

I. INTRODUCTION

A. Overview and Purpose

For the purpose of the Sexual Misconduct Policy and these Procedures, the term Sexual Misconduct specifically includes rape, domestic violence, dating violence, sexual assault and stalking, as those terms are defined in the Sexual Misconduct Policy and by state and federal law.

B. Examples of Conduct Which May Constitute Sexual Misconduct

It is not possible to list all circumstances that might constitute Sexual Misconduct. In general, Sexual Misconduct encompasses any sexually related conduct which causes others discomfort, embarrassment or humiliation, and any harassing conduct, sexually related or otherwise, directed toward an individual because of that individual's sex.

Such conduct is subject to Northwest Tech Policy whenever it occurs in a context related to the employment or academic environments, or if it is imposed upon an individual by virtue of an employment or academic relationship.

A determination of whether conduct constitutes Sexual Misconduct is dependent upon the totality of the circumstances, including the pervasiveness or severity of the conduct. The following examples of conduct may constitute Sexual Misconduct:

- Unwelcome sexual advances—whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life;
- Commenting on an individual's body, commenting about an individual's sexual activity, deficiencies or prowess;
- Displaying sexually suggestive objects, pictures or cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures or suggestive or insulting comments;
- Inquiries into one's sexual experiences; and
- Discussion of one's sexual activities.

In order to constitute Sexual Misconduct, conduct must be unwelcome or non-consensual. Conduct is unwelcome when the other person does not solicit or invite it and regards it as undesirable or offensive. Consent requires a willingness or agreement to engage in the conduct, with full knowledge of the facts and circumstances and the necessary mental capacity. The fact that a person may accept the conduct does not mean that he/she welcomes or consents to it.

II. JURISDICTION; TIMING; RETALIATION AND RELATED MISCONDUCT; CRIMINAL PROCEEDINGS

A. Jurisdiction

1. Personal Jurisdiction. Any person may file a Sexual Misconduct complaint against a "College student" under these Complaint Procedures. A "College student" means any

student who is registered or enrolled at the College at the time of the alleged Sexual Misconduct (including Sexual Misconduct that is alleged to have occurred during any academic recess, provided that there is an expectation of such student's continued enrollment at the College). With respect to a complaint against a student that does not meet the criteria of a College Student, the College reserves the right to determine, in its sole discretion, whether the conduct described in the complaint constitutes a sufficient risk to the College community to warrant processing the complaint.

2. Geographic Jurisdiction. These Complaint Procedures apply to any allegation of Sexual Misconduct against a College student. Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus. Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by Northwest Tech.

B. Timing of Complaints and Availability of Procedures

If there is Personal Jurisdiction over the respondent, there is no time limit to invoking these Complaint Procedures. Nevertheless, students are encouraged to report alleged Sexual Misconduct immediately in order to maximize the College's ability to obtain evidence, and conduct a thorough, impartial and reliable investigation. Failure to promptly report alleged Sexual Misconduct may result in the loss of relevant evidence and witness testimony, and may impair the College's ability to enforce these Complaint Procedures.

Where the respondent is a degree candidate, it is the responsibility of the complainant to consult with the Dean of Student Advancement concerning the respondent's intended date of graduation and to file a complaint in a timely manner where Personal Jurisdiction over the respondent would otherwise be lost. The conferral of a degree may be deferred until proper resolution of any Sexual Misconduct charges.

C. Retaliation

It is a violation of College policy to retaliate against any person making a complaint of Sexual Misconduct or against any person cooperating in the investigation of (including testifying as a witness to) any allegation of Sexual Misconduct. For these purposes, "retaliation" includes intimidation, threats, harassment and other adverse action threatened or taken against any such complainant or third party. Retaliation should be reported promptly to the Dean and may result in disciplinary action independent of the sanction or interim measures imposed in response to the Sexual Misconduct allegations.

D. Other Related Misconduct

In accordance with the Maverick Code of Conduct, disciplinary action may be imposed for Sexual Misconduct *and* any violations of the Maverick Code of Conduct directly related to the alleged Sexual Misconduct. Such related misconduct may include, without limitation, violations of the rules of privacy as articulated herein, violations of the Title IX Coordinator's directive(s) discussed in Section III.D, below, and for violations of other Code of Conduct provisions that occurred in the course of the alleged Sexual Misconduct. It is not the practice of the College to pursue disciplinary action against a complainant or witness for his/her improper use of alcohol or drugs (e.g., underage drinking) which is revealed as a result of the Sexual Misconduct complaint, provided that such student is acting in good faith as a complainant or witness to the events of the alleged Sexual Misconduct.

College students who participate in the investigation process, whether as parties to the proceedings or as witnesses, are expected to provide truthful testimony in accordance with the College's policies and procedures.

E. Effect of Criminal Proceedings

Because Sexual Misconduct may constitute both a violation of College policy and criminal activity, the College encourages students to report alleged Sexual Misconduct promptly to local law enforcement agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of College policy, criminal investigations or reports are not determinative of whether Sexual Misconduct, for purposes of these Complaint Procedures, has occurred. Conduct may constitute Sexual Misconduct under the College's Policy and these Complaint Procedures even if law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute.

The filing of a complaint of Sexual Misconduct under these Complaint Procedures is independent of any criminal investigation or proceeding, and (except that the College's Investigation may be delayed temporarily while the criminal investigators are gathering evidence) the College will not wait for the conclusion of any criminal investigation or proceedings to commence its own Investigation and take interim measures to protect the complainant and the College community, if necessary, as described in Section III.D, below. Nothing in these Procedures is intended to limit the authority of Northwest Tech to take appropriate disciplinary action against any individual who violates College rules or policies, whether or not the conduct constitutes Sexual Misconduct under the law.

III. THE PROCESS: INITIAL STEPS

A. Intake Meeting with Complainant

Upon receipt of notice of any allegation of Sexual Misconduct, a Title IX Coordinator will first schedule an individual intake meeting with the complainant in order to: provide to the complainant a general understanding of College Policy and these Complaint Procedures; to identify forms of support or immediate interventions available to the complainant; and

to address at a high level how the allegation of Sexual Misconduct could potentially be addressed at both the College level and as a criminal matter with local law enforcement. Detailed information about sources of support and immediate interventions available to the complainant within the College.

The intake meeting may also involve a discussion of any interim measures that may be appropriate concerning the complainant's academic and/or College employment arrangements.

B. Formal or Informal Resolution

At the initial intake meeting with the complainant, the Title IX Coordinator will: i) determine whether there is reasonable cause to believe that policy has been violated and if so, ii) determine how the complainant wishes to proceed (Formal Resolution, Informal Resolution or no resolution process of any kind). If the complainant wishes to proceed with either Formal or Informal Resolution, the Title IX Coordinator will determine the name of the respondent, and the date, location and nature of the alleged Sexual Misconduct, and will schedule an individual intake meeting with the respondent in order to: provide the respondent a general understanding of College Policy and these Complaint Procedures; to identify forms of support or immediate interventions available to the respondent; and to address at a high level how the allegation of Sexual Misconduct could potentially be addressed at both the College level and as a criminal matter with local law enforcement. Additional information about sources of support and immediate interventions available to the respondent within the College.

If the complainant wishes to proceed with Formal Resolution, the Title IX Coordinator will promptly prepare and forward a formal complaint to the Investigators for investigation, in accordance with Section IV, below. The formal complaint will set forth the name of the respondent, and the date, location and nature of the alleged Sexual Misconduct.

If the complainant wishes to proceed with Informal Resolution, the Title IX Coordinator will promptly initiate Informal Resolution proceedings, in accordance with Section V, below.

C. Complainant Does Not Wish to Pursue Resolution or Requests Confidentiality

If complainant does not wish to pursue Formal or Informal Resolution and/or requests that his/her complaint remain confidential, **Title IX nevertheless requires the College to investigate and take reasonable action in response to the complainant's information.** The Title IX Coordinator will inform the complainant, however, that the College's ability to respond may be limited. The Title IX Coordinator may conduct a preliminary investigation into the alleged Sexual Misconduct and may weigh the complainant's request(s) against the following factors: the seriousness of the alleged Sexual Misconduct; whether there have been other complaints of Sexual Misconduct against the same respondent; and the respondent's right to receive information about the allegations if the information is maintained by the College as an "education record" under FERPA^[1]. The Title IX Coordinator will inform the complainant if the College

cannot ensure confidentiality. Even if the College cannot take disciplinary action against the respondent because the complainant insists on confidentiality or that the complaint not be resolved, the Title IX Coordinator reserves the authority to undertake an appropriate inquiry, issue a “no-contact” order and take other reasonably necessary measures, including interim measures described in Section III.D.

D. Interim Measures

In *all* complaints of alleged Sexual Misconduct, *regardless of whether the complainant wishes to pursue Formal Resolution, Informal Resolution or no resolution of any kind*, the College will undertake an appropriate inquiry and take such prompt and effective action as is reasonably practicable under the circumstances to support and protect the complainant, including taking appropriate interim measures before the final outcome of complaint. Accordingly, at or after the intake meeting, the Title IX Coordinator may impose a “no contact” order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation. The Title IX Coordinator also may take any further interim measures that he/she deems appropriate concerning the interaction of the parties pending the outcome of the Investigation, including, without limitation, directing appropriate College officials to alter the students’ academic and/or College employment arrangements. When taking steps to separate the complainant and the respondent, the Title IX Coordinator will seek to minimize unnecessary or unreasonable burdens on either party. Violation(s) of the interim measures will constitute related offenses that may lead to additional disciplinary action.

IV. FORMAL RESOLUTION

A complainant may elect Formal Resolution, which involves: i) a fact finding inquiry by trained individuals designated by the Title IX Coordinator to conduct investigations of alleged Sexual Misconduct (“Investigators”), which includes summarizing information learned from those involved, collecting related documents and submitting summary findings to the Title IX Coordinator that are likely to be helpful in determining whether behavior is in violation of Northwest Tech’s Sexual Misconduct Policy (the “Investigation”), and ii) a review/determination by the Title IX Coordinator.

A. Investigation When the complainant elects Formal Resolution, the Title IX Coordinator will prepare and assign the complaint to two Investigators to conduct an Investigation, designating one of the Investigators as the Lead Investigator. The Investigators are neutral fact-finders, who, during the course of the Investigation, typically conduct interviews with the complainant, the respondent and third party witnesses (including expert witnesses, where applicable); visit and take photographs at relevant sites; and, where applicable, coordinate with law enforcement agencies to collect and preserve relevant documentation and other evidence. The Investigators shall summarize the factual findings in a report to the Title IX Coordinator, typically within sixty (60) days from receipt of the complaint, unless additional time is needed in which case the parties will be notified of the extension.

B. Interim Student Record Holds During the Investigation process, the Title IX Coordinator may, where the alleged Sexual Misconduct is sufficiently serious in his/her reasonable discretion, cause a disciplinary hold to be placed on the respondent's academic record pending final resolution of the complaint. A respondent whose transcripts are subject to a hold may appeal that decision to the Dean of Academics, whose decision will be final.

C. Converting from Formal to Informal Resolution At any time during the Formal Resolution process, the complainant may request to engage in Informal Resolution, by making such request to the Title IX Coordinator prior to the final determination. The Title IX Coordinator has the discretion to determine if converting to Informal Resolution is appropriate. Similarly, at any time prior to the final determination, the respondent may elect to acknowledge his/her actions and take responsibility for the alleged Sexual Misconduct. In such cases, the Title IX Coordinator will propose a resolution to the complaint and a sanction. If both the complainant and the respondent agree in writing to such proposed sanction, the complaint is resolved without final review and determination by the Title IX Coordinator and without any further rights of appeal by either party. If either the complainant or the respondent objects to such proposed sanction, a review by the Title IX Coordinator and a final determination will be issued for the exclusive purpose of determining a sanction, which final determination is subject to appeal pursuant to Section IV.D.9.

D. Investigation Procedures

1. Submissions. The parties will provide the Lead Investigator with a list of witnesses they propose to be interviewed, list of relevant documents to be obtained and a description of any other information they believe to be relevant to the Investigation on or before a date set by the Lead Investigator. Evidence of the complainant's past sexual history will not be considered unless it is relevant to the complaint. In the absence of good cause, as determined by the Lead Investigator in his/her sole discretion, the parties may not introduce witnesses, documents or other information after the deadline set by the Lead Investigator. Witnesses contacted by the Investigators but who are unwilling to participate in an interview may instead submit a written statement to the Lead Investigator, prior to the date set for submission of the Investigative Report to the Title IX Coordinator.

2. Pre-Investigation Meeting and Determination of Complaint and Witnesses. The Lead Investigator will schedule a pre-Investigation meeting with each party prior to the first witness interviews. At the meeting, the Lead Investigator will review Investigation procedures with the parties. The respondent must be notified in writing of the official investigation. The letter shall include the policy alleged to be violated, date and time of occurrence as well as witnesses. It will also include a notice of presumed innocence, the entitlement to an advisor of their choice, availability of evidence collected for inspection upon request, information regarding false statements made during the grievance process.

3. Investigation. During the ongoing Investigation, and prior to the Investigative Report, each party may submit a written statement to the Investigators, with any documentation deemed relevant. If prior to the issuance of the Investigative Report, the Investigators determine that unresolved issues exist that would be clarified by the submission of additional information, the Lead Investigator may request such additional information be submitted. The respondent has the option not to provide a written statement; however, the exercise of that option will not preclude the Investigation from proceeding and a final determination of the complaint being made by the Title IX Coordinator. The college shall provide in writing a notice of all interviews/hearings or meetings related to the case to both parties involved.

4. Third Parties. Third parties may assist each party in the Investigation process, including preparing and submitting statements on behalf of a party, but may not participate verbally in any interview or meeting, unless they are witnesses in the Investigation.

5. College's Counsel. College personnel involved in the Investigation may seek advice from the College's Office of the General Counsel throughout the Formal Investigation process on questions of law and procedure; however, factual determinations are the domain of the Investigators, Dean, Title IX Coordinator(s) and Vice President(s). The college should be consulted prior to contact so as to arrange a phone call/meeting.

6. Standard of Proof/Live Hearing. The College evaluates evidence of alleged Sexual Misconduct under a "preponderance of the evidence" standard. A preponderance of the evidence means that the information shows that it is "more likely than not" that the respondent violated the College's Policy. In the context of a review of the Investigators' Investigative Report and determination by the Title IX Coordinator.

Once the investigation has completed the investigator will submit report to both parties and to the deciding staff member and a hearing date set. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

A live hearing will be held and a representative from each party will be allowed to cross examine all witnesses. Both parties should have a support person of their choice. If one party doesn't have a support person one should be assigned at the discretion of the college. Witnesses that do not show up to testify will have their written or recorded statements removed from evidentiary consideration. Once all witnesses have testified the hearing judge/s will prepare a written response of findings and be delivered to both parties within 10 days of the live hearing. If either of the party requests it, the may be conducted by video conference as long as its live and both parties are in the same geographic location and parties are available for live cross examination. The college shall prepare a recorded record of all hearings.

7. Sanction. Any student found responsible for Sexual Misconduct is subject to discipline in accordance with the Student Disciplinary Action Policy, including, but not limited to a verbal or written warning, “no contact” order, alteration of the parties’ academic or employment arrangements at Northwest Tech, probation, suspension and/or expulsion. In determining an appropriate disciplinary action, any record of past violations of the Code of Conduct, as well as the nature and severity of such past violation(s) may be taken into consideration. The purpose of the discipline will be to: a) bring an end to the violation in question, b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation on the complainant and the College community. The disciplinary decision will be made by the Dean (and/or the Title IX Coordinator if different from the Dean) and any discipline imposed will be explained or supported in the Final Outcome Letter. When the Title IX Coordinator overseeing the investigation is not the Dean, the Title IX Coordinator may consult with the Dean regarding appropriate discipline.

8. Decision. The decision of the Title IX Coordinator, and any discipline imposed, if applicable, will be provided to both parties via the Final Outcome Letter described in Section IV.D.11, below, within ten (10) calendar days following the conclusion of this Investigation (or such longer time as the Title IX Coordinator may for good cause determine).

9. Appeals. Either party may petition to appeal the Title IX Coordinator’s final determination only on procedural concerns, where it is believed that the final determination was reached without following these Procedures. In such instances, the appealing party must submit an appeal to the Office of the Dean of Academic Advancement in writing within ten (10) business days of the date the Title IX Coordinator delivers the Final Outcome Letter to the parties. The notice of appeal must describe in detail the procedure that was not followed. Upon receipt of a valid appeal request, the Dean of Academic Advancement will accept such appeal request, will put the non-appealing party on notice allowing the non-appealing party to submit a response directly related to the appeal notice and will review the notice of appeal and any additional documentation with respect to the procedural appeal prior to determining whether a procedure was appropriately followed. If the Dean of Academic Advancement determines that a procedure was not appropriately followed, then the Dean will put the parties on notice of such determination, will allow for the questioned procedure to be carried out appropriately (which may include allowing for additional witness statements and/or documentation in certain circumstances) and will then review the entire set of documents created and collected in the Investigation and the Final Outcome Letter before making a determination regarding the original complaint of Sexual Misconduct. The Dean of Academic Advancement will make an initial ruling with respect to the questioned procedure within ten (10) business days of the date the appeal is submitted. The Dean will make a final ruling/determination with respect to the original complaint of Sexual Misconduct within thirty (30) days of the date of the appeal. Decisions by the Dean of Academic Advancement are final and not subject to appeal by either party.

10. Effective Date of Sanction. Sanctions imposed for Sexual Misconduct are not effective until the resolution of any timely appeal of the decision. However, if advisable to protect the welfare of the complainant or the College community, the Title IX Coordinator and/or Dean may determine that any probation, suspension or expulsion be effective immediately and continue in effect until such time as the Dean of Academic Advancement may otherwise determine. The Dean may suspend the final determination pending exhaustion of any appeals by the respondent pursuant to Section IV.D.9, above, or may allow the respondent to attend classes or to engage in other activity on a supervised or monitored basis, or may make such other modifications to the determination as may be advisable in the sole discretion of the Dean of Academic Advancement. The Dean's decision may not be appealed.

11. Privacy of the Investigation Process; Final Outcome Letter. In order to comply with FERPA, Title IX and other applicable laws, and to provide an orderly process for the submission and consideration of relevant information without undue intimidation or pressure, documents prepared and/or submitted during the Investigation process (including the Investigative Report, and the pre-Investigation submissions referenced in Section IV.D.1, above), witness statements or other information, may not be disclosed outside of the Investigation process, except as may be required or authorized by law.

In accordance with applicable laws, both the complainant and the respondent must be informed of the final outcome, and the College may not impose any limitations on the re-disclosure of this information. Accordingly, following the closure of the investigation process, the Title IX Coordinator will issue a written decision letter (the "Final Outcome Letter"), concurrently to both the respondent and the complainant. The Final Outcome Letter will set forth the name of the respondent; the violation(s) of College policy for which the respondent was found responsible, if any; any essential findings supporting the decision on the issue of responsibility; and the discipline imposed, if any. College policy neither encourages nor discourages the further disclosure of the Final Outcome Letter by either the complainant or the respondent. The College acknowledges that sharing the Final Outcome Letter with others, including family, friends, legal counsel, mental health professionals and sexual assault advocates or victims, may critically important to an individual.

V. INFORMAL RESOLUTION

A complainant who wishes to file a formal complaint with the Dean of Student's Office but who does not wish to pursue Formal Resolution may request a less formal proceeding, known as "Informal Resolution". Although less formal than Formal Resolution, Informal Resolution is an appropriate resolution process; it is not mediation. The respondent is expected to attend the Informal Resolution proceeding, but is not required to participate. Informal resolution shall NOT be available to cases involving staff/faculty as the respondent.

A. Purpose of Informal Resolution

Informal Resolution provides an opportunity for the complainant to confront the respondent, in the presence of, and facilitated by, a presiding officer, as described in Section V.B, below, and to communicate his/her feelings and perceptions regarding the incident, the impact of the incident and his/her wishes and expectations regarding protection in the future. The respondent will have an opportunity to respond.

B. Third Parties; Presiding Officer

The complainant and the respondent each may bring a third party to the Informal Resolution; however, third parties may not participate verbally in the meeting. The Title IX Coordinator or a designee will preside over the Informal Resolution, and may elect to be assisted by another member of the Investigation team.

C. Informal, Resolution Where Respondent Acknowledges Responsibility

If, during the course of the Informal Resolution, the respondent elects to acknowledge his/her actions and take responsibility for the alleged Sexual Misconduct, the Informal Resolution will be concluded and the Title IX Coordinator will propose a sanction. If both the parties agree to such proposed sanction, the complaint will be resolved without any further rights of appeal by either party. If either the complainant or the respondent objects to such proposed sanction, the Dean (and/or the Title IX Coordinator if different from the Dean) shall make a determination of an appropriate sanction, which determination is subject to appeal pursuant to Section IV.D.9. For purposes of this sanction determination, all of the other provisions of these Complaint Procedures relating to the imposition of a sanction for Sexual Misconduct shall apply including, for example, the provisions governing the effective date of the sanction.

D. Privacy of Informal Resolution

In order to promote honest, direct communication, information disclosed during Informal Resolution will remain private while the Informal Resolution is pending, except where disclosure may be required by law or authorized in connection with duties on behalf of the College.

E. Informal Resolution Where Respondent Contests Responsibility

If the respondent contests the complaint of alleged Sexual Misconduct, the Title IX Coordinator may nevertheless impose a protective order agreed upon by the parties, or (with or without such agreement) based on information derived from the Informal Resolution proceedings, taken together with any other relevant information known to the College at the time of the Informal Resolution.

F. Election of Formal Resolution

The College, the complainant or the respondent may, at any time prior to the conclusion of the Informal Resolution, elect to end such proceedings and initiate Formal Resolution instead. In such cases, statements or disclosures made by the parties in the course of the Informal Resolution may be considered in the subsequent Formal Resolution.

[1] Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99.

[2] Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act,
20 U.S.C., Section 1092(f); 34 C.F.R. Part 668.46