance of the institution is that the

sanctions will stand. In the event that the reporting party or responding party rejects the findings in part or in their entirety, he/she may seek an appeal by contacting the Title IX Deputy within five (5) business days following receipt of the written Letter of Determination.

### ***Appeal Procedures***

Any party who files an appeal must do so in writing to the Title IX Deputy. Acceptable means of notification include email, facsimile, hand delivered notification, or postal delivery. The Title IX Deputy will share the appeal with the Title IX team, who will accept or deny the appeal based on the evidence provided (see criteria below).

If the appeal is accepted, it will be shared with other concerned parties. The original finding and sanction will stand if the appeal is not timely or substantively eligible, and the decision is final.

Because the original finding and sanction are presumed to have been decided reasonably and appropriately, the party requesting an appeal must show error. The ONLY grounds for appeal are as follows:

1. A procedural or substantive error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
2. New evidence has been found which was unavailable during the original hearing or investigation that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
3. The sanctions imposed are substantially disproportionate to the severity of the violation.

If the Title IX team determines that a material procedural or substantive error occurred, the Deputy may return the grievance to the Investigation and Hearing Board with instructions to reconvene to correct the error. In rare cases, where the procedural or substantive error cannot be corrected by the Investigation and Hearing Board (as in cases of bias), the Title IX Deputy may, upon advice from the Title IX team, order a new investigation and/or hearing on the complaint with new members from the Investigation and Hearing Board. The results of a reconvened hearing cannot be appealed. The results of a new hearing can be appealed, once, on the three applicable grounds for appeals.

If the Title IX team determines that new evidence should be considered, he or she will return the grievance to the Investigation and Hearing Board to reconsider only the new evidence. The reconsideration of the Investigation and Hearing Board is not appealable.

If the Title IX team determines that the sanctions imposed appear to be disproportionate to the severity of the violation, the Title IX Deputy will refer the complaint to a board composed of three (3) cabinet officers, which may then increase, decrease or otherwise modify the sanctions. This decision is final.

The appeal procedure and determination will typically be completed within 20 business days.

The procedures governing the hearing of appeals include the following:

- Sanctions imposed are implemented immediately unless the party determining the sanction stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- All parties should be informed in a timely manner of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- The appeal will be returned to the original hearing body unless bias has been determined;
- Appeals are not intended to be full rehearings of the complaint, with the exception of substantiated cases of bias. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal;
- The Chair of the Investigation and Hearing Board will render a written decision on the appeal to all parties within seven (7) business days, or as soon as possible thereafter from hearing of the appeal.

## **COMPLAINT AND GRIEVANCE PROCESS PROVISIONS**

### ***Time Periods***

All effort will be made to make a determination in no more than 60 calendar days of filing a formal complaint/grievance.

For purposes of calculating all time periods set forth in this Complaint and Grievance Policy, a business day is defined to mean normal operating hours, Monday through Friday, excluding recognized national and state holidays and NWACC closings.

Timelines may be modified in cases where information is not clear, judged to be incomplete, relevant parties are not available for interview, and/or other related circumstances as may arise. In the event that this step is necessary, the Title IX Compliance Officer or his or her respective deputies will notify the reporting party who filed the grievance in writing within the set timeline.

### ***No Retaliation***

Retaliation against any person who files a complaint of discrimination, participates in an investigation, or opposes a discriminatory employment or educational practice or policy is prohibited by NWACC policy and federal and state law. A person who believes retaliation has occurred should notify the Title IX Compliance Officer as soon as possible.

### ***False Reports***

NWACC will not tolerate intentional false reporting of incidents. It is a violation of the *Codes of Conduct* governing NWACC to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

### ***Office of Civil Rights Complaint***

Although reporting parties are encouraged to attempt to resolve complaints pertaining to discrimination

by utilizing this Grievance Procedure, they have the right to file a complaint directly with the U.S. Department of Education, Office for Civil Rights (OCR) (Dallas regional office). Information regarding applicable timelines and procedures is available from OCR.

***Notice That Cases Will Not Be Re-Heard***

Absent new evidence, NWACC will not re-hear a complaint if the same complaint allegations have been filed by the reporting party against the same responding party with another civil rights enforcement agency of the federal, state or local government or through NWACC's internal complaint procedures, including due process proceedings.

***Effective Date***

This Complaint and Grievance Policy will be effective upon formal adoption. NWACC reserves the right to make changes and amendments to this policy and procedure as needed, with appropriate notice to the community.

## STATEMENT OF THE RIGHTS OF REPORTING PARTY

- The right to be treated with respect by college officials;
- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to college administrators;
- The right to have an advisor or advocate to accompany and assist in the campus hearing process. This advisor can be anyone, including an attorney (provided at the Reporting Party's own cost), but the advisor may not take part directly in the hearing itself, though they may communicate with the Reporting Party as necessary. The college should be notified five (5) business days in advance of the hearing if an advisor or advocate will accompany the Reporting Party.
- The right not to be discouraged by college officials from reporting an assault to both on-campus and off-campus authorities;
- The right to be informed in a timely manner of the outcome and sanction of any disciplinary hearing involving sexual assault, usually within five (5) business days of the end of the conduct hearing;
- 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 to be assisted by campus authorities in notifying such authorities, if the Reporting Party so chooses. This also includes the right not to report, if this is the victim's desire;
- The right to be notified of available counseling, mental health, and/or student services for victims of sexual assault, both on campus and in the community;
- The right to notification of options and assistance for changing academic or employment situations after an alleged sexual assault incident. These changes will be made if they are reasonably available and desired by the victim. No formal complaint, or investigation, campus or criminal, need occur before this option is available. Accommodations may include:
  - Exam (paper, assignment) rescheduling;
  - Taking an incomplete in a class;
  - Transferring class sections;
  - Temporary withdrawal;
  - Alternative course completion options;
  - Alternative work assignments and/or supervisory changes.
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right ***not*** to have any complaint of sexual assault mediated (as opposed to adjudicated);
- The right to make a victim-impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction;
- The right to a campus no contact order against another person who has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the complaining person or others;
- The right to have complaints of sexual misconduct responded to quickly and with sensitivity by campus disciplinary officials;
- The right to appeal the finding and sanction of the conduct body, in accordance with the standards for appeal established by the institution;

- The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law;
- The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness' identity will not be revealed to the accused Responding Party for compelling safety reasons (this does not include the name of the alleged victim/Reporting Party, which will always be revealed);
- The right to preservation of privacy, to the extent possible and allowed by law;
- The right to a conduct process that is closed to the public;
- The right to petition that any member of the conduct body be removed on the basis of demonstrated bias;
- The right to give testimony in a campus hearing by means other than being in the same room with the Responding Party;
- The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;
- The right to be fully informed of campus conduct rules and procedures as well as the nature and extent of all alleged violations contained within the complaint;
- The right to be present for all testimony given and evidence presented before the conduct body;
- The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct training;
- The right to conduct officials comprised of representatives of both genders;
- The right to have college policies and procedures followed without material deviation;
- The right to be informed in advance, when possible, of any public release of information regarding the complaint;
- The right to a fundamentally fair hearing, as defined by these procedures;
- The right not to have released to the public any personally identifiable information about the Reporting Party, without his or her consent;
- The right to a campus conduct outcome based solely on evidence presented during the conduct process. Such evidence shall be credible, relevant, based in fact, and without prejudice.

## STATEMENT OF THE RIGHTS OF RESPONDING PARTY/ACCUSED PARTY

- The right to be treated with respect by college officials;
- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to college administrators against the Responding Party;
- The right to have an advisor or advocate to accompany and assist in the campus hearing process. This advisor can be anyone, including an attorney (provided at the Responding Party's own cost), but the advisor may not take part directly in the hearing itself, though they may communicate with the Responding Party as necessary. The college should be notified five (5) business days in advance of the hearing if an advisor or advocate will accompany the Responding Party.
- The right to be informed in a timely manner of the outcome and sanction of any disciplinary hearing involving sexual assault, usually within five (5) business days of the end of the conduct hearing;
- The right to be informed of available counseling, mental health, and/or student services, both on campus and in the community;
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right to make an impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction;
- The right to have complaints of sexual misconduct responded to quickly and with sensitivity by campus disciplinary officials;
- The right to appeal the finding and sanction of the conduct body, in accordance with the standards for appeal established by the institution;
- The right to review the Reporting Party's testimony and all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law;
- The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness' identity will not be revealed to the Responding Party for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed);
- The right to preservation of privacy, to the extent possible and allowed by law;
- The right to a conduct process that is to the public;
- The right to petition that any member of the conduct body be removed on the basis of demonstrated bias;
- The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;
- The right to be fully informed of the nature, rules and procedures of the campus conduct process and to timely written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions;
- The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct adjudication training;
- The right to conduct officials comprised of representatives of both genders;
- The right to have college policies and procedures followed without material deviation;
- The right to be informed in advance, when possible, of any public release of information regarding the complaint.

- The right to a hearing on the complaint, including timely notice of the hearing date, and adequate time for preparation;
- The right to a fundamentally fair hearing, as defined in these procedures;
- The right to a campus conduct outcome based solely on evidence presented during the conduct process. Such evidence shall be credible, relevant, based in fact, and without prejudice.