

Professional Concerns Committee

Minutes for Nov 05, 2020

Virtual Meeting (On Zoom Conferencing Software), 3:30 pm

Members in Attendance: S. Alexander, K. Code, L. Dynan, J. Elliott, K. Fuegen, B. Green, J. Herman, J. Human, B. Karrick, K. Katkin, M. King, A. Miller, K. Muentz, M. Nakamura, G. Newell, M. Providenti, H. Riffe, J. Rubleske, I. Saad, M. Scola, G. Sun, J. Washburn

Guests in Attendance: Provost Sue Ott Rowlands, J. Bloch, G. Hiles, B. Alston

Members Not in Attendance: W. Darnell, N. Grant, K. Noyes

1. Call to Order, Adoption of Agenda
 - a. The Meeting was called to order at 3:30pm. The agenda was adopted unanimously as distributed.
2. Adoption of Minutes of PCC Meeting of October 15, 2020
 - a. Draft Minutes from PCC Meeting of October 15, 2020 were approved without dissent.
3. Chair's Report & Announcements:

Campbell County has been added to the list of Red Counties for COVID19. Accordingly, NKU has moved to remote operations in learning, and will remain so until the County is no longer Red. About 60 NKU courses still meet face-to-face. Steely Library and Rec Center remain open, as do student services offices.

Faculty are reporting increasing signs of student disengagement. Some faculty members who are teaching hybrid courses report only 2 or 3 students showing up in the classroom. At the same time, students may be skipping class meetings held via Zoom. Faculty who encounter these problems should consider how they might make efforts to reinvigorate student engagement.

Since introducing the "performance funding" model for higher education a few years ago, the Commonwealth of Kentucky has not provided the new funding that is needed to operate the model. Accordingly, public university presidents from across Kentucky may jointly propose a pause in the operation of the model. To date, the Council on Postsecondary Education has not made any changes to the model, and the legislature has not appropriated any new funds to higher education.

On the pension issue, President Vaidya will make final recommendation to exit KERS to the NKU Board of Regents on Dec 2. This plan of action will adversely affect the retirement security of many NKU staffers and some NKU faculty members. The University is looking into ways to mitigate the negative impact of the change on older employees who are closer to retirement. However, President Vaidya has not yet committed to recommending any plan of mitigation to the Regents.

TEEC may recommend offering a new grade for students who fail a course because they stop attending it. Receiving such a grade could render students ineligible for financial aid. In addition, TEEC will recommend that a new designation become available for service-learning courses. Finally, a new vendor may be retained to administer student evaluations of faculty members' teaching. A discussion ensued about how to promote more student participation in evaluation of instructors.

The funding available for project grants has exceeded the funding requested from applicants. However, the number of fellowship applications exceeds available funding.

Agenda Items

1. Old Business, voting item:

a. Revisions to Handbook section 1.6 (Librarians) and section 7 (Appointment, Reappointment, Promotion, and Tenure for Librarians).

After discussion and debate, the PCC voted to recommend amendments to Section 1.6 and Section 7 of the NKU Faculty Handbook, concerning RPT and Performance Review for Library Faculty. The proposed amendments are set forth at Appendix A of these Minutes. PCC's Recommendation will be forwarded to Faculty Senate for further action.

2. Old Business

a. Discussion Item: Interim sexual harassment policy and training

After discussion and debate, the PCC resolved not to recommend any changes to the interim sexual harassment policy that was adopted by the NKU administration over the summer. The interim policy is set to expire in February 2021. The PCC's decision to refrain from commenting was based on the following factors: (1) depending on the outcome of the US Presidential election, it is possible that the US Department of Education's Title IX regulations will presently change, which would facilitate further changes to NKU's sexual harassment policy [**Secretary's note: subsequent to the Nov 5 PCC meeting, Joe Biden won the Presidential election, which makes such regulatory changes likely**]; (2) the PCC considered that it would be in a better position to evaluate any sexual harassment policy after the policy is implemented; and (3) some PCC members opined that most of the recent problems with NKU's sexual harassment policies have concerned the inadequate investigation of complaints prior to disciplinary hearings, which is a step in the process that is not addressed in detail by the language of the current or former policy.

b. Discussion item: Annual performance review in SOTA

The PCC representatives from SOTA presented a document stating reasons why annual performance review evaluations within SOTA should be administered by program heads, rather than by the Director of SOTA. The document is set forth at Appendix B of these Minutes.

During discussion and debate, substantial support for the SOTA proposal was expressed. Some PCC members suggested that perhaps annual performance review evaluations within SOTA could be administered jointly by the SOTA Director and the individual program head at issue. Others expressed some concerns about requiring program heads to perform this additional work even though program heads do not receive the additional rank and pay that Department Chairs in other colleges enjoy. In general, sufficient support for the SOTA proposal was expressed to move forward with the process of bringing the SOTA proposal to a vote. To do so, its proponents agreed to draft specific language that could be inserted into the NKU Faculty Handbook to facilitate the change, and to bring that language back to a near future PCC meeting as a voting item.

Meeting Adjourned at 4:30pm.

Submitted,

K. Katkin, Secretary

Appendix A

Suggested Faculty Handbook Revisions re Steely Library Faculty Provisions

Recommended to Faculty Senate by PCC Nov 5, 2020.

1.6. LIBRARIANS

Current language: Full-time librarians employed by the University in faculty positions are full-time, tenure-track faculty (see Section 1.2, Full-Time Tenure-Track Faculty). Part-time librarians employed by the University in faculty positions are part-time faculty.

Suggested revision: Full-time librarians employed by the University in faculty positions are full-time, tenure-track faculty, full-time, non-tenure-track, renewable faculty, or full-time, non-tenure-track, temporary faculty. Part-time librarians employed by the University in faculty positions are part-time faculty (See Sections 1.1, 1.2, 1.3, 1.4, 1.5)

Addition of NTTT/NTTR faculty.

7. APPOINTMENT, REAPPOINTMENT, PROMOTION, AND TENURE FOR LIBRARIANS

7.1 DISTINCT RESPONSIBILITIES

Current language: Librarians have responsibilities different from those of other faculty; they work on 12-month contracts and devote specified hours each week to their professional assignments in the libraries. Therefore, certain modifications have been made in criteria used in evaluation for reappointment, promotion, and tenure.

Suggested revision: Librarians work on 12-month contracts on their professional assignments in the libraries. Therefore, certain modifications have been made in criteria used in evaluation for reappointment, promotion, and tenure.

Removal of “have responsibilities different from those of other faculty; they”
“and devote specified hours each week to”
Addition of “their”

7.2. FACULTY STATUS AND RANK

Librarians at NKU have faculty status and rank (see Section 1.6, Librarians). The master’s degree in library science is the appropriate terminal degree and is necessary for appointment to a library faculty position.

****No changes to this section****

7.3. POLICIES AND PROCEDURES

The policies and procedures for faculty presented in this Handbook apply to librarians as modified in this Section 7. Effective performance on the job replaces the teaching effectiveness category. The Steely Library and Chase Law Library are considered to be departments with regard to implementation of the reappointment, promotion, and tenure process. The dean of the Steely Library serves as department chair for purposes of RPT. The dean of the Steely Library will forward reappointment, promotion, and tenure recommendations to the provost. The director of Chase Law Library serves in the functions of department chair and reports to the dean of the College of Law.

****This section has been updated - approved by the PCC on 3/23/2020/approved by Faculty Senate 4/27/202****

7.4. RANKS FOR LIBRARIANS

Current language: Library faculty may be appointed to these ranks:

- Instructor of library services,
- Assistant professor of library services,
- Associate professor of library services, or
- Professor of library services.

(See Section 1.9, Qualifications for Appointment to Rank.)

Suggested revision: Librarians that are full-time, tenure-track or tenured faculty may be appointed to these ranks:

- Instructor of library services,
- Assistant professor of library services,
- Associate professor of library services, or
- Professor of library services.

(See Section 1.9, Qualifications for Appointment to Rank.)

Addition of “that are full-time, tenure-track”

~~7.5. CRITERIA FOR EFFECTIVE PERFORMANCE~~

~~Effective performance requires:~~

- ~~• Meeting the responsibilities of the assigned positions successfully and effectively~~
- ~~• Demonstrated successful job performance in:
 - ~~○ Innovation and initiative~~
 - ~~○ Ability to determine and assign work priorities and/or staff duties~~
 - ~~○ Ability to handle increased and new responsibilities~~~~
- ~~• Integrating the area of responsibility with the library as a whole by showing:
 - ~~○ Understanding of overall library operations~~
 - ~~○ Commitment to the library’s goals of education and service~~
 - ~~○ Knowledge of new developments in library science and technology~~
 - ~~○ Willingness to use suggestions, criticism, and evaluations to improve performance~~~~
- ~~• It is the responsibility of every librarian with faculty rank to know the various policies of the University, as set forth in this Handbook or as otherwise published. A failure to comply with a written university policy that has resulted in disciplinary sanction of the library faculty member may constitute unprofessional conduct and consequently may be relevant to evaluations related to reappointment, promotion, and tenure, or to performance review.~~

****This section is not necessary (see Section 16.2.2. Professional Obligations)****

Suggested addition to better mirror teaching faculty criteria:

7.5. CRITERIA

In making evaluations required for library faculty reappointment, promotion, and tenure, three major categories of professional responsibility are to be used. These categories, in order of importance, are position; scholarship and creative activity (see section 3.1.2); and service to the University, the discipline/profession and the community (see section 3.1.3).

7.5.1 POSITION

Effective position performance for librarians requires meeting the responsibilities and priorities of their positions within the library organization. **Assessment of effective performance should take into account all activities and contributions made in their positions to further the mission and services of the library in support of student success.**

~~7.6. CRITERIA FOR REAPPOINTMENT, PROMOTION, AND TENURE~~

~~Librarians are evaluated for reappointment, promotion, and tenure on the basis of a continuing record of achievement and evidence of professional development. A strong performance is mandatory and of primary importance (see Section 7.5, above). It is expected that librarians will also meet the library's standards of scholarly and creative activity and institutional and public service. For librarians, scholarly and creative activity may also include activity in education, e.g. offering formal classroom instruction, conducting workshops, conferences, or other informal educational activities; consultation; and professional committee work.~~

****The addition of 7.5. Criteria makes this section redundant.****

Appendix B

Professional concerns from the Visual Arts Program in the School of the Arts in regard to the proposed APR policy dated August 19, 2019.

Until this proposed handbook policy came up in PCC at the beginning of the year, Visual Arts (one of three programs in SOTA) has had a decades-long history that the person coordinating the day-to-day operations of our academic unit, first as a department chair, then as a program head, performed our APRs. Clearly, at the formation of SOTA, program heads were deemed to perform the reviews and this was always the intent in how it would operate. It should also be noted that at that time it was not communicated to our faculty, that the introduction of these 'program head' positions were not administrative ones—it was largely assumed these were essentially chairs with a different name since these were not defined anywhere. While there may be some varying opinions, the sudden shift with the director performing the reviews has created layers of concern shared by a significant number of faculty in Visual Arts. These include:

- It's doesn't appear to be typical to skip a level (i.e.: over the program head to director) when performing APRs for most faculty at NKU. Faculty should be reviewed in a consistent way and with the move to a 2-4-6 system for RPT, APRs have even more significance.
- Given that the director oversees three programs (formerly departments), this person's background and disciplinary awareness will be outside of that for two of the three programs. This is uneven relative to reviews performed by most chairs on campus who are within the same general academic area.
- Interactions with the school director are typically infrequent and he is not as familiar with the faculty's day-to-day operations. The program head is the one running faculty meetings, performing oversight of curricula, assigning committees, scheduling courses and engaging with student concerns and complaints as they relate to faculty. Having the program head provide input on the director's review is not the same as performing it. The director must rely primarily on reports and faculty self-reporting, rather than first-hand knowledge.
- With the sheer number of reviews, it is not fair to the director to perform so many, or to faculty whose review may be compromised because of the high volume of meetings and written reviews.
- A process by which the program head merely informs the director's review of each individual creates ambiguity as to where input comes from, is difficult to address directly in APR meetings and uses the resources of three individuals.

- The evolution of the SOTA director's role into managing the day-to-day academic unit operations and performing APRs, is moving away from the intended role of this position to focus on donor relationships, large-scale initiatives, developing cultural/community outreach, recruitment, etc.. Instead we are seeing the evolution of one large 'mega-chair' position taking on more traditional chair responsibilities. Consolidating into a mega-department was not the intent of SOTA and undermines the role of chairs at NKU.

- A number of faculty have expressed that the program head's duties fall in line with that of an administrative role of a chair and prefer this position. A chair position would solve the peer-to-peer issue with program heads not being classified as administrators. Some faculty are uncomfortable with a peer-to-peer relationship with the program head as reviewer and think it should be performed by an administrator.

Due to the issues presented, the Visual Arts faculty respectfully ask that the committee recognize the systematic, structural and procedural anomalies that happen within SOTA compared to norms elsewhere on campus, as established by structures that are well-defined within the Faculty Handbook."

May 5, 2020

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Suggested Faculty Handbook Revisions
Draft April 21, 2020
Revised May 8, 2020
Revised May 15, 2020
PCC Voting Item Nov. 5, 2020

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SEXUAL HARASSMENT

POLICY NUMBER: HYBR-SEXHARASS

POLICY TYPE: HYBRID

RESPONSIBLE OFFICIAL TITLE: CHIEF DIVERSITY, EQUITY, AND INCLUSION OFFICER

RESPONSIBLE OFFICE: TITLE IX COORDINATOR/OFFICE OF TITLE IX

EFFECTIVE DATE: 8/14/2020

NEXT REVIEW DATE: 2/14/2021

SUPERSEDES POLICY: SEXUAL MISCONDUCT – 5/6/2015

BOARD OF REGENTS REPORTING (CHECK ONE):

☒ PRESIDENTIAL RECOMMENDATION (CONSENT AGENDA/VOTING ITEM):

☐ PRESIDENTIAL REPORT (INFORMATION ONLY)

I. POLICY STATEMENT

Northern Kentucky University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from harassment and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment or retaliation. The University values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

II. POLICY ON NONDISCRIMINATION

Northern Kentucky University does not discriminate based on national origin, race, color, age, gender, gender identity, gender expression, sexual orientation, religion, political affiliation, physical or mental disability, genetic information, pregnancy, and Uniform Services or veteran status in its educational programs and activities, employment, daily operations and admissions policies, in accordance with all applicable federal legislation, state laws and university policies. No retaliation shall be initiated against any person who makes a good faith report of a violation.

III. SCOPE AND AUTHORITY

The core purpose of this Policy is the prohibition of sexual harassment and retaliation. When an alleged violation of this Policy is reported, the allegations are subject to resolution using the University's Formal Grievance Process, as detailed in the Policy. The Northern Kentucky University community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this Policy.

This Policy is intended to comply with the Final Regulations under Title IX of the Education Amendments of 1972 released by the United States Department of Education on May 6th, 2020. Section 106.6(h) of the Final Rules provides: "To the extent of a conflict between State or local law and Title IX as implemented by §§ 106.30, 106.44, and 106.45, the obligation to comply with §§ 106.30, 106.44, and 106.45 is not obviated or alleviated by any State or local law." Therefore, tenured faculty and employees under contract are subject to the terms of their agreements only to the extent those agreements do not conflict with federal or state compliance obligations.

IV. DEFINITIONS

Advisor is a person chosen by a Party or appointed by the University to conduct cross-examination for the Party at the hearing, if any.

Complainant is an individual who is alleged to be the victim of either conduct that could be sexual harassment based on a protected class or retaliation for engaging in a protected activity.

Complaint (formal) is a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation.

Confidential Resource is an employee who may maintain confidentiality and is not expected to report actual or suspected sexual harassment or retaliation to NKU for the purpose of putting the university on Notice (*Note: those with Clery Act Campus Security Authority status must still fulfill their CSA obligations).

Business Day is a day when the University is open for normal business operations and is not tied to the academic calendar.

Education Program or Activity are locations, events, or circumstances where 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.

Final Determination is a conclusion by a preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate this Policy.

Finding is a conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged.

Formal Grievance Process is a method of formal resolution designated by the University to address conduct that falls within this Policy, and which complies with the requirements of 34 CFR Part 106.45.

Grievance Process Pool includes any Investigators, Hearing Decision-makers, Appeal Decision-makers, Sanctioning Panel members, and university-appointed Advisors who may perform any or all of these roles (though not at the same time or within the same case).

Hearing Decision-maker refers to the person or persons who have decision-making authority within the University's Formal Grievance process.

Investigator is the person or persons charged by the University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.

Notice means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct. (See also—*Report*).

Official with Authority (OWA) is an employee of the University explicitly vested with the authority to implement corrective measures for harassment and/or retaliation on behalf of the University.

Parties include the Complainant(s) and Respondent(s), collectively.

Remedies are post-Finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University's educational program.

Report means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct. (See also—*Notice*)

Respondent is an individual who has been alleged to be the perpetrator of conduct that could constitute harassment or retaliation for engaging in a protected activity.

Sanction is a consequence imposed by the University on a Respondent who is found to have violated this Policy.

Sanctioning Panel refers to the person or persons who have sanctioning authority within the University's Formal Grievance process.

Sexual Harassment is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.

Student – For the purpose of this Policy, the University defines “student” as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the University.

Title IX Coordinator is the official designated by the University to ensure compliance with Title IX and the University's Title IX program. References to the Coordinator throughout this Policy may also encompass a designee of the Coordinator for specific tasks.

Title IX Team refers to the Title IX Coordinator, Deputy Title IX Coordinators, and any member of the Grievance Process Pool.

V. TITLE IX COORDINATOR

Darryl Peal serves as the University's Title IX Coordinator and oversees implementation of this Policy. The Title IX Coordinator has the primary responsibility for coordinating the University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment and retaliation prohibited under this Policy. Whenever this Policy indicates “Title IX Coordinator” the University may substitute a trained designee in compliance with the Title IX Final Regulations.

INDEPENDENCE AND CONFLICT OF INTEREST

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any Party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, or to report misconduct committed by the Title IX Coordinator, contact Northern Kentucky University President Ashish Vaidya (800 Lucas Administrative Center; president@nku.edu).

Concerns of bias or a potential conflict of interest, or reports of misconduct committed by any other Title IX Team member should be raised with the Title IX Coordinator or the Office of Legal Affairs.

VI TITLE IX AND OFFICIALS WITH AUTHORITY—CONTACT INFORMATION

Reports of alleged Policy violations or inquiries about or concerns regarding this Policy and procedures, may be made internally to:

OFFICE OF TITLE IX

Darryl Peal: Title IX Coordinator and Chief Diversity, Equity, and Inclusion Officer

Lucas Administrative Center 824

859-572-6630; peald1@nku.edu; <https://inside.nku.edu/titleix.html>

Angela Zippin: Title IX Investigator

University Center 330; 859-572-7669; zippina1@nku.edu

DEPUTY TITLE IX COORDINATORS

Bob Alston: Director of the Office of Student Conduct, Rights and Advocacy and Deputy Title IX Coordinator for Students

Student Union 301; 859-572-5147; alstonr1@nku.edu

Rachel Green, Director of Employee Relations and EEO and Deputy Title IX Coordinator for Staff & Faculty

Lucas Administrative Center 717; 859-572-7600; greenr5@nku.edu

Debbie Kirch, Associate Athletic Director for Compliance & SWA Deputy Title IX Coordinator for Athletics

BB&T Arena 133L; 859-572-5140; kirchd1@nku.edu

OFFICIALS WITH AUTHORITY

In addition to the Title IX Team members listed above, Officials with Authority (OWAs) to address and correct sexual harassment and/or retaliation may also receive reports on behalf of the University.

OWAs can be found in Human Resources; Student Conduct, Rights, and Advocacy; University Police; Legal Affairs; the Office of the Provost; the Office of the Vice President for Student Affairs; and the Board of Regents. Contact information for specific OWAs may be found on the Office of Title IX website: <https://inside.nku.edu/titleix/contact.html>.

VII. REPORTING SEXUAL HARASSMENT AND RETALIATION

All members of the Northern Kentucky University community are encouraged and empowered to report incidents of sexual harassment and/or retaliation to the Office of Title IX or any OWA. However, when a member of the University community becomes aware of such an incident, they may honor the Complainant's request not to have identifying information reported to the University. Trainings to foster campus awareness of reporting and support services are provided regularly and may be scheduled by contacting the Office of Title IX.

Athletics staff, coaches, administrators, and student-athletes are required to report any known or suspected sexual harassment (including sexual violence) to the Title IX Coordinator immediately.

Reports do not automatically initiate the university's obligation to investigate the allegation, but may place the University on Notice that sexual harassment and/or retaliation may be occurring. Reports can be made to a designated individual or online.

- Reports may be made in writing or verbally to the Title IX Coordinator, Title IX Investigator, Deputy Title IX Coordinator(s), or any Official with Authority at any time, including during non-business hours, in-person, by telephone, email, or US mail.
- Reports may also be made online, using the reporting form posted at: <https://inside.nku.edu/titleix> (File a Report).

Upon receiving a report of sexual harassment and/or retaliation, the Title IX Coordinator will contact the Complainant to offer supportive measures and determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.

Because reporting carries no obligation to initiate the Formal Grievance Process, the Complainant remains largely in control and should not be deterred from submitting a report which allows the University to provide supportive measures.

Reporting requirements under Title IX may be different than reporting requirements under other state and/or federal laws, such as the Clery Act. Please refer questions about other reporting obligations to the Office of Legal Affairs.

VIII. FORMAL COMPLAINT OF SEXUAL HARASSMENT AND/OR RETALIATION

The term “Formal Complaint” has a very specific definition within the Title IX Final Rules (See, 34 CFR 106.30(a)). A Formal Complaint is a document filed by a Complainant, or in rare circumstances—the Title IX Coordinator. A Formal Complaint requires a signed writing that alleges Policy violation(s) by Respondent(s) and requests that the University investigate the allegation(s). A Formal Complaint initiates the University’s Formal Grievance Process.

A written Formal Complaint may be filed with Title IX Coordinator in person, by email, US mail, or using the University’s online portal provided for this purpose found at <https://inside.nku.edu/titleix/report/formal-complaint>. A Complainant’s signature can be physical or digital, or otherwise indicate that the Complainant is the person filing the Complaint.

If a Complaint is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly. A Formal Complaint will also be referred to as a ‘Complaint’ in this Policy.

SUPPORTIVE MEASURES

The University will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged sexual harassment and/or retaliation. Supportive measures are available to all Parties without expense, even if no formal complaint has been filed.

Supportive measures are non-disciplinary, non-punitive individualized services offered when appropriate, as reasonably available, and without fee or charge to the Parties to restore or preserve access to the University’s Education Program or Activity, including measures designed to protect the safety of all Parties or the University’s educational environment, and/or deter sexual harassment and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving Notice via a Report or a Complaint. At the time that supportive measures are offered, the University will inform the Complainant, in writing, that they may file a Formal Complaint with the University either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The University will maintain the privacy of the supportive measures, provided that privacy does not impair the University’s ability to provide the supportive measures. The University will act to ensure as minimal an academic impact on the Parties as possible. The University will implement measures in a way that does not unreasonably burden the other Party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Education to the community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Providing campus safety escorts
- Implementing contact limitations (University no contact orders) between the Parties.
Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.
- Recommendations for academic support, extensions of deadlines, or other course/program-related adjustments
- Class schedule modifications, withdrawals, or leaves of absence

- Campus trespass orders and/or Timely Warnings
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

EMERGENCY REMOVAL

The University can act to remove a Respondent entirely or partially from its Education Program or Activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator, who may utilize a Behavioral Intervention Team (BIT) made up of representatives from Health, Counseling, and Student Wellness; Human Resources; Legal Affairs; University Police; Student Conduct, Rights, and Advocacy; and other resources as appropriate. The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns.

In all cases in which an emergency removal is imposed, the student, employee, or, for student organizations, the organization's President and representative, will be given notice of the decision and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to give reason for why the removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within five (5) business days of notice, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this Policy to implement or stay an emergency removal and to determine the conditions and duration. There is no appeal process for emergency removal decisions.

Violation of an emergency removal under this Policy will be grounds for discipline, which may include expulsion or termination.

Where the Respondent is a faculty or staff member, existing provisions for interim action are applicable.

PRIVACY

Every effort is made by the University to preserve the privacy of Reports and Complaints. Privacy means that information related to a Complaint will be shared with a limited number of the University's employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the University's response to Notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state open records law and federal law.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA). The privacy of employee records will be protected in accordance with Human Resources, Faculty Handbook, and other university policies. Some university records may be subject to release under Kentucky's Open Records Act if an exemption does not apply. The Office of Legal Affairs manages and responds to open records requests on behalf of the University.

JURISDICTION

This Policy applies only to the Education Program and Activities of Northern Kentucky University. Specifically, to conduct that takes place on NKU's campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by the University's recognized student organizations. Further, the Respondent must be a member of the University community in order for this Policy to apply.

If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Even when the Respondent is not a member of the University community, supportive measures, Remedies, and resources may be accessible to the Complainant.

Vendors serving the University through third-party contracts have agreed to comply with University policies. In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from University property and/or events.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in connecting with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

TIME LIMITS ON REPORTING

There is no time limitation on providing Notice or filing a Complaint. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide Remedies may be more limited or impossible.

Acting on Reports or Complaints significantly impacted by the passage of time is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or Remedies, and/or engage in informal or formal action, as appropriate.

When a Complaint is affected by significant time delay, the University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of Complaint.

ONLINE SEXUAL HARASSMENT AND/OR RETALIATION

Northern Kentucky University does not control external websites, social media, and other venues where harassing communications may occur. Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the University's control (e.g., not on University networks, websites, or between University email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial in-program disruption.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

IX. SEXUAL HARASSMENT PROHIBITED

Sexual harassment is not tolerated at Northern Kentucky University, and is regarded as an unlawful discriminatory practice by The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Commonwealth of Kentucky.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

- 1) **Quid Pro Quo:** An employee of the University conditions, implicitly or explicitly, the provision of an aid, benefit, or service of the University, on an individual's participation in unwelcome sexual conduct.
- 2) **Sexual Harassment:** Unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and objectively offensive, that it effectively denies a person equal access to the University's Education Program or Activity.
- 3) **Sexual Assault, defined as:**
 - a) **Sex Offenses, Forcible:**
 - i) Any sexual act directed against another person,
 - ii) without the consent of the Complainant,
 - iii) including instances in which the Complainant is incapable of giving consent.
 - b) **Forcible Rape:**
 - i) Penetration,
 - ii) no matter how slight,
 - iii) of the vagina or anus with any body part or object, or
 - iv) oral penetration by a sex organ of another person,
 - v) without the consent of the Complainant.
 - c) **Forcible Sodomy:**
 - i) Oral or anal sexual intercourse with another person,
 - ii) forcibly,
 - iii) and/or against that person's will (non-consensually), or
 - iv) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - d) **Sexual Assault with an Object:**
 - i) The use of an object or instrument to penetrate,
 - ii) however slightly,
 - iii) the genital or anal opening of the body of another person,
 - iv) forcibly,
 - v) and/or against that person's will (non-consensually),
 - vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - e) **Forcible Fondling:**
 - i) The touching of the private body parts of another person (buttocks, groin, breasts),
 - ii) for the purpose of sexual gratification,
 - iii) forcibly,
 - iv) and/or against that person's will (non-consensually),
 - v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - f) **Sex Offenses, Non-forcible:**
 - i) **Incest:**
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by Kentucky law.

- ii) Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent of sixteen (16) years old.
- 4) Dating Violence, defined as:
 - a) violence,
 - b) on the basis of sex,
 - c) committed by a person,
 - d) who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i) The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii) Dating violence does not include acts covered under the definition of domestic violence.
- 5) Domestic Violence, defined as:
 - a) violence,
 - b) on the basis of sex,
 - c) committed by a current or former spouse or intimate partner of the Complainant,
 - d) by a person with whom the Complainant shares a child in common, or
 - i) by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - ii) by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Kentucky, or
 - iii) by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Kentucky.
- 6) Stalking, defined as:
 - a) engaging in a course of conduct,
 - b) on the basis of sex,
 - c) directed at a specific person, that
 - i) would cause a reasonable person to fear for the person's safety, or
 - ii) the safety of others; or
 - iii) suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

OTHER SEX-BASED PROHIBITED OFFENSES

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, the University additionally prohibits Sexual Exploitation as a form of discrimination outside of Title IX when the act is based upon the Complainant's sex.

Sexual Exploitation is defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this Policy. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent, including the making or posting of revenge pornography
- Causing the incapacity of another person, or attempting to cause the incapacity of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity

Violation of any other University policies may constitute a Sex-Based Offense when a violation is motivated by sex, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

X. EXPLANATION OF TERMS RELATED TO SEXUAL HARASSMENT

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, 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.

Consent is clear, knowing, and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Verbal consent is not a requirement of this Policy; however, consent *may* be given by words as long as those words create mutually understandable clear permission regarding willingness to engage in sexual activity. Consent to any one form of sexual activity cannot alone imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Kentucky law (KRS § 510.020) states that lack of consent results from:

- a) Forcible compulsion;
- b) Incapacity to consent; or
- c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

A person is deemed incapable of giving consent when he or she is:

- a) Less than sixteen (16) years old;
- b) Sixteen (16) or seventeen (17) years old and the actor is at least ten (10) years older than the victim at the time of the sexual act;
- c) An individual unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences, due to an intellectual disability or a mental illness;
- d) Mentally incapacitated;
- e) Physically helpless; or
- f) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or agency.

Domestic Violence: To categorize an incident as domestic violence the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced.

Incapacity: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. A Respondent violates this Policy if they engage in sexual activity with a Complainant who is incapable of giving consent. Incapacity is determined through consideration of all relevant indicators of an individual's state and is not the same as mere intoxication and/or being drunk or high.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment. Incapacity occurs when 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).

Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

RETALIATION PROHIBITED

Retaliation is any adverse action a University community member takes against another community member for engaging in protected activities. Protected activity under this Policy includes good-faith reporting of an incident that may implicate this Policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Northern Kentucky University is prepared to take appropriate steps to protect individuals who are concerned that they may be subjected to retaliation.

COUNTERCLAIMS

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the formal grievance procedures. Investigation of such claims may take place after resolution of the underlying initial allegation or be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are **not** made in good faith, they will be considered retaliatory and may constitute a violation of this Policy.

FALSE ALLEGATIONS AND EVIDENCE

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a Policy violation determination. Additionally, witnesses and Parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University Policy.

CONFIDENTIAL RESOURCES

All members of the Northern Kentucky University community are encouraged and empowered to report actual or suspected sexual harassment or retaliation to appropriate officials immediately, though there are some limited exceptions.

On campus, some resources may maintain confidentiality and are not expected to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared. Reporting sexual harassment to these offices does not place the University on Notice regarding potential misconduct.

Complainants that seek to keep the details of an incident confidential may speak with the following university resources:

- Professional counselors and health service providers in Health, Counseling, and Student Wellness
- Norse Violence Prevention staff members
- Employee Assistance Program providers

The above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order. Northern Kentucky University employees who are Confidential Resources will timely submit anonymous statistical information for Clery Act purposes.

WHEN A COMPLAINANT DOES NOT WISH TO PROCEED

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a Formal Complaint to be pursued, they 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 to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so. The Title IX Coordinator may sign a Formal Complaint to

initiate a Formal Grievance Process based on results of a violence risk assessment which shows a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes. The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written Complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy. When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, an Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

The University's ability to remedy and respond to Notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University will offer supportive measures and Remedies to the Complainant, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly resolved through these procedures.

FEDERAL TIMELY WARNING OBLIGATIONS

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Northern Kentucky University must issue Timely Warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

AMNESTY FOR COMPLAINANTS AND WITNESSES

It is in the best interests of the Northern Kentucky University community that Complainants choose to report misconduct to University officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process. To encourage reporting and participation in the process, the University maintains a policy of offering Parties and witnesses amnesty from minor policy violations related to the incident.

FEDERAL STATISTICAL REPORTING OBLIGATIONS

Certain campus officials, those deemed Campus Security Authorities, have a duty to report the following for federal statistical reporting purposes as required by the Clery Act. Nothing in this Policy changes that duty.

XI. FORMAL GRIEVANCE PROCESS FOR SEXUAL HARASSMENT ALLEGATIONS

OVERVIEW

Northern Kentucky University will utilize the following Formal Grievance Process when a Formal Complaint of a violation of the Policy is received by the Title IX Coordinator. The procedures below apply to all qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) and other sex-based offenses involving students, staff, administrators, or faculty members. All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through procedures described in the Code of Student Rights and Responsibilities, Grievance policy for staff, Faculty Handbook, and other applicable policies.

REPORT/COMPLAINT

Upon receipt of a Report or Complaint of an alleged violation of the Policy, the Title IX Coordinator will initiate a prompt initial assessment to determine the next steps the University needs to take. The Title IX Coordinator will offer supportive measures if the Complainant does not want to file a Formal Complaint; and/or initiate the Formal Grievance Process upon submission of a Formal Complaint.

The University uses the Formal Grievance Process to determine whether or not the Policy has been violated. If so, the University will promptly implement effective Remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, or their effects.

INITIAL ASSESSMENT

Following receipt of a Report or a Complaint of an alleged violation of this Policy, the Title IX Coordinator will engage in a brief initial assessment to determine reasonable cause, whether any of the requirements for mandatory dismissal are present, and potential supportive measures. This an initial assessment is typically conducted within one to five business days. Additionally, this assessment will include contacting the Parties to offer supportive measures and determine if the Complainant wishes to make a Formal Complaint.

If the Complainant does not want to make a Formal Complaint but requests a supportive response, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate a Formal Complaint later, if desired.

If the Complainant submits a Formal Complaint, the Title IX Coordinator will determine if the misconduct alleged falls within the scope of Title IX. If it does, the Title IX Coordinator will initiate the Formal Grievance Process.

If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the Complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly. Please note that dismissing a Complaint under Title IX is procedural, and does not limit the University’s authority to address a Complaint with another appropriate University policy and process. Where Complaints are referred to other University processes, the Parties will be notified.

VIOLENCE RISK ASSESSMENT

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Title IX Behavioral Intervention Team (BIT) as part of the initial assessment. A VRA can aid in critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether to permit a voluntary withdrawal by the Respondent;
- Assessment of appropriate sanctions/Remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning or Trespass order is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

DISMISSAL (MANDATORY AND DISCRETIONARY)

Dismissal requirements are mandated by the 2020 Title IX Final Regulations, 34 CFR §106.45. The University must dismiss a Formal Complaint if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in the Policy, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or
- 3) The University does not have control of the Respondent; and/or
- 4) The conduct did not occur against a person in the United States; and/or
- 5) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the Education Program or Activity of the University.

The University **may** dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the University; or
- 3) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon any dismissal, mandatory or discretionary, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties. This dismissal decision is appealable by either Party under the procedures for appeal below. A Complainant who decides to withdraw a Complaint may later request to reinstate it or refile it.

RIGHT TO AN ADVISOR

The Parties must each have an Advisor present with them at a hearing to conduct cross-examination. The Parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available. 'Eligible' means the Advisor does not have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. 'Available' means the Party cannot insist on an Advisor who simply doesn't have inclination or time to fulfill the role.

Choosing an Advisor who is also a witness in the process is permitted but creates potential for bias and conflict-of-interest. A Party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Hearing Decision-maker.

If a Party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any questioning of the other Party and witnesses. A Party who wishes to have a University-appointed Advisor conduct cross-examination on their behalf must notify the Title IX Coordinator at least five (5) business days before the hearing.

In addition to the hearing, at which an Advisor is required, the Parties have the opportunity to be accompanied to any other related meeting or proceeding by an individual of their choice for support, advice, and/or consultation. This individual may be, but is not required to be, the Advisor selected to conduct cross-examination at the hearing.

Advisors and Parties are expected to follow the requirements of the University's Title IX Advisor Guidance and Designation form available on the [Office of Title IX website](#). This document is required by this Policy and is incorporated herein.

FORMAL GRIEVANCE PROCESS

Grievance proceedings are private and not subject to Kentucky's Open Meetings Act. All persons present at any time during the grievance process are expected to maintain the privacy of the proceedings in accordance with University policy. Although there is an expectation of privacy around what Investigators share with Parties during interviews, the Parties have discretion to share their own knowledge and evidence with others if they so choose. The University encourages Parties to discuss any sharing of information with their Advisors before doing so.

The University resolves Complaints of sexual harassment through the Formal Grievance Process. However, the University reserves the right to develop and implement an informal resolution process in the future.

DISABILITIES ACCOMMODATIONS IN THE GRIEVANCE PROCESS

Northern Kentucky University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's Formal Grievance Process.

Anyone needing such accommodations or support should contact the Office of Student Accessibility or ADA Coordinator, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

Students:

Office for Student Accessibility
Student Union, Suite 303
Hours: 8:15am - 4:30pm
Email: osa@nku.edu
Phone: (859) 572-5282

Employees:

ADA Coordinator
Office of Human Resources
Lucas Administrative Center 708
Email: greenr5@nku.edu
Phone: (859) 572-76000

GRIEVANCE PROCESS POOL

The Formal Grievance Process relies on a Pool of University community members and external resources ("the Pool") to carry out the process. The list of Pool members and a description of the Pool can be found at <https://inside.nku.edu/titleix/resources/pool.html>.

Pool Member Roles

Members of the Pool are trained annually, and can serve in each of the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to Complaints
- To act as an Advisor to the Parties
- To investigate Complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Hearing Decision-maker regarding the Complaint
- To serve as a Sanctioning Panel member after a Finding of responsibility
- To serve as an Appeal Decision-maker

Pool Appointment and Membership

The Title IX Coordinator, in consultation with the President and Vice Presidents, appoints members to the Pool to act with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the University can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

The Pool includes the Title IX Team and properly trained faculty, staff, and, where appropriate, students. Additionally, the University may utilize non-campus partners, who have been properly trained, to serve as Pool Members. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

Pool Member Training

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of the University's Sexual Harassment Policy and Procedures
- The definition of sexual harassment in the Title IX Final Regulations (See 34 CFR 106.30)
- How to conduct an investigation and grievance process including hearings and appeals
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence for Decision-makers
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence

Specific training is also provided for Appeal Decision-makers, intake personnel, and university-appointed Advisors. All University Pool members are required to attend these trainings annually. Training may be offered internally or proof of external training will be acceptable for contracted third-parties. The materials used to train all university members of the Pool are publicly posted here: <https://inside.nku.edu/titleix/resources/pool.html>.

FORMAL GRIEVANCE PROCESS: NOTICE OF INVESTIGATION AND ALLEGATIONS

The Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations, including the identities of the Parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known
- The specific policies implicated
- A description of the applicable procedures
- A statement that the University presumes the Respondent is not responsible for the alleged conduct
- A statement that determinations of responsibility are made at the conclusion of the grievance process and that the Parties may request, and will be given, an opportunity to inspect and review evidence collected in the investigation.
- A statement that Parties may have an advisor of their choice, who may be, but is not required to be, an attorney
- A statement informing the Parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Formal Grievance Process

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice 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 University records, or emailed to the Parties' University email accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

GRIEVANCE PROCESS TIMELINE

All allegations are acted upon promptly by the University once it has received a Formal Complaint. Complaints will generally be resolved within 60-90 business days. However, exceptions and extenuating circumstances may arise that cause the process to take longer. The University will avoid undue delays within its control.

When the general timeframes for resolution outlined in the University's procedures are delayed, the University will provide written notice to the Parties of the delay, the general rationale for the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

ENSURING IMPARTIALITY AND PRESUMPTION OF NOT RESPONSIBLE

No individual materially involved in the administration of the Formal Grievance Process may have or demonstrate a conflict of interest or bias for or against a Party generally, or for or against a Complainant or Respondent specifically.

The Title IX Coordinator will vet the assigned Investigator to ensure impartiality by determining there are no actual or apparent conflicts of interest or disqualifying biases. The Parties may, at any time during the Formal Grievance Process, raise a concern regarding bias or conflict of interest. If raised, the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a Policy violation and evidence which supports that the Respondent did not engage in a Policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a Policy violation by the applicable standard of proof. Further, the burden of collecting evidence and proving a violation of this Policy is on the University and is not the responsibility of either Party.

INVESTIGATION

Timeline

Investigations are completed expeditiously, normally within thirty to forty-five (30-45) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the investigation.

Delays in the Investigation Process and Interactions with Law Enforcement

The University may undertake a reasonable delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, public health emergencies, and/or accommodations for disabilities or health conditions.

The Investigator will communicate in writing the anticipated duration of the delay and reason to the Parties and provide the Parties with status updates if necessary. The University will promptly resume its investigation and grievance process as soon as feasible. During such a delay, the University will implement supportive measures as deemed appropriate.

University actions are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant Parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. The Investigator will provide regular status updates to the Parties throughout the investigation.

Parties will be provided clear, written notice before each and every interview or other meeting they are invited to or expected to attend. Such notice will date, time, location, participants invited, and the purpose of the interview or meeting.

Within the Investigation, all Parties have a full and fair opportunity, without restriction, to discuss allegations, suggest witnesses and questions, to present evidence and expert witnesses, and to fully review and respond to all evidence on the record.

Prior to the conclusion of the investigation, the Investigator will provide the Parties and their respective Advisors (if so desired by the Parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each Party may meaningfully respond to the evidence. The Parties may elect to waive the full ten (10) days.

The Investigator will incorporate relevant elements of the Parties written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator will then share with the Parties and their Advisors the final investigation report at least ten (10) business days prior to a hearing. The Parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Decision-maker at the hearing, and will be exchanged between each Party by the Decision-maker.

Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the Parties) who are students or employees of Northern Kentucky University are expected to cooperate with and participate in the University's investigation and grievance process.

While in-person interviews for Parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break, or personal/public health circumstances) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator determines that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator, though not preferred. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator elects to audio and/or video record interviews, all involved Parties must be made aware of audio and/or video recording.

Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the Parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Referral for Hearing

Once the final investigation report is shared with the Parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation, when the final investigation report is transmitted to the Parties and the Decision-maker, unless all Parties and the Decision-maker agree and the University is able to meet its hearing obligations under an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker from the Pool depending on whether the Respondent is a faculty, staff, or a student. Allegations involving student-employees will be directed to an appropriate Decision-maker depending on the context of the alleged misconduct.

FORMAL HEARING PROCEDURES

Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Decision-maker will send notice of the hearing to the Parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A 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.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the Parties located in separate rooms using technology that enables the Decision-maker and Parties to see and hear a Party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to the Decision-maker or member of the Sanctioning Panel on the basis of demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the Parties after the hearing.
- A statement that if any Party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the Party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker. For compelling reasons, the Decision-maker may reschedule the hearing.
- Notification that the Parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The Party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint one. Each Party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker about the matter, unless they have been provided already.
- An invitation to each Party to submit to the Sanctioning Panel an impact statement pre-hearing that the Sanctioning Panel will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least five (5) business days prior to the hearing.

Alternative Hearing Participation Options

If a Party or Parties prefer not to attend or cannot attend the hearing in person, the Party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the scheduled hearing. The University can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged Policy violation.

Pre-Hearing Preparation

Parties will receive the names of all persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report at least ten (10) business days prior to the scheduled hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator or have proffered a written statement or answered written questions, unless all Parties and the Decision-maker agree to the witness's participation in the hearing. The same is true for any evidence that is first offered at the hearing. If the Parties and Decision-maker do not agree to the admission of evidence newly offered at the hearing, the Decision-maker will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The Parties will be given the names of the Decision-maker and Sanctioning Panelists at least five (5) business days in advance of the hearing. All objections to any Decision-maker or Sanctioning Panelists must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) days prior to the hearing. Decision-makers and Sanctioning Panelists will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker and Sanctioning Panelists the list of names of all Parties, witnesses, and Advisors at least five (5) business days in advance of the hearing so that the Decision-maker and Sanctioning Panelists can determine if they can make an objective decision or if they must recuse themselves from the proceedings for bias or conflict of interest. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

Single Decision-maker

The University will designate a single Decision-maker to conduct the hearing. The Decision-maker will answer all questions of procedure. Those who have served as Investigators or Advisors may not serve as Decision-maker in the same matter. The Title IX Coordinator may not serve as a Decision-maker in any hearing but may serve as a hearing facilitator of the hearing if their previous role in the matter does not create a conflict of interest. Otherwise, a designee may fulfill the role of hearing facilitator. The hearing will convene at a date and time as coordinated by the Office of Title IX and properly noticed to the Parties.

Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker determines is relevant and credible will be considered. The Decision-maker does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the Parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

Conducting the Hearing

The Decision-maker explains the procedures and introduces the participants. Participants at the hearing will include the Decision-maker, the hearing facilitator, the Parties, Advisors to the Parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

The Decision-maker and/or hearing facilitator then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, Party logistics, curation of documents, separation of the Parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various Parties/witnesses as they wait; flow of Parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

Investigator Presentation

While the Investigator is not typically a witness in a formal hearing, if requested by either Party, the Investigator will appear as a witness in the hearing and submit to cross-examination. The Investigator may be present during the entire hearing process, but not during deliberations. Neither the Parties nor the Decision-maker should ask the Investigator their opinions on credibility, recommended Findings, or determinations; the Investigators, Advisors, and Parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-maker will direct that it be disregarded.

Testimony and Cross-examination

Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

After the Investigator presents their report, if requested, and are questioned, the Parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Decision-maker. The Parties/witnesses will submit to questioning by the Parties through their Advisors ("cross-examination") and then by the Decision-maker if so needed.

Each question is subject to a relevance determination by the Decision-maker. The Advisor, who will remain seated during questioning, will pose the proposed question orally (orally is the default, but other means of submission may be permitted by the Decision-maker upon request if agreed to by all Parties and the Decision-maker or necessary as an accommodation), the proceeding will pause to allow the Decision-maker to consider it (and state it if it has not been stated aloud), and the Decision-maker will state whether the question will be permitted, disallowed, or rephrased.

The Decision-maker may invite explanations or persuasive statements regarding relevance with the Advisors, if the Decision-maker so chooses. The Decision-maker will then state their decision on the question for the record and advise the Party/witness to whom the question was directed, accordingly. The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Decision-maker has final say on all questions and determinations of relevance. The Decision-maker may consult with legal counsel on any questions of admissibility. The Decision-maker may ask Advisors to frame why a question is or is

not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Decision-maker has ruled on a question.

If the Parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Decision-maker may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Decision-maker should not permit irrelevant questions that probe for bias.

Refusal to Submit to Cross-Examination and Inferences

If a Party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker may not rely on any prior statement made by that Party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker must disregard that statement. Evidence provided that is something other than a statement by the Party or witness may be considered.

If the Party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the Party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The Decision-maker may not draw any inference solely from a Party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If a Party's Advisor of choice refuses to comply with the University's established rules of decorum for the hearing as detailed in the [Advisor Guidance and Designation Form](#), the University may require the Party to use a different Advisor which may be a University-appointed Advisor. If a University-appointed Advisor refuses to comply with the rules of decorum, the University may provide that Party with a different Advisor to conduct cross-examination on behalf of that Party.

Deliberation, Decision-making, and Standard of Proof

The Decision-maker will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the Policy violation(s) in question. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Decision-maker, but is there only to facilitate procedurally, not to address the substance of the allegations.

The Decision-maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination of responsibility, rationale, the evidence used in support of its determination, the evidence disregarded, and credibility assessments.

This report typically should not exceed three (3) to five (5) pages in length and should be submitted to the Title IX Coordinator within fifteen (15) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the Parties.

Sanctioning for Finding of Responsible

When there is a Finding of responsibility on one or more of the allegations, the Title IX Coordinator will provide the written deliberation statement to a Sanctioning Panel. The composition of the Sanctioning Panel will be determined by the classification of the Respondent. The Sanctioning Panel for an enrolled student will consist of one faculty member, one staff member, and one student, in accordance with Kentucky law (KRS 164.370). The Sanctioning Panel for university

employees shall be convened as governed by existing disciplinary policies. Where this panel is used, the Title IX Coordinator will designate one member as the Chair.

The Sanctioning Panel will consider the written deliberation statement, previously submitted Party impact statements, and any pertinent discipline history to determine the appropriate sanctions in consultation with other appropriate administrators, as necessary.

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- The impact on the Parties
- Any other information deemed relevant by the Panel

The Panel's sanctioning decision will be made in writing, will include the rationale for the sanction(s), and be delivered to the Title IX Coordinator within fifteen (15) business days of convening. The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested. The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

Student Sanctions

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

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation:* A written reprimand for violation of institutional Policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Northern Kentucky University.
- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend University-sponsored events.
- *Withholding Diploma:* The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including University registration) for a specified period of time.

- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

If a student is suspended or expelled from the University, they are not eligible for financial reimbursement.

Employee Sanctions

The following are sanctions that may be imposed upon employees singly or in combination as permitted by university policies and procedures governing employee discipline:

- Warning – Verbal or Written
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination
- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

Final Determination

Having received the Decision-maker's deliberation statement, and the Sanctioning Panel's sanctioning decision if the Respondent was found responsible, the Title IX Coordinator will direct the Decision-maker to prepare a Final Determination. The Final Determination will be provided to the Parties and their Advisors by the Title IX Coordinator generally within fifteen (15) business days of receipt of the deliberation statement and/or sanction decision, if any. However, if circumstances require an extension, such extension will be communicated to the Parties.

The Final Determination will be provided to the Parties simultaneously, 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 University records, or emailed to the Parties' University-issued email account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Final Determination will identify the specific alleged violation including the Policy section and will contain a general description of the procedural steps taken by the University.

The Final Determination will also specify the Finding on each alleged Policy violation; the Findings of fact that support the determination; conclusions regarding the application of the relevant Policy to the facts at issue; a statement of, and rationale for, the result of each allegation; and any sanctions issued; and any Remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity. The Final Determination will only include information which the University is permitted to share according to state or federal law. Generally Remedies provided to the Complainant are not typically shared with the Respondent unless the Remedy directly relates to the Respondent.

The Final Determination will also include information detailing appeal rights and notice regarding when the determination is considered to be final. Any changes that occur prior to finalization will also be communicated in writing.

Hearing Recording

Hearings (but not deliberations) are recorded by the University for the purpose of review and in the event of an appeal. The Parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker, Sanctioning Panel, the Parties, their Advisors, and appropriate administrators of the University will be permitted to listen and/or view the recording in a controlled manner as determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

Withdrawal or Resignation While Charges Pending

Students: If a student has an allegation pending for violation of the Policy, the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma. Should a student decide to not participate in the Formal Grievance Process, the process proceeds absent their participation to a reasonable resolution. If the student Respondent withdraws or takes a leave for a specified period of time (e.g., one semester or term), the Formal Grievance Process may continue remotely.

Employees: Should an employee Respondent resign with unresolved allegations pending, the Formal Grievance Process ends, as the University no longer has disciplinary jurisdiction over the resigned employee.

The University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation.

Appeals

Any Party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the Final Determination.

A single Appeal Decision-maker will hear the appeal. The Appeal Decision-maker will not have any involvement in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

Grounds for Appeal

Appeals are limited to the following grounds:

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- 3) The Title IX Coordinator, Investigator, Decision-maker, or Sanctioning Panel member had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If the Request for Appeal does not meet any of the grounds for appeal above, that request will be denied by the Appeal Decision-maker. The Parties and their Advisors will be notified in writing of the denial and the rationale.

If the Request for Appeal meets any of the grounds for appeal above, then the Appeal Decision-maker will notify the Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker.

The other Party and their Advisor, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker will be provided with the Request for Appeal with the approved grounds. Those responding are given ten (10) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal Decision-maker to all Parties for review and comment.

The non-appealing Party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Decision-maker and either denied or approved. If approved, it will be forwarded to the Party who initially requested an appeal, the Investigator and/or original Decision-maker, as necessary, who will submit their responses in ten (10) business days, which will be circulated for review and comment by all Parties.

Neither Party may submit any new requests for appeal after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Decision-maker will render a decision, generally within fifteen (15) business days, unless extended for good cause. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all Parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the Finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential Findings to the extent the University is permitted to share under state or federal law.

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 institutional records, or emailed to the Parties' University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

Sanctions Status during the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

Appeal Considerations

The following must be considered by the Appeal Decision-maker when reviewing the appeal:

- Decisions on appeal are to be deferential to the original decision, making changes to the Finding only when there is clear error and to the sanction only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing of the allegation. In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

- An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the Finding and/or sanction.
- The Appeal Decision-maker may consult with the Title IX Coordinator or Legal Counsel on questions of procedure or rationale, for clarification, if needed.
- Appeals granted based on new evidence should normally be remanded to the original Investigator and/or Decision-maker for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- In rare cases where a procedural error cannot be cured by the original Decision-maker (as in cases of bias), the appeal may order a new hearing with a new Decision-maker.
- An order for a new hearing cannot be appealed. However, the outcome of a new hearing can be appealed on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.
- The decision of the Appeal Decision-maker is final unless further appeal is required by law or university policy.
 - Respondent students who are suspended or expelled may appeal to the Board of Regents on the grounds listed above. Appeals must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Appeal Outcome. The Board, or a subcommittee of the Board, will review the record and determine whether to approve, reject, or modify an earlier determination and/or sanctions imposed. The decision of the Board of Regents is final and the sanction(s) imposed will stand. The Board will inform the Title IX Coordinator of their decision in writing, and provide these findings and sanctions to the student/student organization in writing within ten (10) business days following the Board of Regents Meeting.
 - Employed Parties may file subsequent appeals as outlined in the Staff Grievance Policy, Faculty Handbook or other University policy.

LONG-TERM REMEDIES

Following the conclusion of the Formal Grievance Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term Remedies with respect to the Parties and/or the campus community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These Remedies may include, but are not limited to:

- Referral to counseling and health services, including referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

RECORDKEEPING

Northern Kentucky University will maintain for a period of seven (7) years records of:

- 1) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- 2) Any disciplinary sanctions imposed on the Respondent;
- 3) Any Remedies provided to the Complainant designed to restore or preserve equal access to the University's Education Program or Activity;
- 4) Any appeal and the appeal outcome;
- 5) Any Informal Resolution and the result;
- 6) All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on the University's website; and
- 7) Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
 - a) The basis for all conclusions that the response was not deliberately indifferent;
 - b) Any measures designed to restore or preserve equal access to the University's Education Program or Activity; and
 - c) If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The University will also maintain any and all records in accordance with Kentucky's University Model Records Retention Schedule.

XII. EXTERNAL COMPLAINTS

Office for Civil Rights (OCR)

U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Office for Civil Rights - Philadelphia Office

U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: (215) 656-8541
FAX: (215) 656-8605
TDD: (800) 877-8339
Email: OCR.Philadelphia@ed.gov

Employees may file Title IX complaints with the Office for Civil Rights, U.S. Department of Education, in certain circumstances; or under Title VII with the Equal Employment Opportunity Commission (EEOC).

Equal Employment Opportunity Commission

Cincinnati Area Office
John W. Peck Federal Office Building
550 Main Street, 10th Floor
Cincinnati, OH 45202
Phone: (800) 669-4000
Fax: (513) 246-0218
TTY: (800) 669-6820
ASL Video Phone: (844) 234-5122

XIII. REVISION OF THIS POLICY AND PROCEDURES

This Policy is implemented on an interim basis for renewable six-month intervals. Should a court strike down, either temporarily or permanently, any terms or provisions of this Policy and/or related procedures, the University reserves the right to make immediate modifications to its policies and procedures that take effect upon publication on NKU's policy website.

Further, should any court strike any portion of the 2020 Title IX Regulations (34 CFR Part 106), or should an administration order them suspended or withdrawn, the University reserves the right to withdraw this interim Policy and procedures and immediately reinstate previous policies and/or procedures or revise them accordingly.

This Policy and related procedures supersede any previous policy addressing sexual harassment.

During the Formal Grievance Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any Party, such as to accommodate summer schedules or correct an oversight in drafting.

If government laws or regulations change, or court decisions alter, the requirements in a way that impacts this Policy, this document will be construed to comply with the most recent government regulations or court holdings.

REFERENCES & FORMS

[Office of Title IX](#)

[Advisor Guidance and Designation Form](#)

[KRS 164.370](#)

[KRS 164.360](#)

[34 C.F.R. Part 106](#)

RELATED POLICIES

[Faculty Policies and Procedures Handbook](#)

[Department Chairs Handbook](#)

[Staff Grievance Policy](#)

[Code of Student Rights and Responsibilities](#)

[Disclosure of Campus Security & Crime Statistics](#)

REVISION HISTORY

REVISION TYPE	MONTH/YEAR APPROVED
Revision & Name Change	August 14, 2020
New Policy – Sexual Misconduct	May 6, 2015

SEXUAL HARASSMENT

PRESIDENTIAL APPROVAL

PRESIDENT

Signature

A. K. Vaidya

Date

8/14/2020

Ashish K. Vaidya

BOARD OF REGENTS APPROVAL

BOARD OF REGENTS (IF FORWARDED BY PRESIDENT)

- ☐ This policy was forwarded to the Board of Regents on the ***Presidential Report (information only)***.

Date of Board of Regents meeting at which this policy was reported:

____/____/____.

- ☒ This policy was forwarded to the Board of Regents as a ***Presidential Recommendation (consent agenda/voting item)***.

- ☒ The Board of Regents approved this policy on 08 / 07 / 2020.

(Attach a copy of Board of Regents meeting minutes showing approval of policy.)

- ☐ The Board of Regents rejected this policy on ____/____/____.

(Attach a copy of Board of Regents meeting minutes showing rejection of policy.)

VICE PRESIDENT & CHIEF STRATEGY OFFICER

Signature

Bonita Brown

Date

08/14/2020

Bonita J. Brown