

NORTHWEST STATE COMMUNITY
COLLEGE POLICY AND PROCEDURES

3358: 14-3-35 SEXUAL MISCONDUCT

Revised: 12/14/2018

(A) PURPOSE OF THE POLICY

Northwest State Community College is committed to maintaining an academic, work, and study environment where everyone is treated with dignity and respect and is free of sexual misconduct in any form. Sexual misconduct is a broad term that includes but is not limited to sexual harassment, sexual violence, inappropriate behavior that is of a sexual nature, or inappropriate behavior that is based on sex, and directed towards, by or against employees, students, vendors, customers or persons participating in a college program or activity.

Students and employees are expected to conduct themselves in a manner that maintains an environment free from sexual misconduct. All students and employees have a responsibility to be aware of this policy's contents, to abide by its terms, and to assist in its enforcement. This policy defines expectations for the college, its student, and its employees and establishes mechanisms for determining when those expectations have been violated. .

(B) TITLE IX NOTICE OF NON-DISCRIMINATION

Title IX of the Education Amendments of 1972, and its implementing regulation at 43 C.F.R. Part 106 (Title IX) provides, "No individual in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

(C) DEFINITIONS

- i. Sexual Misconduct* – any unwelcome behavior of a sexual nature that is committed without consent or has the purpose or effect of threatening, intimidating, or coercing a person. Sexual misconduct can occur between persons of the same or different sex.
- ii. Non-Consensual Sexual Contact*- any intentional sexual touching and any other intentional bodily contact in a sexual manner, however slight, with any object, by a man or a woman upon another person that is without consent. Non-Consensual Sexual Contact is a felony in the State of Ohio, defined in Title 29 of the Ohio Revised Code.
- iii. Consent*- a freely and affirmatively communicated willingness to participate in sexual activity, expressed by clear, unambiguous words or actions. It is the responsibility of the initiator of the sexual activity to ensure that he or she has the other person's consent to engage in sexual activity, throughout the entire sexual activity by all parties involved. At any time, a participant can communicate that he or she no longer consents to continuing the activity. Consent may never be obtained through the use of force, coercion, or intimidation; or if the victim is mentally or physically incapacitated, including through the use of drugs or alcohol. Consent cannot be assumed based on the existence of a previous dating or sexual relationship. The initiator's use of alcohol or drugs does not diminish his/her

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responsibility to obtain consent.

- iv. Force*- the use of physical violence, threat of physical violence and/or imposing on someone physically to gain sexual access.
- v. Coercion*- unreasonable, intimidating or forcible pressure for sexual activity.
- vi. Incapacitation*- A mental state in which an individual cannot make rational decisions because they lack the capacity to give knowing consent. Such incapacitation may be caused by alcohol or drug use, sleep or unconsciousness, or physical or mental impairment.
- vii. Retaliation*- Adverse action taken against an individual because the individual has engaged in a protected activity (such as filing a discrimination complaint or participating in an investigation of a violation of law or policy). The adverse action can be tangible (such as the giving of a lower grade or unjustified discipline) or intangible (such as the making of verbal threats or derogatory comments).
- viii. Sexual Assault*– includes non-consensual vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.
- ix. Sexual Exploitation* - occurs when someone takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to the benefit or advantage of anyone other than the person being exploited.
- x. Stalking*- engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.
- xi. Domestic Violence/Intimate Partner Violence/Dating Violence*- violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship and/or the frequency of interaction between the persons involved in the relationship.
- xii. Sexual Harassment* - conduct of a sexual nature based on a person’s sexual orientation, gender or gender identity and expression that prevents or impairs the full realization of occupational or educational opportunities or benefits. Sexual harassment occurs when this conduct explicitly or implicitly affects or interferes with a person’s ability to pursue the terms and conditions of employment or academic attainment.

 - a. Forms of Sexual Harassment Include: *Quid Pro Quo* (a.k.a – “this for that”) - is the abuse of power and/or authority. Such behavior is especially harmful in situations where the imposition of unwanted sexual attention is accompanied by an explicit or implicit promise of employment, academic success, preferential treatment, the threat of reprisal or a negative consequence for refusal to engage in behavior of a sexual nature. Sexual harassment may occur

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without employment, academic, or economic injury to the victim.

- b. ***Hostile Work Environment*** - includes any unwelcome physical, verbal or nonverbal conduct of a sexual nature that is so severe and pervasive that it unreasonably interferes with job performance or learning ability and creates an intimidating, or offensive work or academic environment, even if it leads to no tangible or economic consequences. A single instance of harassment may be sufficient to create a hostile work environment.

(D) SCOPE

- (1) This policy applies to alleged sexual misconduct that takes place on College property or at college-sponsored activities, regardless of the location of the activity.
- (2) This policy may also apply to alleged sexual harassment or sexual misconduct that occurs off-campus, including virtual places, when the Title IX Coordinator or Deputy Coordinator determines that the alleged off-campus conduct could reasonably create a hostile environment or a continuing adverse effect on campus.

(E) JURISDICTION

- (1) The college has a compelling obligation to address allegations and suspected instances of sexual misconduct when it knows or should have known information that would lead a reasonable person to believe that this policy has been violated. The college may take appropriate action, including pursuing an investigation even in cases when the complainant is reluctant to proceed.
- (2) The college's disciplinary response may be limited if the accused is a visitor or other third-party or is not subject to the college's jurisdiction.

(F) REPORTING RESPONSIBILITIES AND FILING A FORMAL REPORT

- (1) Anyone – especially all faculty, staff and administrators – who believes that employees, students, or non-employee's behavior constitutes sexual misconduct has a responsibility to report the behavior/action as soon as it is known so that the college may administer this policy.
- (2) In cases of alleged sexual misconduct where the victim or alleged perpetrator is an employee, the complaint may be made to any of the following:
 - (a) The Title IX Coordinator or the Deputy Title IX Coordinator
 - (b) an employee of Human Resources; or
 - (c) an employee of the college's Police Department.
- (3) In cases of alleged sexual misconduct where the victim and/or alleged perpetrator is a student, a potential student, or someone participating in a college event, the complaint may be made to any of the following:

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- (a) the Title IX Coordinator or the Deputy Title IX Coordinator;
- (b) the Vice President for Academics;
- (4) Any person designated to receive complaints under this policy who has direct or constructive knowledge of alleged discriminatory or harassing behavior must take immediate appropriate action to report the behavior to the Title IX Coordinator or Deputy Title IX Coordinator. Failure to do so may result in disciplinary action, up to and including termination of employment.
- (5) The college will promptly investigate all allegations of sexual misconduct, sexual harassment and sexual violence in accordance with the procedures set forth in 14-3-35 Sexual Misconduct procedures. The Title IX Coordinator is responsible for overseeing the investigation of complaints under this policy and monitoring/coordinating the response of other campus offices that may respond to complaints of sex-based offenses under this policy, including complaints of retaliation for filing a complaint on the basis of this policy. The College's Title IX Coordinator's contact information can be found in the Human Resource Office.
- (6) Any employee who knowingly or maliciously makes a false or frivolous allegation of sexual misconduct will be subject to college's applicable disciplinary policy and procedures.
- (7) Any student who knowingly or maliciously makes a false or frivolous allegation of sexual misconduct will be subject to the process outlined by the Student Code of Conduct Policy 14-5-08.

(G) CONSEQUENCES OF SEXUAL MISCONDUCT

- (1) ***For Employees*** - Violations of this policy will result in disciplinary action, up to and including termination of employment. Further, employees may be subjected to interim measures in accordance with Sexual Misconduct Procedure 14-3-35 while complaints of violations are being investigated and until the matter is resolved.
- (2) ***For Students*** - Sanctions for violating this policy may range from a warning to expulsion. Further, students may be subjected to interim measures in accordance with Sexual Misconduct Procedure 14-3-35 while complaints of violations are being investigated and until the matter is resolved.

(H) INDICATORS AND EXAMPLES OF SEXUAL MISCONDUCT

- (1) The conduct must be unwelcome, non-consensual and severe or pervasive.
- (2) Sexual misconduct can occur in a variety of circumstances, including but not limited to the following:
 - (a) The victim and the person engaging in misconduct do not have to be of the opposite sex.
 - (b) The person engaging in the misconduct can be any full or part-

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time faculty, staff, administrator, employee, student, or non-employee conducting business at the college.

- (c) The victim does not have to be the person directly experiencing the misconduct, but could be a third party or anyone aware of, or affected by, the misconduct.
- (3) Examples of sexual misconduct include, but are not limited to, the following:
- (a) unwanted physical contact of any kind including touching, hugging or kissing;
 - (b) verbal harassment, such as slurs, propositions, lewd comments, recordings, music, jokes and offensive personal references of a sexual nature;
 - (c) non-verbal harassment, such as obscene hand or finger gestures, explicit drawings, pictures, posters, and cartoons or sexually suggestive written or electronically transmitted messages, and postings on social media;
 - (d) conduct of a sexual nature that is demeaning, bullying, insulting, or intimidating;
 - (e) sexual assault, including unwanted penetration of an orifice (anal, vaginal, oral) with the penis, mouth, finger or objects;
 - (f) prostituting another person;
 - (g) using electronic devices or technology (e.g., cell phone, camera, email, internet sites or social networks) to record or transmit nudity or sexual acts without a person's knowledge and/or permission;
 - (h) intentionally observing nudity or sexual acts of another person without the person's knowledge or permission (voyeurism);
 - (i) threatening to sexually harm someone;
 - (j) initiating sexual activity with a person who is incapacitated and unable to provide consent; or
 - (k) inducing incapacitation for the purpose of sexual exploitation.

**(I) PROHIBITIONS AGAINST CONSENSUAL SEXUAL
RELATIONSHIP MISCONDUCT**

Consensual sexual relationships include romantic, intimate or sexual relationships in which both parties agree to participate in the relationship. The college recognizes that consensual sexual relationships are generally not problematic, except when the relationship may compromise the integrity of the college, create the potential for the abuse of authority, or create the inability to remain impartial. Consensual sexual relationships may also create a third-party perception that a subordinate is receiving preferential treatment.

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(1) Consensual sexual relationship misconduct among employees:

The college strictly prohibits consensual sexual relationships between administrators, supervisors, deans or chairpersons and the employees they supervise professionally advise, counsel, or employees over whom they have direct impact on the employee's terms and conditions of employment.

(2) Consensual sexual relationship misconduct with students:

- (a) The college strictly prohibits consensual sexual relationships between faculty members and the students or student employees enrolled in a class or class sequence(s) taught, advised, counseled, or supervised by the faculty member, or over whom the faculty member has direct impact on the student or student employee's academic enrollment or success.
- (b) The college strictly prohibits consensual sexual relationships between administrators, supervisors, deans, chairpersons or employees and the student or student employees whom they advise, counsel, or supervise, or over whom they have a direct impact on the student or student employee's academic enrollment or success.
- (c) The college strongly discourages all employees or faculty members from engaging in consensual sexual relationships with students as long as the student is considered to be in an active status as a student, even if the student is not currently enrolled in a class.

(J) CONSEQUENCES OF CONSENSUAL SEXUAL RELATIONSHIP MISCONDUCT

- (1) Any employee or faculty member who is engaged in a consensual sexual relationship that may be in violation of this policy has the responsibility to notify his/her administrator, dean or chairperson, the Human Resources Department and/or the Title IX Coordinator or Deputy Title IX Coordinator about the relationship as soon as it is known that it may violate this policy.
 - (a) The employment of the parties involved in the consensual sexual relationship in which one person has authority over or influence upon the status of the other will be modified so that the authority or influence no longer exists. This shall occur by moving one of the persons to another position, department or supervisor, if possible. If acceptable alternative arrangements are not feasible, the relationship may not continue or employees will be subject to further disciplinary action, up to and including termination.
 - (b) An employee who does not notify his/her administrator, supervisor, dean or chairperson that he/she is involved in a consensual sexual relationship is in violation of this policy and shall be subject to disciplinary action, up to and including termination of employment.

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- (c) If an employee and/or faculty member is found to be engaged in a consensual sexual relationship with a student that violates this policy, disciplinary action may be expedited.
- (d) When one person in a consensual sexual relationship of any kind clearly informs the other person that the relationship is no longer welcome, the other person should not pursue the relationship. To continue the pursuit of the relationship may become a violation of this policy, and the pursuing person will be subject to disciplinary action, up to and including termination of employment.

(K) ACADEMIC FREEDOM/FIRST AMENDMENT GUIDELINES

- (1) The college is committed to providing a safe, anti-harassing, and nondiscriminatory environment that protects the civil rights of individuals, and the college recognizes the protections of academic freedom in the classroom.
- (2) This policy is not intended to restrict serious discussion of controversial issues in a training or academic situation. In order to prevent claims that course content is discriminatory, harassing or offensive, it is recommended that participants in such discussions are provided with a disclosure that the content may be controversial.

(L) CONFIDENTIALITY

To the extent possible, all information received in connection with the reporting, investigation, and resolution of allegations of sexual misconduct will be treated as confidential except to the extent it is necessary to disclose information in order to investigate the allegation, take steps to stop, prevent or address the misconduct, resolve the complaint or when compelled to do so by law. All individuals involved in the process should observe the same standard of discretion and respect for the reputation of everyone involved in the process.

(M) RETALIATION

College policy and federal, state and local law strictly prohibit retaliation in any form against any employee, faculty member, student, vendor, customer, or other person participating in a college program or activity who complains or reports an allegation, or who participates in an investigation of sexual misconduct.

Retaliation is a serious violation that can subject the offender to sanctions independent of the merits of the allegation. Allegations of retaliation should be directed to the Title IX Coordinator or Deputy Coordinator.

- (N) The Administration shall establish procedures to administer this policy. Those procedures can be found in the college's Procedure No. 14-3-35 Sexual Misconduct.