

**FACULTY SENATE MEETING**  
**August 31, 2020**

**Members present:** Kalyani Ankem, Jason Applegate, Janel Bloch, Tracey Bonner, Robert Brice, David Childs, Ronnie Chamberlain, Susannah Coaston, Christine Curran, Charlisa Daniels, Irene Encarnacion, John Farrar, Richard Fox, Kathleen Fuegen, Kebede Gemene, Amy Gillingham, Lisa Holden, Stephen Johnson, Kajsja Larson, Christopher Lawrence, Marc Leone, Caroline Macke, Phil McCartney, Chari Ramkumar, Dana Ripley, Denice Robertson, Sara Runge, Robert Salyer, Lynn Smith, Andrea Lambert South, Laura Sullivan, Duke Thompson, Jose Saavedra Torres, Lynn Warner, Kimberly Weir, Zach Wells

**Members absent:** Rhonda Davis, Jacqueline Emerine, Rich Gilson, Steven Gores, Brian Hackett, Jennifer Kinsley, Jitana Benton Lee, Justin Yates

**Guests:** Sue Ott Rowlands (Provost), Michael Baranowski (Faculty Regent), Keysha Alston (Staff Congress Representative), Mia Derks (SGA Representative), Isabela McClintock (Scripps Howard), Grace Hiles (Faculty Senate Office), Sara Conwell (Staff Congress President), Diana McGill, Amal Said, Alar Lipping, Noelle Horn, Kimberly Clayton-Code, Xiaoni Zhang, Emily Detmer-Goebel, Dolores White

**Call to Order, Adoption of Agenda**

The meeting was called to order by Senate President John Farrar at 3:04 pm with a quorum present. The agenda was adopted as distributed at the meeting.

**Welcome and Introductions**

Senate President Farrar welcomed everyone back to a “strange” academic semester. There are some new officers and committee chairs on the Executive Committee this year:

President, Dr. John Farrar  
Vice President, Dr. Steven Gores  
Secretary, Dr. Laura Sullivan  
Parliamentarian, Dr. David Childs  
UCC Chair, Dr. Richard Fox  
Benefits Chair, Dr. Charlisa Daniels  
PCC Chair, Dr. Kathleen Fuegen  
Budget Chair, Dr. Janel Bloch  
Graduate Program Chair, Dr. Brian Hackett  
General Education Chair, Dr. Kimberly Weir  
TEEC Chair, Dr. Christopher Lawrence  
Faculty Advocate, Dr. Phil McCartney  
Faculty Regent, Dr. Michael Baranowski  
Office Personnel, Grace Hiles

**Approval of Minutes**

The minutes of the May 8, 2020 meeting were approved.

## Guest Reports:

- **President (Ashish Vaidya):**
  - President Vaidya welcomed everyone back and expressed profound thanks for the incredible work done over the past five to six months.
  - There is currently a confluence of three crises—social unrest, COVID-19, and the economic recession. All are taking a toll across the country and individually. Despite the challenges, it is important to continue to work for our students and be aware of student mental health. He expressed his gratitude in keeping students front and center.
  - Keeping with a theme of the fall convocation, it is important to consider our well-being and make efforts to stay connected.
  - The university is continuing to advance inclusiveness and diversity work. Darryl Peal, Chief Diversity, Equity and Inclusion Officer (CDO) and Angela Zippin, Title IX Coordinator, have been invited to a future Senate meeting to address sexual harassment and the new policy.
  - There will be a Financial Sustainability Campus Conversation on September 18 that will highlight national trends in university budget models, discuss NKU's budget and COVID-19 impact, and explore ideas for alternative sources of revenue.
  - There is no new information from Frankfort, other than waiting to see what the next few months reveal about the state budget. All presidents of state universities recently discussed the performance funding model, and there is a consensus that the model does not work unless there is new funding. Reallocating or reducing existing resources is not productive.
  - Next week's Board of Regents (BOR) meeting will address the master plan and the pension issue, and all are urged to attend. A decision must be made about the pension by January 1.
  - There are currently two cabinet level searches, one for Vice President for Student Affairs and the other for Provost and Executive Vice President for Academic Affairs.
  
- **Provost (Sue Ott Rowlands):**
  - The provost welcomed everyone back and thanked them for the hard work and preparation since spring.
  - The Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) response report has been submitted, as a result of the university being put on warning for the need to complete a full cycle of Gen Ed assessment and for the need to provide additional resources/support for Stealy Library. She is pleased with the report and expects a SACSCOC response probably in December.
  - The COVID-10 Preparedness team continues to meet multiple times a week to work on issues that arise. Some concern has been expressed about the COVID-19 dashboard which provides regional data. Because NKU is not a residential campus, regional numbers are the best way to convey the level of COVID-19 cases. Enhancements to the dashboard are forthcoming.
  - Discussions have begun about commencement, what it will look like, how to accommodate May graduates as well as summer and fall graduates. She hopes to have an announcement soon so that students/families can plan.
  - There will be a webinar in the next couple of weeks for faculty to ask questions about the current issues. Details will be sent soon.

- **Faculty Regent** (Michael Baranowski):
  - The next BOR meeting is September 9 which he will report on at the next Senate meeting.
- **Staff Congress Representative** (Keysha Alston):
  - As a new Staff Congress member she looks forward to the continuing partnership with Faculty Senate.
  - Several meetings took place over the summer which included goal setting.
- **SGA Representative** (Mia Derks):
  - Fall meetings are just underway, with freshman elections this week.
  - SGA will be meeting with Darryl Peal, CDO, to discuss bias and diversity training.
- **Voter Registration & Public Affairs Intern - Scripps Howard Center for Civic Engagement** (Isabela McClintock)
  - Scripps Howard has launched a variety of initiatives on voter education this fall and also offers various registration resources for faculty and their classes. Ways faculty can help students Get Out the Vote include the following:
    - **National Voter Registration Day** - Publish a Canvas announcement on National Voter Registration Day to encouraging students to get registered and request their ballot/check their polling place with a link to [nku.edu/iVote](http://nku.edu/iVote) For support reach out to [engage@nku.edu](mailto:engage@nku.edu) or [mcclintoci1@nku.edu](mailto:mcclintoci1@nku.edu)
    - **Connect voting to course material!** Every area of study at NKU is connected to voting in some way, but students in STEM majors vote at lower rates than any other group. Use the Andrew Goodman Foundation's [Stemocracy](#) Project
    - **Lead by Example** If you plan to vote, let your students know why you believe it's important!
  - Additional voter resource information can be found at the Scripps Howard web page, <https://inside.nku.edu/civicengagement.html>

#### Officer Reports:

- **Senate President** (John Farrar):
  - Senate President Farrar's introductory remarks included reflections over the summer on his role and responsibilities as president. This role is an important way to represent faculty, give voice to the faculty, and to advocate for faculty. Student success begins with faculty success.
  - There are a number of issues to pursue this year, with collegial governance a priority, making sure the faculty's voice is heard, working together to meet our objectives, and standing up for ourselves even if there is opposition from the administration.
  - There were a couple of meetings over the summer for the provost search. Faculty comments about the position were incorporated into the position description.
  - A Sexual Harassment policy was passed in the August BOR meeting; materials on that are attached to the agenda. Darryl Peal, CDO, has committed to a six-month review of the policy, and is interested in feedback from Senate. He will attend a future Senate meeting to discuss.
  - The Elections Committee needs volunteers/nominations. Names may be submitted to Senate President Farrar or Grace Hiles.
  - A suggestion was made to bring back the Faculty Happy Hour, as a means to socialize

- (via Zoom, at this time) and connect. He will look into getting that event coordinated.
  - Due to the number of racial incidents over the summer, a Black Lives Matter Ad Hoc Committee will be formed. Information on that will be sent out soon. The goal is to determine how Senate and other similar committees on campus can better work together, in actionable ways that will support all of our colleagues.
- **Faculty Advocate** (Phil McCartney):
  - It was a very busy summer for the Executive Committee and there are a number of issues that he will look into this semester.

### **Committee Reports:**

- **University Curriculum Committee** (Richard Fox):
  - UCC's first meeting is this Thursday, and meetings will be held via Zoom this semester.
  - A curriculum workshop is usually offered every September for those who are new to the curriculum process such as program directors and new members of curriculum committees. This summer, he recorded a curriculum presentation for new administrators, which is now available through the UCC Canvas page, listed under the Curriculum Workshop module. For anyone not going through the administrator orientation this summer and needs Curriculog orientation, you are invited to view the video. Two Zoom sessions will be held in a couple of weeks for a question and answer period, as a follow-up to viewing the video. Anyone who needs to be added to the UCC Canvas page to access the video, please email foxr@nku.edu
  - The UCC Annual Report will be available at the Faculty Senate website: <https://inside.nku.edu/content/dam/facultysenate/docs/2020-2021FacultySenate/ucc-report2020.pdf>
  - One UCC initiative this year is to remove Senate from the approval process for certificate programs. After UCC approval, this issue will be brought to the Senate.
- **Budget** (Janel Bloch):
  - The committee met several times this summer to provide input to the ad hoc budget group. The first semester meeting is this Wednesday.
  - Another faculty survey will likely take place this fall.
- **Benefits** (Charlisa Daniels):
  - The numbers and budget for the 2020-2021 faculty development awards are: Fellowships (16, \$6,000 each, \$96,000), Project Grants (11, \$66,000), Sabbaticals (23).
  - The committee will conduct two workshops, via Zoom, about Faculty Development Awards. Workshop 1 will be an overview of faculty development awards, September 8 at 10 am and repeated September 9 at 2 pm. Workshop 2 will review the format of proposals, September 15 at 10 am and repeated September 16 at 2 pm.
- **Professional Concerns** (Kathleen Fuegen):
  - Darryl Peal, CDO, Angela Zippin, Title IX Investigator, and Sara Kelley, Deputy General Counsel, are invited to the committee's first meeting on September 17 to discuss the Sexual Harassment policy.

- **TEEC** (Chris Lawrence):
  - The committee is working on rounding out the committee roster and creating initiatives for this semester.
  
- **General Education Committee** (Kimberly Weir):
  - The first round of assessment was completed and SLOs approved last spring.
  - This year a recertification process will occur with current courses, and a number of courses that have not been assessed in some time will be reviewed.
  - Emily Detmer-Goebel, Interim Faculty Director for Gen Ed, is heading up a two-year plan to infuse Success by Design into the Gen Ed program.
  - There will not be a call for new Gen Ed courses this year.

### **Adjournment**

The meeting was adjourned at 4:19 pm.

Respectfully submitted,

Laura A. Sullivan




**Information about Faculty Senate meetings**  
(adapted from Matthew Zacate email, August 21, 2019)

- **Meeting duration.** Following our conventional meeting format, there will usually be around 16 regular guests, officers, and committee chairs eligible to give reports at each meeting. Using 5 minutes as a reasonable expectation for the length of a typical report, it could take as long as 80 minutes just to get through reports. Some reports will take less than 5 minutes, and some officers and guests will not have reports. On the other hand, questions about reports will increase the time needed for this portion of the meeting. Usually there will be business to be discussed and voted upon after the reports. One should therefore assume that a typical meeting will take at least 1 ½ hours. I personally would prefer meetings to be finished in less time; however, there likely will be occasions when there is more business than can be covered in 1 ½ hours. I hope everyone can keep enough flexibility in their Monday evening schedules to give us the option of holding longer meetings in the (hopefully) rare instances they are needed.
- **Attendance.** According to Robert’s Rules of Order, business cannot be conducted without a quorum. Our Senate constitution defines the quorum to be 50% of members. We have 45 voting representatives in the Senate, so 23 must be present. It is, therefore, desirable that Senators be present (and seated at the table or identified on Zoom) at the beginning of the meeting, which starts promptly at 3pm, and stay until the meeting is adjourned. If the number of Senators attending the meeting falls below 23, the meeting effectively will need to be adjourned early, before all business is completed.
- **Substitutes.** Our Senate constitution allows a designated alternate to attend a meeting in place of an elected Senator. Thus, if an unavoidable conflict arises and you must miss a meeting, you can still help us conduct business by arranging for a colleague from the unit you represent to take your place. In order for your substitute to qualify as a “designated alternate,” please notify Senate President ([farrarj1@nku.edu](mailto:farrarj1@nku.edu)) and copy Grace Hiles ([hilesg1@nku.edu](mailto:hilesg1@nku.edu)) at least three hours before the meeting so that we have an up-to-date roster available to determine if a quorum exists and to be clear who exactly has voting privileges should a vote take place.
- **Business.** Business is conducted largely in the form of a main motion (made orally) or a resolution (presented in writing). The Senate mainly will consider main motions/resolutions that come as recommendations from Senate standing committees (usually as part of officer reports), as recommendations from Senate Executive Committees (usually in the New Business part of the meeting), or as proposals from Senators (usually as part of new business). It is best if a Senator with a proposal contacts a member of the Executive Committee well in advance of the meeting so that an officer of the Senate can help with the formulation of the resolution and arrange for it to be distributed to all Senators before the meeting; however, this is not required. A Senator may bring up new business with a motion at the meeting, but I likely will ask for the motion to be written down before it is considered by the full Senate so that I can be sure it is recorded accurately in the minutes.
- **Shaping motions/resolutions.** The end result of any given motion/resolution is a yes/no vote. Members of the Senate will have the opportunity to discuss most motions/resolutions before the vote is held. In addition to discussing the merits of a motion, it usually is possible to propose changes to its wording; any such proposed changes are voted upon as they arise, and then the main motion – with any approved changes – is voted upon as the final step. It is not necessary for a Senator to be well-versed in the formal language of Robert’s Rules of Order to participate in discussions and propose changes. Senate officers will help with language when necessary, and Senators should feel free to ask questions about how to propose changes or new business if they are uncertain.
- **Postponing votes on motions/resolutions.** After a main motion has been made and seconded, it is possible during the discussion phase to make a motion to postpone the vote until the next meeting. If the motion to postpone is seconded and then receives a majority vote, further discussion of the main motion will be postponed. This may be desirable in situations where the business is not time-sensitive and Senators would like to consult members of their departments/colleges before voting.

## Special Rules for conducting business of the Faculty Senate while NKU is in “virtual continuity of operations” mode

Meetings of the Faculty Senate will be conducted virtually, using the Zoom online meeting software (available for download and user configuration at <https://nku.zoom.us/> using NKU login).


Owing to the large number of participants attending senate meetings, the following rules will be observed to foster orderly meetings and maintain integrity of vote results.

1. Zoom profile setup
  - a. Voting members will set their Zoom profile and/or connect with a link-name using their first and last names with an asterisk (\*) after their last names. Instructions for setting this up can be found on the next page.
  - b. Non-voting members will ensure that an asterisk does not appear after their names.
2. Meeting participants will keep phones/microphones muted when they do not have the floor in order to minimize background noise during the meeting.
  - a. The senate president, as meeting host, and designated co-hosts of the meeting will have the ability to mute participants when they do not have the floor.
  - b. A participant who wishes to address the assembly, raise a point of order, *etc.* should use the raise-hand icon (  ), which can be found at the bottom of the participants panel, and wait until he/she is recognized to unmute and speak. Instructions for finding the participants panel are on the next page.
3. Voting
  - a. Votes ordinarily cast by voice (aye versus no) in regular senate meetings will be cast using the yes (  ) and no (  ) icons, which can be found at the bottom of the participants panel. Instructions for finding the participants panel are on the next page.
  - b. In the event that there is a vote by ballot, the anonymous polling feature of zoom will be used. The host and designated co-hosts will put non-voting members and guests on hold during the poll to ensure that only voting members are allowed to cast votes.
4. Use of **chat** in Zoom.
  - a. Ideally, chat will mainly be used to alert the meeting host and designated co-hosts of technical problems, so that the co-hosts can try to help participants resolve those issues.
  - b. If technical issues cannot be resolved, participants may make motions, contribute to discussion, vote, *etc.* via chat, and co-hosts will relay chat content to the assembly.
  - c. Chat also may be used to communicate in writing proposed wording changes in motions to amend or change.
  - d. Instructions for activating the chat panel are provided on the next page.

Note that meeting attendees will be allowed to use phones for audio; however, votes must be cast as described above in the Zoom software/app.

## Instructions for using Zoom

Setting user's name (as it will appear in the participants panel)

- When joining the meeting (possibly the easiest) – enter your name (with or without asterisk, as appropriate) in the Your Name box in the Join Meeting dialog box.
- Before the meeting (recommended)
  1. Sign in at <https://nku.zoom.us/> and select profile
  2. Click the Edit link to the right of your name
  3. Edit name (including or excluding asterisk, as appropriate)
  4. Press the save changes button
- During the meeting (Windows)
  1. Click the arrow next to the right of the video button (  ) in meeting controls
  2. Select Video Settings...
  3. Select Profile on the left of the window that pops up
  4. Push the Edit my Profile button, which brings up profile settings in a web browser
  5. It may be necessary to close the advanced setting window and reactivate the web browser window before editing your profile
  6. Click the Edit link to the right of your name
  7. Edit name(s) as needed
  8. Press the save changes button
  9. Return to the zoom meeting window
  10. End the meeting
  11. Rejoin the meeting

Activating the participants panel

- Push the participants button (  ) in the meeting controls

Activating the chat panel

- Push the chat button (  ) in the meeting controls



## COLLEGIAL GOVERNANCE AT NKU

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The Faculty and Administrators, of Northern Kentucky University, has endorse the "Statement on Government of Colleges and Universities", jointly formulated by the American Association of University Professors, Association of Governing Boards of Universities and Colleges, and the American Council of Education. (As adopted by the AAUP on October 29, 1966 and revised in April 1990) as the most appropriate general statement on University Governance. The remainder of the position paper, specifically addresses the role of faculty and faculty bodies in university governance, consistent with the aforementioned "Statement on Government of Colleges and Universities."

The Faculty and Administrators of Northern Kentucky University believe in a collegial system of university governance, based on a concept of authority and responsibility shared among colleagues, some who have primary duties as faculty and some who have primary duties as administrators. A collegial system has, as its fundamental principle, the concept of good faith, consultation among these colleagues prior to decision-making as stipulated below. Under the collegial system, decision-making authority is delegated or assigned to the collegial group most expert in or responsible for the particular area in which the decision is made. However, the Board of Regents and Council on Post-secondary Education is statutorily responsible for the governance of the University, and this document does not abridge this responsibility or authority. All colleagues in the system, regardless of their respective roles as faculty or administrators, have an obligation to honor and support the decisions reached through the collegial process. If good faith consultation among colleagues exists, if decision-making authority is delegated appropriately, and if all participants are committed to the decisions made through the collegial system, non-productive adversarial relationships among groups are minimized, and university goals and objectives are more easily achieved.

### **A. CHARACTERISTICS OF A COLLEGIAL SYSTEM OF GOVERNANCE:**

1. "Colleague" is defined as a university employee of faculty rank or of professional or administrative classification.
2. Leadership, reason, persuasion, and cooperation are the hallmarks of the collegial system.
3. All colleagues have the opportunity to participate, directly or through elected representatives, in the collegial process.
4. Good faith consultation and mutual respect among colleagues are fundamental principles of the collegial system. All university decisions are preceded by dialogue among relevant constituencies, followed by appropriate rationale.
5. Academic freedom is an essential element of collegial governance.
6. When the person responsible for making the decision reaches a decision, and that person has considered all recommendations made pursuant to this document, then that decision is reached through the collegial process.
7. Colleagues are bound by the decisions relating to or affecting matters, which are reached through collegial processes. Colleagues, therefore, ought to avoid using external political processes (e.g., legislature, CPE, governing board) to frustrate the decisions reached through the collegial process.
8. All colleagues are bound equally by the results of the system and seek to implement those decisions. Of course, a colleague is free to seek to change policy within the collegial system. Leaders of the faculty (e.g., president, provost, senate president, deans, and chairs.) have a particular responsibility to implement the decisions of the system. To facilitate consensus on [the policy] policies and procedures, the procedures outlined in section B1 through B4 below shall be followed.

## **B. THE ROLE OF FACULTY BODIES IN THE COLLEGIAL SYSTEM:**

"Faculty bodies" are defined as the collective members with faculty rank of an academic unit (such as) Department and College faculties, the Senate and its committees, and department and college faculty committees. As participants in the collegial system of university governance, all faculty bodies are obligated to make decisions and/or recommendations for the good of the university. Generally speaking, faculty bodies have primary responsibility for recommendations in matters directly related to academics, including curricula subject matter and methods of instruction, research, faculty status, and those aspects of student life which directly relate to the educational process.

### **1. Academic matters:**

Faculty bodies have primary responsibility for recommendations in the following matters, and their recommendations should be implemented except for compelling reasons. Reasons for non-implementation of faculty recommendations should be clearly stated in writing, except where giving reasons in writing would contradict the faculty handbook, other pertinent university governance documents, or state or federal regulations. In cases where written notification is prohibited, reasons for non-implementation of recommendations should still be communicated in another manner to the appropriate faculty bodies. Implementation or notification should occur in a timely fashion.

Examples:

- Admissions requirements
- Graduation requirements
- Graduation of students
- Program Curricula
- Approval of academic degree programs
- Policies regarding grading and student grievances associated with academic work
- Academic personnel policies
- Academic personnel decisions
- Dismissal of tenured faculty
- Policies (personnel policies) which result in dismissal of tenured faculty
- Faculty and academic grievances
- Approval of agreements with external organizations which directly affect academic matters
- Structure of faculty and collegial academic governance bodies
- Appointment and reappointment of academic officers
- Academic planning
- Issues related to academic freedom
- University policy statements related to the matters listed above

### **2. Activities fundamentally affecting academic programs:**

Good faith consultation with faculty bodies is routine in the following matters. Faculty opinion in these matters should be strongly considered.

Examples:

- Selection of the President and Executive Officers
- Structure and organization of academic units (departments, divisions, colleges, and schools)
- Institutional Budget Priorities
- Building priorities and design of academic facilities
- Policies regarding academic administrators (e.g. job descriptions, performance reviews)
- Selection of academic administrative staff at the Director level and above
- Decisions regarding organization of academic administration

- Goals and objectives of major fund raising efforts as they may affect academic matters
- Foundation money for academic affairs
- General policies regarding intercollegiate athletics, to the extent that they involve academic concerns
- Policies concerning agreements with businesses and other entities which may affect academic matters
- University policy documents related to these matters

### **3. Activities which may affect academic programs:**

Good faith consultation generally occurs in the following matters, which are the primary responsibility of the administration, to the extent that they affect academic matters.

Examples:

- Structure of support services
- Scholarship policies
- Student non-academic discipline (policy and implementation)
- Long range planning not affecting academic matters
- Selection of major non-academic administrators
- Structure and authority of campus security/police services
- Policies concerning disposal of major assets of the university
- Foundation priorities
- Planning for support services related to academic functions
- University support services related to academic functions

### **4. Activities not normally affecting academic matters:**

Consultation does not take place routinely in the following matters. When consultation does occur, the faculty act more as advisors or expert assistants than the colleagues. Decision-making or recommending authority generally is shared substantially with other groups (e.g. students, staff, and the community), and in some cases other (non-faculty) groups may retain primary authority. Faculty bodies may feel free to give advice in these matters regardless of whether formal consultation occurs.

Examples:

- Management and investment of funds of the university and the foundation
- Implementation of budget priorities and policies
- Selection of contractors and vendors
- Routine operation of and planning for auxiliary enterprises
- Non-academic personnel policies (development and implementation)
- Staff personnel policies
- Selection of staff and lower level non-academic administrators
- Development and implementation of staff grievance policies
- Alumni and development structures and plans (not including academic matters)
- Selection of auditors and outside counsel
- Development and implementation of recreational policies
- Routine operation of intercollegiate athletics
- Development of lobbying and legislature efforts

**Approved by NKU Faculty Senate February 23, 1998**

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[Dr. Vijay V. Raghavan,](#)

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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 6<sup>th</sup>, 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](mailto: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](mailto:peald1@nku.edu); <https://inside.nku.edu/titleix.html>

**Angela Zippin: Title IX Investigator**

University Center 330; 859-572-7669; [zippina1@nku.edu](mailto: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](mailto: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](mailto: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](mailto: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](mailto:osa@nku.edu)  
Phone: (859) 572-5282

### **Employees:**

ADA Coordinator  
Office of Human Resources  
Lucas Administrative Center 708  
Email: [greenr5@nku.edu](mailto: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](mailto: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](mailto: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

<b>PRESIDENT</b>	
Signature <i>A. K. Vaidya</i>	Date 8/14/2020
Ashish K. Vaidya	

## BOARD OF REGENTS APPROVAL

<b>BOARD OF REGENTS (IF FORWARDED BY PRESIDENT)</b>	
<input type="checkbox"/> This policy was forwarded to the Board of Regents on the <b>Presidential Report (information only)</b> . Date of Board of Regents meeting at which this policy was reported: ____/____/____.	
<input checked="" type="checkbox"/> This policy was forwarded to the Board of Regents as a <b>Presidential Recommendation (consent agenda/voting item)</b> . <input checked="" type="checkbox"/> The Board of Regents approved this policy on <u>08</u> / <u>07</u> / <u>2020</u> . (Attach a copy of Board of Regents meeting minutes showing approval of policy.) <input type="checkbox"/> The Board of Regents rejected this policy on ____/____/____. (Attach a copy of Board of Regents meeting minutes showing rejection of policy.)	
<b>VICE PRESIDENT &amp; CHIEF STRATEGY OFFICER</b>	
Signature <i>Bonita Brown</i>	Date 08/14/2020
Bonita J. Brown	