

University of Nebraska

Response to Allegations of Student Sexual Misconduct

1. Introduction

- a. Beginning with the University of Nebraska charter in 1869, Nebraska law has provided that no person shall be deprived of the privileges of this institution because of sex. Discrimination on the basis of sex is also prohibited by Federal law.
- b. Sexual misconduct is conduct in violation of University policy and state and federal law that the University will take action to eliminate, prevent, and redress once the University has notice that sexual misconduct has occurred. "Sexual misconduct" includes dating violence, domestic assault, domestic violence, rape, sexual assault, sexual harassment (whether sexual violence is involved or not), and stalking. This policy applies to all University of Nebraska students regardless of sexual orientation or gender identity, and to all programs and activities under the jurisdiction of the University of Nebraska. All students are protected against sexual misconduct under this policy, whether the alleged sexual misconduct is committed by another University student, University employee, or third party. Persons who have been subjected to sexual misconduct may be able to receive assistance from the University regardless of whether a charge or report of any kind is filed.
- c. The University will investigate reported allegations of sexual misconduct and may take appropriate remedial action even if the person allegedly subject to misconduct or the Complainant does not wish to pursue formal charges. Any response by the University may be hindered by a person's or the Complainant's desire for anonymity and/or inaction.
- d. Sexual misconduct by or against a student may be investigated by the University whether it is alleged to have been committed on or off campus.
- e. Any person can complain of sexual misconduct against or by a student. Complaints of sexual misconduct may be made using the University's internal processes at the same time that criminal complaints or charges are pursued with the appropriate law enforcement or external agencies. University internal investigation and disciplinary proceedings are independent of any criminal or external proceedings.

- f. The University may pursue disciplinary action against a student at the same time the student is facing criminal charges for the same offense, even if the criminal prosecution is pending, or has been dismissed, or the charges have been reduced.
- g. Complaints regarding sexual misconduct against a student by a student can be made to the campus¹ Student Affairs Officer or Title IX Coordinator.² Sexual misconduct complaints by or against employees should be made to the appropriate Human Resources Office or Title IX Coordinator.
- h. University policy prohibits retaliation against any person making a complaint of sexual misconduct or against any person cooperating in the investigation, including but not limited to witnesses. The prohibition of actual or threatened retaliation applies to employees and third parties as well as students.

2. Investigations of Alleged Sexual Misconduct; Disciplinary Complaints

- a. Upon receipt of a sexual misconduct complaint or report, the University will provide the Complainant a written notice describing the options of pursuing a criminal complaint with a law enforcement agency, filing an administrative charge with an external agency, and/or using the University's investigation and disciplinary processes. The Complainant may go forward with one or more options at the same time, but the University's investigation may need to be delayed temporarily by, or scheduled around, an ongoing criminal or external administrative investigation.
- b. Any member of the University community may submit allegations of sexual misconduct against a student. Allegations shall be prepared in writing and directed to the Student Affairs Officer or designee. The Student Affairs Officer shall then direct the allegation(s) to a Conduct Officer for investigation. Any allegation should be submitted as soon as possible after the alleged misconduct takes place, preferably within, but not limited to, seven (7) University business days after the misconduct occurred.
- c. The Complainant must state, in writing, if he or she wishes to pursue a complaint. If he or she does not wish to pursue the complaint

¹ Insert "UNK, UNL, UNMC or UNO" wherever campus is used in this document.

² Insert the names, telephone numbers, both office and e-mail addresses of the persons with these responsibilities.

and/or requests that his or her identity remain anonymous, the Student Affairs Officer will make note of that wish in the report. Regardless of the Complainant's choice, the University is still required to investigate reports of sexual misconduct. The Complainant must be informed if the University cannot ensure anonymity.

- d. The Conduct Officer or Title IX Coordinator shall conduct an investigation to determine if the allegation(s) have merit. Investigations of the allegations should be concluded within (60) calendar days of receipt of a report³, and may be permitted a longer completion period under extraordinary circumstances, but both parties must be informed in writing of the extension of the timeline. If the investigator determines by the greater weight of the evidence that a violation occurred, a recommended disposition should be included in the investigator's report. If the investigation determines it is more likely than not that the Respondent did not violate the Student Code, the complaint may be dismissed without further proceedings. If both the Complainant and the Respondent agree to the dismissal, the complaint is resolved without any further rights of appeal by either party. If the Complainant objects, he or she may appeal the dismissal decision administratively to the Student Affairs Officer within seven (7) University business days. The Student Affairs Officer will either affirm the investigative determination, or refer the complaint for further proceedings. The Student Affairs Officer's decision of the dismissal appeal will be final.
 - i. If the Complainant wishes to pursue an Administrative Resolution, the Conduct Officer will determine the Respondent's position and take actions as necessary.
 - ii. If the Complainant wishes to pursue a disciplinary hearing, a formal hearing will be held by a Conduct Officer, or in cases where University Suspension or University Expulsion is sought, a hearing before a Conduct Board must be held.
 - iii. After the fact-finding investigation the Complainant, the Respondent, and appropriate university officials shall be given timely access to any information that will be used during Administrative Resolution and/or Formal Hearing proceedings.

³ See "Questions and Answers on Title IX and Sexual Violence" guidance issued April 29, 2014 by the U.S. Dept. of Education, Office of Civil Rights (OCR) at F-8 and OCR April 4, 2011 Dear Colleague Letter, page 12. A maximum timeframe of 60 calendar days for the investigation is allowed. This "includes conducting the investigation . . . to determine whether the alleged sexual violence occurred . . . and determining what actions the school will take . . ." OCR Guidance, supra, at p. 31. This time frame is different and independent from University business days, and is not affected by closing of administrative offices, class schedules, or national holidays.

3. Interim Protective Measures

- a. “No contact” directives are to be issued in writing to persons involved in any alleged sexual misconduct promptly after the University receives notice of a complaint. Respondents and the Complainant will both be expected to abide by the terms of no contact directives and may go through disciplinary proceedings should they violate the directives.
- b. Students who have been subjected to sexual misconduct or Complainants have access to other available University assistance in changing academic and living situations after an alleged incident, if so requested by the student or Complainant and if such changes are reasonably available. Accommodations to minimize the burden on the student or Complainant may include but are not limited to:
 - i. Change of an on-campus student’s housing to a different on-campus location;
 - ii. Assistance from the University in completing the relocation;
 - iii. Arranging to end a University housing contract and/or adjusting a student account balance for refund;
 - iv. Rescheduling an exam, paper, or assignment;
 - v. Taking an incomplete in a class;
 - vi. Transferring between class sections;
 - vii. Temporary withdrawal;
 - viii. Alternative course completion options;
 - ix. Arranging to complete a course or lectures via distance education methods with the assistance of technology;
 - x. Providing increased security at locations or activities.
- c. Any student charged with sexual misconduct has the right to maintain status as a student and attend classes while the case is pending final resolution within the University Conduct process, unless it is determined by the Student Affairs Officer or his/her designee that the student’s continued participation as a student, whether inside or outside of the classroom, would seriously disrupt normal operation of the University or constitute an immediate harm, threat of harm, hostile environment and/or danger to the health, safety, or welfare of the Respondent, the Complainant, any person allegedly subject to sexual misconduct, or any member of the University community.
- d. Pending completion of an investigation or University Conduct Proceedings, the Student Affairs Officer may at any time temporarily suspend a student when the Student Affairs Officer finds and believes from information coming to his or her attention that the presence of

the Respondent on the University premises would seriously disrupt normal operation of the University or constitute an immediate harm, threat of harm, hostile environment and/or danger to the health, safety, or welfare of the Respondent, the Complainant, any person allegedly subject to sexual misconduct, or any member of the University community. The Student Affairs Officer should work with the appropriate academic Dean in making the decision to discontinue the Respondent's continued participation as a student prior to the completion of the formal proceedings.

- e. During the suspension described in this section, the Respondent may be denied access to any University premises, including classes, residence hall access, sporting events, and/or all other University programs, activities or privileges for which the student might otherwise be eligible, as the Student Affairs Officer may determine to be appropriate.
- f. If a student placed on interim suspension is ultimately found "not in violation" of the Code, such student shall be allowed, at the reasonable discretion of the appropriate faculty, to make up academic work missed while on suspension.

4. General Provisions Applicable in Cases of Alleged Sexual Misconduct

- a. The Conduct Officer and Conduct Board can hear any allegations of any other violations of the Student Code of Conduct in addition to allegations of sexual misconduct that are directly related to the alleged sexual misconduct. If the Conduct Officer or Conduct Board determines other provisions of the Student Code of Conduct were violated, they may impose proper sanctions.
- b. Any student involved in a Conduct proceeding has the right to confidentiality as mandated by the Family Educational Rights and Privacy Act of 1974 (FERPA) and implementing regulations.
- c. No process implemented under this Sexual Misconduct Procedure shall be open to the public. The complaining party and the Respondent are entitled to the same opportunities to have others present during a disciplinary proceeding subject to conditions established by the Conduct Officer or Conduct Board. Witnesses may be sequestered and attendance at hearings may be restricted to the Complainant, Respondent and advisors.
- d. In such cases when a student fails to appear before the Conduct Officer or Conduct Board, a plea of "not in violation" shall be entered

on the Respondent's behalf and the hearing may proceed as scheduled.

- e. In all cases, whether the Respondent is present or not, the evidence in support of the allegations shall be presented and considered.
- f. The determination of the merits of each case shall be made using a greater weight of the evidence standard, meaning it is more likely than not that a proposition (such as violation of the Code) was proven.
- g. The burden of proof shall rest upon the Conduct Officer or Complainant bringing the misconduct charge. A Respondent is presumed not to be in violation of the Code until proven otherwise.

5. Rights of the Complainant and the Respondent in Sexual Misconduct Proceedings

- a. Sexual misconduct proceedings will be conducted by trained University officials to provide a prompt, fair, and impartial process from initial investigation to the final result.
- b. Both a Respondent and the Complainant have the right to see sexual misconduct charges in written form.
- c. Both the Respondent and the Complainant have a right to confidentiality during sexual misconduct proceedings to the extent possible. However, the duty of confidentiality does not preclude the University from conducting a meaningful investigation or reporting such incidents as required. The duty of confidentiality shall also extend to all persons involved in processing the complaint and the investigation. The Complainant has a right to anonymity only to the extent that the Complainant does not wish to file an official complaint with the University or does not wish the University to take any action against the Respondent in regard to the complaint.
- d. All charges shall be presented to the Respondent and the Complainant in written form by a University official or the Conduct Officer within seven (7) University business days after the investigation is complete.
- e. Both a Respondent and the Complainant have a right to prepare a written statement in advance of a formal hearing. Both parties will have the right to view each other's statement.
- f. The Complainant and the Respondent have the right to be assisted by any advisor they choose, including legal counsel, at their own expense.

- 1 i. The role of the advisor is limited to providing advice to the
2 party who has requested his/her presence in a manner which
3 does not disturb Conduct proceedings. If an advisor fails to
4 act in accordance with these guidelines, he/she may be barred
5 from participation in the Conduct proceedings.
6
- 7 g. A Respondent and the Complainant have the right to hear all
8 evidence, present evidence, testify, and to hear and submit questions
9 for witnesses during formal hearings.
10
- 11 i. Direct questioning of the witnesses by the Respondent and
12 Complainant may be limited. The Conduct Officer presiding at
13 the hearing or Chair of the Conduct Board may control
14 questioning by requiring the Respondent and Complainant to
15 submit questions in writing to determine if the questions are
16 appropriate, and then the presiding Conduct Officer or Chair
17 may pose questions to the witness.
18
- 19 h. A Respondent and the Complainant have the right to inspect all
20 documents used as evidence and a list of all witnesses for the formal
21 hearing in advance of the hearing.
22
- 23 i. The Respondent may not be found to have committed sexual
24 misconduct solely because the respondent failed to appear for a
25 conduct hearing.
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- 27 j. Sexual misconduct proceedings should be completed in a reasonably
28 prompt time frame.
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- 30 k. A Respondent and the Complainant have the right to be notified of the
31 decision rendered. Any initial, interim, and final decision to resolve
32 disciplinary matters must include a statement of any University
33 sanctions imposed together with the rationale for the decision.
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35 **6. Administrative Resolution Procedures in Cases of Alleged Sexual**
36 **Misconduct**
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- 38 a. Both the Complainant and the Respondent may elect to dispose of the
39 claim administratively. This conference will be scheduled not less
40 than three (3), nor more than fourteen (14), University business days
41 after the Conduct Officer's investigation is complete. The Respondent
42 may elect to acknowledge his or her actions and take responsibility. If
43 the Respondent denies responsibility but the investigation determines
44 that it was more likely than not the Respondent violated the Code, the
45 Conduct Officer could propose a resolution and an appropriate
46 sanction. If both the Complainant and the Respondent agree to the

47 proposed sanction, the complaint is resolved without a formal
48 hearing. Mediation shall not be used to resolve sexual assault
49 complaints.

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- 51 b. Administrative Resolution procedures may be discontinued at the
52 request of any participant, or terminated by the Conduct Officer.
53 When Administrative Resolution fails, a formal hearing by a Conduct
54 Officer or Conduct Board must be held.
- 55
- 56 c. If University Suspension or University Expulsion is sought and the
57 Complainant or the Respondent cannot agree to the proposed
58 sanction, a hearing must be held before the Conduct Board to
59 determine the proper sanction.
- 60
- 61 d. When University Suspension or University Expulsion is not sought, a
62 formal hearing will be held before a Conduct Officer. Unless the
63 parties agree, the Conduct Officer who was responsible for
64 investigation of sexual misconduct allegations and/or who attempted
65 an unsuccessful Administrative Resolution will not preside over the
66 formal hearing.

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68 **7. Formal Hearings in Cases of Alleged Sexual Misconduct**

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- 70 a. Both a Respondent and the Complainant shall have the right to
71 attend a pre-hearing conference to discuss the issues and facts that
72 will be presented at the hearing, to exchange information about
73 witnesses likely to be called, answer procedural questions, and settle
74 those matters which may be agreeably concluded. The conference will
75 **not** be used to settle the issue of whether or not the violation was
76 committed or to challenge any recommended sanctions. This
77 conference shall be held at least two (2) days prior to the scheduled
78 hearing.
- 79
- 80 i. Students will be instructed about the use of past sexual
81 behavior of the Complainant⁴ or past sexual assault by the
82 Respondent⁵ as evidence at the hearing. In most situations,
83 evidence of the past sexual history of either the Respondent or
84 the Complainant will not be admitted at the hearing except in
85 very limited situations.
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⁴ See Neb. Rev. Stat. § 27-412 (2012 Cum. Supp.) (Relevance of person's alleged past sexual behavior or alleged sexual predisposition), *see also* OCR Guidance F-7.

⁵ See Neb. Rev. Stat. § 27-415 (2012 Cum. Supp.) (Evidence of crimes of sexual assault in civil cases).

- 87 b. A time shall be set for a hearing, not less than three (3), nor more
88 than fourteen (14), University business days after the Respondent and
89 the Complainant have been notified that the complaint was referred to
90 the hearing. Maximum time limits for scheduling of hearings may be
91 extended at the discretion of the Conduct Officer or Conduct Board
92 chair.
93
- 94 c. Hearings shall conform to the following guidelines:
95
- 96 i. In cases where the case is referred to a Conduct Board, the
97 Conduct Board shall be composed of at least 3 members of the
98 University community.
 - 99 ii. Any real or perceived conflict of interest or bias between the
100 Conduct Officer presiding at a hearing or a member of the
101 Conduct Board and the Respondent or the Complainant must
102 be brought to the attention of the Conduct Officer or Conduct
103 Board no less than two (2) University business days in
104 advance of the hearing.
 - 105 iii. The Respondent(s) and the Complainant and/or the Conduct
106 Officer are responsible for presenting their respective cases to
107 the Conduct Officer presiding at the hearing or the Conduct
108 Board.
 - 109 iv. The Conduct Board shall select its own Chair with all
110 members possessing voting privileges.
 - 111 v. In hearings involving more than one Respondent, the
112 presiding Conduct Officer or Chair of the Conduct Board, in
113 his or her discretion, may permit the hearings concerning
114 each student to be conducted separately.
 - 115 vi. The Respondent(s), the Complainant, and the Conduct Officer
116 shall have the right to hear all evidence, present evidence,
117 testify, and to hear and question witnesses.
 - 118 vii. The Respondent, the Complainant, and the Conduct Officer
119 shall have an opportunity in advance to inspect documents
120 and a list of witnesses for the hearing no less than two (2)
121 University business days in advance of the hearing.
 - 122 viii. Pertinent records, facts, reports, and statements may be
123 accepted as evidence for consideration by a presiding Conduct
124 Officer or Conduct Board. Evidence which possesses probative
125 value commonly accepted by reasonably prudent persons in
126 the conduct of their affairs may be admitted and given
127 probative effect. Incompetent, irrelevant, immaterial, and
128 unduly repetitious evidence should be excluded. The rules of
129 privilege recognized by law shall be given effect. Evidence that
130 would not be admissible in a State Court criminal proceeding
131 by reason of the method or manner in which it was acquired
132 shall not be admitted.

- 133 ix. All procedural and evidentiary questions are subject to the
134 final decision of the presiding Conduct Officer or Chair of the
135 Conduct Board.
- 136 d. After the hearing, the Conduct Board shall determine by simple
137 majority vote whether or not the University Suspension or University
138 Expulsion is warranted. The decision of a presiding Conduct Officer or
139 Conduct Board shall be based solely upon evidence introduced and
140 received at the hearing. There shall be a verbatim record made, such
141 as by sound recording, of all formal hearings. The formal hearing
142 record shall be the property of the University.
- 143
- 144 e. Within seven (7) University business days following the conclusion of
145 formal hearing proceedings, the presiding Conduct Officer or the
146 Conduct Board Chair shall inform the Respondent, the Complainant,
147 and the Title IX Coordinator in writing, of its findings and of the
148 sanction(s) imposed, if any.
- 149
- 150 f. The presiding Conduct Officer and the Conduct Board may seek
151 advice from the University’s Counsel throughout the hearing process
152 on questions of law and procedure. However, the presiding Conduct
153 Officer and Conduct Board are responsible for making their own
154 factual conclusions.
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156 **8. Conduct Sanctions Against Individual Student For Sexual**
157 **Misconduct**

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- 159 a. The following sanction(s) may be imposed upon any individual student
160 found to be “in violation” of the Code.
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- 162 i. Warning: A formal, written notice that the student is violating,
163 or has violated, one or more University Conduct Rules and
164 Regulations and that a continuance of the misconduct may
165 lead to additional disciplinary action. Also, that the incident
166 has been documented and shall remain in the student’s
167 Conduct file for the remainder of their University career.
- 168 ii. Probation: A formal, written reprimand for a student’s
169 violation(s) of specified University Conduct Rules and
170 Regulations. This probation, including strict campus conduct
171 guidelines, is for a designated period of time and may remain
172 in effect for the remainder of a student’s University career. It
173 includes the probability of more severe disciplinary sanctions
174 if the student is found to be in violation of any University
175 Conduct Rules and Regulations during the probationary
176 period.
- 177 iii. Loss of Privileges: Denial of specified privileges for a
178 designated period of time.

- 179 iv. Restitution: Compensation for loss, damage, or injury. This
180 may take the form of appropriate service and/or monetary,
181 and/or material replacement.
- 182 v. Discretionary Sanctions: In accordance with the goal of
183 education and assisting students with conduct problems, this
184 may include work assignments, educational requirements,
185 service to the University or local community, parental
186 notification, or other related discretionary assignments (such
187 assignments must have the prior approval of the Conduct
188 Officer). Any costs associated with the assignment are the
189 responsibility of the student.
- 190 vi. Residence Hall Relocation: Moving a student from one room to
191 another and/or one residence hall to another.
- 192 vii. Residence Hall Suspension: Separation of the student from
193 the residence halls for a definite period of time, after which the
194 student is eligible to return. Conditions for readmission may
195 be specified.
- 196 viii. Residence Hall Expulsion: Permanent removal of the student
197 from any and all of the residence halls. The student may not
198 re-enter the residence halls, under any conditions, even as a
199 visitor. Students expelled from the residence halls remain
200 liable for all Residential and Greek Life costs and meal plan
201 fees and may not be eligible for refunds for the full occupancy
202 period of the students' housing contracts.
- 203 ix. University Suspension: Separation of the student from the
204 University for a definite period of time, after which the student
205 may be eligible for return, contingent upon meeting specified
206 conditions for re-admittance. The student must satisfactorily
207 demonstrate to the Student Affairs Officer that all conditions
208 for re-admittance have been met before the student will be
209 allowed to matriculate.
- 210 x. University Expulsion: Permanent separation of the student
211 from the University, without the possibility of re-admission.
- 212
- 213 b. More than one of the sanctions listed above may be imposed for any
214 single violation.
- 215
- 216 c. If a student fails to abide by one or more of the sanctions imposed, a
217 hold may be placed on his/her registration account until satisfactory
218 progress is made towards completion.
- 219
- 220 d. Other than University Expulsion, disciplinary sanctions shall not be
221 made part of the student's permanent academic record, but shall
222 become part of the student's confidential disciplinary record.
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- 224 i. After graduation, and upon application to the Conduct Officer,
225 the student's confidential disciplinary record may be expunged
226 of disciplinary actions other than University Suspension or
227 University Expulsion.
228 ii. Cases involving the imposition of sanctions other than
229 University Suspension or University Expulsion shall be
230 expunged from the student's confidential record seven (7)
231 years after graduation, final disposition of the case, or as
232 otherwise authorized or required by law.

233 **9. Appeals**

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235 a. A decision reached after a formal hearing may be appealed by the
236 Respondent, the Complainant, or the Conduct Officer within seven (7)
237 University business days of delivery of the decision to the parties
238 involved in the formal hearing.
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240 b. Appeals shall be in writing and shall be delivered to the Appeals
241 Officer appointed by the Chancellor.
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243 c. Appeals may be filed for one or more of the following purposes:
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245 i. To determine whether the original hearing was conducted
246 fairly in light of the charges and evidence presented, and in
247 conformity with prescribed procedures giving the complaining
248 party a reasonable opportunity to prepare and present
249 evidence that the Code was violated, and giving the
250 Respondent a reasonable opportunity to prepare and to
251 present a rebuttal of those allegations.
252 ii. To determine whether the sanction(s) imposed were
253 appropriate.
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255 d. An appeal that does not clearly raise one or more of the issues listed
256 above shall be dismissed without further consideration.
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258 e. An appeal shall be limited to review of the record of the initial hearing
259 and supporting documents unless the Appeals Officer, after notice to
260 the Complainant and Respondent, requests additional information
261 from the presiding Conduct Officer, Chair of the Conduct Board,
262 Complainant or Respondent.
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264 f. The Appeals Officer shall complete review of the appeal normally within
265 fourteen (14) University business days after receipt of the record and
266 any additional information, and shall promptly issue a written
267 decision to the Respondent, the Complainant and the Conduct Officer.
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270 **10. Definitions**

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- a. “Actor” means a person accused of sexual misconduct.
- b. “Administrative Resolution” is at least one conference between the Conduct Officer and a Respondent and the Complainant to determine whether a student has violated the Code and to impose sanction(s), if warranted.
- c. The term “advisor” means any person, including legal counsel, who assists the Respondent, Complainant or Conduct Officer during a Conduct proceeding.
- d. The term “Appeals Officer” means the person authorized by the Chancellor to determine on appeal whether the result of a formal hearing should be affirmed or modified.
- e. “Bodily injury” shall mean physical pain, illness, or any impairment of physical condition.
- f. The term “Code” means the campus Student Code of Conduct.
- g. The term “Complainant” means any individual who comes forward to the Student Affairs Officer, Title IX Coordinator or Human Resource Officer to complain of sexual misconduct by a student, member of the University community or a third party.
- h. The term “Conduct Board” means persons authorized by the Student Affairs Officer to determine whether a student has violated the Code and to impose sanction(s), if warranted. The Conduct Board must include one or more student members when sanctions of suspension or expulsion are involved.⁶
- i. The term “Conduct Officer” means a University official authorized by the Student Affairs Officer to investigate and determine whether or not the Code has been violated. The Conduct Officer may also engage in attempts at administrative resolution or preside at a formal hearing when University Suspension or Expulsion is not sought as a sanction against a student.
- j. “Confidentiality” means that the University will not disclose the names of individuals involved in a sexual misconduct case to others except on a need to know basis or as required by law. The University will

⁶ Section 5.4(e) of the Bylaws of the Board of Regents requires “a hearing before a regularly constituted board in all cases involving expulsion or suspension.”

312 instruct employees and students about the requirement not to
313 disclose confidential information. Confidentiality is not the same as
314 anonymity, where an individual is not named or personally identified.

315
316 k. “Consent” means agreement, approval, or permission as to some act
317 or purpose, given voluntarily by a competent person. “Without
318 consent” means:

319 (1) (i) The person was compelled to submit due to the use of
320 force or threat of force or coercion, or (ii) the person expressed a
321 lack of consent through words, or (iii) the person expressed a lack
322 of consent through conduct, or (iv) the consent, if any was actually
323 given, was the result of the actor's deception as to the identity of
324 the actor or the nature or purpose of the act on the part of the
325 actor;

326 (2) The person need only resist, either verbally or physically,
327 so as to make the person's refusal to consent genuine and real and
328 so as to reasonably make known to the actor the person's refusal
329 to consent; and

330 (3) A person need not resist verbally or physically where it
331 would be useless or futile to do so.

332 (4) In the above text, the word “person” means the individual
333 against whom a wrongful act was allegedly committed, and the
334 word “actor” is the individual alleged to have committed a wrongful
335 act. When the actor knew or should have known that a person
336 was mentally or physically incapable of resisting or understanding
337 the nature of his or her conduct, there is no consent. A person
338 may be incapacitated due to intoxication, mental illness or
339 deficiency or by physical illness or disability to the extent that
340 personal decision-making is impossible. Surprise may also prevent
341 resistance, as where a person is grabbed from behind.

342
343 There are some persons who the law presumes are incapable
344 of consenting to sexual contact or penetration by an actor by
345 reason of their age. Under Nebraska law an actor nineteen years of
346 age or older may not subject a person under the age of sixteen
347 years of age to sexual penetration, or a person under fifteen years
348 of age to sexual contact.

349
350 l. “Dating violence” is included within the definition of “domestic assault.”

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352 m. “Domestic assault” has three definitions which depend on the harm
353 threatened or inflicted by an actor on a person. An actor commits
354 domestic assault if he or she (i) intentionally and knowingly causes
355 bodily injury to his or her intimate partner; (ii) threatens an intimate

356 partner with imminent bodily injury; or (iii) threatens an intimate
357 partner in a menacing manner. An actor commits a more severe form
358 of domestic assault if he or she intentionally and knowingly causes
359 bodily injury to his or her intimate partner with a dangerous
360 instrument. An actor commits the worst form of domestic assault if he
361 or she intentionally and knowingly causes serious bodily injury to his
362 or her intimate partner.

363 n. “Domestic violence” is included within the definition of “domestic
364 assault.”

365 o. “Force or threat of force” means (a) the use of physical force which
366 overcomes the person’s resistance or (b) the threat of physical force,
367 express or implied, against the person or a third party that places the
368 person in fear of death or in fear of serious personal injury to the
369 person of a third party where the person reasonably believes that the
370 actor has the present or future ability to execute the threat.

371 p. “Intimate partner” means a spouse; a former spouse; persons who
372 have a child in common whether or not they have been married or
373 lived together at any time; and persons who are or were involved in a
374 dating relationship. For purposes of this definition, dating
375 relationship means frequent, intimate associations primarily
376 characterized by the expectation of affection or sexual involvement,
377 but does not include a casual relationship or an ordinary association
378 between persons in a business or social context.

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380 q. “Intimate parts” means the genital area, groin, inner thighs, buttocks
381 or breasts.

382
383 r. The term “in violation” means that it is more likely than not⁷ that a
384 student committed one or more violations of the Code.

385
386 s. The term “may” is used in the permissive sense.

387
388 t. The term “member of the University community” includes any
389 individual who is a student, staff, faculty member, University official,
390 or any other individual employed by, or acting on behalf of the
391 University. An individual’s status in a particular situation shall be
392 determined by the investigating Conduct Officer or Title IX
393 Coordinator.

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⁷ By making a finding of whether it is more likely than not that a violation did or did not occur, a “greater weight of the evidence” standard is being used.

- 395 u. The term “not in violation” means that it is more likely than not that a
396 student did not commit one or more violations of the Code.
397
- 398 v. “Past sexual behavior” means a person’s sexual behavior other than
399 when the sexual misconduct is alleged to have occurred.
400
- 401 w. “Person” means the individual who allegedly was, or was determined
402 to have been, subjected to sexual misconduct.
403
- 404 x. “Rape” is included under the definition of sexual assault by an actor’s
405 sexual penetration of the person without consent.
406
- 407 y. “Respondent” is any student who is charged with having violated one
408 or more provisions of the code.
409
- 410 z. “Retaliation” includes intimidation, threats, harassment, and other
411 adverse action threatened or taken against the Complainant or a third
412 party in an attempt to prevent or otherwise obstruct the reporting of
413 sexual misconduct.

- 414 aa. “Serious bodily injury” shall mean bodily injury which involves a
415 substantial risk of death, or which involves substantial risk of serious
416 physical disfigurement, or protracted loss or impairment of the
417 function of any part or organ of the body.

- 418 bb. “Serious personal injury” means great bodily injury or disfigurement,
419 extreme mental anguish or mental trauma, pregnancy, disease, or
420 loss or impairment of a sexual or reproductive organ.
421
- 422 cc. “Sexual assault” is committed when an actor subjects a person to
423 sexual penetration (i) without the consent of the person, (ii) when the
424 actor knew or should have known that the person was mentally or
425 physically incapable of resisting or appreciating the nature of the
426 person’s own conduct, or (iii) when the actor is nineteen years of age
427 or older and the person is at least twelve but less than sixteen years
428 of age.
429

- 430 Sexual assault is also committed when an actor subjects a person to
431 sexual contact (a) without consent of the person, or (b) when the actor
432 knew or should have known that the person was physically or
433 mentally incapable of resisting or appraising the nature of the
434 person’s own conduct. Sexual assault by contact should be punished
435 more severely if the actor causes serious personal injury to a person,
436 than if the actor shall not have caused serious personal injury.
437

- 438 dd. "Sexual contact" means the intentional touching of a person's
439 intimate parts or the intentional touching of a person's clothing
440 covering the immediate area of the person's intimate parts. Sexual
441 contact also means the touching by the person of the actor's intimate
442 parts or the clothing covering the immediate area of the actor's
443 intimate parts when such touching is intentionally caused by the
444 actor. Sexual contact shall include only such conduct which can be
445 reasonably construed as being for the purpose of sexual arousal or
446 gratification of either party.
447
- 448 ee. "Sexual harassment" is unwelcome conduct or behavior of a sexual
449 nature. Sexual harassment can include unwelcome sexual advances,
450 requests for sexual favors and other verbal, nonverbal, or physical
451 conduct of a sexual nature. Conduct that is sufficiently serious to
452 limit or deny student's ability to participate in or benefit from the
453 University's educational program creates a hostile environment, and
454 is prohibited. Examples of sexual harassment include, but are not
455 limited to: (1) an exposure of an actor's genitals done with the intent
456 to affront or alarm any person, and (2) viewing a person in state of
457 undress without his or her consent or knowledge.
458
- 459 ff. "Sexual misconduct" includes dating violence, domestic assault,
460 domestic violence, rape, sexual assault, sexual harassment, and
461 stalking.
462
- 463 gg. "Sexual penetration" means sexual intercourse in its ordinary
464 meaning, cunnilingus, fellatio, anal intercourse or any intrusion,
465 however slight, of any part of the actor's or person's body or any
466 object manipulated by the actor into the genital or anal openings of
467 the person's body which can be reasonably construed as being for
468 nonmedical or nonhealth purposes. Sexual penetration does not
469 require emission of semen.
470
- 471 hh. The term "shall" is used in the imperative sense.
472
- 473 ii. "Stalking" means to engage in a knowing and willful course of conduct
474 directed at a specific person or a family or household member of such
475 person with the intent to injure, terrify, threaten, or intimidate.
476
- 477 kk. The term "student" includes all individuals taking courses at the
478 University, whether full-time or part-time, pursuing undergraduate,
479 graduate, or professional studies, whether or not they reside in the
480 University residence halls. Individuals who withdraw after having
481 allegedly committed sexual misconduct, or who are not officially
482 enrolled for a particular term, but who have an expected continued

483 academic relationship with the University, may be considered
484 “students.”

485
486 ll. The “Student Affairs Officer” is the individual authorized by the
487 University and the University Chancellor to be responsible for the
488 administration of the Code, and in certain circumstances includes his
489 or her designee.

490
491 mm. The “Title IX Coordinator” is the individual designated by the
492 campus to respond to allegations of sexual misconduct by students,
493 and in some circumstances can include his or her designee.

494
495 nn. The term “University” means University of Nebraska.

496
497 oo. The term “University business day” means any calendar day where
498 the campus offices are open for business, excluding weekends and
499 national holidays.

500 OR

501 The term “University business day” means any calendar day where
502 the campus offices are open for business and classes are in session,
503 excluding weekends and national holidays.

504
505 pp. The term “University official” includes any individual employed by,
506 associated with, or performing assigned administrative or professional
507 responsibilities in the interests of the University. Counselors and
508 Healthcare Professionals are bound by professional rules that may
509 preclude their reporting violations of University rules.

510
511 qq. The term “University premises” includes all land, buildings, facilities,
512 University approved housing and other property in the possession of,
513 or owned, used, or controlled by the University, including adjacent
514 streets and sidewalks.

515
516

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