

# Title IX of the Higher Education Act of 1972 Policy and Procedure

<b>Approved by:</b>  Responsible Official: Student Affairs (918) 444-2120 <a href="mailto:studentaffairs@nsuok.edu">studentaffairs@nsuok.edu</a>  HUMAN Resources (918) 444-2230 <a href="mailto:humanresources@nsuok.edu">humanresources@nsuok.edu</a>	<b>History:</b> Adopted – October 22, 2013 Revised – AUG 15, 2018 REVISED-JULY 27, 2020  Related Policies: Family Educational Rights and Privacy Act Title IX Tips & FAQ's (Student) Additional References: <a href="#">Report Concern</a> <a href="#">Title IX of the Education Amendments of 1972</a> <a href="#">Campus Security Report</a> <a href="#">Federal "Clery" law</a>
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*The following policy and procedures are written for students, faculty and staff (employees) at Northeastern State University. There are slight differences between the student policies and procedures and employee policies and procedures due to influencing variables related to employment laws and regulations.*

## Statement on Non-Discrimination

NSU students, employees, guests, third party vendors, and visitors are to conduct themselves in a manner that does not impose on the rights of others and does not discriminate as outlined in NSU's Statement on Non-Discrimination.

Northeastern State University (NSU) does not discriminate on the basis of race, color, sex, national or ethnic origin, religion, disability, age, or status as a veteran, and to the extent allowed by Oklahoma law, marital status, sexual orientation, gender expression and gender identity in its programs and activities. These protections extend to employment with and admission to NSU, as well as, participation in university sponsored programs.

NSU is committed to a learning, working, and living environment that promotes personal integrity, civility, and mutual respect free of discrimination on the basis of sex, which includes all forms of sexual harassment. Sexual harassment violates an individual's fundamental rights and personal dignity. NSU considers sexual harassment in all its forms to be a serious offense. Title IX defines sexual harassment broadly to include any

of the three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designated to protect: any instance of quid pro quo harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. To ensure compliance with Title IX and other federal and state civil rights laws, NSU has developed policies and procedures that address and prohibit sexual harassment in all of its forms.

## Introduction

All members of the campus community (students, employees, guests, and visitors) are expected to conduct themselves in a manner that does not infringe upon the rights of others. When an allegation of sexual harassment is brought to the attention of the institution, and a respondent is found to have violated this policy, sanctions will be used to reasonably ensure that such actions are never repeated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

NSU acknowledges that there may be some limitations regarding the ability to control or act against certain types of third parties, however, this should neither prohibit nor discourage individuals from filing a grievance about conduct of an individual who is not an NSU student or employee.

Sexual Harassment offenses include, but are not Limited to:

1. Quid Pro Quo
2. Sexual Assault
3. Domestic Violence
4. Dating Violence
5. Stalking

# Defining Sexual Harassment Offenses

## **Sexual Harassment**

consists of behaviors which are:

- A. unwelcome, verbal, nonverbal, or physical conduct of a sexual nature that is,
- B. severe, pervasive and objectively offensive denies or deprives a person equal access to NSU's
- C. educational program and/or activities, and is
- D. based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

Examples include:

- unwelcome sexual advances
- requests for sexual favors
- acts of sexual violence
- attempts to coerce an unwilling person into a sexual relationship
- repeatedly subjecting a person to egregious, unwelcome sexual attention
- punishing a refusal to comply with a sexual based request
- making a benefit conditional upon submitting to sexual advances
- sexual violence
- intimate partner violence
- stalking
- sex-based bullying

## **Sex Offense (Clery Definition)**

is any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth). This offense includes the forcible rape of both males and females. There are four types of Forcible Sex Offenses and their definitions are provided below:

- Rape is the carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth). This offense includes the forcible rape of both males and females.
- Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the

victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

- Incest is non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape is non-forcible sexual intercourse with a person who is under the statutory age of consent.

## **Domestic Violence**

is a pattern of abusive behaviors and tactics used to inflict power and control over another person. This includes felony or misdemeanor crimes of violence committed by a current or former spouse/intimate partner of the victim.

- A. By a person with whom a person shares a child in common.
- B. By a person who is cohabitating with, or has cohabitated with the victim as a spouse/intimate partner.
- C. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime occurred.
- D. By any other person, against an adult or youth victim, who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime occurred.

## **Dating violence**

is violence committed by a person who is, or has been, in a social relationship of a romantic or intimate nature with the victim. And, the existence of such relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of the relationship, and/or the frequency of the interactions between the persons involved in the relationship. Dating violence includes, but is not limited to: Sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under Domestic Violence.

## **Stalking**

is a pattern of behavior directed at as specific person that would cause a reasonable person to:

- A. Fear for one's safety or the safety of others
- B. Suffer substantial emotional distress Examples include but are not limited to:
  - 2 or more acts in which the stalker directly, indirectly, or through third parties,

- by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or
- interferes with a person's property.

## Applicable Definitions:

### **Complainant:**

an individual who alleges to be a victim of conduct that could constitute sexual harassment, who must be participating in, or attempting to participate in an educational program or activity of the school with which the formal complaint is filed.

### **Consent:**

is the affirmative, unambiguous, and voluntary agreement to engage in a specific sexual activity during a sexual encounter which can be revoked at any time. Consent is sexual permission. In order to give effective consent, one must be of legal age. Consent is clear, knowing and voluntary.

Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts. Individuals who consent to sex must be able to understand what they are doing. When alcohol or other drugs are being used, a person may be considered unable to give valid consent.

Anything but a clear, knowing, and voluntary consent to any sexual activity is equivalent to a "no." Consent cannot be given by an individual who is asleep or is mentally or physically incapacitated either through the effect of drugs or alcohol or for any other reason or is under duress, threat, coercion, or force, or inferred under circumstances in which consent is not clear including, but not limited to, the absence of an individual saying "no" or "stop" or the existence of a prior or current relationship or sexual activity.

### **Coercion:**

is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

## **Emergency Removal:**

occurs when it has been determined that an immediate threat to the physical health or safety of any individual arising from the allegations of sexual harassment; the respondent will be given the opportunity to immediately challenge the decision following removal.

## **Employee:**

a person working in a defined position for the university in exchange for remuneration in the form of wages paid through NSU payroll. NSU assigns, monitors, and evaluates the work performed by employees. The definition of employee includes all fulltime, part-time, temporary, seasonal, interim appointments, student workers through work study, and Graduate Assistantships. Employees are NOT considered those individuals defined as independent contractors paid as 1099 persons having a contractual relationship with the university.

## **Evidence:**

may include, but is not limited to documentary evidence: such as written statements or testimonies; electronic evidence: such as text messages, social media, photos, audio recordings, video recordings; and tangible/demonstrative evidence: drawings, models, and site visits.

## **Force:**

is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent ("Have sex with me or I'll hit you. Okay, don't hit me, I'll do what you want.").

## **Formal Complaint**

is defined as a written document filed and signed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation. A formal complaint may be filed with the Title IX Coordinator using the provided contact information. A signed formal complaint is a document or electronic submission that contains the complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the formal complaint.

## **Preponderance of Evidence:**

a standard of proof requiring more than 50 percent of the claim to be true; "50 plus a feather".

## **Remedies:**

are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant's equal access to education and 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.

## **Retaliation:**

is any direct or indirect action taken against a person or organization as a response to their involvement or affiliation with the conduct, academic, legal, and/or administrative process. Any act of retaliation, threats, intimidation, coercion, discrimination, and bringing a code of conduct charge for actions that do not involve sexual harassment but arise from the same facts or circumstances as a formal grievance complaint, if the conduct charges are brought for the purpose of interfering with a person's Title IX rights. Persons protected from retaliation in a Title IX complaint include complainant, testifying witnesses, persons who assisted, participated or refused to participate in any manner in the investigation, proceeding or hearing or appeal panel. Employees may be subject to disciplinary action up to and including termination for engaging in retaliatory acts.

## **Respondent:**

any individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

## **Students:**

is/are all persons enrolled at the university both full and part time, pursuing undergraduate, graduate, or professional studies. Persons who are not officially enrolled for a particular term but who have a relationship with the university are considered students. This definition includes, but is not limited to, incoming freshmen, transfer students, anyone participating in university sponsored programs or activities, persons who enroll in courses from time to time, and participants in third party programs (RUSO 4.4.3).

## **Supportive Measures:**

defined as individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

## **Title IX Coordinator:**

is responsible for oversight of the investigation and resolution of all reports of gender-based discrimination, sexual harassment, domestic violence, dating violence and stalking. The coordinator is trained in University policies and procedures as well as applicable laws.

## **University Business Day:**

University business days follow the university calendar and are typically Monday through Friday 8:00 AM - 5:00 PM Central Time. Closures due to inclement weather or other emergency do not constitute university business days.

## **Offices Where a Complaint or Report May be Filed**

NSU encourages those who have experienced sexual harassment to report these offenses promptly to the Title IX Coordinator and seek all available assistance. Individuals wishing to pursue criminal complaints may also report to the NSU Police Department.

## **Title IX Coordinator:**

Whitney Arbaugh  
Administration Building, 209  
601 N. Grand Avenue  
Tahlequah, OK 74464  
[titleix@nsuok.edu](mailto:titleix@nsuok.edu)  
918.444.2120

## **Northeastern State University Police Department:**

<b>Tahlequah Campus</b>	<b>Broken Arrow</b>	<b>Muskogee Campus</b>
Administration Building, LL 918.444.2468	Campus Business & Technology, 101 918.449.6248	918.444.5010

## **Confidential Reporting Options**

### **On-Campus Option**

Hawkreach Counseling Services  
918.444.2042 (Tahlequah & Muskogee)  
918.449.6131 (Broken Arrow)  
[hawkreach@nsuok.edu](mailto:hawkreach@nsuok.edu)

## **Off-Campus Options**

Student Advocate- 918.444.2042

Help In Crisis- 918.456.0673

WISH (Women in Safe Homes, Muskogee)- 918.682.7879

DVIS (Domestic Violence Intervention Services, Tulsa/Broken Arrow)-  
918.743.5763

## **Online Reporting Option**

Anyone may use the report a concern link, [nsuok.edu/ReportConcern.aspx](https://nsuok.edu/ReportConcern.aspx), to report any incidents or concerning behavior. These reports are submitted to the Behavioral Intervention Team (BIT) for review.

## **Guidance on Taking Immediate Action**

In the event that sexual assault or violence occurred, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. (The decision to press charges does not have to be made at this time. However, following these procedures will help preserve this option for the future.) Complaining parties should not bathe, urinate, douche, brush teeth, or drink liquids. Clothes should not be changed; but if they are, bring all the original clothing to the hospital in a paper bag, as plastic bags may damage the evidence.

When necessary, seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after the medical examination.

If you have been choked/strangled, we strongly encourage you to seek immediate medical attention.

All incidents of sexual harassment or retaliation, should be reported to the Title IX Coordinator. The Title IX Coordinator will provide for the adequate, reliable, and equitable investigations on all complaints.

## **Statement on Procedure**

In Title IX procedures, legal terms like "guilt," "innocence" and "burdens of proof" are not applicable, but NSU never assumes a party is in violation of NSU policy. Campus hearings consider the totality of all evidence available, from all relevant sources. NSU uses preponderance of evidence as its burden of proof.

Before a formal complaint is filed, a complainant will be offered supportive measures. Should a formal complaint be filed, the respondent will also be offered supportive measures. These may include, but are not limited to:

- Modifications of living arrangements
- Modification of academic schedule
- Mutual non-communication agreement
- Modifications of employment location, hours, etc.
- Counseling
- Health care referral

If allegations are made against the Title IX Coordinator, the HR director will initiate the process of investigating the complaint.

## Grievance Procedure

### **General Requirements**

In accordance with federal law, NSU will prescribe to a consistent, transparent process for resolving formal complaints of sexual harassment.

This includes:

- Treating complainants equitably by providing remedies any time a respondent is found responsible.
- Treating respondents equitably by not imposing disciplinary sanctions without following the grievance procedure outlined in this policy. The respondent is always presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. Even a preemptive measure such as a properly implemented emergency removal does not mitigate this presumption.
- Requiring objective evaluation of all relevant evidence and avoiding credibility
- determinations based on a person's status as a complainant, respondent, or witness.
- Not restricting rights protected under the US Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX.
- Affirming the complainant's wishes with respect to whether NSU investigates the incident, unless the Title IX coordinator decides to initiate an investigation over the complainant's wishes should such decision be clearly reasonable due to the known circumstances.
- If the allegations in a formal complaint do not meet the definition of sexual harassment, or did not occur in the school's education program or activity against a person in the United States, federal law clarifies that NSU must dismiss such allegations for the purposes of Title IX but

may still address the allegations in any manner the school deems appropriate under the school's own code of conduct.

NSU shall take reasonable steps to prevent the recurrence of sexual harassment or retaliation in any form. If the reoccurrence takes place, those responsible for such behavior may be subject to disciplinary and/or legal action.

## **Emergency Removal**

NSU may, at its discretion, employ the use of emergency removals. NSU will undertake an individualized safety and risk assessment to determine if a respondent is an immediate threat to the physical health or safety of any individual arising from the allegations of sexual harassment. A respondent will be given the opportunity to immediately challenge the decision following removal (also known as a show-cause meeting).

### Show-cause Meeting

Following an emergency removal from campus, a respondent wishing to challenge their removal must:

1. Request a meeting through the Office of Student Conduct & Development for students and the Office of Human Resources for employees.
2. Prior to the scheduled meeting, provide written documentation supporting the claim for the emergency removal to be lifted.
3. Meetings may be conducted in-person or virtually, at the discretion of the administrator.
4. Outcomes will be communicated to the parties via email within 24 hours after the conclusion of the show-cause meeting.

## **Formal Complaint**

Once a report of sexual harassment is made, the Title IX Coordinator offer supportive measures to the individual who is alleged to be the victim. Next, the Title IX Coordinator will ask the alleged victim if they would like to submit a formal, signed, complaint.

If they choose not to submit a formal complaint, *see Special Provisions section of this document.*

If they choose to submit a signed formal complaint, the Title IX Coordinator will:

- Notify the respondent, in writing, of the allegations against them and the supportive measures available, *see notice of allegations.*

- Notify both complainant and respondent, in writing, of their right to choose an advisor of their choice. The university can and will provide an advisor to either party.

After the notice, an investigation of the report shall be pursued within ten (10) university business days. To ensure a prompt and thorough investigation, the complainant should provide as much of the following information as possible:

- The name, department, and/or position of the person or persons allegedly causing the sexual harassment or retaliation.;
- A description of the incident(s), including the date(s), location(s), and the presence of any witnesses;
- The names of other students or employees who might have been subject to the same or similar sexual harassment or retaliation;
- Any steps the complainant has taken to try to stop the sexual harassment or retaliation; and
- Any other information the complainant believes to be relevant to the sexual harassment, harassment, or retaliation.

## **Notice of Allegations**

Upon receipt of a formal complaint, the Title IX Coordinator will provide a written notice to the respondent containing:

- notice of our grievance process (including informal resolution process)
- notice of the allegations of sexual harassment, including:
  - The identities of the parties involved in the incident, if known.
  - The conduct allegedly constituting sexual harassment
  - The date and location of the alleged incident, if known
  - A statement that the respondent is presumed not responsible for the alleged conduct
  - A statement that determination of responsibility is made at the conclusion of the grievance process
  - The ability to have an advisor of their choice
  - Information about reviewing evidence
  - Information pertaining to the conduct code in regards to knowingly making false statements or knowingly submitting false information during the grievance process.
  - Information regarding NSU's retaliation policy.
  - Information about the process for notification should additional allegations be made during the course of the grievance process.

Sufficient preparation time will be given to the parties before any initial interview.

## **Advisors**

Parties may have an advisor present during any investigation meeting. The role of the advisor will be limited to being present only; the advisor will not be permitted to speak to anyone other than their advisee during any meeting, interview or hearing relevant to the investigation, with the exception of cross examination within the hearing setting. If the advisor is an attorney, the party shall notify the Title IX Coordinator that an attorney will be present at least two days prior to the meeting, interview or hearing.

## **Investigation**

When a formal complaint is signed, a formal investigation will be conducted. The Title IX Coordinator will assign investigators. All investigations will be conducted by at least two investigators who have received appropriate training approved by the Title IX Coordinator. The investigators must be free from conflicts of interest or bias for or against complainants or respondents. Investigators may include (but are not limited to) the Title IX Coordinator; other appropriate NSU faculty or staff; or contracted, external investigators. The investigation shall be concluded within a reasonable amount of time. The investigation will be conducted in a manner so that it is adequate, reliable, and impartial.

The investigation may include but is not limited to, interviews of the parties involved, including witnesses, and the gathering of other relevant information.

All parties may present witnesses and other relevant inculpatory and exculpatory evidence for objective evaluation. The Title IX Coordinator will send evidence directly related to the allegations to the parties and their advisor prior to the final investigation report. Parties have 10 days to inspect, review, and respond to the evidence.

At any time during the investigation, the investigators may recommend supportive measures.

## **Investigation Report**

Once a formal investigation is concluded, a written investigative report shall be submitted to the Title IX Coordinator. The investigation report is a written report describing the evidence gathered from the investigation with description of all the interviews and any other documents reviewed.

The Title IX Coordinator will determine whether further action is needed pursuant to NSU policy and/or state or federal law, and respond accordingly. If further action is deemed necessary resolution processes or disciplinary

procedures will be initiated. However, the Title IX Coordinator must dismiss formal complaints:

- of misconduct that do not meet the sexual harassment definition, and/or
- that did not occur within an NSU educational program or activity against a person in the US. The Title IX Coordinator may dismiss a formal complaint:
- if a complainant desires to withdraw their formal complaint, and/or
- the respondent is no longer enrolled at NSU, and/or
- if NSU is unable to gather sufficient information to reach a determination.

After review, the Title IX Coordinator will send the parties and their advisors the investigation report. Parties will have 10 days to respond (in writing, emailed or signed and delivered to the Title IX Coordinator) should they choose to do so.

## **Live Hearings**

*NOTE: For additional details, see Student Handbook, Article IV Student Conduct Code Procedures; F. Student Conduct Conferences for Individuals; for employees see Employment Handbook; HR 8.0 Sexual Harassment Policy.*

If investigation findings indicate a potential Title IX policy violation, a live hearing with cross-examination will be held. A minimum of two decision-makers will be appointed by the conduct administrator or who will schedule the live hearing. The decision-makers will determine whether or not there has been a policy violation and determine a resolution.

All live hearings will be audio and/or audio-visual recorded.

Live hearings may be conducted with all parties physically present. However, at the request of either party or at the discretion of NSU, the institution will provide for the entire live hearing to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other. If a party does not have an advisor present at the live hearing, NSU will provide an advisor of NSU's choice.

Cross-examination is sensitive and must take place in a phased process. Each party's advisor is permitted 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. Before a complainant, respondent, or witness answers a

question, the decision-makers must first determine whether the question is relevant. Decision-makers will then explain to the party's advisor asking the question why it is not relevant. The decision-makers may deem certain questions about a complainant's prior sexual behavior irrelevant unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent. Unduly repetitive character witnesses or any other types of witnesses including expert witnesses can be limited at the discretion of the panel.

If a party or witness does not submit to cross-examination at the live hearing, the decision-makers must not rely on any statement of that party or witness in reaching a determination regarding responsibility.

The decision-makers must issue a written determination regarding responsibility. Written determination will be sent to the parties simultaneously. This determination will include:

- A reference to the policy(s) alleged to have been violated.
- A summary of the allegations.
- Findings of fact supporting the determination.
- Conclusions about whether the alleged conduct occurred.
- Rationale for the result as to each allegation.
- Any disciplinary sanctions imposed on the respondent; see Student Code of Conduct.
- Whether remedies will be provided to the complainant.
- Procedural information on appeals for either party.

## **Appeals (Students Only)**

*NOTE: Employee appeals differ depending on employment status; see Employment Handbook; HR 8.7 Appeals for employees.*

To request an appeal, of the live hearing outcome or the dismissal of a complaint, the student must submit the reason for their appeal in writing (typed, not hand-written). The request may be signed, dated, and delivered to Student Conduct and Development or may be emailed to Student Conduct and Development ([conduct@nsuok.edu](mailto:conduct@nsuok.edu)), within 7 days following the date the outcome letter was sent. Any email should be sent from the student's NSU email account.

An appeal request allows a respondent or complainant the opportunity to bring forward concerns about the outcome of the case in which they were a part. An appeal may be requested for one or more of the following:

- Procedural irregularity that may have affected the outcome, and/or
- Newly discovered evidence that may have affected the outcome (the

new evidence must be included with the written appeal request), and/or

- Title IX personnel had a conflict of interest or bias that may have affected the outcome.

Failure to check or claim notice of correspondence from the university via email, postal service, or campus mail, may not constitute an acceptable reason for appeal.

During the appeal process, records reviewed may include, but are not limited to: investigation reports, findings, sanctions assigned, the appeal request, and/or other procedural documents. Character references/letters of support will not be considered at the appeal. Any party wishing to provide a response to a submitted appeal has 7 days to do so. Responses should be submitted in writing to the conduct administrator ([conduct@nsuok.edu](mailto:conduct@nsuok.edu)). There will only be one appeal.

Appropriate parties shall be notified regarding the submission, denial, or acceptance, and outcome of an appeal, simultaneously, and within a reasonable time frame.

Appeals will be conducted as file review by the VPSA, Dean of Students, and one additional designee. The committee may determine one of the following actions:

- Return the case to the original student conduct administrator for a new conduct conference and/or sanction.
- Reverse or modify the outcome and/or sanctions. Modification may include, reducing or increasing the severity of the original sanctions.
- Uphold the outcome and/or sanctions. Appeal decisions are final.

## **Informal Resolution**

At the discretion of the Title IX Coordinator, informal resolution may be offered following a formal complaint. Informal resolution may include, but is not limited to, mediation or restorative justice measures. Both parties must give voluntary, informed, written consent to participate in an informal resolution process and may withdraw from the informal resolution process at any time prior to a resolution.

In cases where the facts are generally not in dispute, and the respondent expresses a willingness to accept responsibility for all charges in a case, with the informed consent of the complainant and the University, the hearing procedure will be waived. The parties will be provided the opportunity to submit a written statement to the Title IX Coordinator, who will share this

information (with the Student Conduct Coordinator for student respondents and with the Assistant Director of Human Resources for employee respondents) for consideration in determining appropriate sanctions. The sanction decision will be made based on investigation information and the written statements, as well as any conduct history on the part of the respondent. Any appeal in an acceptance of responsibility resolution will be limited to the grounds that the sanction provided by the University is grossly inappropriate in light of the violations committed, or relevant aggravating and mitigating factors, and in consideration of applicable policy. Both the complainant and the respondent shall have the same right of appeal.

*NOTE: An informal resolution process may not be offered or facilitated if the respondent is an employee of NSU and the complainant is a student of NSU.*

## Procedural Considerations

### **Jurisdiction**

This policy applies to any allegation of sexual harassment against members of the NSU community on NSU property, in NSU programs, on land NSU leases or controls, or at events NSU sponsors. NSU may address off-campus or out-of-school harassment, including but not limited to public forums (Internet speech, Facebook, etc.), especially when those off-campus or out-of-school acts have a demonstrable and/or significant on-campus or in-school disruptive impact.

### **Confidentiality**

Students may make confidential reports may be made by contacting HawkReach Counseling Services and/or off-campus victim services providers (see contact information provided in this document). Employees may use any of the off-campus victim services provides listed in this policy. NSU Counselors and Victim's Advocate are available free of charge, and can be seen on an emergency basis.

All inquiries, complaints, and investigations are treated with discretion; however, information is revealed as law and policy require. Therefore, the identity of the complainant and any witnesses may be revealed to the person(s) accused of such misconduct.

### **Federal Statistical Reporting Obligations:**

Certain campus officials (campus security officials) have a duty to report violations of this policy for federal statistical reporting purposes. All personally identifiable information is kept private, but statistical information must be passed along to the Clery Reporting Officer regarding the type of

incident and its general location (on or off-campus, in the surrounding area, but no addresses are given), for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety.

### **Federal Timely Warning Reporting Obligations:**

In accordance with Federal law, NSU administrators must issue timely warnings when incidents pose a substantial threat of bodily harm or danger to members of the campus community. NSU will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

### **Cooperation with Law Enforcement**

NSU will implement appropriate measures during a law enforcement agency's investigation to provide for the safety of the campus community and may cooperate with law enforcement to the extent of and accordance with local, state, and federal law.

### **Records Maintenance**

The final written report and all documentation contained in the investigation file should be turned over to the Title IX Coordinator. Records detailing the University's investigation into potential violations of this policy will be collected and maintained, including notes of interviews, copies of documents reviewed, and other relevant information. This record will be maintained by the Title IX Coordinator for a minimum period of 7 years. All hearings will be audio and/or audio-visual recorded.

### **Retaliation**

Retaliation is any direct or indirect action taken against a person or organization as a response to their involvement or affiliation with the conduct, academic, legal, and/or administrative process. Any act of retaliation, which may include threats, intimidation, coercion, or discrimination, may result in disciplinary action.

## **Special Provisions**

### **Distinct and Separate Process**

The University may undertake a short delay to allow evidence collection when criminal charges on the basis of the same behaviors that invoke this process are being investigated by police or other law enforcement. University action will not be precluded on the grounds that civil or criminal

charges involving the same incident have or have not been filed or that charges have been dismissed or reduced. The Civil Rights & Title IX Process is distinct from any criminal investigation and flows from the University's obligation under Title IX and other equity laws to ensure it is providing a safe and nondiscriminatory environment. If a complainant wishes to pursue criminal processes only and wants to waive any University response to the situation, they should make that request to the Title IX Coordinator – and such requests will usually be respected unless the University must act independently to preserve the safety of the campus community from a threat or future violation of policy.

### **Good Samaritan/Limited Immunity**

The welfare of individuals in our community is of paramount importance. Sometimes, individuals are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, as student who has been drinking underage might hesitate to help take a victim of sexual misconduct to NSU Police). NSU pursues a policy of limited immunity for individuals who offer help to others in need. While Student Conduct Code or Employment Handbook violations may not be overlooked, NSU will take into consideration the positive actions of those who offer their assistance to others.

### **Notification of Outcomes**

In cases of arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction, NSU may publicly release the name of the involved party found to be in violation of NSU policy as well as the nature of the violation and/or sanction(s) assigned.

### **Pregnant or Parenting Students and Employees**

NSU reviews all cases for pregnant or parenting students and employees on an individual basis. Each individual is encouraged to communicate and work with their individual faculty members or supervisors to develop a plan for class, assignments, etc. The Title IX Coordinator may assist in this process at the request of the individual.

### **Title IX Coordinator as Complainant**

As necessary, the Title IX Coordinator reserves the right to initiate a conduct complaint, to serve as complainant, and to initiate conduct proceedings with or without a formal complainant.