



Executive Memorandum No. 38

Procedures for Sexual Misconduct Reports against Students

Pursuant to Regents' Policy 2.1.8(B)(3), the President shall implement procedures to address the rights of all individuals involved in cases of sexual misconduct. Detailed in the Addendum attached hereto are the procedures to be followed in response to allegations of student sexual misconduct.

Dated this 14th day of August, 2020.

A handwritten signature in cursive script, reading "Ted Carter".

Ted Carter, President

Reference: August 14, 2020

Revised: October 28, 2021 (effective immediately)

Response to Allegations of Student Sexual Misconduct

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“document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party under the Sexual Misconduct Policy and will comply with the requirements of the Sexual Misconduct Policy.

9. “Incapacitated” means an individual is unable to understand the facts, nature, extent, or implications of the situation due to drugs, alcohol, a mental disability, being asleep, unconscious or in any other state where the individual is unaware that sexual contact is occurring, or based on their age (pursuant to Nebraska law). With respect to alcohol and drugs, intoxication and/or impairment is not presumptively equivalent to incapacitation. Consent does not exist when the individual initiating sexual activity knew or should have known of the other individual’s incapacitation.

There are some persons who Nebraska law presumes are incapable of consenting to sexual contact or penetration as defined by Nebraska law by an actor by reason of their age. Under Nebraska law an actor nineteen years of age or older may not subject a person under the age of sixteen years of age to sexual penetration, or a person under fifteen years of age to sexual contact.

10. “In violation” means that it is more likely than not that a Respondent has committed one or more acts of sexual misconduct. In other words, a preponderance of the evidence standard must be used to find sexual misconduct.
11. “May” is used in the permissive sense.
12. “Not in violation” means that it is more likely than not that a Respondent did not commit one or more acts of sexual misconduct.
13. “Past sexual behavior” means a person’s sexual behavior other than when the sexual misconduct is alleged to have occurred.
14. “Private body parts” means the genital area, groin, inner thighs, buttocks, or breasts.
15. “Preponderance of the Evidence” is the standard of evidence the University uses to determine whether the Respondent violated the Sexual Misconduct Policy. A finding of responsibility by a preponderance of the evidence means that it is more likely than not, based on all the reasonable evidence and reasonable inferences from the evidence, that the Respondent violated the Sexual Misconduct Policy.
16. “Relevant evidence” means evidence that has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action.

- The University of Nebraska hotline is available for online reporting at <https://secure.ethicspoint.com/domain/media/en/gui/52126/index.html> or by phone at 844-348-9584.
- A person may also contact the Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by visiting www2.ed.gov/about/offices/list/ocr/complaintintro.html or calling 1-800-421-3481.

3. Reporting to Law Enforcement

An individual who has experienced sexual misconduct has the right to choose whether to file a police report. The University encourages individuals to report incidents of sexual misconduct to University Police or local law enforcement. Filing a police report can result in the investigation of whether sexual violence or related crimes occurred and the prosecution of the perpetrator. Timely reporting to the police is an important factor in successful investigation and prosecution of crimes, including sexual violence.

The Title IX Coordinator or their designee provides information on contacting local and campus law enforcement and will assist an individual in doing so. However, the Title IX Coordinator or their designee will not compel an individual to go to law enforcement.

Contact Information for University Police or Public Safety:

University Police (UNL and UNCA)
300 N 17th Street
(402) 472-2222
unl.police@unl.edu

Campus Security (UNMC)
4215 Emile Street
(402) 559-5111
unmcsecoffice@unmc.edu

Department of Public Safety (UNO)
100 Eppley Administration Building
(402) 554-2648
unopublicsafety@unomaha.edu

Police Department (UNK)
Facilities Building, 2501 19th Avenue
(308) 865-8911
unkpd@unk.edu

6. Investigation

The investigation process is conducted by the Title IX Coordinator or one or more Investigators. The University has the burden of gathering evidence sufficient to allow the Hearing Board to reach a determination regarding responsibility.

a. Meeting Notice

Prior to meeting with the Complainant or the Respondent, the Investigator will provide, written notice to the person being interviewed of the date, time, location, participants, and purpose all investigative interviews or other meetings, with sufficient time for the party to prepare to participate. In general, sufficient time will be at least five (5) University Days, however, a party may agree to meet sooner.

b. Advisors

The University will provide the parties with the same opportunities to have others present during any meeting or grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by up to two advisors of their choice, who may be, but are not required to be, attorneys, and not limit the choice or presence of advisors for either the Complainant or the Respondent in any meeting or grievance proceeding. However, the University may establish restrictions regarding the extent to which the advisors may participate in the proceedings, as long as the restrictions apply equally to both parties.

c. Gathering Evidence

The Investigator will meet separately with the Complainant and the Respondent. The Investigator will ask for all information relevant to the allegations. The parties will have an equal opportunity to identify witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. For both parties, this is an opportunity to present any information regarding the incident, including names of witnesses, the existence of documents, emails, text messages, or other recordings, or any other information the parties feel may be relevant. As part of the investigation, the Investigator may conduct additional investigative and witness interviews at the Investigator's discretion. The Investigator is responsible for contacting and interviewing relevant witnesses the Complainant identifies and witnesses the Respondent identifies, and any witnesses the Investigator deems necessary. The Investigator will review all available pertinent evidence. This may include reviewing student and/or personnel files and reviewing law enforcement documents or evidence. The Complainant and the Respondent may also submit supplemental information at any time during the investigation until the Investigator issues a final Investigative Report.

The Investigator will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the

7. Formal Hearings in Cases of Alleged Sexual Misconduct

a. Overview

After an investigation, the University will conduct a hearing to determine whether the Respondent is responsible for violating the Sexual Misconduct Policy. During the hearing, the Student Conduct Officer or their designee, the Complainant, and the Respondent will each have an opportunity to

- i. Discuss and explain their position;
- ii. Present evidence, including documents and witnesses; and
- iii. Have their advisor ask questions of other party and witnesses (e.g. cross-examination).

If a determination of responsibility for sexual misconduct is made against the Respondent, the decision-maker(s) will determine appropriate sanctions for Respondent and confirm that the University will provide remedies to the Complainant. A hearing must be held unless the case has been resolved pursuant to the Informal Resolution Section. The University will strive to conduct a hearing within thirty (30) University Days from the issuance of the investigation report.

b. Hearing Scheduling and Notice

When the Investigator sends the Investigative Report to the Respondent and the Complainant, the Title IX Coordinator or their designee will forward a copy of the Investigative Report to the Hearing Facilitator. The Hearing Facilitator will schedule a hearing date, time, and location and notify the parties of the same. The University will strive to complete a hearing within one (1) month from the issuance of the investigation report. (May be delayed due to Informal Resolution)

A Pre-Hearing Conference will be held at least two (2) University Days prior to the scheduled hearing. The University will provide written notice of the date, time, location, participants, and purpose of both the prehearing conference and of the hearing at least five (5) University Days prior to the prehearing conference.

c. Pre-Hearing Conference

The Respondent and the Complainant shall have the right to attend a Pre-Hearing Conference. The purpose of the Pre-Hearing Conference is to plan for the hearing, discuss the issues and facts that will be presented at the hearing, exchange information about witnesses likely to be called, answer procedural questions, and settle those matters which may be agreeably concluded. Generally, the Chair of the Hearing Board will preside over the Pre-Hearing Conference. During or prior to the Pre-Hearing Conference, the parties shall be informed of the names of the Hearing Board members.

- i. Hearing Information Exchange Prior to the Pre-Hearing Conference

The Respondent, the Complainant, and the University Presenter shall have an opportunity to inspect documents and a list of witnesses prior to the hearing. The Hearing Board will receive a copy of the Investigative Report. If there are any additional documents, that the Respondent, the Complainant, or the University Presenter would like to offer at the hearing, this information should be provided at least two (2) University Days before the Pre-Hearing Conference. This information will be exchanged with all parties.

ii. Use of Past Sexual Behavior

During the Pre-Hearing Conference, the parties will be instructed about the use of past sexual behavior of the Complainant¹ or past sexual assault by the Respondent² as evidence at the hearing. In most situations, questions and evidence of the past sexual history of either the Respondent or the Complainant are not relevant and will not be admitted at the hearing except in very limited situations set forth below.

- a) 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
- b) if the questions and evidence concern specific incidents or the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

d. General Hearing Information

- i. At the request of either party, the University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- ii. The University will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.
- iii. The Hearing Board is a subset of the University Conduct Board. It will be composed an odd number of three or more members, including one (1) student member. One of the members shall serve as Chair. All members possess voting privileges.
- iv. Any real or perceived conflict of interest or bias between a member of the Hearing Board and the Respondent or the Complainant must be brought to the attention of the Hearing Facilitator or Chair of the

¹ See Neb. Rev. Stat. § 27-412 (2016) (Relevance of person's alleged past sexual behavior or alleged sexual predisposition).

² See Neb. Rev. Stat. § 27-415 (2016) (Evidence of crimes of sexual assault in civil cases).

- Hearing Board no less than two (2) University Days in advance of the hearing.
- v. The Respondent and the Complainant have the right to be present for the hearing. If the Respondent is a student organization, then one of its officers has the right to be present for the hearing. The hearing is closed to the public.
 - vi. The Respondent may not be found to be responsible for sexual misconduct solely because the Respondent is not present at the Hearing.
 - vii. In such cases when a Respondent fails to appear before the Hearing Board, a plea of “not in violation” shall be entered on the Respondent’s behalf and the hearing may proceed as scheduled. In this situation, the University will provide an advisor to conduct cross-examination of the Complainant and witnesses.
 - viii. In hearings involving more than one Respondent, the Chair of the Hearing Board, in their discretion, may permit the hearings concerning each Respondent to be conducted separately.
 - ix. The Respondent(s), the Complainant, and the University Presenter shall have the right to hear all evidence, present evidence, testify, and to hear and question witnesses.
 - x. The process must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. Examples of privileges under law include Lawyer-Client, Physician-Patient, Professional Counselor-Client; Spousal, Clergy, and Victim’s Advocate.
 - xi. The role of the Complainant’s and the Respondent’s advisor of choice is limited to providing advice to the party and conducting cross-examination of witnesses. The role of a University appointed advisor is limited to conducting cross-examination. Advisors must fulfill their role in a manner which does not disturb Conduct proceedings. If an advisor fails to act in accordance with these guidelines, they may be barred from participation in the Conduct proceedings and the hearing may be continued.
 - xii. The Hearing Board may seek advice from the University’s Counsel throughout the hearing process on questions of law and procedure. However, the members of the Hearing Board are responsible for making their own factual conclusions.

5. Mandatory Relocation
 - a. The student is required to move to a different room, University residence hall, or housing unit.
6. Loss of Privileges for a Specified Period of Time
 - a. Loss of a privilege to engage in any activity or experience not required to satisfy graduation requirements, including but not limited to:
 - i. Prohibition or limitation on the use of University electronic resources such as, internet access, email access, computers, or tablets;
 - ii. Prohibition or limitation on the use of University media resources, such as communal televisions, projectors, etc.;
 - iii. Prohibition or limitation on the use of University wellness/recreation center equipment;
 - iv. Prohibition or limitation on on-campus dining;
 - v. Prohibition or limitation on use of on-campus transportation;
 - vi. Prohibition or limitation on use of University purchasing cards or accounts;
 - vii. Prohibition or limitation on use of University keys and/or card access.
 - viii. Prohibition or limitation on the use of personal media devices; and
 - ix. Restriction on access to campus.
7. Restitution
 - a. Requiring the student to return to the owner money or property that the student wrongfully took.
 - b. Requiring the student to pay the owner for property destroyed or damaged.
8. Performance of Service to the University Community
 - a. The service must be reasonable in type and duration.

- d. A notation will be made on the student's transcript.

Additional Provisions Related to Sanctions:

1. If there is a dispute about whether a student or a student organization complied with any of the conditions imposed as part of the response to a violation, the dispute will be resolved through the Title IX Coordinator or as a Student Conduct matter.
 - a. The factors relevant to the determination of the appropriate response(s) include, among others;
 - b. the nature and seriousness of the conduct;
 - c. the harm that the conduct caused or might have caused;
 - d. the student's academic progress or experience;
 - e. the student or student organization's acceptance of responsibility for the conduct;
 - f. the student or student organization's efforts to conceal or avoid responsibility for the conduct;
 - g. the student or student organization's explanations for the conduct;
 - h. the student or student organization's prior record of violations; and
 - i. the interests of the University, and the imposition of any sanctions pursuant to procedures other than those authorized by this Code (for example, sanctions imposed by a faculty member or by civil authorities).
2. Other than University Expulsion, disciplinary sanctions shall not be made part of the student's permanent academic record, but shall become part of the student's confidential disciplinary record.
3. After graduation, and upon application to the Conduct Officer, the student's confidential disciplinary record may be expunged of disciplinary actions other than University Suspension or University Expulsion.
4. Cases involving the imposition of sanctions other than University Suspension or University Expulsion shall be expunged from the student's confidential record seven (7) years after graduation, final disposition of the case, or as otherwise authorized or required by law.

- d. The Title IX Coordinator or their designee must approve the terms of any Informal Resolution.
- e. The Respondent may be subject to discipline for potential violations of policies in addition to the Sexual Misconduct Policy outside of the Informal Resolution Process. However, the Informal Resolution process may also address other potential violations of policies in addition to the Sexual Misconduct Policy.
- f. Informal Resolution procedures may be discontinued at the request of any party or terminated by the Title IX Coordinator or their designee.
- g. If the University and parties do not reach an agreement to resolve the Formal Complaint through the Informal Resolution process, the grievance process will be resumed with respect to the Formal Complaint, including investigation and adjudication and any Formal Hearing.

N. Retaliation

No member of the University community may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the Sexual Misconduct Policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Sexual Misconduct Policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for Student Code of Conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by the Sexual Misconduct Policy, constitutes retaliation.

O. Periodic Review

This Sexual Misconduct Procedures will be reviewed at least every two (2) years. The Provost will initiate this review.

P. Effective Date

These Procedures apply to reports of sexual misconduct received by the Title IX Coordinator on or after August 14, 2020, except that definitions from the Policy in place at the time the alleged prohibited conduct occurred will be used to make the decision on responsibility.