

## Title IX Sexual Harassment Policy

It is the policy of the Arkansas Northeastern College ("College") to prohibit sexual harassment and acts of sexual assault, dating violence, domestic violence and stalking committed against students, employees, visitors to the campus, and other persons engaged in or seeking to participate in an educational program or activity.

### Scope

Educational program or activity includes locations, events, or circumstances over which the school exercises substantial control.

### Definitions

The following list identifies terms regarding sexual discrimination.

- **Consent:** If there is any use of intimidation, threats, coercion, or physical force then there is no consent. If a person cannot understand the sexual situation due to an impairment, there is no consent: this includes impairment or incapacitation due to drugs or alcohol. When a person is incapable of giving consent due to the person's status as a minor, there is no consent. When force is used there is no consent. Silence does not establish consent. *\*\*Consent to sexual activities in the past does not imply future consent in any way.*
- **Coercion:** Coercive behavior is any pressure applied in a sexual situation where someone has made it clear that they do not want to participate in any sexual activity.
- **Force:** The use of physical violence to obtain or engage in sexual activities with another person. Force also includes explicit threats, implied threats, intimidation and coercion that overcome resistance or produce consent. Under Arkansas law, the age of consent varies with the degrees of assault, the age of the actor, and the relationship of the actor to the other party. For specific information, please refer to the relevant Arkansas Statutes.
- **Dating Violence:** Any violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the alleged victim. This includes any physical violence, sexual exploitation, sexual harassment, or sexual assault.
- **Domestic Violence:** Any physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or any sexual conduct between family or household

members, whether minors or adults, that constitutes a crime under the laws of the state of Arkansas. Family or household members means spouses, former spouses, parents and children, any children residing in the household, persons who presently or in the past have resided or cohabited together, persons who have or have had a child in common, and persons who are presently or in the past have been in a dating relationship together. See also, Arkansas Code Annotated § 9-15-103—" Domestic Abuse.")

- **Hostile Environment:** Unwelcome gender-based verbal or physical conduct which is so severe, pervasive, and objectionable offensive that it has the effect of unreasonable interfering with an individual's education or employment performance or creating an intimidating, hostile, or offensive educational or employment environment.
- **Sexual Assault:** Sexual contact or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to any sexual contact where the victim is not able to give or otherwise does not give consent; intentional touching of, or coercing, forcing, or attempting to coerce or force another to touch a person's intimate parts (defined as genital area, groin, inner thigh, buttocks, or breast); and sexual intercourse without consent, including rape.
- **Sexual Harassment:** Sexual harassment means conduct on the basis of sex that satisfies one or more of the following: (i) Submission to or toleration of such conduct is used as a term of instruction, employment or participation in the school's activities, or submission to or rejection of such conduct is used as the basis for employment or educational decisions affecting the individual; or (ii) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to or unreasonable interferes with the person's participating in the person's education or employment performance or activity; or (iii) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).
- **Stalking:** Stalking means engaging in a course of conduct directed at a specific person, regardless of one's relationship with that person, which would cause a reasonable person to :
  1. Fear for a person's safety or the safety of another person:
  2. And/or suffer substantial emotional distress.

## **Reporting Process**

Arkansas Northeastern College has designated a Title IX Coordinator with overall responsibility for oversight of the College's compliance with its obligations under Title IX, including, but not limited to, its obligations to investigate and respond to allegations of sexual discrimination.

Any student, faculty member, staff member, administrator, or visitor to the campus who has experienced or witnessed sexual harassment, sexual assault, dating violence, domestic violence or stalking should report the incident immediately to the Arkansas Northeastern College Title IX Coordinator or to the Deputy Title IX Coordinator.

Arkansas Northeastern College has designated the following faculty and staff members as "Mandatory Reporters". As such, these people are required to report complaints to the Title IX Coordinator.

- Any employee who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or
- Any employee whom a student could reasonably believe has this authority or duty.

Upon receiving a report of a possible Title IX violation, the College's Title IX Coordinator (and/or his or her designee) will first conduct an intake meeting with the complainant. During the complainant intake meeting, the Title IX Coordinator (and/or his or her designee) will gather information and discuss, among other things, confidentiality standards and possible supportive measures that could be provided during the pendency of the complaint proceeding, such as, changes in academic classes and/or No Contact orders. During the intake meeting, the Title IX Coordinator (and/or his or her designee) will also make referrals, as appropriate, to law enforcement, advocacy, counseling, medical, academic and/or other available resources.

If during the complainant victim intake process, the complainant states a desire to file a formal complaint, or if the Title IX Coordinator determines (based on the information gathered) that additional steps should be taken in the interest of providing a safe and non-discriminatory environment for all, the Title IX Coordinator will issue and sign a formal complaint. The formal complaint will be incorporated into a Notice of Allegations\*, which will be remitted, in writing, simultaneously to both parties.

In order to file a formal complaint, the complainant must be “participating in or attempting to participate in” the recipient’s education program or activity at the time the formal complaint is filed. The phrase “educational program or activity” includes “all the operations of “an institution (i.e. “locations, events, or circumstances”) over which the institution “exercised substantial control over both the respondent and the context in which the harassment occurs”.

The Title IX Coordinator (and/or his or her designee) will next conduct an intake meeting with the respondent.

Both the complainant and the respondent may be accompanied by one advisor/support person to assist them through the intake process. The advisor/support person may not speak on behalf of the student throughout the investigatory proceeding. The Title IX Coordinator (and/or his or her designee) will investigate the allegations in a prompt, through and unbiased manner, considering all inculpatory and exculpatory evidence to the allegations which is obtained by the Title IX Coordinator, or provided by the parties or any witness.

Both parties have an equal opportunity to inspect and review:

Any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint;

Evidence upon which the college does not intend to rely in reaching a determination regarding responsibility;

And inculpatory or exculpatory evidence whether obtained from a party or other source.

All evidence that parties want to be considered must be provided to the Title IX Coordinator before the first inspection period begins. Any additional evidence offered by either party will not be admissible.

**First Inspection Period:** At the end of the investigation, but before a report is drafted the parties have 10 days to review all of the evidence collected during the investigation. The parties must be able to review the evidence the Title IX Coordinator is going to use as well as the evidence he/she is not going to use in drafting the investigative report. In that 10-day review period, both parties have equal opportunity to review and respond in writing to the evidence. The Title IX Coordinator will “consider” the responses before completing the investigative report.

**Second Inspection Period:** After the final investigative report is written, but before the hearing where the determination of a possible violation of the Title IX policy will be made, the parties can review the final investigative report. This report does not have a determination. It just outlines the investigation. In that 10-day review period, both parties have equal opportunity to review and respond in writing to the evidence.

Based on relevant information garnered through the victim intake process, the Chief Student Affairs Officer or his/her designee will make an initial assessment regarding whether a potential Title IX violation has occurred. If the Chief Student Affairs Officer determines that a potential Title IX violation has occurred, the matter will be referred to the Decision Makers (“Student Disciplinary Committee”).

If the respondent is a faculty or staff member, the recommendation will be forwarded to the Human Relations Department.

### **Standards of Evidence**

The standard of evidence threshold is the clear and convincing evidence standard. The college will apply the same standard of evidence for all formal complaints of sexual harassment whether the respondent is a student or an employee.

### **Hearing Process**

The Student Disciplinary Committee will conduct a live hearing during which it will interview and question the Complainant, the Respondent, and any witnesses whose testimony the Committee deems relevant.

If a party does not have an advisor present at the live hearing, the college must provide without fee or charge to that party, an advisor of the school’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

The Student Disciplinary Committee will permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s advisor of choice and never by a party personally. At the request of either party, or at the discretion of the College, the College will provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other. Only relevant cross-examination and other questions may be asked of a party or witness.

Before a complainant/alleged victim, respondent, or witness answers a cross-examination or other question, committee must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant. If a party or witness does not submit to cross-examination at the live hearing, the Committee must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Committee cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. The College will create an audio or audiovisual recording, or transcript, of any live hearing.

The Student Disciplinary Committee will issue a written determination within 10 days of the hearing regarding responsibility with findings of fact, the timeline of the investigation, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to either party. The written determination will be sent simultaneously to the parties along with information about how to file an appeal, and a statement that the clear and convincing evidence standard used in the hearing shall also be used in the appeal.

### **Sanctions**

There are three levels of sanctions:

Level 1 Options:

- Warning (verbal or written)
- Probation

Level 2 Options:

- Suspension
- Organizational sanctions

Level 3 Option:

- Expulsion

## Appeals

Both parties may appeal based on dismissal of a formal complaint or any allegations therein, or any finding made, or sanctions or remedies ordered or denied by the Decision Makers on the following bases: procedural irregularity that affected the outcome of the matter; 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/or, the Title IX Coordinator, investigator, or committee member had a conflict of interest or bias that affected the outcome of the matter. The appeal must be made within 10 days of the decision.

The appeal body will consist of the President's Cabinet.

\* The Notice of Allegations must contain the following:

1. Sufficient details (known at the time) to allow the respondent to prepare a response prior to any initial interview. Sufficient detail must include the identities of the parties involved in the alleged incident, the specific conduct allegedly constituting sexual harassment (under U.S. Department of Education regulations), the date of the incident and the location of the incident;
2. Sufficient time for the respondent to prepare a response to the allegations prior to any initial interview;
3. A "statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process (34 CFR 106.45 (b)(2)(i)(B));
4. Notice to the parties that they have the right to have an advisor which may be, but is not required to be, an attorney;
5. Notice that the parties may inspect and review evidence as part of the investigation that is directly related to the allegations set forth in the formal complaint;
6. Notice to the parties of any provisions in the educational institution's code of conduct which prohibits "making false statements or knowingly submitting false information during the grievance process." (34 CFR 106.45(b)(2)(i)(B)