



Sexual Misconduct Resolution Procedures Governing Students and Employees

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1 FILING A COMPLAINT

There is a difference between a “Report” and a “Complaint.” A Report is made to the College when any person contacts the Title IX Coordinator and states that any form of sexual misconduct is reported to have occurred. The reporter can be the Complainant, or the person who is alleging being the victim of sexual misconduct or may be another person who has knowledge of the incident who wishes to report the incident to the College.

When someone files a Report, the Title IX Coordinator will contact the Complainant, and will advise them the process by which they can file a Complaint with the College and will offer them supportive measures, if applicable. A Complainant need not file a formal complaint in order to receive supportive measures or may decide to file. If they do not file, they retain the right to file at a later time although delaying may result in the College losing its ability to collect evidence or interview persons who may have knowledge of the incident.

To order for the College to respond and investigate, a Complainant must file a Complaint with the Title IX Coordinator (or designee). A Complaint means a written statement filed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct against a Respondent and requesting resolution of the alleged behavior. A Complaint may be completed by the Complainant in person or submitted by email, mail or by phone to the Title IX Coordinator.

2 INFORMAL RESOLUTION PROCESS

At the time of the filing of a Complaint or at any time prior to a determination of responsibility, either Party may request to proceed under a voluntary Informal Resolution Process that does not involve a full investigation. The Title IX Coordinator will determine, based on the totality of the circumstances, whether an Informal Resolution Process is appropriate given the facts and participants. For example, an Informal Resolution Process is never appropriate for resolving reports alleging sexual harassment of a student by an employee.

Upon request and written agreement by the Parties and the Title IX Coordinator that the Informal Resolution Process is appropriate, the Title IX Coordinator will provide to the parties a written notice disclosing the allegations, and the requirements of the Informal Resolution Process, including when the Parties are precluded from resuming a Formal Resolution Process, any consequences resulting from participating in the Informal Resolution, and the records that will be maintained and shared. Informal Resolutions are not subject to appeal by any Party.

Informal Resolutions may include, but are not limited to;

- Placing a Respondent on notice that, if such behavior has occurred or is occurring, such conduct should cease immediately;
- A written warning;
- Education and/or training for a Respondent and/or department;
- Permanent Supportive Measures for Complainant;
- Mediation or other informal communication between the Complainant and Respondent;
- Events and/or trainings offered to the campus community or particular departments; and/or

- Referral and/or collaboration with another College department in order to address the allegations and eliminate any potential sexual misconduct.

For cases that meet the Title IX threshold, the Parties may withdraw from the Informal Resolution Process at any time prior to agreeing to a resolution and resume the Formal Resolution Process with respect to the Complaint.

2.1 NOTICE OF ALLEGATION AND ASSIGNMENT TO AN INVESTIGATOR

Upon filing of a complaint requesting a Formal Resolution, the Complainant and Respondent will receive written notice from the Title IX Coordinator of the allegations of sexual harassment, including sufficient details known at the time with sufficient time to prepare before any initial interview. The Parties will receive written simultaneous notification of additional allegations as appropriate.

The Title IX Coordinator will assign one or more Investigators to the case and/or will conduct the investigation personally. The Parties will be provided with the name(s) of the Investigator(s) and allowed 5 business days to request the removal and replacement of an Investigator based on bias or conflict of interest. Any request for a change in an Investigator must be accompanied by supporting information and the decision to assign a new Investigator will be made to the Title IX Coordinator.

Throughout the grievance process, the Title IX Coordinator will provide to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of meetings, investigative interviews, and hearings, with sufficient time for the Party to prepare to participate as well as advise the Party of the opportunity to present evidence and witness information, if applicable.

2.2 OVERVIEW OF INVESTIGATION

2.2.1 TIMEFRAME

The Title IX Coordinator will seek to complete the investigation and any resulting disciplinary process, excluding appeals, within 60 business days after receipt of the complaint.

There may be circumstances that require the extension of timeframes for good cause, including extension beyond 60 business days. Timeframes may be extended to ensure the integrity and completeness of the investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, or accommodate delays by the Parties; or for other legitimate reasons, including the complexity of the investigation and the severity and extent of the alleged misconduct. The College will notify the Parties in writing of any extension of the timeframes for good cause, and the reason for the extension.

Although cooperation with law enforcement may require the College to temporarily suspend the fact-finding aspect of a Title IX investigation, the College will promptly resume its Title IX investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The College will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide interim measures for the complainant.

Investigations will proceed according to the aforementioned timeframes during the summer and at other times when the College is not in session. The Title IX Coordinator will work with the Parties to balance the need for promptness and the preference for in-person meetings regarding the investigation.

Timeframes for all phases of the disciplinary process, including the investigation, any related disciplinary proceedings, and any related appeal, apply equally to both Parties.

2.2.2 INVESTIGATION OVERVIEW

During the investigation, the parties will have an equal opportunity to be heard, to submit information and other inculpatory and exculpatory evidence, to identify witnesses including fact and expert witnesses, and to submit questions that they believe should be directed by the investigator to the other or to any witness. The investigator will notify and seek to meet separately with the parties and third-party witnesses and will gather other relevant and available information including, without limitation, electronic or other records of communications between the parties or witnesses, photographs, and written documentation.

The College will not require, allow, rely upon, or otherwise use questions or evidence during the investigation, hearing, or determination of responsibility that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The College will not allow questions or evidence, during the investigation, hearing, or determination of responsibility, 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 College will not restrict either Party from discussing allegations under investigation or from presenting relevant evidence.

2.2.3 PARTICIPATION

Exclusive of the Complainant and the Respondent, NSCC expects all members of the College community to cooperate fully with the investigation and disciplinary procedures. The College recognizes that an individual may be reluctant to participate in the process; nevertheless, any student or member of the faculty or staff who refuses to cooperate in an investigation may be subject to discipline. Refusal to cooperate includes delaying or failing to acknowledge requests from College officials for information and delaying or failing to make oneself available for meetings with College officials.

It is understood that there may be circumstances in which a Complainant wishes to limit their participation. The complainant retains this right and will not be subject to discipline, although the College may be obligated to conduct an investigation.

Equally, there are numerous reasons why a Respondent may choose not to participate in the process. If a Respondent chooses not to participate in an investigation for any reason, the College process will continue, findings will be reached with respect to the alleged conduct, and the College will issue any sanctions, as appropriate. The College will not, however, draw any adverse inference from a Respondent's silence or stated desire to not participate.

The College will protect the privacy of the participating Parties and witnesses in any proceeding, meeting, or hearing to resolve complaints.

2.3 INSPECTION OF EVIDENCE AND THE INVESTIGATIVE REPORT

Prior to completion of the investigative report, the Title IX Coordinator will send to each Party a preliminary investigative report containing the evidence subject to inspection and review, redacted of personally identifiable information as necessary, in an electronic format or a hard copy. The Parties will have 10 business days to submit a written response, to meet again with the Investigator, and/or to request

the collection of additional evidence by the Investigator. The evidence subject to inspection and review includes any evidence obtained as part of the investigation that is directly related to the allegation 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. The evidence subject to inspection and review will not contain any privileged or inadmissible information as defined in this policy.

Following the opportunity to review the preliminary investigative report, the Investigator will create a final investigative report that incorporates any written response or new information from the Parties or collected by the Investigator. The final investigative report will also fairly summarize the relevant evidence. The Investigator has the discretion to determine the relevance of any evidence presented.

The Title IX Coordinator will send to each Party the final investigative report in an electronic format or a hard copy, for their review and the parties will have 10 business days to submit a written response.

If there is significant, substantive, new information and/or evidence provided in the written response, the Investigator will make the final determination regarding whether a revised Final Investigative Report will be issued to both Parties. The Final Investigative Report and any written responses will be provided to the Decision-Maker at least 3 business days prior to the date of the hearing.

For cases that meet the threshold for Title IX, the Title IX Coordinator will secure written permission from the Parties to share the preliminary and final investigative reports with the Party's Advisor. Reports will not be shared by the College with any support person not acting in the role of the Advisor of Choice.

2.3.1 ASSIGNMENT TO GRIEVANCE PROCEDURES

If at the conclusion of the investigation, the College has not previously determined if the case meets the threshold and jurisdiction for Title IX, the Title IX Coordinator will make a final determination as to whether to proceed under the Title IX or Non-Title IX Grievance Procedures. If the case does not meet the threshold and jurisdiction for Title IX, the Title IX Coordinator will dismiss the case for purposes of Title IX and proceed under the Non-Title IX Grievance Procedures.

2.4 DETERMINATION REGARDING RESPONSIBILITY

At the conclusion of the Investigation, the Parties will be provided with the name(s) of the Decision-Maker(s) and will be allowed 5 business days to request the removal and replacement of a Decision-Maker based on bias or conflict of interest. Any request for a change in a Decision-Maker must be accompanied by supporting information and the decision to assign a new Decision-Maker will be made by the Title IX Coordinator. At that time, either party may also request that the Parties not to be in the same room for any hearing or meeting in which both may attend. The College will determine the appropriate use of technology to satisfy the request.

2.4.1 NON-TITLE IX GRIEVANCE PROCEDURES--STUDENTS

For Non-Title IX cases in which the Respondent is a student, the determination regarding responsibility will be made at a live hearing utilizing the procedures outlined in this section.

The Parties may have an Advisor of Choice to accompany them to the hearing. The Advisor of Choice may not actively participate but may confer with the Party as is reasonably necessary. If the Advisor of Choice violates the rules or engages in behavior or advocacy that harasses, abuses, or intimidates either Party, a witness, or the Decision-Maker, that Advisor of Choice may be prohibited from further participation.

*Note: for Non-Title IX Grievance Procedures, the College has no obligation to provide an Advisor, but the Parties may do so at their expense, if applicable.

At least 5 business days prior to the hearing, the Parties must submit names of witnesses they would like to appear at the hearing and any relevant questions to be asked of the witnesses and the other party. The Party's may ask additional relevant questions at the hearing, but pre-submitted questions will be vetted in advance for relevancy and admissibility and ruled on during the live proceeding. Questions at the hearing are limited to those assessing credibility and relevant questions that have not previously been asked and answered in the final investigative report.

At the hearing, the Decision-Maker is responsible for maintaining an orderly, fair, impartial, and respectful hearing. The Decision-Maker has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding any offending person. The Decision-Maker will determine the method for questioning at the hearing, but all questions posed by the Parties will be asked exclusively by the Decision-Maker.

In the absence of good cause, as determined by the Decision-Maker, information, witnesses, and other evidence discoverable through the exercise of due diligence that is not provided to the Investigator during the investigation will not be considered at the hearing.

All hearings are closed to the public. A recording will be made by the College, but all other recordings are strictly prohibited. The College will not provide copies of the original recording without cause, including to comply with a subpoena or other lawful production order.

A Complainant, Respondent, or witness may decline to participate in the hearing. The Decision-Maker will not draw an inference about the responsibility determination based solely on a party's or witness's absence from the Hearing or refusal to submit to questions.

2.4.2 NON-TITLE IX GRIEVANCE PROCEDURES-EMPLOYEES

For Non-Title IX cases in which the Respondent is an employee, the determination regarding responsibility will be made by the Decision-Maker based on the final investigative report (there is no live hearing.) The Decision-Maker is responsible for maintaining an orderly, fair, and impartial process. The Decision-Maker, in his or her discretion, may pose additional questions to the Parties or to witnesses in writing or in person. A Complainant, Respondent, or witness may decline to further participate. The Decision-Maker will not draw an inference about the responsibility determination based solely on a party's or witness's refusal to submit to additional questions.

In the absence of good cause, as determined by the Decision-Maker, information, witnesses, and other evidence discoverable through the exercise of due diligence that is not provided to the Investigator during the investigation will not be considered in the decision-making process.

2.4.3 TITLE IX GRIEVANCE PROCEDURES FOR STUDENTS AND EMPLOYEES

For cases that have been determined by the Title IX Coordinator to meet the threshold for Title IX Sexual Harassment as well as the Title IX jurisdictional requirements, the determination regarding responsibility will be made at a live hearing utilizing the procedures outlined in this section.

The Parties may have an Advisor of Choice at the hearing. The Advisor is responsible for conducting the cross-examination which includes asking the other Party and any witnesses all relevant questions and follow-up questions, including those that challenge credibility. If a Party does not have an Advisor, the College will appoint one on behalf of the Party free of charge. In this capacity, the Advisor will be

appointed for the sole purpose of conducting cross examination of the other Party and witnesses. If the Advisor violates the rules or engages in behavior or advocacy that harasses, abuses, or intimidates either Party, a witness, or the Decision-Maker, that Advisor or Support Person may be prohibited from further participation.

At the hearing, the Decision-Maker is responsible for maintaining an orderly, fair, impartial, and respectful hearing. The Decision-Maker has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding any offending person. The Decision-Maker will determine the method for questioning at the hearing. 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 must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-Maker must explain to the Party proposing the questions any decision to exclude a question as not relevant.

In the absence of good cause, as determined by the Decision-Maker, information, witnesses, and other evidence discoverable through the exercise of due diligence that is not provided to the Investigator during the investigation will not be considered at the hearing.

All hearings are closed to the public. A recording will be made by the College, but all other recordings are prohibited.

A Complainant, Respondent, or witness may decline to participate in the hearing and the Decision-Maker will not rely on any previous statement of that party or witness in reaching a determination as to responsibility. The Decision-Maker will not draw an inference about the responsibility determination based solely on a party's or witness's absence from the Hearing or refusal to submit to questions.

2.5 FINDINGS

2.5.1 STANDARD OF EVIDENCE

In all proceedings, the Decision-maker shall use a preponderance of the evidence standard to determine whether the alleged violation of the policy occurred. The preponderance of the evidence means a standard of proof in which the totality of the evidence offered in support of a fact is greater or more convincing than the evidence which is offered in opposition to it; given the totality of information the version of events that is more likely than not. Preponderance of the evidence is understood to require more than 50 percent certainty to determine responsibility for a policy violation (51% or greater).

2.5.2 WRITTEN DETERMINATION OF RESPONSIBILITY

The Complainant and Respondent will simultaneously receive a written determination regarding responsibility applying the preponderance of the evidence standard typically within five (5) business days of the determination of responsibility. The written determination letter, drafted by the Decision-Maker, will include:

- The allegations constituting sexual harassment;
- A description of the procedural steps taken during the grievance process;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;

- A statement, and rationale for the result of each allegation including findings, sanctions, and remedies; and
- Options for appeal.

The determination of responsibility becomes final either on notification of the results of the appeal, or the date on which an appeal would no longer be considered timely.

2.6 INTENTIONALLY FALSE REPORTS

Individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth, may be subject to disciplinary action up to and including termination or expulsion. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by an investigation.

2.7 SANCTIONS AND REMEDIES

If there is a finding of responsibility based on a preponderance of the evidence, the determination of sanctions and remedies will be made by the Decision-Maker in consultation with the respective trained College Administrator.

Sanctions will be determined based on the seriousness of the misconduct and the Respondent's previous disciplinary history (if any).

Remedies are designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

Sanctions for students include but are not limited to:

One or more of the following courses of action may be taken when a student has been found to have violated this policy. Possible sanctions include:

(1) Disciplinary Warning

A disciplinary warning to a student represents a formal written admonition for a specific conduct violation. A student under warning shall continue to exercise all right and privileges for the college as a student in good standing. Upon issuance of a formal warning, a discipline file is created in the office of the Vice President for Academics. The file will be consulted in determining sanctions for any further proven code violation.

(2) Disciplinary Probation

Disciplinary probation is a sanction imposed for a specific period of time and may include conditions restricting the student's privileges or eligibility for and participation in activities. Such privileges and eligibility are automatically restored upon completion of the probationary period if the student has complied satisfactorily with all conditions and has refrained from further code violations. Upon issuance of a formal probation, a discipline file is created in the office of the Vice President for Academics. The file will be consulted in determining sanctions for any further proven code violations. Allied Health & Public Service and Nursing have program specific warning notice procedures; these reports are filed with the respective Dean.

(3) Suspension

Suspension is a sanction that terminates the student's enrollment, separating the student from the college for a period not to exceed two (2) full academic semesters (excluding summer) following the effective date of the imposition of the suspension. Readmission at the end of the suspension period may require satisfactory completion of specified stipulations to be met. Upon issuance of a formal suspension, a discipline file is created in the office of the Vice President for Academics. The file will be consulted in determining sanctions for any further proven code violations.

(4) Disciplinary Dismissal

Disciplinary dismissal is a sanction by which the student is involuntarily separated from the College for four (4) semesters (including summer) or more following the effective date of the imposition of the dismissal. Upon reinstatement, student may be required to meet other conditions imposed by the vice president such as ineligibility to participate in specified student activities; or periodic contact with a designated college staff member or counseling agency. Upon issuance of a formal dismissal, a discipline file is created in the office of the Vice President for Academics. The file will be consulted in determining sanctions for any further proven code violations

(5) Expulsion

Expulsion is a sanction by which the student is involuntarily separated from the college permanently. Upon issuance of an expulsion, a discipline file is created in the office of the Vice President for Academics.

(6) Other Sanctions

Other sanctions identified through the hearing proceedings deemed appropriate to the student and the conduct violation in question may be imposed, singularly or in combination with any of the above-listed sanctions. Examples include, but are not limited to, research assignments, community service projects, and special workshop participation, making restitution for property damage or misappropriation of college property or service, or the property of any person, restriction of access to specified campus facilities and/or property, and /or referral to medical resources or counseling personnel. These can be assigned as recommended sanctions or as conditions to another sanction. Upon issuance of formal sanctions, a discipline file is created in the office of the Vice President for Academics. The file will be consulted in determining sanctions for any further proven code violations.

Sanctions for employees include but are not limited to:

One or more of the following courses of action may be taken when an employee has been found to have violated this policy. Possible sanctions include:

Professional Unit:

- Verbal Warning
- Written Warning
- One Day Suspension without pay
- Five Day Suspension without pay
- Termination

Support Unit:

- Verbal Warning
- Written Warning
- One Day Suspension with or without pay
- Five Day Suspension with or without pay
- Termination

Graded:

- Verbal Warning
- Written Warning
- Time off with or without pay
- Involuntary/Voluntary Termination

The Complainant and the Respondent have equal rights to an impartial appeal. All appeals will be referred to an Appellate Decision-Maker appointed by the President (or designee.) The Decision-Maker for the appeal will not have served as the Investigator or Decision-Maker in the previous steps of the process.

A Complainant or Respondent may file a written appeal with the Title IX Coordinator on the grounds that:

- 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/or
- 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.

The purpose of an appeal is not to initiate a review of substantive issues of fact or a new determination of whether a violation of College rules has occurred. The appellate Decision-Makers may decide to uphold the original decision, to alter the imposed penalty, or to return the case for additional proceedings or other action.

The deadline for filing a written appeal is five business days from the date the Parties are provided the written determination of responsibility. If either Party files an appeal, the Title IX Coordinator will notify the other Party in writing and provide both parties in writing the opportunity to submit a written statement in support of or challenging the outcome.

The Title IX Coordinator will have primary responsibility for interactions with the Parties, for the gathering of information needed for the appeal, and for notifying both Parties in writing of the outcome of any appeal. The written decision regarding the appeal will be provided simultaneously within five business days after the conclusion of the review and will describe the results of the appeal and the rationale for each result.