

**Northwest Florida State College  
Title IX Administrative Policies  
Sexual Misconduct Procedure**

**References: NWFSC BOT Policy HR 20.00 and HR 24.00; 34 CFR Part 106, including the May 6, 2020, Department of Education’s Office for Civil Rights (OCR) new regulations mandating changes to the Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance under Title IX.**

**1. Purpose**

This procedure implements the aspects of Northwest Florida State College (NWFSC) policy and state and federal law that prohibit unlawful discrimination based on sex and gender in employment and educational programs or activities. Title IX prohibits NWFSC from discriminating on the basis of sex in the education programs or activities it operates, including employment.

**2. Scope**

This Procedure applies to all NWFSC employees, students, colleges, offices, and workplaces, regardless of location if the location is in used by an officially recognized student or institution organization and to all NWFSC-related conduct, policies, decisions, and actions. The use of the term “NWFSC” throughout this policy shall mean all college campuses and any affiliated organizations directly controlled through NWFSC.

**3. Definitions**

**3.1 Complainant:** Individual who is alleged to be the victim of conduct that could constitute sexual harassment or is the subject of sexual misconduct, or of retaliation related to the complaint, investigation thereof, or any circumstance surrounding the complaint. For purposes of this procedure, the Complainant can be a NWFSC employee, student, volunteer, guest, or visitor.

**3.2 Respondent:** Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or sexual misconduct, sex abuse or sexual violence and is the subject of a complaint. For purposes of this procedure, the Respondent can be a NWFSC employee, student, volunteer, guest, or visitor.

**3.3 Sexual Misconduct Offenses** include, but are not limited to:

- A. Sexual Harassment is behavior that can be characterized by a reasonable persons as;
  - 1) Unwelcome, gender-based verbal or physical conduct;
  - 2) Sufficiently severe, pervasive, or persistent;

- 3) Unreasonably interfering with, denying, or limiting someone's ability to participate in or benefit from NWFSC' educational program and/or activities; and
  - 4) Based on power differentials, creation of a hostile environment, or retaliation.
  - 5) Sexual Harassment as defined by Title IX as conduct on the basis of sex that satisfies one or more of the following:
    - a. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo harassment of the employee or student);
    - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity (Reports of sexual assault, dating violence, domestic violence and stalking do not need to meet the description of severe, pervasive and objectively offensive); or
    - c. As used in any of the four Clery Act/VAWA sex offenses – "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
- B. Non-consensual Sexual Contact or attempts to commit same is behavior that can be characterized by a reasonable person as consisting of;
- 1) Any intentional sexual touching, however slight,
  - 2) That is without consent and/or by force,
  - 3) With any object, including body parts such as hand or genitals,
  - 4) By any individual upon any individual.
- C. Non-consensual Sexual Intercourse, Sexual Assault, Sexual Violence or attempts to commit same is behavior that can be characterized by a reasonable person as consisting of ;
- 1) Any sexual penetration, however slight,
  - 2) That is without consent and/or by force,

- 3) With any object, including body parts such as hand or genitals,
- 4) By any individual upon any individual.

D. Sexual Exploitation or Sexual Abuse occurs when an individual takes non-consensual or abusive sexual advantage of another for his or her own gain, advantage, or benefit or for the gain, advantage, or benefit of anyone other than the individual who is being exploited, and that behavior does not constitute an otherwise-defined sexual misconduct offense.

**3.4 Consent** to sexual activity is a factual determination that varies by circumstance. For Title IX proposes, the Assistant Secretary does not require the College to adopt a particular definition of consent with respect to sexual assault, as defined by section 3.3A(5)(c) above. However, in all cases, consent must be clear, knowing, and voluntary. Consent is active, not passive. Consent can be given by words or actions. The words or actions must be sufficient to create mutually understandable clear permission regarding willingness to engage in, and the conditions of engaging in, sexual activity. Silence, in and of itself, is not consent, cannot be interpreted as consent, and, standing alone, cannot be relied upon as a defense. Consent to one form of sexual activity does not imply consent to any other forms of sexual activity. Any person may withdraw consent at any point involved in sexual contact. Previous relationships or prior consent does not imply consent to future sexual acts.

A person is legally deemed incapable of consent when he or she is any of the following:

- Less than eighteen years old
- An individual with an intellectual disability or an individual that suffers from a mental illness
- Mentally incapacitated (including but not limited to, use of alcohol, drugs, sleep, involuntary physical restraint, unconsciousness, or other inability to make rational, reasonable decisions)
- Physically helpless

**3.5 Force** is the use of physical violence and/or a physical imposition on someone to gain sexual contact, access, or other sexual gratification. Force also includes threats, intimidation (implied threats) and coercion that overcome another person's resistance or produce consent that would not have been granted but for the force.

**3.6 Formal complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College 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 College 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 under §34 U.S.C 106.8(a), and by any additional method designated

by the College. 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 College) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

- 3.7 Coercion** is the exertion of unreasonable pressure to obtain sexual conduct, activity, or gratification. Once an individual makes it clear that he/she does not want to have sex, wants to stop, or does not want to go past a certain point of sexual activity, continued pressure intended to obtain sex, the continuation of sex, or the movement beyond a certain point of sexual behavior may be coercive.
- 3.8 Responsible Employee.** A responsible employee includes any employee who has the authority to institute corrective measures on behalf of the College, or to any employee of an elementary and secondary school. Employees with supervisory and leadership responsibilities are considered Responsible Employees, including division chairs, deans, administrators, faculty, and other employees in managerial positions, including all those identified as College Administrators under Florida State Board Rule (SBR) 6A-14.099.
- 3.9 Privacy** generally means that information related to a report of a violation of this policy will only be shared among NWFSC employees who “need to know” in order to assist in review, investigation, or resolution of the report of violation. These employees are not bound by confidentiality, but will be discreet and respectful of the privacy all individuals involved.
- 3.10 Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to the College’s Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the College with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the College.
- 3.11 Supportive measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus

escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

#### **4. Procedure**

**4.1 Title IX Requirements.** Under Title IX, NWFSC is required to take immediate action if the college has “actual knowledge” of a sexual harassment or sexual misconduct allegation. Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the College’s Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College, or to any employee of an elementary and secondary school. “Notice” means notice of sexual harassment, sexual misconduct or allegations of the same to the College’s Title IX Coordinator or any official of the College identified as a “Responsible Employee.”

**4.2 Privacy and Confidentiality.** The terms “Privacy” and “Confidentiality” have distinct meanings under this procedure.

##### **A. Privacy**

NWFSC is committed to protecting the privacy of all individuals involved in a report of any violation of the Sexual Misconduct Policy and Procedure. Individuals involved in the response, including Title IX coordinators, investigators, and decision makers shall receive instruction about safeguarding private information. Throughout the process NWFSC will make every effort to protect the privacy interests of all individuals involved in a manner consistent with the institution’s duty to respond appropriately. When the need for privacy and confidentiality conflict with obligations imposed by state and federal laws (Clery reporting, open records, FERPA and duty to warn/duty to report) those laws shall control. All NWFSC proceedings are conducted in compliance with FERPA, Title IX, Title VII, the Clery Act, and state and federal law. No information shall be released from such proceedings except as required or permitted by law and NWFSC policy and procedure.

##### **B. Confidentiality**

Certain mental health providers, ordained clergy, rape crisis counselors and attorneys have legally protected confidentiality. NWFSC does not provide these services, but the Title IX Coordinator at the college may maintain a list of local services for referral. Please note that when a report involves suspected abuse of a minor under the age of 18, state law requires both NWFSC as well as entities who are entitled to maintain confidentiality to notify child protective services and/or local law enforcement.

When a Complainant requests that his/her identifiable information not be shared with the Respondent or that no formal action be taken, NWFSC will balance this request with its obligations to provide a safe and non-discriminatory environment for its members and its responsibility to provide

proper due process rights to the Respondent. NWFSC may consider the nature and seriousness of the conduct, the ages and roles of the Complainant and Respondent, whether or not other reports or complaints against the Respondent have been received, and the rights of the Respondent to receive notice and relevant information before disciplinary action is sought.

The College must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute or regulations, 20 U.S.C. 1232g and 34 CFR part 99, or required by law, or to carry out the purposes of 34 CFR part 106.

NWFSC will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or a request to not pursue an investigation. If NWFSC is unable to take action due to the Complainant's request, or must take action despite the request, the Title IX Coordinator will inform the Complainant of NWFSC's chosen course of action.

Additionally, the College must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

- C. **Anonymous Reports.** Anonymous reports will be taken seriously and reviewed thoroughly by NWFSC, but the ability to respond to such a report may be limited depending on the information provided. Where a complainant desires to initiate a grievance process/formal complaint, the complainant cannot remain anonymous or prevent the complainant's identity from being disclosed to the respondent (via the written notice of allegations). Fundamental fairness and due process principles require that a respondent knows the details of the allegations made against the respondent, to the extent the details are known, to provide adequate opportunity for the respondent to respond. The U.S. Department of Education does not believe this results in unfairness to a complainant.

**4.3 Reporting.** NWFSC encourages any individual who has suffered an incident of sexual violence to seek immediate assistance from a medical provider and/or law enforcement. This is the best way to ensure that evidence is preserved and that a timely investigation and response are initiated. An individual who is considering making a criminal complaint or taking other legal action should seek medical care as soon as possible after the assault. It is important for the individual to not bathe, douche, or change clothing prior to the medical examination in order to avoid

inadvertently removing important evidence. The kind of evidence that supports a legal case against an accused should be collected within 72 hours of an assault.

#### A. Reporting Options

- 1) Sexual assault, sexual misconduct, sexual harassment, stalking and relationship violence may be reported to any office responsible for Student Affairs, Campus Safety/Security, Academic Affairs, or any other official or staff member and that faculty and/or staff member is obligated to assist that student in contacting the Campus Title IX Coordinator or Campus Security.
- 2) A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator on the College website and by any additional method designated by the College.
- 3) At the time of the report, the Complainant does not have to decide on or request a course of action. Choosing to report and then deciding what to do after making the report may be a process that takes time. The Campus Title IX Coordinator is trained to assist individuals through the process.
- 4) All NWFSC personnel who receive a report or complaint of sexual assault, stalking, and/or relationship violence should immediately refer the complainant to the Title IX Coordinator where the complainant will be counseled about available options.

#### B. False Reports

NWFSC will not tolerate intentional false reporting of incidents. NWFSC takes all allegations of sexual misconduct seriously. A good-faith complaint that results in no finding of a violation is NOT considered a false report. However, if any party is found to have made false allegations or given false or untruthful information with malicious intent or in bad faith, that party may be subject to disciplinary action under NWFSC policies and procedures and/or the Code of Student Conduct. False reports may also constitute violations of state criminal statutes and civil defamation laws.

### **4.4 Designation of Coordinator, Dissemination of Policy, and Adoption of Grievance Procedures.**

- A. Designation of coordinator. The College must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the "Title IX Coordinator." The College must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and

all unions or professional organizations holding collective bargaining or professional agreements with the College, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator pursuant to this paragraph. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

Northwest Florida State College has designated Roberta Mackey, Executive Director of Human Resources as the College's Title IX Coordinator. Ms. Mackey can be reach at 850-729-5365 or email at [mackeyr@nwfsc.edu](mailto:mackeyr@nwfsc.edu).

B. Dissemination of policy

- 1) Notification of policy. Each College must notify persons entitled to a notification under paragraph (A) above that the College does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX to the College may be referred to the College's Title IX Coordinator, to the Vice President of Student Success or both.
- 2) Publications. The College must prominently display the contact information required to be listed for the Title IX Coordinator and this policy on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification under paragraph (A) of this section. Additionally, the College will not use or distribute a publication stating that the College treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by title IX.

- C. Adoption of grievance procedures. The College must adopt and publish these grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited under a grievance process that complies with 34 U.S.C. § 106. The College must provide persons entitled to notification under paragraph (A) of this section notice of the College's grievance procedures and grievance process, including how to



report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the College will respond.

- D. Application outside the United States. The requirements of this grievance process of this section apply only to sex discrimination occurring against a person in the United States.

**4.5 Protective Measures.** Should the reported misconduct represent an ongoing threat to the safety of members of the campus community, the College may be required to mitigate safety issues:

**A. Emergency removal.** Nothing in this part precludes a College from removing a respondent from the College’s education program or activity on an emergency basis, provided that the College undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

**B. Administrative leave.** Nothing in this subpart precludes a College from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with this procedure. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

**4.6 College’s Response to Sexual Harassment.**

**A. General response to sexual harassment.** A College with actual knowledge of sexual harassment in an education program or activity of the College against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A College is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. An “education program or activity” includes locations, events, or circumstances over which the College exercised 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 a postsecondary institution. A College’s response must treat complainants and respondents equitably by offering supportive measures as defined in section 3 above to a complainant, and by following a grievance process that complies with 34 U.S.C. § 106 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in section 3 above, against a respondent. The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant’s wishes with respect

to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

**B. Response to a formal complaint.** In response to a formal complaint, the College must follow a grievance process that complies with 34 U.S.C. § 106, which is this process. With or without a formal complaint, a College must comply with the procedures above.

#### **4.7 Grievance Process for Formal Complaints of Sexual Harassment.**

A. Basic requirements for grievance process. A College's grievance process must:

- 1) Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. Remedies must be designed to restore or preserve equal access to the College's education program or activity. Such remedies may include the same individualized services described as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;
- 2) Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;
- 3) Require that any individual designated by a College as a Title IX Coordinator, investigator, decision-maker, or any person designated by a College to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A College must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, section 3, above, the scope of the College's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. A College must ensure that decision-makers receive training on any technology to be used at a live hearing and 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. A College also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal

resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

- 4) Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;
  - 5) Include reasonably prompt time frames for conclusion of the grievance process (60-day cap removed), including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the College offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;
  - 6) Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the College may implement following any determination of responsibility;
  - 7) State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;
  - 8) Include the procedures and permissible bases for the complainant and respondent to appeal;
  - 9) Describe the range of supportive measures available to complainants and respondents; and
  - 10) Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- B. Notice of allegations. Upon receipt of a formal complaint, a College must provide the following written notice to the parties who are known:
- 1) Notice of the College's grievance process that complies with this section, including any informal resolution process.
  - 2) Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in section 3, above, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if

known, the conduct allegedly constituting sexual harassment under section 3, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence, subject to this procedure. The written notice must inform the parties of any provision in the College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

- 3) If, in the course of an investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to this procedure, the College must provide notice of the additional allegations to the parties whose identities are known.

### **C. Dismissal of a formal complaint**

- 1) The College must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in section 3, above, even if proved, did not occur in the College's education program or activity, or did not occur against a person in the United States, then the College must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the College's code of conduct.
- 2) The College may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the College; or specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- 3) Upon a dismissal required or permitted pursuant to this procedure, the College must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

**D. Consolidation of formal complaints.** The College may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable.

**E. Investigation of a formal complaint.** When investigating a formal complaint and throughout the grievance process, the college must:

- 1) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the College and not on the parties provided that the College cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the College must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);
- 2) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- 3) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- 4) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the College may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- 5) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- 6) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the College must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The College must make all such evidence subject to the parties' inspection and review available at any

hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

- 7) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

**F. Hearings. The College's grievance process must provide for a live hearing.**

1. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the College under section 4.7E(4), above, to otherwise restrict the extent to which advisors may participate in the proceedings. At the request of either party, the College must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the College must provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, 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. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Colleges must create an audio or

audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

2. For the College's Collegiate High School the College's grievance process may, but need not, provide for a hearing. With or without a hearing, after the College has sent the investigative report to the parties pursuant to section 4.7E, above, and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, 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. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

#### **G. Determination regarding responsibility.**

1. The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the College must apply the standard of evidence described in section 4.7A(7), above. This written determination must include:
  - a) Identification of the allegations potentially constituting sexual harassment as defined in section 3, above;
  - b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - c) Findings of fact supporting the determination;
  - d) Conclusions regarding the application of the College's code of conduct to the facts;
  - e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the respondent, and whether remedies designed to restore or preserve equal access to the College's

education program or activity will be provided by the College to the complainant; and

- f) The College's procedures and permissible bases for the complainant and respondent to appeal.
2. The College must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
3. The Title IX Coordinator is responsible for effective implementation of any remedies.

#### **H. Rights of Appeal:**

1. The College must offer both parties an appeal from a determination regarding responsibility, and from a College's dismissal of a formal complaint or any allegations therein, on the following bases:
  - 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 individual complainant or respondent that affected the outcome of the matter.
2. The College may offer an appeal equally to both parties on additional bases.
3. Regarding all appeals, the College must:
  - a) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
  - b) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
  - c) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in section 4.7A(3), above;
  - d) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;



- e) Issue a written decision describing the result of the appeal and the rationale for the result; and
  - f) Provide the written decision simultaneously to both parties.
4. Appeals are not intended to be full rehearing of the complaint. 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. Appeal decisions are to be deferential to the original committee, making changes to the findings only where there is clear error.
  5. Appeals must be submitted in writing within 7 business days of the decision maker's decision. Non-appealing party will be given the opportunity to be heard in an appeal process and both parties will be given a reasonable amount of time to respond in writing. A separate decision maker will review the appeal documentation and submit whether grounds for an appeal exist.

**I. Investigation Process:** Overview: In every report of sexual harassment or misconduct, the College will make an immediate assessment of any risk of harm to individuals or to the campus community and will take steps necessary to address those risks. These steps may include interim protective measures to provide for the safety of the individual and the campus community.

1. Upon receipt of a report of violation of this Sexual Misconduct Procedure, the college Title IX Coordinator must immediately assess the situation and circumstances to recommend further action for resolution of the report. The Title IX Coordinator will conduct an initial Title IX Assessment in order to provide an integrated and coordinated response to reports of sexual harassment and sexual misconduct. The assessment will consider the nature of the report, the safety of the individual and of the campus community, and when, possible, the Complainant's expressed preference for resolution. After consideration of the above factors, the College may choose to pursue an informal resolution, which may include a remedies-based approach (reserved for less egregious violations). If the violation warrants, the Title IX Coordinator will refer the matter for investigation.
2. When the Title IX Coordinator concludes that an investigation is required, and in all cases of formal complaints, NWFSC will designate an investigator(s) with specific training and experience investigating allegations of sexual harassment and sexual misconduct. The College may use a team of trained investigators or may outsource such an investigation to qualified, trained professionals. The investigation will be a fair and reliable fact-gathering process. The investigation will be conducted thoroughly, impartially, and fairly. The investigation will be respectful of individual privacy concerns, but must be performed in a manner that

will ensure NWFSC's compliance with all state and federal laws, including this procedure to protect the due process rights of all parties.

3. At the request of law enforcement, NWFSC may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. NWFSC will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. The College will promptly resume its Title IX fact gathering as soon as law enforcement permits.
4. NWFSC will seek to complete the investigation within 20 (twenty) business days of receiving the complaint, or a reasonable amount of time given the circumstances. Regardless, the College will not act deliberately indifferent in concluding this investigation. This time frame may be extended depending on the circumstances of each case. Information gathered during the review or investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the campus community, and impose remedies as necessary to address the effects of the conduct cited in the report. At the conclusion of the investigation, the College will notify the Complainant and the Respondent in writing that the investigation is complete and the Title IX Coordinator will determine the appropriate manner of resolution and, if appropriate, refer the report for further investigation, Informal Resolution or Formal Resolution.
5. The college Title IX Coordinator will document each report or request for assistance in resolving a case involving charges of sexual misconduct, whether formal or informal, and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law.

**J. Informal Resolution.** The College may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this procedure. Similarly, the College may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. Informal resolution is a remedies-based, non-judicial approach designed to eliminate a hostile environment without taking disciplinary action against a Respondent. Where the Title IX assessment concludes that informal resolution may be appropriate, NWFSC will take immediate action to protect the rights of the Complainant and remediate and correct the policy violations leading to the complaint. However, at any time prior to reaching a determination regarding responsibility the College may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the College:

1. Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances

under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

2. Obtains the parties' voluntary, written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

**K. Recordkeeping. The College must maintain for a period of seven years records of:**

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under section 4.7F of this procedure, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the College's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A College must make these training materials publicly available on its website, or if the College does not maintain a website the College must make these materials available upon request for inspection by members of the public.
5. For each response required under section 4.6A of this procedure a College must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the College must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the College's education program or activity. If the College does not provide a complainant with supportive measures, then the College must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the College in the future from providing additional explanations or detailing additional measures taken.
6. The College Title IX Coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Title IX assessment,

informal resolution or formal resolution. Complaints resolved by means of Title IX assessment or informal resolution are not part of a student's conduct file or academic record or of an employee's personnel record.

#### **L. Retaliation prohibited.**

1. No College or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, 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 part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation. The College must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination adopted in this procedure.
2. Specific circumstances:
  - a. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under the L.1 above.
  - b. 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 part does not constitute retaliation prohibited under L.1 above, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
3. Retaliation may include unlawful adverse employment action (such as a demotion, change in working hours/schedule or working conditions, etc.), unlawful adverse action in the academic setting, offensive behavior on and off the job/NWFSC premises, and third-party retaliation (e.g., against victim's close

associate or relative if also employed at or attending a NWFSC institution). Use of social media to harass or retaliate against individuals involved in a sexual misconduct complaint shall be subject to disciplinary action.

4. No unlawful adverse employment action or other retaliation shall be taken against any individual who resists or rejects sexual misconduct, who makes a good faith report or allegation of sexual misconduct, or who participates in a sexual misconduct investigation or proceeding. An individual who believes he/she has been retaliated against shall report it using the same procedures as allegations of harassment, discrimination or sexual misconduct. NWFSC shall investigate any allegations of retaliation and take appropriate action if retaliation did occur.

## **5. Revisions.**

This procedure is written to be in compliance with federal and state law as interpreted by the courts. If this policy in any way becomes in conflict with new or existing statutes, regulations, or judicial opinions, NWFSC' procedure can be deemed amended as of the time of the decision, ruling, or legislative action to assure continued compliance. NWFSC reserves the right to change any provision of this procedure at any time and the change shall become effective immediately.