

Concordia University, Nebraska Policy Against Sexual Misconduct

Last updated August 2020

I. NOTICE OF NON-DISCRIMINATION

Concordia University does not discriminate on the basis of sex, disability, age, race, color, gender, and national and ethnic origin in administering admissions and educational policies, scholarship and loan programs, and athletic and other school-administered programs. Admitted students enjoy the rights, privileges, programs and activities generally offered to all Concordia students.

CUNE prohibits discrimination against any member of the University community on the basis of race, color, sex, age, national origin or ancestry, genetic information, marital status, pregnancy, disability, military or veteran status. CUNE views, evaluates, and treats all persons in any University related activity or circumstance solely as individuals on the basis of their own personal abilities, qualifications, and other relevant characteristics. The University will conduct its programs, services and activities consistent with applicable federal, state and local laws.

As an entity of the LCMS, CUNE is exempt from the provision of the Civil Rights Act of 1964, which forbids discrimination in employment based on religion; therefore, we retain the right to give preference in hiring persons who are Christian, and/or members in good standing of LCMS congregations. Preference in holding certain employment positions is given to ordained or commissioned ministers of LCMS. The LCMS upholds the doctrinal belief that women may not serve as ordained ministers; therefore, women are not considered for ordained minister positions.

II. TITLE IX

Title IX of the Education Amendments of 1972 ("Title IX") is a federal law that prohibits discrimination on the basis of sex in federally-funded education programs and activities. Concordia complies with Title IX which states "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." (20 U.S.C. Sec. 1681 et seq.).

III. POLICY STATEMENT

A. Purpose

Concordia University Nebraska is committed to creating and maintaining a community where all persons who participate in University programs and activities can learn and work together free from sexual misconduct, sex discrimination and sexual harassment. Sexual misconduct, sex discrimination, sexual harassment, including sexual assault, domestic violence, dating violence and stalking, can be detrimental to the safe living and learning environment which Concordia University Nebraska seeks to maintain. Such behavior is prohibited by law and University policy. The University will respond promptly and effectively to reports of sexual misconduct, sex discrimination and sexual harassment including sexual assault, domestic violence, dating violence and stalking and will take appropriate action to prevent, correct and discipline behavior that violates University policy.

B. Scope

This policy applies to Concordia University Nebraska's Board of Regents, administrators, faculty, staff, and students, and individuals conducting business with the University. This policy applies to conduct that takes place on campus, in or on University owned or controlled

premises, in all Education Programs or Activities, including University-sponsored or supported events, and in University vehicles. Additionally, this policy applies off campus when the conduct potentially affects a person's education or employment with the University, poses a potential risk to members of the University community, or where the University in its discretion has an identifiable interest.

C. Free Speech

Principles of academic freedom are central to the mission of institutions of higher education. Speech and expression, which fall within the ambit of academic freedom, will not be considered a violation of this policy.

IV. DEFINITIONS AND PROHIBITED CONDUCT

A. Policy Definitions

1. **Complainant.** An individual who is alleged to have experienced conduct that could constitute Prohibited Conduct under this policy. There may be more than one complainant for an incident.
2. **Education Program or Activity.** Education Programs and Activities includes all of the University's operations, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the University. It also applies to all locations, events, or circumstances over which the university exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.
3. **Formal Complaint.** A document filed and signed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting the University investigate the allegation of sexual harassment.
4. **Formal Resolution.** A grievance process initiated when a formal complaint is filed alleging sexual harassment and/or other forms of sexual misconduct against a respondent, and also requests that the complaint be investigated. The Formal Resolution includes an investigation, a decision, and an appeal. The decision-making process includes a live hearing when the complaint involves allegations of "Title IX — Sexual Harassment." (For detailed explanation see Section X. Grievance Procedures and Complaint Resolution)
5. **Informal Resolution Process.** Alternate complaint resolution process available when a formal complaint is signed and filed alleging sexual harassment and/or other forms of sexual misconduct against a

respondent, and both parties voluntarily agree to have the complaint resolved informally.

6. **Mandatory Reporters.** Faculty, staff, and student employees (including RAs) are considered mandatory reporters. Concordia employees who hold a professional license, who are not employed by Concordia as a counselor, health service provider, or an ordained LCMS minister, are considered mandatory reporters (responsible employee). A mandatory reporter must report all allegations of sexual harassment and/or other forms of sexual misconduct to the Title IX Coordinator immediately to ensure the University is able to provide a prompt, thorough, and supportive response.
7. **Participants.** The term “participants” includes a “Complainant”, “Respondent”, and “Witness” as defined in this policy.
8. **Parties.** The term “parties” includes “Complainant” and “Respondent” as defined in this policy.
9. **Preponderance of the Evidence.** Preponderance of the evidence standard used for determining allegations of Prohibited Conduct under this policy. This standard is satisfied if the evidence and information gathered in the matter indicate that the action is more likely than to have occurred.
10. **Remedies.** Measures determined to be necessary by the Hearing Officer/Panel (Title IX) or Appropriate Administrator (Alternative Grievance Process for Students) to restore or preserve the complainant’s equal access to the University’s education program and/or activity.
11. **Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct under this Policy. There may be more than one respondent for an incident.
12. **Witness.** A person who is requested to participate in an investigation or a hearing because the person may have information about the alleged Prohibited Conduct. Names of potential witnesses may be supplied by the complainant, respondent, or others with knowledge of the matter.

B. Prohibited Conduct

The following, broadly referred to as “Sexual Misconduct,” constitute Prohibited Conduct which violates this and other University policies.

Federal regulations provide for certain procedures that must be used in the case of conduct that meets the definition of Sexual Harassment under Title IX (“Title IX – Sexual Harassment”). However, where conduct does not meet certain threshold requirements under Title IX, the same or similar conduct may still be prohibited by the University.

For reported behavior to qualify as Title IX – Sexual Harassment, in addition to meeting the elements of the specific type of Sexual Harassment below, it must meet all of the following threshold requirements, as determined by the Title IX Coordinator and as mandated by federal regulations:

- The conduct must have occurred against a person in the United States.
- The conduct must have occurred within the University’s education program or activity. For purposes of this Policy, this means that the conduct must have occurred either (a) in a location, event, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment occurred or (b) in relation to a building owned or controlled by a student organization that is officially recognized by the University.
- The complainant must be participating in or attempting to participate in the education program or activity of the University at the time the formal complaint is filed.

Conduct that does not meet these threshold requirements is subject to a Title IX Dismissal, but may still be resolved through the Alternative Grievance Process for Students and or under applicable policies found in a University handbook.

1. Title IX - Sexual Harassment

Sexual Harassment for purposes of this policy is conduct on the basis of sex that constitutes (a) Quid Pro Quo Harassment, (2) Hostile Environment Sexual Harassment, (3) Sexual Assault, (4) Domestic Violence, (5) Dating Violence, or (6) Stalking, as those terms are defined in this policy.

- a. **Quid Pro Quo Sexual Harassment.** A university employee conditioning an educational benefit, aid, or service of the University’s upon a person’s participation in unwelcome sexual conduct.
- b. **Hostile Environment Sexual Harassment.** Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the University’s education programs or activities.

In determining whether a Hostile Environment exists, the University will consider the totality of the circumstances, including factors such as the actual impact the conduct has had on the complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The University will evaluate the totality of the circumstances from the perspective of a reasonable person in the complainant’s position.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome, include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact;
- Unwelcome kissing, hugging, or massaging;
- Sexual innuendos, jokes, or humor;
- Displaying sexual graffiti, pictures, videos, or posters;
- Using sexually explicit profanity;
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities;
- E-mail and Internet use that violates this policy;
- Leering or staring at someone in a sexual way, such as staring at a person's breasts, groin and or buttocks;
- Sending sexually explicit emails, text messages, or social media posts;
- Commenting on a person's dress in a sexual manner;
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship; or
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes.

c. Sexual Assault. An offense or attempted offense that meets the definition of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, or Statutory Rape, as those terms are defined below:

1. **Rape** is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is "carnal knowledge" if there is the slightest penetration of the vagina or anus by the sexual organ of the other person.
2. **Sodomy** is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
3. **Sexual Assault with an Object** is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.
4. **Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
5. **Incest** is sexual intercourse between persons who are related to each other

within the degrees wherein marriage is prohibited by Nebraska law.

6. Statutory Rape is sexual intercourse with a person who is under the statutory age of consent as defined by Nebraska law.

d. Dating Violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a dating relationship shall be determined based on the consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction 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.

e. Domestic Violence. Violence, including felony or misdemeanor crimes of violence, committed by a current or former spouse or intimate partner 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 or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family laws of the state of Nebraska, or 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 state of Nebraska.

f. Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or that would cause a reasonable person to suffer substantial emotional distress. For the purposes of this definition:

- Course of conduct: Two or more acts, including, but not limited to, 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
- Reasonable person: A reasonable person under similar circumstances, similarly situated to the victim.
- Substantial emotional distress: Significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

2. Sexual Exploitation

Sexual exploitation occurs when a person, knowingly or recklessly, takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Non-consensual video-recording or audio-recording or photographing of sexual

- activity;
- Forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups;
 - The intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner;
 - Any activity that goes beyond the boundaries of Consent (such as permitting others to observe consensual sex with someone who is not aware of the observation);
 - Public indecency (exposure of genitals to others without consent); or
 - Knowingly exposing another person to a sexually transmitted infection (“STI”) or Human Immunodeficiency Virus (“HIV”) without prior knowledge and consent of the person to be exposed to STI or HIV.

3. Retaliation

Retaliation is any adverse action (including, but not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against an individual because the individual has made a report or filed a formal complaint; or has supported or provided information in connection with a report or formal complaint; participated in or refused to participate in a grievance process under this policy or engaged in other legally protected activities, including participation in the complaint procedures relating Title IX complaints with the U.S. Department of Education’s Office for Civil Rights. For an action or decision to be considered adverse, it must be materially adverse and be of a nature that would dissuade a reasonable, similarly-situated person from exercising their right to file a grievance or to participate in an investigation. Retaliation, for purposes of this policy, does not include petty slights or annoyances.

4. Sex Discrimination

The act of treating similarly situated persons differently on the basis of that person’s sex. This may also include disparate treatment on the basis of pregnancy or a pregnancy-related condition, or a sex stereotype.

Discrimination on the basis of sex/gender in employment is permissible in situations where sex/gender is a bona fide occupational qualification reasonably necessary to the normal operation of the university. Note that the federal regulations governing Title IX include certain exceptions/exemptions, such as single-gender housing and athletic participation, which do not constitute sex/gender discrimination.

5. Other Unprofessional/Inappropriate Conduct

Other Unprofessional/Inappropriate Conduct means behavior or conduct that is unprofessional and/or inappropriate for the educational and/or working environment, but does not rise to the level of Sexual Harassment or other form of Prohibited Conduct outlined above. Other Unprofessional/Inappropriate Conduct will be investigated and adjudicated according to the policies and procedures outlined in Section Alternative Grievance Process for Students and/or under applicable policies found in a University handbook.

C. Consent

Concordia adheres to God's Word in dealing with matters of sexual conduct. Nonconsensual physical/sexual behavior is inappropriate, unhealthy and against God's Word.

Consent is knowing, voluntary, and clear permission by word or action, to engage in each instance of 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 before engaging in the activity. A person who is incapacitated (as defined in this policy) is not capable of giving consent.

Relying on nonverbal communication alone may result in a violation of this policy. Consent cannot be inferred from silence, passivity, or lack of resistance. Additionally, consent to one form of sexual activity does not imply consent to other forms of sexual activity. Similarly, a current or previous sexual and/or dating relationship between the participants does not constitute consent. Even in the context of a relationship, there must be mutual consent.

Consent to some sexual contact, such as kissing or fondling, cannot be presumed to be consent to other sexual activity, such as intercourse.

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.

A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the acts to continue and, if that happens, the other person must stop immediately.

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. Silence or the absence of resistance alone is not consent.

Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) Coercion, (d) Incapacitation or (e) any other factor that would eliminate an individual's ability to exercise their own free will to choose whether or not to have sexual activity.

An individual is unable to provide Consent to engage in sexual activity when the individual:

1. Is under the age of 16 (Nebraska state law);
2. Has a mental or developmental or physical disability that renders him or her incapable of giving consent;
3. Is unconscious or physically unable to resist; or
4. Is incapacitated due to alcohol or other drugs, and this condition was known, or reasonably should have been known, by the respondent.

D. Incapacitation

Incapacitation means a state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep.

An incapacitated individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act

(e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless.

Incapacitation can only be found when the respondent knew or should have known that the complainant was incapacitated when viewed from the position of a sober, reasonable person. One’s own intoxication is not an excuse for failure to recognize another person’s incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone is insufficient to establish incapacitation. When alcohol or drug use is involved, incapacitation is a state beyond drunkenness or intoxication. Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination, considering the individual’s:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of the circumstances of the act
- Level of consciousness

No single factor is determinative of incapacitation. Some of the common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

E. Coercion

Coercion means conduct, including intimidation and express or implied threats of emotional, educational, reputational, financial, or other harm that would place a reasonable person in fear of immediate or future harm and that is employed to persuade or compel someone to engage in unwelcome sexual contact. Such acts may include, but are not limited to, threatening to disclose personal sexual information, or threatening to harm oneself if the other party does not engage in the sexual activity. Coercing an individual into engaging in sexual activity violates this policy.

V. REPORTING

A. Reporting to the University

The university encourages prompt reporting of possible Prohibited Conduct. It is important to note that the university distinguishes between reporting an incident of possible Prohibited Conduct to the university and filing a Formal Complaint. Reporting an incident of possible Prohibited Conduct informs the university of the incident and allows the university to provide supportive measures to the complainant. A report to the university will not necessarily result in a Formal Complaint being filed. If a complainant wishes to initiate the grievance process, they should file a Formal Complaint (as outlined below in Section X.C of this policy).

At the time of reporting, the complainant does not have to decide on a particular course of action in advance. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The university will offer reasonably available supportive measures consistent with this policy. The university can also provide support that

can assist a complainant in making these important decisions, and to the extent possible, will respect a complainant's autonomy in deciding how to proceed. The university will seek to balance a complainant's interest with its responsibility to provide a safe and non-discriminatory environment for all members of the university community.

The university encourages all individuals to seek assistance from medical provider(s) and/or law enforcement immediately after an incident of Prohibited Conduct, whether or not the complainant plans to pursue criminal charges. This option allows for the preservation of evidence and ensures a timely response by law enforcement.

To make a report about possible Prohibited Conduct, a party or any third party should notify the Title IX Coordinator. A report may be made at any time, including during nonbusiness hours, in person, by telephone, by mail, by email, or by completing the online reporting form. The preferred method of reporting is electronically, using the online report form.

Title IX Coordinator

The university has designated a Title IX Coordinator. The Title IX Coordinator is responsible for overseeing the university's compliance with Title IX, including accepting reports and/or reports of sexual harassment or retaliation from students, faculty, and staff, assisting with the investigation of Title IX complaints and coordinating the university's training, education and prevention efforts. The university's Title IX Coordinator is:

Shawn Zook, Human Resource and Payroll Specialist
Title IX Coordinator
Weller 102, 800 North Columbia, Seward, Nebraska 68434
Shawn.Zook@cune.edu
402-643-7261

If an individual believes that the Title IX Coordinator has engaged in Prohibited Conduct or has otherwise behaved inappropriately, the individual should contact David Kumm, Executive Vice President, to discuss the complaint process.

B. Anonymous Reporting

Anyone may make an anonymous report regarding alleged violations of this policy to the Title IX Coordinator or by completing an online report form. While anonymous reports are accepted and will be reviewed by the Title IX Coordinator, the decision to remain anonymous may significantly impact the university's ability to address the reported conduct, investigate the reported conduct, collect evidence, or take action against parties alleged to have violated this policy.

C. Request Not to Investigate

The university recognizes that the reports made under this process are personal in nature and will make every effort to respect the privacy and wishes of those identified in a report or formal complaint it receives. As stated in Section IV.A.6 above, university employees, with the exception of confidential resources, are required by university policy to report any information they receive of an alleged violation of this policy to the Title IX Coordinator. Even though a complainant may request that the university not initiate an investigation, the university may need to proceed in order to act in the best interest of campus safety.

Complainants may make a verbal or written request to the Title IX Coordinator that the University keep their identity and identifying information confidential from respondents; not investigate a report the university has received; or dismiss a formal complaint. Generally, the University will make every effort to comply with such requests from complainants. However, the university's Title IX Coordinator must evaluate such requests for confidentiality in the context of the university's responsibility to provide a safe and nondiscriminatory environment for the entire university community. Accordingly, there are situations in which the university must deny a complainant's request in order to meet its obligations to the campus community as a whole. When weighing a request for confidentiality, the university will consider a range of factors. These factors include, but are not limited to:

- circumstances that suggest there is an increased risk of the Respondent committing additional acts of sexual misconduct, interpersonal violence, or other violence (e.g., prior allegations of sexual misconduct or interpersonal violence made against the Respondent, a history of arrests, etc.),
- the reported use of force during the commission of an alleged violation of this policy,
- the reported use of a weapon during the commission of an alleged violation of this policy,
- significant physical injury resulting from an alleged violation of this policy,
- the reported involvement of multiple respondents in the commission of an alleged violation of this policy,
- whether the school possesses other means to obtain relevant evidence (e.g., security cameras, personnel who witnessed the event, physical evidence), and
- other relevant factors, including but not limited to:
 - the frequency and severity of the alleged behavior
 - the age of the complainant (for example, if the complainant is a minor)
 - any position of trust a respondent may hold due to the nature of their employment or other relevant status with the university.

1. Notice of Decision on Request

If a complainant requests in writing that the university not investigate a report, the university must notify the complainant of its decision related to that request. The Title IX Coordinator will make that notification in writing to the complainant. Similarly, if a complainant has made a request that their identifying information not be used in an investigation, the Title IX Coordinator will notify the complainant in writing of his or her decision. Lastly, in accordance with Title IX, should the university dismiss a Formal Complaint at any stage of the process, the university must provide both the complainant and respondent a written notice of the dismissal of the complaint as well as the reason(s) for the dismissal.

2. Confidentiality

The university recognizes that the privacy of all involved in reported incidents and in all matters resolved through the grievance process is extremely important. The university may only share information as necessary in order to meet its investigative and compliance obligations.

D. Privacy

Privacy generally means that information related to a report of Prohibited Conduct will only be shared with those university employees who “need to know” in order to assist in the active review, investigation, or resolution of the report, including the issuance of supportive measures. The university will determine which employees have a legitimate need to know about individual conduct complaints pursuant to FERPA, Title IX, the Clery Act, and university policy and will share information accordingly. The university may notify the parents or guardians of any dependent students who are respondents regarding conduct charges or sanctions, particularly disciplinary probation, loss of housing, suspension and dismissal.

E. Confidential Resources

In addition to a number of off-campus confidential resources, the university has also identified several confidential resources available to students and employees. Students may discuss an incident with confidential employees or an off-campus resource (e.g., rape crisis center, doctor, psychologist, clergy, etc.) at their discretion, without fear of their identity being reported to the university. Likewise, employees may also seek support from the Employee Assistance Program or an off-campus resource (e.g., rape crisis center, doctor, psychologist, clergy, etc.) at their discretion, without fear of their identity being reported to the university. A number of off-campus resources are listed in Section VI Resources and Assistance below.

1. Confidential Employees

Students, faculty, and staff may wish to seek confidential assistance in dealing with an incident of sexual misconduct. The University has identified specific employees who will maintain confidentiality under the professional license or professional ethics necessary for their employed role at the University. Please see the University’s Title IX webpage for a list of those Concordia employees who may keep information regarding incident of sexual misconduct confidential. The list includes the following individuals:

Rev. Ryan Matthias, Campus Pastor

CampusPastor@cune.edu, 402-643-7216, Janzow Campus Center 208

Kathleen von Kampen, Campus Counselor

Kathleen.Vonkampen@cune.edu, 402-643-7398, Janzow Campus Center 202A

2. Employee Assistance Program

Eligible employees have access to the Employee Assistance Program (EAP) as part of their benefits with the university. The EAP covers up to six free face-to-face sessions with a counselor, per issue, per year, plus unlimited telephonic assistance. The university is not notified when an employee uses the service.

Employee Assistance Program

866.726.5267, <http://www.cignabehavioral.com>, 24 hours a day/7 days a week.

F. Mandatory Reporting Requirement for University Employees

With the exception of Confidential Employees, all university employees, Faculty, staff, and student employees, including RAs and RCs, are Mandatory Reporters. Mandatory Reporters must promptly report to the university's Title IX Coordinator or Director of Human Resources when they witness or receive information regarding an incident that the employee reasonably believes constitutes Prohibited Conduct (Sexual Misconduct) including Sexual Harassment, Sexual Assault, Dating Violence, or Stalking, which is alleged to have been committed by or against a person who was a student enrolled at or an employee of the University at the time of the incident. University employees who hold a professional license who are not employed by the university as a counselor, health service provider, or an ordained LCMS minister, are considered Mandatory Reporters. **Failure to report by a Mandatory Reporter is a violation of this policy and may warrant discipline up to and including termination.** A Mandatory Reporter's duty to report does not grant investigative responsibility.

Mandatory Reporters are required to make a report using the university's online form. An email or written memo is also acceptable if it can be delivered to the Title IX Coordinator or Director of Human Resources promptly after the Mandatory Reporter's duty to report arises.

The report must include all information concerning the incident known to the Mandatory Reporter which is relevant to an investigation under this policy, including whether the subject of the report has expressed a desire for an institutional response to the incident or made a request for confidentiality in reporting the incident.

Mandatory Reporters are required to report Prohibited Conduct including Sexual Harassment even if they have been requested by the person confiding in them to keep the discussion confidential. Mandatory Reporters are not permitted to use the anonymous reporting option.

When a Mandatory Reporter receives a report of Prohibited Conduct from a potential victim, the victim should be notified that:

- the employee must report the information to the Title IX Coordinator;
- the Title IX Coordinator will reach out to the potential victim to provide supportive measures; and
- confidential communications can be made with the university's Campus Pastor or counselors in the University's Counseling Center and that those communications will not be reported to the Title IX Coordinator without the potential victim's consent.

Additional reporting requirements for sexual offenses: Reporting a sexual offense under this policy is not the same as making a "Clery" report as required under university policy.

G. Reporting to Law Enforcement

A complainant may choose to file a police report about an incident, regardless of his or her decision to file a formal complaint with the university. While the contact information for the Seward Policy is listed below, the Title IX Coordinator or Student Life Office can assist individuals with contacting the appropriate law enforcement agency if an incident takes place outside of the city of Seward.

Seward Police Department
Emergency: 911

Non-Emergency: 402 643-3002
Victim Assistance: 402-641-2455

H. Reporting to the U.S. Department of Education

Students and employees experiencing harassment or discrimination also have the right to file a formal grievance with government authorities, specifically with the Office of Civil Rights (OCR) (<http://www2.ed.gov/about/offices/list/ocr/index.html>) of the U.S. Department of Education. The OCR for Nebraska is located at:

Kansas City Office
Office for Civil Rights
U.S. Department of Education
One Petticoat Lane
1010 Walnut Street, 3rd floor, Suite 320
Kansas City, MO 64106
Telephone: 816-268-0550
FAX: 816-268-0599; TDD: 800-877-8339
Email: OCR.KansasCity@ed.gov

VI. RESOURCES AND ASSISTANCE

A. Immediate Assistance

1. Medical Care

The university strongly encourages victims of dating or domestic violence, sexual assault, or other sexual violence to seek immediate medical attention. Not only will medical personnel be able to provide appropriate medical treatment, they may also be able to preserve DNA and other evidence related to the sexual violence. This evidence may be helpful in any criminal investigation that may take place as well as in obtaining a protective order against the perpetrator. Victims have access to a medical examination in order to preserve evidence whether or not they choose to make a report to law enforcement. Whenever possible, this exam should be done immediately after the incident. If it is not possible to complete the exam immediately, victims who have experienced sexual assault can still obtain a Sexual Assault Medical Forensic Exam within four days of the assault.

2. Law Enforcement Assistance

The university strongly encourages individuals who have witnessed or been the victim of sexual misconduct to report the incident to law enforcement, even if time has passed since the incident. A law enforcement agency's jurisdiction is geographic, and the agency responsible for receiving a report will depend upon where the incident occurred. If the incident occurred on the Concordia University Nebraska campus or somewhere off campus in the City of Seward, reports may be filed with the Seward Police Department by calling:

Emergency: 911
Non-Emergency: 402 643-3002

Victim Assistance: 402-641-2455

3. Counseling Assistance

In addition to medical care, individuals who have experienced sexual misconduct are encouraged to seek counseling assistance, even if they do not intend to report the incident to the university or to law enforcement. Additionally, other individuals who may have been impacted by an incident are also encouraged to seek counseling. Counseling can be accessed independently through a provider of the individual's choosing, however the university also provides counseling resources.

Students wishing to talk to a university counselor should contact:

Kathleen von Kampen, Campus Counselor

Kathleen.Vonkampen@cune.edu, 402-643-7398, Janzow Campus Center 202A

Employees should contact:

Employee Assistance Program

866.726.5267, <http://www.cignabehavioral.com>, 24 hours a day/7 days a week.

B. Additional Off-Campus Resources

In addition to the on-campus resources discussed above, there are a number of off-campus resources available to students, faculty, and staff.

Memorial Health Care Center

300 North Columbia Ave. Seward, NE
402-643-2971

Bryan East Campus

1600 S. 48th St., Lincoln, NE 68506
402-481-1111

Hope Crisis Center

24 hr. Crisis Line
Confidential, 1-1, Advocacy
Temporary Shelter, food, clothing 877-388-HOPE (4673)

National Sexual Assault Hotline

Free, confidential counseling 24 hours a day
A national (not a local) service provider, however they can help connect you to local providers
1-800-656-4673

RAINN (Rape, Abuse, & Incest National Network) (Sexual Assault)

1-800-656-4673 (HOPE); <http://www.rainn.org>

National 24 hr. helpline for sexual assault survivors. Assist in directing people to local services and will speak with persons in crisis.

VII. SUPPORTIVE MEASURES

Parties involved in an incident reported under this policy are entitled to reasonably available supportive measures, regardless of whether or not a formal complaint is filed. Supportive measures are offered without fee or charge, are not disciplinary in nature, and are not designed to unreasonably burden the other party.

The university will maintain the confidentiality of the individuals receiving supportive measures, to the extent that maintaining such confidentiality does not impair the university's ability to provide the supportive measures. Supportive measures are assessed individually and tailored to the specific needs of the Parties involved.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Any requests for or questions concerning supportive measures should be directed to the Title IX Coordinator.

Potential supportive measures, implemented on behalf of the complainant and/or the respondent to the extent reasonably available and warranted by the circumstances, include, but are not limited to:

- Residence hall reassignment
- Counseling
- Extensions of course-related deadlines, including rescheduling of exams and assignments
- Modifications to class or work schedules and/or locations
- Withdrawal from or re-taking a class without penalty
- Imposition of a mutual "no-contact order" (failing to abide by the no-contact order may result in allegations of additional policy violations)
- Campus escorts
- Leave of absence
- Providing assistance with identifying resources available to assist with matters of visa or immigration issues

VIII. EMERGENCY REMOVAL AND EMPLOYEE ADMINISTRATIVE LEAVE

In addition to the supportive measures described in Section VII Supportive Measures, the University may, where appropriate, remove a student or employee on an emergency basis.

A. Emergency Removal

A student respondent may be removed from the university's programs and activities on an emergency/temporary basis if, after an individualized safety and risk analysis by the Title IX Coordinator or the Title IX Coordinator's designee, it is determined that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. Under these circumstances, the student respondent will be

notified in writing of the emergency removal from the university's education program or activity, and the student respondent will have an opportunity to immediately challenge the decision.

B. Employee Administrative Leave

An employee respondent may be placed on administrative leave, in accordance with the university's policies and procedures, during the pendency of the grievance process.

IX. ADDITIONAL CONDUCT VIOLATIONS

A. Other Prohibited Conduct

In addition to the Prohibited Conduct described in Section IV.B Prohibited Conduct of this policy, individuals subject to this policy should be aware that all other university policies apply as well. Other violations of university policy that occur in the course of an investigation, informal resolution, or formal grievance process are subject to discipline. Examples of such conduct include, but are not limited to:

1. False Complaint or Providing False Information

All participants in this process are expected to provide truthful information to the best of their ability. Any person who, in bad faith, knowingly files a false complaint under this policy or provides materially false information is subject to disciplinary action up to and including dismissal or separation from the university. A determination that a respondent is not responsible for allegations of sexual misconduct does not imply a report, formal complaint, or information provided by a complainant or witnesses was false. Similarly, a determination that a respondent is responsible for a policy violation does not imply that a respondent's or witness statements disclaiming responsibility were false.

2. Interference with Complaint Resolution Process

Any person who interferes with the complaint resolution process under this policy is subject to disciplinary action up to and including dismissal or separation from the university. Interference with a grievance process may include, but is not limited to:

- Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- Removing, destroying, or altering documentation relevant to the grievance process; or
- Knowingly providing false or misleading information to the Title IX Coordinator, investigator(s) or hearing officer(s)/panel, or encouraging others to do so.

B. Concurrent Pending Personnel, Academic, or Conduct Actions

The filing of a formal complaint under this policy will not stop or delay the enforcement of other university policies, including, but not limited to:

- Any evaluation or disciplinary action relating to a complainant who is not performing up to acceptable standards or who has violated other university rules or policies;
- Any evaluation or grading of students participating in a class;
- The ability of a student to add/drop a class or change academic programs; or

- Any job-related functions of a university employee.

X. GRIEVANCE PROCEDURES AND COMPLAINT RESOLUTION

A. University Officials Involved in the Grievance Process

1. Title IX Coordinator

The Title IX Coordinator is the university administrator responsible for oversight of the university's compliance with Title IX. The Title IX Coordinator is responsible for responding to reports and formal complaints of Sexual Harassment as well as other Prohibited Conduct under this policy. Any member of the university community may contact the Title IX Coordinator with questions or to discuss the grievance process. The Title IX Coordinator is also available to discuss this policy and the grievance processes, coordinate supportive measures, and provide education on sexual misconduct, Sexual Harassment and other relevant issues.

2. Investigators

Investigators are neutral and impartial fact finders assigned by the university to investigate formal complaints and gather evidence and information. Investigators are responsible for completing an investigation report at the end of the investigation.

3. Hearing Officer(s)/Panel

The hearing officer(s) is responsible for conducting the hearing in an efficient and orderly fashion. This includes ensuring that all participants and attendees of the hearing comply with university expectations for their conduct during the proceedings. The hearing officer(s) is also responsible for evaluating the relevancy of questions the parties wish to ask of each other and witnesses and rendering a written determination regarding the responsibility of the respondent as related to the alleged Prohibited Conduct. Hearing officer(s) are responsible for conducting themselves and rendering a decision in a neutral, impartial, and objective manner.

4. Appeal Officer

The appeal officer is a neutral party assigned to review appeals of the grievance process as outlined in this policy. The appeal officer cannot be the Title IX Coordinator or an Investigator or Hearing Officer involved in the decision being appealed.

B. Applicability of Grievance Processes

1. Students

The grievance process in Sections X.A to X.J of this policy applies in instances where:

- The reported behavior qualifies as Title IX – Sexual Harassment as defined in this policy and meets all of the following threshold requirements, as determined by the Title IX Coordinator and as mandated by federal regulations:

- The conduct must have occurred against a person in the United States.
- The conduct must have occurred within the university's education program or activity. For purposes of this policy, this means that the conduct must have occurred either (a) in a location, event, or circumstances over which the university exercised substantial control over both the respondent and the context in which the sexual harassment occurs or (b) in relation to a building owned or controlled by a student organization that is officially recognized by the university.
- The complainant must be participating in or attempting to participate in the education program or activity of the university at the time the formal complaint is filed.

Conduct that does not meet these threshold requirements is subject to a Title IX Dismissal, but in instances where the Respondent is a student at the time of the alleged conduct the process in Section X.K Alternative Grievance Process for Students of this policy applies.

2. Employees

The grievance process in Sections X.A to X.J of this policy applies in instances where:

- The reported behavior qualifies as Title IX – Sexual Harassment as defined in this policy and meets all of the following threshold requirements, as determined by the Title IX Coordinator and as mandated by federal regulations:
- The conduct must have occurred against a person in the United States.
- The conduct must have occurred within the university's education program or activity. For purposes of this Policy, this means that the conduct must have occurred either (a) in a location, event, or circumstances over which the university exercised substantial control over both the respondent and the context in which the sexual harassment occurs or (b) in relation to a building owned or controlled by a student organization that is officially recognized by the university.
- The complainant must be participating in or attempting to participate in the education program or activity of the University at the time the formal complaint is filed.

Conduct that does not meet these threshold requirements is subject to a Title IX Dismissal, and instances of allegations of sexual misconduct against employees will be handled according applicable policies found in a university handbook. In instances where the respondent is a student at the time of the alleged conduct, the process in Section X.K Alternative Grievance Process for Students of this Policy applies.

3. Contracted Workers, Vendors, Visitors, Volunteers, etc.

In reviewing formal complaint against third parties, the university will apply the analysis described above with regard to employees. The university may apply other institutional policies to third-party respondents if the grievance procedures outlined in this policy do not apply to the alleged conduct.

C. Formal Complaint

In order to initiate the grievance process, the complainant must sign a formal complaint requesting an investigation and submit it to the Title IX Coordinator. A formal complaint is a document filed in writing by and signed by a complainant, or signed by the Title IX Coordinator that alleges conduct prohibited under this policy by a respondent and requests that the university officially investigate and resolve the allegation. The formal complaint may be filed with the Title IX Coordinator by in-person delivery, by mail, by electronic mail, or through the online reporting form and must contain the Complainant's physical or digital signature. In the instances when the Title IX Coordinator signs and submits a formal complaint, the Title IX Coordinator is not a complainant or a party during a Formal Resolution, and must comply with requirements for any person involved in the response and/or resolution to be free from conflicts and bias. The complaint must be submitted in writing and must include the following:

- Name and contact information of complainant;
- Name(s) of respondent(s) (if known);
- A detailed description of the alleged conduct or incident that is the basis of the alleged violation under this policy;
- Dates(s), time(s), location(s) of the alleged occurrence(s); and
- Names of any witnesses to the alleged conduct or incident

The Complainant may also submit any documents or information relevant to the formal complaint. The Respondent will have access to any and all information gathered during the course of an investigation, including the formal complaint and any materials submitted with it.

1. Dismissal of Formal Complaints

a. Required Dismissal

Under the Title IX regulations, the university is required to distinguish between prohibited conduct under the purview of Title IX and prohibited conduct that may be a violation of other university policies. The university is legally required to dismiss a Formal Complaint of Title IX - Sexual Harassment as defined by this policy, in whole or in part, when Sexual Harassment is alleged and where:

- The conduct does not meet the definition of Title IX-Sexual Harassment;
- The alleged conduct did not occur in the university's education program or activity; or

- The alleged conduct did not occur against a person in the United States.

A required dismissal under this section applies only to allegations of Title IX - Sexual Harassment. The university may still investigate a formal complaint to assess whether other institutional policies have been violated. The university may also investigate allegations of prohibited conduct under this policy but not technically under the purview of Title IX.

b. Discretionary Dismissal

A formal complaint may be withdrawn if the complainant informs the Title IX Coordinator in writing that he or she wants to withdraw the complaint or the allegations. The Title IX Coordinator may choose to withdraw a formal complaint if a respondent is no longer participating in or attempting to participate in the education or program activity of the university, the complainant submits a written request to withdraw the complaint, or specific circumstances prevent the university from gathering evidence sufficient to reach a determination. No matter the reason for the withdrawal of a complaint, the parties will be notified in writing of the decision, including the reasoning.

c. Notice of Dismissal

If the university dismisses a formal complaint pursuant to the preceding paragraph, the university will provide both parties a written notice of the dismissal in addition to the reason(s) for the dismissal.

d. Appeal of Decision to Dismiss

Either party may appeal that university's decision to dismiss a formal complaint, utilizing the appeal process outlined in Section X.I. Appeals.

e. Concurrent Criminal or Civil Proceedings

As a matter of practice, the University will not wait for the outcome of a concurrent criminal or civil proceeding to take action on a formal complaint. At the university's discretion, the university may pause or delay an investigation for a brief period of time due to concurrent criminal or civil proceedings on a case-by-case basis.

D. Notice of Formal Complaint

Once a formal complaint is received, the Title IX Coordinator will provide a written notice to the parties of the formal complaint and available university resources. The written notice of the formal complaint will include the following:

- A notice of the grievance process as outlined in this policy;
- A notice of the allegations that potentially constitute prohibited conduct under this policy, including sufficient details about the alleged conduct known to the university at the time of receipt of the formal complaint. "Sufficient details" include the identity of the parties (if known), as well as the date(s), time(s), and location(s) of the alleged conduct;
- A statement of the potential policy violations being investigated;

- A statement that the respondent is presumed not responsible for the alleged conduct and that the determination regarding responsibility will be made at the conclusion of the grievance process;
- The rights of both parties to an advisor of their choice who may be, but is not required to be, an attorney, and that their advisor may inspect and review all evidence;
- A statement that the parties may review evidence gathered as part of any investigation;
- A reference to the provision of this policy (Section IX.A.1) that knowingly making false statements or submitting false information during the grievance process is prohibited and subject to disciplinary action; and
- Any other information relevant to the written notice.

E. Informal Resolution

The university may, in the Title IX Coordinator's discretion, facilitate an informal resolution in accordance with the protocol outlined below.

Generally, informal resolution involves a structured, supervised interaction between the parties and/or other affected community members that seeks to identify and meet the needs of the complainant while providing an opportunity for the respondent and/or other affected community members to accept responsibility and repair harm (to the extent possible). Informal resolution may not include an investigation, hearing, or disciplinary action against a respondent (including transcript notations), but may include imposing appropriate and reasonable remedies as agreed to by the parties. All informal resolutions are facilitated by a trained administrator or outside expert.

1. Informal Resolution Availability

Informal resolution is available in matters in which the Title IX Coordinator, in the Title IX Coordinator's discretion, determines it is appropriate. Factors the university will consider when determining whether a report of Prohibited Conduct is suitable for informal resolution include, but are not limited to:

- the nature and severity of the conduct, including whether the use of force or a weapon was involved;
- the respondent's prior known disciplinary or criminal conduct, including whether the university has received other reports of Prohibited Conduct committed by the respondent;
- whether the alleged incident poses a risk of harm to other individuals or the community;
- the dynamics of power or control commonly associated with the alleged conduct or the nature of the parties' relationship;
- whether multiple parties are affected or involved;
- any admissions of responsibility by the Respondent; and
- any other factor deemed relevant by the Title IX Coordinator or their designee in the interest of overall campus safety or safety of the parties involved.

Informal resolution will not be permitted if the respondent is a non-student employee accused of committing Sexual Harassment against a student.

2. Informal Resolution Process

At any time after the parties are provided written notice of the formal complaint, and before the completion of any appeal, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the formal complaint by agreement of the parties.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another university official, or a suitable third-party);
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a Party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each Party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence. The University will not pressure or compel any individual to engage in mediation, to directly confront the other, or to participate in any particular form of informal resolution. Individuals may be accompanied by an advisor or support person at any meetings related to the informal resolution process.

3. Informal Resolution Timeframe

Informal resolutions of a formal complaint will typically be concluded within 30 calendar days after notice to the university that both parties wish to proceed with the informal resolution process. The Title IX Coordinator may adjust any time periods or deadlines in the informal resolution process for good cause. During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

4. Termination of Informal Resolution

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized. If a party exercises their right to terminate an informal resolution, the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

5. Informal Resolution Agreements and Documentation

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signatures. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, appeal, remediation, or discipline by the university, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to the university.

Any final resolution pursuant to the informal resolution process will be documented and kept for at least seven years as required by law. However, no recording of the informal resolution process will be made and all statements made during the informal resolution process may not be used for or against either party (and the hearing officer and appeal officer may not consider any such statement made during informal resolution) should the parties resume the grievance process. Failure to comply with an informal resolution agreement may result in disciplinary action.

F. Investigations of a Formal Complaint

1. Time to Respond

After the university provides the parties with a written notice of a formal complaint, the respondent will be allowed a reasonable time to respond in writing and through an interview with the investigators.

2. Notice of Meetings, Proceedings, and Interviews

The university will provide written notice to a party whose participation is invited or expected of the date, time, location, participants, and purpose of all meetings, investigative interviews, or other proceedings in the grievance process, with sufficient time for the party to prepare to participate. The complainant and respondent may have an advisor of their choice attend any related interview, meeting, or proceeding in the grievance process. Advisors are not permitted to actively participate in meetings or proceedings in the grievance process, unless explicitly provided for in this policy.

3. Evidence

The parties may present the investigator with any information or evidence that may be relevant to the formal complaint. The parties may present the names of any fact or expert witnesses who may provide relevant information, and how the witnesses may be relevant to the formal complaint. The parties may submit to the investigators any questions they would like asked of any known potential witnesses or parties.

4. Witness Interviews

The complainant and respondent may present witnesses to the investigator. The investigator(s) will interview relevant and available witnesses.

5. Investigation Timeframe

The investigation of a formal complaint will typically be concluded within 90 days of the filing of a formal complaint. The university, for good cause, may extend the time frame and will notify both parties of any such extension, including the reason for such an extension. The parties will be updated on the progress of the investigation as needed.

6. Access to Evidence

After the investigation report has been drafted, but not yet finalized, the investigators will provide each party and each party's advisor, if any, with access to all evidence obtained (relevant or not) as part of the investigation. Both parties will have at least 10 calendar days to inspect, review, and respond to the evidence. All responses to the evidence must be submitted by the parties, in writing, to the investigators. Advisors are not permitted to submit written response to the evidence on their own or on behalf of the party they are advising. The investigators will consider all timely responses submitted by the parties in finalizing the investigation report.

7. Completed Investigation Report

The investigators will complete an investigation report that summarizes all relevant evidence. In addition, the completed investigation report will contain the following:

- A list of each of the allegations that potentially constitutes prohibited conduct under this policy;
- A timeline of the procedural steps of the investigation;
- Summaries of participant statements and responses to questions.

The investigators will provide the completed investigation report concurrently to both parties and each party's advisor, if any, at least 10 calendar days prior to the date of the scheduled hearing in order to review and prepare for the hearing. A copy of the completed investigation report will also be issued to the Title IX Coordinator and the hearing officer(s) assigned to the hearing.

G. Standard of Evidence and Presumption of Not Responsible

Respondents have the right to be, and will be, presumed not responsible for a violation of Prohibited Conduct unless found in violation at the end of the grievance process. All decisions in the grievance process will be made using the preponderance of the evidence standard.

H. Hearing

1. Written Notice of Hearing

The university will provide written notice to participants of the hearing, and the participant's advisor, if any, at least 10 calendar days in advance of the hearing. The written notice shall include the date, time, and location for the hearing as well as names of all participants in the hearing (including the hearing officer(s) and all parties and participants in the investigation report). The notice shall also include the purpose of the hearing, a statement of the alleged prohibited conduct, and a summary statement of the evidence gathered.

2. Challenges to the Hearing Officer(s)

Both the complainant and the respondent have the right to challenge the hearing officer(s) on the basis of fairness, impartiality, or objectivity. The challenge must be submitted in writing to

the hearing officer(s) within five (5) calendar days after receiving notice of the name of the hearing officer and must state the reasons for the challenge. The hearing officer(s) will be the sole judge of whether they can serve with fairness, impartiality, and objectivity. In the event that the hearing officer(s) recuses themselves, another Hearing Officer will be selected.

3. Duties of the Hearing Officer(s) During the Hearing

The hearing officer(s) is/are responsible for conducting the hearing in an efficient and orderly fashion. The hearing officer(s) may question participants who testify at the hearing at any time and will rule on the relevancy of questions posed to participants at the hearing. Additionally, the hearing officer(s) will rule on all procedural matters and on any objections that may arise during the hearing.

4. Physical and Virtual Hearing Space

The university may provide for a live hearing to occur either in person or virtually, utilizing technology that allows both parties and the hearing officer to simultaneously see and hear participants answering questions. At the request of either party, the university will arrange for the hearing to occur with the parties in separate rooms and allowing participants to participate virtually. Participants may choose to appear at the hearing virtually, and are not required to be physically present at the same physical location as the hearing.

5. Access to Evidence

Each party will have access to all of the evidence from the investigation, including a copy of the completed investigation report.

6. Recording of the Hearing

The hearing will be recorded. The university will determine if the recording is made in audio or audiovisual format. The hearing proceedings may be transcribed at the sole discretion of the university. The recording or transcript, if applicable, will be available for the parties to inspect and review, upon request.

7. Advisor of Choice

Both parties are entitled to an advisor of their choice at the hearing. If a party does not have an advisor, the university will provide one. Advisors are not permitted to actively participate in the hearing, except for asking questions of the other party and of any witnesses.

8. Opening and Closing Statements

Both the complainant and respondent may make opening and closing statements.

9. Exclusion of Privileged Information

The hearing officer(s) may not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege in the state of Nebraska, unless the person holding such privilege has waived the privilege. This includes information protected by attorney-client privilege and physician-patient privilege.

10. Questioning Participants

a. Questioning by the Hearing Officer(s)

The hearing officer(s) may ask questions of any participant in the hearing at any time, and may be the first person to ask any question of any party or witness.

b. Questioning by Advisors

Each party's advisor will have the opportunity to ask relevant questions and follow up questions of the other party and of any witnesses that participate in the hearing. This includes questions challenging credibility. The parties will not be permitted to question other participants themselves. Each advisor has the ability to ask questions verbally, directly, and in real time at the hearing. After an advisor asks each question, but before the participant being questioned responds, the hearing officer(s) will rule as to whether or not the question is relevant to the alleged conduct charges. If the hearing officer(s) decides the question is irrelevant, the hearing officer(s) must explain their decision to exclude the question. If the hearing officer(s) decides the question is relevant, the participant must answer it.

c. Prior Sexual History

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove the complainant consented to the alleged conduct.

d. Not Submitting to Cross-Examination

If a party or witness refuses to submit to cross-examination during the hearing, the hearing officer(s) will not rely on any statement of that party or witness, when reaching a responsibility determination. The hearing officer(s) will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.

11. Hearing Officer(s) Determination

Within ten (10) business days of the conclusion of the hearing, the hearing officer(s) will issue a written decision, which will include the following:

- The allegations that potentially constitute prohibited conduct under this policy and were under review at the hearing;
- A timeline of the procedural steps of the grievance process, beginning with the receipt of the formal complaint through the conclusion of the hearing;
- The findings of fact that support the hearing officer(s)'s determination;
- The decision and rationale as to whether the respondent is responsible for each allegation;
- Any disciplinary sanctions imposed, if applicable;

- The remedies, if applicable, designed to restore the complainant's access to the education program or activity; and
- The university's procedures and permissible basis for the complainant and respondent to appeal.

The hearing officer(s) will send a copy of the written decision concurrently to both parties. In addition, a copy will be sent to the Vice President for Student Affairs and Athletics (for student respondents) or appropriate administrator (for employee respondents) and the Title IX Coordinator.

I. Sanctions and Remedies

The following sanctions and remedies may be imposed by the hearing officer(s) in accordance with this policy:

1. Student Respondents

- Educational training;
- Prohibition on shared classes or extra-curricular activities;
- Suspension or revocation of rights and privileges, including but not limited to participation in athletic or extracurricular activities and ability to reside in University owned or operated housing;
- Withholding of grades, official transcript, and/or degree;
- Bar against readmission, bar against enrollment, drop from one or more classes, and/or withdrawal from the University;
- Denial of degree;
- Revocation of degree and withdrawal of diploma;
- Disciplinary probation;
- Denial of admission to and/or removal from a university program or activity;
- Suspension from the university. Suspension is for a set period of time and is noted on the academic transcript. At the request of the student, the notation can be removed from the transcript when the period of suspension has concluded and all conditions of the suspension and any other sanctions have been met;
- Expulsion (permanent removal from the University). Expulsion creates a permanent notation on the student's academic transcript; and/or
- Other sanction(s) or remedies as deemed appropriate by the hearing officer.

2. Employee Respondents

- Employment probation;
- Job demotion or reassignment;
- Suspension (with or without pay) for a specific period of time;
- Dismissal or termination;
- Ineligibility for rehire; and/or
- Other sanction(s) or remedies as deemed appropriate by the hearing officer(s).

J. Appeals

Either party may appeal either the university's decision to dismiss a formal complaint or a hearing officer(s)'s decision in writing within 10 calendar days of notification of the decision to dismiss the complaint or the hearing officer(s)'s determination. Appeals are limited to the following basis:

- There was a procedural irregularity that affected the outcome of the matter;
- There is new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- The Title IX Coordinator, investigator(s), or hearing officer(s) had a conflict of interest or bias for or against the parties (generally or the parties specifically involved in this matter) that affected the outcome of the matter.

When an appeal is filed, both parties will be notified in writing of the appeal, and the university will promptly provide a copy of the appeal to the non-appealing party. Any non-appealing party will have seven calendar (7) days from the notification of the appeal to submit a written statement in support of the outcome. The appeal officer will review the appeal and issue a written decision within 21 calendar days from the date the appeal was submitted.

At the conclusion of their review, the appeal officer will issue a written decision to:

- Affirm the university's decision to dismiss a formal complaint;
- Affirm the hearing officer's determination regarding the respondent's responsibility and affirm the disciplinary sanction(s) and remedies, if applicable;
- Affirm the hearing officer(s)'s determination regarding the respondent's responsibility and amend the disciplinary sanction(s) and remedies, if applicable;
- Remand the process back to the hearing stage for the original hearing officer to remedy any procedural irregularity or consider new evidence;
- Remand the process back to the hearing stage for a new hearing officer to conduct a new hearing on the matter;
- Reverse the University's decision to dismiss a complaint, reinstate the complaint, and imitate the formal grievance process;
- Reverse the hearing officer's determination of the respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
- Affirm or amend the sanctions and/or remedies outlined in an administrative resolution.

K. Record Keeping

The university will retain all of the documentation included in the grievance process for at least seven years, in accordance with state and federal records laws and university policy. Records of all matters resulting in expulsion (students) and ineligibility for rehire (employees) will be kept permanently. All documentation of records are private and confidential. Student records of the grievance process are disciplinary records under FERPA.

L. Alternative Grievance Process for Students

For all other formal complaints where the respondent is a student at the time of the alleged conduct, the grievance process as outlined below applies:

1. Investigation Report and Preliminary Determination Regarding Responsibility

Section X.F of this policy applies except that the investigator(s) will include a preliminary determination of responsibility for each allegation in the completed investigation report. The preliminary determination of responsibility will also include the findings of fact that support the investigators' determination as well as the rationale for the determination for each allegation. The completed investigation report will be forwarded to the Title IX Coordinator (or designee).

The Title IX Coordinator (or designee) will conduct an independent review of the investigation report and, at the conclusion of the review, will:

- Accept the preliminary determination regarding responsibility of the respondent, and either dismiss the matter or proceed to resolution (if applicable);
- Amend the preliminary determination regarding responsibility of the respondent and either dismiss the matter or proceed to resolution (if applicable); or
- Remand the process back to the investigation stage to address an investigation concern.

2. Resolution

Where there is a determination of responsibility the process will proceed to the resolution stage, and the complainant and respondent may elect one of the following options:

a. Administrative Resolution

Both parties agree to the determination of responsibility outlined in the completed investigation report and waive their right to a hearing. The matter is referred to the Vice President for Student Affairs and Athletics to implement sanctions and/or remedies. Both parties retain the right to appeal the sanctions and/or remedies as outlined in Section X.J of this policy. The finding of responsibility may not be appealed by either party.

b. Hearing

If either party chooses this option, then a hearing must be convened for the resolution of the allegations. In a hearing, the determination regarding responsibility of the respondent will be

made by a hearing officer(s). Both parties retain the right to appeal the outcome of the hearing, as described in Section X.J of this policy.

3. Hearing Procedures Under the Alternative Grievance Process

The hearing procedures described in Section X will apply to hearings conducted under this alternative grievance process, with the following exceptions:

a. Advisor of Choice

Each party may have an advisor of their choice at the hearing. Upon request, the university will provide an advisor to either party. Advisors are not permitted to actively participate in any portion of a hearing conducted under the alternative grievance process.

b. Questioning Participants

The hearing officer(s) may ask questions of any participant in the hearing at any time, and may be the first person to ask questions of any party or witness. Each party may ask relevant questions of any participant in the hearing by submitting the questions they would like to be asked to the hearing officer(s) in writing. The hearing officer(s) will determine whether or not the question is relevant to the alleged charges. The hearing officer(s) will then ask relevant cross-examination questions to the participant and allow for relevant follow up questions, if applicable. Advisors are not permitted to ask any questions of participants during hearings conducted under the alternative grievance process.

c. Prior Sexual History

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove the complainant consented to the alleged conduct.

XI. Education and Prevention Programs

Concordia University recognizes that the most effective way to achieve a community free of Prohibited Conduct is to equip all community members with the skills to recognize and prevent these prohibited forms of conduct.

Throughout the year the university offers educational programs to promote awareness of Prohibited Conduct. Prevention programs include an overview of the university's policies and procedures, relevant definitions, including Prohibited Conduct, consent, discussion of the impact of alcohol and illegal drug use, safe and positive options for bystander intervention, and information about risk reduction. Incoming first-year students and new employees will receive primary prevention and awareness programming as part of their orientation.

Concordia University offers regular primary prevention programs and ongoing education and awareness programs for all students and employees. Employees who play a key role in implementing the policy, including those faculty and staff who are likely to receive reports of

Prohibited Conduct will receive regular in-depth training to assist with a timely, sensitive, respectful, and effective institutional response.

Concordia University is committed to ensuring that all employees understand how to respond to reports of this nature.