

## **Sexual Misconduct**

(Previously Sexual Harassment Prohibition)

(adopted 12/13/16, 8/14/18)

Title IX compliance includes the prohibition of sexual misconduct and provisions for grievance procedures.

It shall be the administrative policy of NCCC that no person 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 of NCCC as required by Title IX of the Education Amendments of 1972 and any amendments thereto. This title covers three major areas: admissions, employment, and treatment of students.

As a part of its policy not to discriminate on the basis of sex, NCCC hereby specifically prohibits any act of sexual misconduct and has adopted for its students and employees the following definition of sexual misconduct:

Requests for sexual favors or unwelcome advances in the form of verbal or physical conduct of a sexual nature for which compliance is made an expressed or implied condition of an individual's initial or continued employment, requests which affect decisions regarding an individual's education, or requests which interfere with an individual's work or academic performance including peer sexual harassment which creates a hostile environment to the educational process.

### **Applicable Scope**

Neosho County Community College (hereafter referred to as "College") affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the College's Sexual Misconduct Grievance policy as detailed below. When the responding party<sup>1</sup> is a member of the College community, the Sexual Misconduct Grievance policy is applicable regardless of the status of the reporting party<sup>2</sup> who may be a member or non-member of the campus community, including students, student organizations, faculty, administrators, staff, guests, visitors, campers, etc. When a reporting party or responding party is a non-member of the campus community, the College's response is limited to investigation only, with no right of appeal, and limited rights concerning access to information in the investigation report. NCCC response to non-member reporting or responding parties is limited to on-campus behavior or behavior that has a direct nexus to College programs or events.

### **Title IX Coordinator**

The Vice President for Student Learning serves as the Title IX Coordinator<sup>3</sup> and oversees implementation of the College's Sexual Misconduct policy. The Title IX Coordinator [heads the Title IX Team and] acts with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by the Title IX Coordinator, contact the College President at (620) 432-0346. To raise concerns regarding a potential conflict of interest with any other administrator involved in the appropriate Sexual Misconduct Grievance policy, please contact the Title IX Coordinator.

Inquiries about and reports regarding this policy and procedure may be made internally to:

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<sup>1</sup> As used in this document the term "responding party" refers to the person who has allegedly engaged in discrimination.

<sup>2</sup> As used in this document, the term "reporting party" refers to the person impacted by alleged discrimination.

<sup>3</sup> Note that throughout this document, the term "Title IX Coordinator" refers to the Title IX Coordinator or their designee.

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NeoKan Hall Athletics office  
Inquiries may be made externally to:  
Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov) Web: <http://www.ed.gov/ocr>

## **Reporting Sexual Misconduct**

Reports of sexual misconduct may be made using any of the following options. There is no time limitation on the filing of allegations. However, if the responding party is no longer subject to the College's jurisdiction, the ability to investigate, respond and provide remedies may be more limited:

- 1) Report directly to the Title IX Coordinator [or deputy/deputies] (see above);
- 2) Report online, using the reporting form posted at the College's website; and
- 3) Report using other electronic means as available.

All reports are acted upon promptly while every effort is made by the College to preserve the privacy of reports. Such reports may also be anonymous. Anonymous reports will be investigated. Additionally, all employees of the College are designated as mandated reporters and will share a report with the Title IX Coordinator promptly. Confidentiality and mandated reporting is addressed more specifically below in section 7. Reports of sexual misconduct committed by the Title IX Coordinator should be reported to the College President (620) 432-0346.

## **Jurisdiction**

This policy applies to sexual misconduct that takes place on the campus, at College-sponsored events, off-campus and online when the Title IX Team determines that the off-campus or online conduct affects a substantial College interest. A substantial College interest is defined to include:

- a) Any sexual misconduct that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- b) Any sexual misconduct where it appears that the responding party may present a danger or threat to the health or safety of self or students or employees;
- c) Any sexual misconduct that significantly impinges upon the rights, property or achievements of self or students or employees or significantly breaches the peace and/or causes social disorder; and/or
- d) Any sexual misconduct that is detrimental to the educational interests of the College.

As a general rule, a report from a reporting party who is not a student or employee or a report about a responding party who is not a student or employee must be for sexual misconduct that takes place on College property or at College sponsored events.

## **Sexual Misconduct**

"Sexual Misconduct" is a broad term encompassing non-consensual or unwelcome sexual advances, sexual violence, dating violence, domestic violence, and stalking.

Per Title IX compliance, it shall be the administrative policy of NCCC that no person 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 of NCCC as required by statute. This title covers three major areas: admissions, employment, and treatment of students.

As a part of its policy not to discriminate on the basis of sex, NCCC hereby specifically prohibits any act of sexual misconduct and has adopted for its students and employees the following definition of sexual misconduct:

Sexual misconduct includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct sexual in nature. The Sexual Misconduct policy specifically addresses the following:

- Unwelcomed communication, including but not limited to phone, text message, email, social media, or other electronic media;
- Requests for sexual favors for which compliance, or submission to such acts, is expressed or implied to impact initial or continued employment;
- Requests for sexual favors for which compliance, or submission to such acts, is expressed or implied to impact an individual's education;
- Requests for sexual favors for which compliance, or submission to such acts, is expressed or implied to impact the individual's work or academic performance or creates an intimidating, hostile, or offensive work or academic environment.

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

Revised 1/8/2019

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical and may result in a sanction ranging from reprimand through expulsion (students) or termination of employment. This includes RAs and students over whom they have direct responsibility.

### **Categories of and Specific Definitions Related to Sexual Misconduct**

The College has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, the College considers non-consensual sexual violence to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, the College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved.

#### **a. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of Kansas regard sexual harassment as a form of sex/gender discrimination.

Sexual harassment is:

- unwelcome, sexual, sex-based and/or gender-based conduct which may be verbal, written, online and/or physical.

Anyone experiencing sexual harassment in any College program is encouraged to report it immediately to the Title IX Coordinator, a Title IX Deputy, or other college official. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of *quid pro quo* harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- severe, or
- persistent or pervasive, and
- objectively offensive, such that it:
  - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational, employment social and/or residential program.

*Quid Pro Quo* Sexual Harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational development or performance.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.
- Two supervisors frequently "rate" several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

**b. Non-Consensual Sexual Intercourse is defined as:**

Any sexual intercourse, however slight, with any object, by a person upon another person, that is without consent and/or by force.

Sexual intercourse includes:

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

**c. Non-Consensual Sexual Contact is defined as:**

- any intentional sexual touching, however slight, with any object, by a person upon another person, that is without consent and/or by force.

Sexual touching includes:

- Intentional contact with the breasts, groin, or genitals, mouth or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other bodily contact in a sexual manner.

**d. Sexual Exploitation**

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed).
- Invasion of sexual privacy.
- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent).
- Prostitution.
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection.
- Administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent (assuming the act is not completed).
- Exposing one's genitals in non-consensual circumstances.
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

**e. Force and Consent**

**Force:** 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.”).

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

**NOTE:** Silence or the absence of resistance alone is not consent. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of consent is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**Consent:** Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented each time from beginning to end while engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent can be withdrawn at any time once given, as long as the withdrawal is clearly communicated through words or actions.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or reasonably should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

In Kansas, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old may be a crime, and a potential violation of this policy, even if the minor wanted to engage in the act.

### Examples of lack of consent:

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 pm until 3:00 am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never have done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. Bill is responsible for violating the College's Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.
2. Jiang is a sophomore at the college. Beth is a freshman. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.
3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. This is a violation of the Non-Consensual Sexual Intercourse policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the College expects.



## f. Other Serious Sexual Misconduct Offenses

Dating Violence means 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 the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence is defined by law as violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse, or by any family or household member.

Examples of Dating or Domestic Violence:

1. A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based on jealousy is a violation of the Intimate Partner Violence policy.
2. An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
3. A student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
4. Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.

Stalking is an intentional, malicious and repeated following or harassment of another person and making a credible threat with the intent to place such person in reasonable fear for such person's safety, as defined by statute, and is a criminal offense. If you feel you are a victim of stalking, please notify the police department or sheriff's office immediately.

Examples of Stalking:

1. A student repeatedly shows up at another student's on-campus residence, always notifying the RA that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together.
2. A student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the tutor thanked the student and stated that it was not necessary and would appreciate if the gift deliveries stop. The student then started leaving notes of love and gratitude on the tutor's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together."

Any other College policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

Sanctions for the above-listed "Other Serious Sexual Misconduct" behaviors range from reprimand through expulsion (students) or termination of employment.

### **Retaliation**

As it relates to sexual misconduct, retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing an allegation or for assisting in providing information relevant to a claim of harassment is a serious violation of College policy and will be treated as another possible instance of harassment. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator or any Deputy Coordinator and will be promptly investigated. The College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Examples of Retaliation:

1. A student athlete files an allegation against a coach for sexual harassment; the coach subsequently cuts the student athlete's playing time in half without a legitimate justification.
2. A faculty member complains of gender inequity in pay within her department; her supervisor then revokes his prior approval allowing her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."

### **Remedial Action**

Upon notice of alleged discrimination, the College will implement initial remedial, responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such actions could include but are not limited to: no contact orders, providing counseling and/or medical services, academic support, living arrangement adjustments, transportation accommodations, visa and immigration assistance, student financial aid counseling, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to community support resources.

The College will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the College's ability to provide the accommodations or protective measures.

Procedures for handling reported incidents are fully described below.

### **Confidentiality and Reporting of Offenses Under This Policy**

All College employees, with the exception of the Director of Academic Advising and Counseling (faculty, staff, administrators), are expected to report actual or suspected sexual misconduct to appropriate officials immediately, though there are some limited exceptions. Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such

as Take Back the Night events do not provide notice that must be reported to the Coordinator by employees, unless the reporting party clearly indicates that they wish a report to be made.

If a reporting party would like the details of an incident to remain confidential, the reporting party can speak with the on-campus victim advocates. See the full Mandatory Reporter policy on the college website or in office of the Title IX Coordinator.

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. Note that the College's ability to remedy and respond to a reported incident may be limited if the reporting party does not want the institution to proceed with an investigation and/or the Equity Resolution Process.

In cases indicating pattern, predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the reporting party requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have allegations taken seriously by NCCC when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to the Title IX Team. Information will be shared as necessary with investigators, **witnesses and the responding party**. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at the College website, or other electronic means as available. Note that these anonymous reports may prompt a need for the institution to investigate.

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex/gender harassment or discrimination of which they become aware is a violation of College policy and can be subject to disciplinary action for failure to comply.

### **False Allegations**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

### **Amnesty for Reporting Party and Witnesses (applies to students only)**

Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to the Campus Police). The College pursues a policy of amnesty for students who offer help to others in need. [While policy violations cannot be overlooked, the College will provide educational options, rather than punishment, to those who offer their assistance to others in need.]

### **Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical

information must be passed along to appropriate College personnel 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 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. The College's Mandated Reporter policy can be found at the College's website.

### **Equity RESOLUTION Process for ALLEGATIONS of SEXUAL MISCONDUCT**

The College will act on any formal or informal allegation or notice of violation of the Sexual Misconduct policy that is received by a responsible employee as defined by the College's Mandated Reporter policy.

The procedures described below apply to all allegations of sexual misconduct involving students, staff or faculty members. All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty and staff handbooks.

#### **Overview**

Upon notice to the Title IX Coordinator, this resolution process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the Sexual Misconduct policy has been violated. If so, the College will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determines whether the Sexual Misconduct policy has been violated. If so, the College will promptly implement effective remedies designed to end the misconduct, prevent its recurrence and address its effects.

#### **1. Sexual Misconduct Grievance Process (SMGP)**

Allegations under the policy on Sexual Misconduct are resolved using the Title IX Team. Members of the Title IX team are announced in an annual distribution of this policy to campus, prospective students, their parents and prospective employees. The list of members and a description of the Title IX Team can be found below and also at the College's website. Members of the Title IX Team are trained in all aspects of the resolution process, and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To provide sensitive intake for and initial advice pertaining to allegations
- To serve in a mediation or restorative justice role in conflict resolution
- To investigate allegations
- To act as process advisors to those involved in the Equity Resolution Process

Title IX Team members also recommend proactive policies, and serve in an educative role for the community. The President, in consultation with the Title IX Coordinator, appoints the pool, which reports to the Title IX Coordinator. Title IX Team members receive annual training organized by the Title IX Coordinator, including a review of College policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety and promote

accountability. This training will include, but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to all forms of sexual misconduct allegations; the College's Sexual Misconduct policy and procedures; confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance. All Title IX Team members are required to attend this annual training to be eligible to serve.

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620-432-0333 – office  
620-212-5135 – cell  
[kjacobson@neosho.edu](mailto:kjacobson@neosho.edu)  
Sanders Hall Human Resources office

, Athletic Director  
Deputy Title IX Coordinator  
Neosho County Community College  
800 W. 14<sup>th</sup> Street  
Chanute, KS 66720  
620-432-0397 – office –cell  
NeoKan Hall Athletics office

## **2. Reporting Misconduct**

Any student, member of the community, guest or visitor who believes that the Sexual Misconduct policy has been violated should contact the Title IX Coordinator or any responsible employee as defined by the

Mandated Reporter policy. The College website also includes a reporting form at which may serve to initiate the resolution process.

All employees receiving reports of a potential violation of College policy are expected to immediately contact the Title IX Coordinator or Deputy Title IX Coordinator. All initial contacts will be treated with privacy: specific information on any allegation received by any party will be reported to the Title IX Coordinator. Every effort will be made to maintain the privacy of those initiating an allegation. In all cases, the College will give consideration to the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process.

### **3. Preliminary Inquiry**

Following receipt of notice or a report of misconduct, the Title IX Coordinator engages in a preliminary inquiry to determine if there is reasonable cause to believe the Sexual Misconduct policy has been violated. For the purposes of this process, the Title IX Coordinator, unless otherwise noted, refers to the Title IX Coordinator or designee. The preliminary inquiry is typically 1-3 days in duration. This inquiry may also serve to help the Title IX Coordinator to determine if the allegations evidence violence, threat, pattern, predation and/or weapon, in the event that the reporting party has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the Title IX Coordinator may respect a reporting party's request for no action, and will investigate only so far as necessary to determine appropriate remedies. As necessary, the College reserves the right to initiate resolution proceedings without a formal report or participation by the reporting party.

In cases where the reporting party wishes to proceed or the College determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the Title IX Coordinator will direct a formal investigation to commence and the allegation will be resolved through one of the processes discussed briefly here and in greater detail below:

- Conflict Resolution – typically used for less serious offenses and only when both parties agree to conflict resolution
- Administrative Resolution – resolution by a trained administrator

The process followed considers the preference of the parties, but is ultimately determined at the discretion of the Title IX Coordinator. Conflict Resolution may only occur if selected by all parties, otherwise the Administrative Resolution Process applies.

If conflict resolution is desired by the reporting party, and appears appropriate given the nature of the alleged behavior, then the report does not proceed to investigation, unless a pattern of misconduct is suspected or there is an actual or perceived threat of further harm to the community or any of its members.

Once a formal investigation is commenced, the Title IX Coordinator will provide written notification of the investigation to the responding party at an appropriate time during the investigation.<sup>4</sup> The College aims

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<sup>4</sup> Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official College records; or emailed to the

to complete all investigations within a sixty (60) calendar day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator with notice to the parties as appropriate.

If, during the preliminary inquiry or at any point during the formal investigation, the Title IX Coordinator determines that there is no reasonable cause to believe that policy has been violated, the process will end unless the reporting party requests that the Title IX Coordinator makes an extraordinary determination to re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator.

#### **4. Interim Remedies/Actions**

The Title IX Coordinator may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the reporting party and the community and to prevent further violations.

These remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to Human Resources
- Education to the community
- Altering the housing situation of any associated party
- Altering work arrangements for employees
- Providing campus escorts
- Providing transportation accommodations
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

The College may interim suspend a student, employee or organization pending the completion of SMGP investigation and procedures, particularly when in the judgment of the Title IX Coordinator the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party or the ongoing activity of a student organization whose behavior is in question. In all cases in which an interim suspension is imposed, the student, employee or student organization will be given the option to meet with the Title IX Coordinator prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX Coordinator has sole discretion to implement or stay an interim suspension and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to College housing and/or the College campus/facilities/events. As determined by the Title IX Coordinator, this restriction can include classes and/or all other College activities or privileges for which the student or employee might otherwise be eligible. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding party.

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parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The reporting party is typically copied on such correspondence.

The institution will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the institution's ability to provide the interim actions or protective measures.

## **5. Investigation**

Once the decision is made to commence a formal investigation, the Title IX Coordinator appoints Title IX Team members to conduct the investigation (typically using a team of two SMGP investigators), usually within two (2) days of determining that an investigation should proceed. Investigations are completed expeditiously, normally within ten (10) days, though some investigations take weeks or even months, depending on the nature, extent and complexity of the allegations, availability of witnesses, police involvement, etc.

The College may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The College will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete. College action will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

All investigations will be thorough, reliable, impartial, prompt and fair. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, as necessary.

The investigators will typically take the following steps, if not already completed (not necessarily in order):

- In coordination with campus partners (e.g.: the Title IX Coordinator), initiate or assist with any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify all policies allegedly violated;
- Assist the Title IX Coordinator with an immediate preliminary inquiry to determine if there is reasonable cause to believe the responding party has violated policy.
  - If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Prepare the notice of allegation [charges] on the basis of the preliminary inquiry;
- Meet with the reporting party to finalize their statement, if necessary;
- If possible, provide written notification to the parties prior to their interviews that they may have the assistance of a Title IX Team member or other advisor of their choosing present for all meetings attended by the advisee;
- Provide reporting party and responding party with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result;
- Prior to the conclusion of the investigation, provide the reporting party and the responding party with a list of witnesses whose information will be used to render a finding;



- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses.
- Provide parties with all relevant evidence to be used in rendering a determination and provide each with a full and fair opportunity to address that evidence prior to a finding being rendered;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- Provide regular updates to the reporting party throughout the investigation, and to the responding party, as appropriate;
- Make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not);
- Investigators finalize and present the findings to the parties, without undue delay between notifications;

At any point during the investigation, if it is determined there is no reasonable cause to believe that College policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the College's investigation and the Equity Resolution Process. Failure of a witness to cooperate with and/or participate in the investigation or Equity Resolution Process constitutes a violation of policy and may be subject to discipline. At the discretion of the college, witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation do not have the ability to offer evidence later during the appeal if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence.

The College will use audio transcription recording during the investigation process. No unauthorized audio or video recording of any kind is permitted during investigation meetings or other Equity Resolution Process proceedings.

## **6. Advisors**

Each party is allowed to have an advisor of their choice present with them for all SMGP meetings and proceedings, from intake through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available, and usually otherwise not involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is available and eligible. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the campus community.

Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The College cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the College is not obligated to provide one.

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent the reporting party or the responding party during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or hearing panelists. The parties are expected to ask and respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Title IX Coordinator will determine whether the advisor may be reinstated, may be replaced by a different advisor, or whether the party will forfeit the right to an advisor for the remainder of the process.

The College expects that the parties will wish to share documentation related to the allegations with their advisors. The College provides a consent form that authorizes such sharing. The parties must complete this form before the College is able to share records with an advisor, though parties may share the information directly with their advisor if they wish. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

The College expects an advisor to adjust their schedule to allow them to attend College meetings when scheduled. The College does not typically change scheduled meetings to accommodate an advisor's inability to attend. The College will, however, make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not locked into using the same advisor throughout.

The parties must advise the investigators of the identity of their advisor at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties must provide timely notice to investigators if they change advisors at any time.

## **7. Resolution**

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with College policy. While the contents of the hearing

are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors [advocates].

**a. Conflict Resolution**

Conflict Resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal hearing process to resolve conflicts. The Title IX Coordinator will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, a trained administrator will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions may still be possible as the result of a conflict resolution process. Additionally, parties may agree to appropriate remedies. The Title IX Coordinator will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

Conflict resolution will not be the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Title IX Coordinator believe that it could be beneficial. Mediation will not be used in cases of sexual violence. It is not necessary to pursue conflict resolution first in order to pursue Administrative Resolution, and any party participating in conflict resolution can stop that process at any time and request a shift to Administrative Resolution.

**b. Administrative Resolution**

Administrative Resolution can be pursued for any behavior that falls within the policy on Sexual Misconduct at any time during the process.

In Administrative Resolution, the Title IX Coordinator has the authority to address all collateral misconduct, meaning that they hear all allegations of sexual misconduct and retaliation, but also may address any additional alleged policy violations that have occurred in concert with the sexual misconduct or retaliation, even though those collateral allegations may not specifically fall within the policy on Sexual Misconduct. Accordingly, investigations should be conducted with as wide a scope as necessary.

Any evidence that the Title IX Coordinator believes is relevant and credible may be considered, including history and pattern evidence. The Title IX Coordinator may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the reporting party (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the reporting party. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators will supply the Title IX Coordinator

with information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

Neither the Title IX Coordinator nor investigators will meet with character witnesses, but investigators may accept up to two (2) letters supporting the character of each of the parties.

The Title IX Coordinator will base the determination(s) on the preponderance of the evidence, whether it is more likely than not that the responding party violated policy as alleged.

The responding party may choose to admit responsibility for all or part of the alleged policy violations at any point during the investigation or Administrative Resolution process. If the responding party admits responsibility, the Title IX Coordinator will render a determination that the individual is in violation of College policy.

If the responding party admits the violation, or is found in violation, the Title IX Coordinator, in consultation with others as appropriate, will determine an appropriate sanction or responsive action, will implement it, and act promptly and effectively to stop the harassment or discrimination, prevent its recurrence and remedy the effects of the discriminatory conduct.

The Title IX Coordinator will inform the parties of the final determination within three (3) days of the resolution, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official College records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law. The notice will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and any appeals options.

**c. Sanctions**

Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant
- The need for sanctions/responsive actions to bring an end to the sexual misconduct and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual misconduct and/or retaliation
- The need to remedy the effects of the sexual misconduct and/or retaliation on the reporting party and the community

i. Student Sanctions

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- Warning: A notice in writing to the student that the student is violating or has violated institutional regulations.
- Probation: A written reprimand for violation of specified regulations. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to be violating any institutional regulations during the probationary period.
- Loss of Privileges: Denial of specified privileges for a designated period of time.
- Restitution: Compensation for loss, damage or injury. This may take the form of appropriate service and/or monetary or material replacement.
- Discretionary Sanctions: Work assignments, service to the College or other related discretionary assignments.
- Student Housing Suspension: Separation of the student from Student Housing for a definite period of time after which the student is eligible to return. Conditions for readmission may be specified.
- Student Housing Expulsion: Permanent separation of the student from Student Housing.
- College Suspension: Separation of the student from the College for a definite period of time, after which the student is eligible to return. Conditions or readmission may be specified.
- Withdrawal: Withdrawal is administrative removal of a student from a class or from the College and may be imposed in instances of unmet financial obligation; for reasons of health; pending the outcome of a competent medical evaluation. The withdrawn student may also be barred from re-enrollment until such time as specific conditions have been met.
- Expulsion: Permanent severance from NCCC.

ii. Employee Sanctions

Responsive actions for an employee who has engaged in harassment, discrimination and/or retaliation may include:

- Probation
- Non-Renewal
- Termination

**d. Withdrawal or Resignation While Charges Pending**

Students: The College does not permit a responding student to withdraw if that student has an allegation pending for violation of the policy on Sexual Misconduct. Should a student decide to leave and/or not participate in the SMGP, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to College unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved.

Employees: Should a responding employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status and the employee HR record shall indicate that the employee is ineligible for rehire. Should an employee decide to leave and/or not

participate in the SMGP, the process may, nonetheless proceed in the employee's absence to a reasonable resolution.

#### **e. Appeals**

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator only within two (2) business days of the delivery of the written finding of the Title IX Team. Any party may appeal the findings and/or sanctions only under the grounds described, below:

- A procedural error or omission occurred that significantly impacted the outcome of the investigation (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed fall outside the range of sanctions the College has designated for this offense and the cumulative record of the responding party.

The Title IX Coordinator will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately. When any party requests an appeal, the Title IX Coordinator will share the appeal request with the other party(ies), who may file a response within two (2) business days and/or bring their own appeal on separate grounds. If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within two (2) business days. These response or appeal requests will be shared with each party.

Where the Title IX Coordinator finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the Title IX Coordinator are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation. In most cases, appeals are confined to a review of the written documentation or record of the investigation, and pertinent documentation regarding the grounds for appeal. An appeal is not an opportunity for the Title IX Coordinator to substitute his or her judgment for that of the original investigator(s) merely because they disagree with its finding and/or sanctions.
- Appeals granted based on new evidence should normally be remanded to the investigator(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator.
- Sanctions imposed as the result of Administrative Resolution are implemented immediately unless the Title IX Coordinator or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.

- For students: Graduation, athletic activities, study abroad, college-sponsored trips, internships/externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- The Title IX Coordinator will incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within two (2) business days of the resolution of the appeal or remand.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand EXCEPT, as may be provided otherwise in the Negotiated Agreement for Professional Employees as defined therein.
- In rare cases where a procedural [or substantive] error cannot be cured by the original investigator(s) and/or Title IX Coordinator (as in cases of bias), the Title IX Coordinator may direct a new investigation and/or Administrative Resolution process, including a new investigative team. The results of a remand cannot be appealed. The results of a new Administrative Resolution process can be appealed using the process outlined above.
- In cases where the appeal results in reinstatement to the College or resumption of privileges, reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

**f. Long-Term Remedies/Actions**

Following the conclusion of the Equity Resolution Process and in addition to any sanctions implemented, the Title IX Coordinator may utilize long-term remedies or actions to stop the harassment or discrimination, remedy its effects and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to Human Resources
- Education to the community
- Permanently altering the housing situation of any associated party
- Permanently altering work arrangements for employees
- Providing campus escorts
- Climate surveys
- Policy modification
- Providing transportation accommodations
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Team, long-term remedies may also be provided even when the responding party is found not responsible.

The institution will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the institution's ability to provide the actions or protective measures.

**g. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Title IX Coordinator. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/ corrective actions and/or suspension, expulsion and/or termination from the College and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

#### **h. Records**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept by the Title IX Coordinator according to statute in the Title IX Coordinator database.

#### **i. Statement of the Rights of the Parties**

##### *Statement of the Reporting Party's rights:*

- The right to investigation and appropriate resolution of all credible allegations of sexual misconduct or discrimination made in good faith to College officials;
- The right to be informed in advance of any public release of information regarding the incident;
- The right not to have any personally identifiable information released to the public, without their consent;
- The right to be treated with respect by College officials;
- The right to have College policies and procedures followed without material deviation;
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence;
- The right not to be discouraged by College officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities;
- The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the reporting party so chooses. This also includes the right not to be pressured to report, as well;
- The right to have reports of sexual misconduct responded to promptly and with sensitivity by campus law enforcement and other campus officials;
- The right to be notified of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student services, both on campus and in the community;
- The right to a campus no contact order (or a trespass order against a non-affiliated third party) when someone has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the reporting party or others;
- The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual misconduct incident, if so requested by the reporting party and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:



- Change of an on-campus student's housing to a different on-campus location;
- Assistance from College support staff in completing the relocation;
- Transportation accommodations;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Exam (paper, assignment) rescheduling;
- Taking an incomplete in a class;
- Transferring class sections;
- Temporary withdrawal;
- Alternative course completion options.
- The right to have the College maintain such accommodations for as long as is necessary, and for protective measures to remain confidential, provided confidentiality does not impair the institution's ability to provide the accommodations or protective measures;
- The right to be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;
- The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;
- The right to be informed of the names of all witnesses whose information will be used to render a finding, in advance of that finding, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence;
- The right to regular updates on the status of the investigation and/or resolution;
- The right to have reports addressed by investigators and the Title IX Coordinator who have received [at least eight hours of] annual sexual misconduct training;
- The right to preservation of privacy, to the extent possible and permitted by law;
- The right to meetings and/or interviews that are closed to the public;
- The right to petition that any College representative in the process be recused on the basis of demonstrated bias or conflict-of-interest;
- The right to bring a victim advocate or advisor of the reporting party's choosing to all phases of the investigation and resolution proceeding;
- [The right to have the College compel the participation of student, faculty and staff witnesses, and the opportunity (if desired) to provide the investigators with a list of potential questions to ask of witnesses, and the right to challenge documentary evidence];
- The right to submit an impact statement in writing to the Title IX Coordinator following determination of responsibility, but prior to sanctioning;
- The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
- The right to be informed in writing of when a decision by the College is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the College.

*Statement of the Responding Party's rights:*

- The right to investigation and appropriate resolution of all credible reports of sexual misconduct made in good faith to College administrators;

- The right to be informed in advance, when possible, of any public release of information regarding the report;
- The right to be treated with respect by College officials;
- The right to have College policies and procedures followed without material deviation;
- The right to be informed of and have access to campus resources for medical, health, counseling, and advisory services;
- The right to timely written notice of all alleged violations, including the nature of the violation, the applicable policies and procedures and possible sanctions;
- The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, prior to the finding by the Title IX Coordinator;
- The right to be informed of the names of all witnesses whose information will be used to render a finding, prior to final determination, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence in a campus resolution process;
- The right to have reports addressed by investigators and the Title IX Coordinator who have received annual training;
- The right to petition to the Title IX Team that any College representative be recused from the resolution process on the basis of demonstrated bias and/or conflict-of-interest;
- The right to meetings and interviews that are closed to the public;
- The right to have an advisor of their choice to accompany and assist throughout the campus resolution process;
- The right to a fundamentally fair resolution, as defined in these procedures;
- The right to provide an impact statement in writing to the Title IX Coordinator following any determination of responsibility, but prior to sanctioning;
- The right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
- The right to be informed in writing of when a decision of the College is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the College.

## **8. Revision**

These policies and procedures will be reviewed and updated annually by the Title IX Team. The College reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. The Title IX Coordinator may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Title IX Coordinator may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current

policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

## **Mandatory Reporter**

(adopted 11/13/16, 8/14/18)

This document is intended to outline NCCC's policy regarding mandated reporting by employees of concerning behaviors, sex discrimination, harassment and crimes. This policy explains briefly the meaning and purpose of mandatory reporters, outlines the legal context, and articulates a straightforward set of guidelines for all employees to follow.

### Preface

Mandatory Reporters: What and Why?

There are three federal laws that establish responsibilities for employees of universities to report certain types of crimes and incidents, especially sexual misconduct – the Clery Act, Title VII and Title IX. Additionally, state law may create a reporting duty regarding the abuse of minors. Each of these areas of federal law has a different purpose, but generally the laws are intended to protect members of the campus community, visitors and guests from criminal and discriminatory behavior. The responsibilities established by these laws give rise to the term “mandatory reporter.” Reporting of concerning and disruptive behaviors is not legally mandated, but is a policy mandate to report to the Dean of Student Services for student concerns or Director of Human Resources for employee concerns in early identification and detection of at-risk situations.

### The Legal Context

The Clery Act creates a duty for institutions to report crimes against persons and property in 18 categories and 8 types of hate crimes. Federal law requires NCCC to disclose these crimes in its Annual Security Report each October and failure to do so can result in substantial fines being imposed on the institution by the Department of Education. Guided by the language of the Clery Act and subsequent amendments, NCCC is required to define which employees must report crime information they receive so that NCCC can include it in the Annual Security Report. These employees are known as Campus Security Authorities.

#### a. The Clery Act

The language of the Clery Act would allow NCCC to exclude some faculty from reporting some of the time and to exempt many professional staff from the obligation to report. Such an approach, however, risks creating confusion for faculty and staff, takes a minimalist approach to the ethical obligation to inform our community about serious crimes, and makes the institution more vulnerable to enforcement action.

#### b. Title VII

Title VII focuses on sexual harassment in the workplace, and covers other forms of discrimination as well. Failure to take appropriate action can lead to legal liability for NCCC.

Under Title VII, the law creates a duty to report for employees who supervise other employees, including students being paid by NCCC. As with the Clery Act, this statute would allow some faculty and staff to be exempted from reporting while supervising employees would be mandated to report. Once again, however, this selective approach may create confusion and risk; and it fails to ask all of us to share the responsibility to create a work place free of sexual harassment and other forms of discrimination.

### c. Title IX

Title IX focuses on the adverse consequences faced by victims of gender discrimination and sexual harassment and creates an obligation for NCCC to investigate and to provide a “prompt and effective remedy.” Title IX obligates NCCC to provide a safe environment that does not interfere with the victim’s right to pursue an education or employment opportunities, benefits or privileges. NCCC incurs obligations under Title IX when a victim has given notice to a “responsible employee,” or when NCCC, in the exercise of reasonable care, should have known, about the assault or harassment.

As with the other laws, the definition of “responsible employee” under Title IX would allow NCCC to treat only some faculty and staff as mandated reporters but with the same possibility of confusion and risk of institutional exposure. Additionally, guidance from the Department of Education indicates that anyone a student could reasonably perceive as a responsible employee should be mandated to report, as should any employee who has a duty to report other forms of misconduct, such as academic dishonesty. Finally, the Department of Education has given prescriptive guidance on the duties of confidential employees, such as counselors, and those who can be exempted from mandatory reporting by NCCC, such as victim advocates. That guidance is reflected in the policy below.

## **Neosho County Community College (NCCC) Mandatory Reporting Policy**

### Who Reports?

NCCC defines all employees and trustees as mandatory reporters, unless exempted below. This includes student-workers who learn of reportable information while they are in the course of their duties for NCCC. NCCC considers RAs to be mandatory reporters who are always on-duty.

### What Is to Be Reported?

- If a mandatory reporter learns about sex/gender discrimination, that employee is expected to promptly within 48 hours or less as soon as deemed necessary based on the severity of the incident contact the Title IX Coordinator Sarah Robb at 620-230-8062 (cell), 620-432-0302 (office), or [sarah\\_rob主@neosho.edu](mailto:sarah_rob主@neosho.edu), or one of the deputy Title IX coordinators; Kerrie Coomes at 620-212-1153 (cell), 620-432-0304 (office), or [kcoomes@neosho.edu](mailto:kcoomes@neosho.edu), Karin Jacobson at 620-212-5135 (cell) 620-432-0333 (office), or [kjacobson@neosho.edu](mailto:kjacobson@neosho.edu), or , 620-432-0321 (office), or , who will then notify the Title IX Coordinator. The Title IX Coordinator will take responsibility for prompt notification to other appropriate NCCC officials. Sex/gender discrimination includes sexual harassment, sexual violence, intimate partner or relationship violence, and gender- based bullying, stalking, and hazing.
- Other serious crimes covered by the Clery Act (defined in number 6 below) must be

reported immediately to the NCCC Clery Coordinator, (cell), 620-432-0381 (office) or . When a crime is also a form of sex/gender discrimination covered in the bullet above in any situation where the victim so requests, or there is a threat to the safety of the community or any member of it, even if they may also be criminal in nature, it should be reported immediately to the Title IX Coordinator.

- Reporting of concerning and disruptive behaviors should be reported to the Dean of Student Services for student concerns or Director of Human Resources for employee concerns in early identification and detection of at-risk situations.
- **Reporting of child sexual and/or physical abuse should be made to the County Attorney/Police Department** as well as the Title IX Coordinator.

When reporting misconduct covered under Title IX (e.g., sexual harassment, sex or gender discrimination, sexual assault, dating violence, domestic violence, stalking, sexual orientation discrimination, gender identity discrimination, etc.), NCCC employees must provide full details of the incident if known, including all names and personally identifying information. If a victim wishes for no action to be taken, the Title IX Coordinator must evaluate that request. NCCC is always guided by the goal of empowering the victim and allowing the victim to retain as much control over the process as possible. Typically, NCCC is compelled to act despite a victim's wishes when an incident evidences use of weapons, violence, threat, pattern or predation. Otherwise, a request for confidentiality or no action may be honored, with remedies offered to the victim as appropriate.

Employees should not promise confidentiality unless their professional role is confidential, and they have received the report in that confidential capacity. If approached, it is appropriate to counsel, "I may be obligated to share what you tell me with administrative officials. If you would like, I can connect you with campus resources who can maintain the confidentiality or privacy of what you share with them." Where an incident involves off-campus conduct involving a member or members of the campus community, the reporting expectations of this policy still apply. If an employee is unsure of whether to report, consult with the Title IX Coordinator or deputies as appropriate. These officials will guide an employee on what is to be reported, when and how.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to the Title IX Team. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted on the College's website or other means when available. Note that these anonymous reports may prompt a need for the institution to investigate.

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex/gender harassment or discrimination of which they become aware is a violation of College policy and can be subject to disciplinary action for failure to comply.

Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such as Take Back the Night events do not provide notice that must be reported to the Coordinator by employees, unless the reporting party clearly indicates that they

wish a report to be made. Remedial actions may result from such disclosures without formal College action.

### Confidential Employees

Counselors, health service providers and clergy are considered exempt from mandatory reporting, unless a victim asks them to report or a duty to report exists under state law based on an imminently harmful situation. NCCC has designated the Director of Academic Advising and Counseling as a Confidential Employee. Confidential employees are expected to report aggregate data as it is reported to the Title IX Coordinator, without any personally identifiable details unless the confidential employee determines on a case-by-case basis that reporting would not be in the best interest of their client/patient/parishioner.

### Designated Private Resources

NCCC wants victims to have a safe space for reporting. Thus, it has designated Hope Unlimited, Inc. as a possible private resource. Under NCCC policy these employees make reports in the form of non-personally identifiable ["Jane Doe" or "John Doe"] information initially. If it is determined through subsequent investigation that more information is needed, the Title IX Coordinator will seek it from employees designated as private resources. Where an employee designated as a private resource shares an incident with the Title IX Coordinator, the employee is not also required to also report this misconduct as a criminal act to the Clery Coordinator. The Title IX Coordinator will do so, to avoid double counting of incidents, unless there is an emergency or the victim wishes to report directly to Clery Coordinator.

### Timely Warning

In some cases, the Clery Coordinator may be required to release a timely warning to the community about a threat to the community. In such cases, an initial investigation or determination of the nature of the threat may be conducted, after which a warning will be issued immediately. Victims will not be identified in any warning that is released.