

# WESTERN NEBRASKA COMMUNITY COLLEGE

## Administrative Procedure

<b>TITLE:</b>	Student Discipline for Non-Academic Misconduct
<b>DIVISION:</b>	Student Services
<b>CATEGORY:</b>	Student Rights and Responsibilities
<b>REFERENCE:</b>	BP-560 Student Code of Conduct BP-720 Equal Opportunity Employer/Non-Discrimination BP-721 Sexual Harassment Policy (Regulatory Policy Standards) PP-720 Discrimination, Harassment, or Retaliation Complaint Operating Procedure Sexual Harassment Grievance Investigation Procedure
<b>NUMBER:</b>	AP-560
<b>DATE OF REVIEW:</b>	August 30, 2022
<b>APPROVAL:</b>	John Marrin, Interim President

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### Purpose

Students are expected to adhere to the Student Code of Conduct and policies and procedures of the College. If a student is charged with violating the Code of Conduct, these are the procedures to be used in resolving the charge.

### Scope

This procedure applies to all Western Nebraska Community College (WNCC) students regardless of department, division, status, classification, type, or location. This procedure encompasses standards of student behavior as outlined in the *Student Handbook* except for issues of Academic Integrity (see AP-561).

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### Definitions

*Code of Conduct:* A document developed and published by each college which defines prescribed conduct of students.

*Student:* All persons taking courses at WNCC, both full-time and part-time, pursuing both credit and non-credit courses, and those concurrently attending secondary or post-secondary institutions and the College. Persons who are not officially enrolled for a specific term, but who have a continuing relationship with the College are considered students.

*Jurisdiction:* College jurisdiction applies to student conduct which occurs on or off campus including while a student or organization is participating in College-sponsored activities such as study abroad and student travel programs. The College may adjudicate off-campus conduct when the continued

presence of the student is likely to interfere with the educational process or the orderly operation of the campus; is likely to endanger the health, safety, or welfare of the College community; or the offense committed by the student is of such a serious nature as to adversely affect the student's suitability as a member of the College community. The Student Code of Conduct shall apply to a student's conduct even if the student withdraws from school while a disciplinary matter is pending. In relevant cases, the student's use of electronic media in violating a standard of conduct may be considered in the adjudication process regardless of where the electronic media originated.

*Dean of Students:* The individual designated by the College president to administer student affairs and be responsible for administering the College's Student Conduct Code and this procedure. The Dean of Students may delegate student discipline to another individual (designee). Title IX Coordinator(s) and Title VI and VII Coordinator(s) (EO Coordinator) is the employee(s) designated by the College president to oversee all civil rights complaints.

*Notice:* Notices which are required to be given by this procedure shall be considered served upon the student when given by personal delivery, mailing by certified mail, or emailing the student to their official College email address requesting a delivery receipt notification. If notice is mailed, student shall be given three (3) additional days to respond.

*Day:* Refers to working day unless otherwise noted below.

*Sanctions:* One or more of the following may be imposed when there is a finding that a student has violated the College's Code of Conduct.

1. *Verbal Warning:* A notice served upon the student advising him/her that he/she is violating or has violated College regulations.
2. *Warning:* A formal, written notice that the student is violating, or has violated, one or more College rules and regulations and that a continuance of the misconduct may lead to additional disciplinary action.
3. *Loss of Privileges:* Denial of specified privileges for a designated period of time.
4. *Discretionary Sanctions:* As needed to maintain a healthy and safe educational and work environment for students, visitors, faculty, and staff at WNCC.
5. *Disciplinary Probation:* A written plan addressing a student's violations of the Conduct of Conduct and WNCC rules. Probation shall include specified conduct guidelines for a designated period of time.
6. *On-campus housing relocation:* Moving a student from one room to another and/or from one campus residence hall to another.
7. *On-campus housing suspension:* Separation of the student from on-campus housing for a specified period of time, after which the student is eligible to return. Conditions of reentry may be specified.
8. *On-campus housing expulsion:* Permanent removal of a student from any and all on-campus housing options. The student so removed may not re-enter the residence halls, under any conditions, even as a visitor.
9. *College Suspension:* Separation of the student from the College for a definite period of time, after which the student may be eligible for return, contingent upon meeting specified conditions for re-admittance.

10. *College Expulsion*: Indefinite separation of the student from the College. The student is not eligible for admission or re-admission at any of the campuses within Western Nebraska Community College.
  - In exceptional cases where a student wants to be considered for admission or re-admission after an expulsion has been implemented, the student bears the burden to prove the behavior that resulted in the expulsion has been resolved. It is within the College's discretion to admit or deny the student.
11. *Interim Action*: An immediate action taken by the Dean of Students or designee to ensure the safety and well-being of members of the College community; preservation of College property; or if the student poses a definite threat of disruption or interference to others or the normal operations of the College. In the event of an interim action, the hearing before the Dean of Students or designee shall occur as soon as possible following the interim action. If the College issues a permanent sanction, the student shall be afforded appeal rights as discussed below. If the College does not implement a permanent sanction, the interim action will be removed from the student's record.

## **Procedures**

### *Investigation, Notice and Opportunity to Be Heard*

The Dean of Students or designee shall receive all allegations of student misconduct and investigate the complaints. Notice will be given to the student alleged to have committed a violation(s) of the Student Code of Conduct. The investigation process includes meeting with the student to give him/her the opportunity to respond to the allegations of misconduct along with the other rights set forth in the Special Discipline Process Provisions herein. If the allegations of misconduct are discrimination and/or harassment based on federal or state civil rights laws, the College will investigate those incidents through the Discrimination, Harassment, or Retaliation Complaint Procedure or Sexual Misconduct Procedure.

### *Decision*

Once the investigation is complete, either through this process or the relevant process set forth above, the Dean of Students or designee shall render a sanction decision.

The Dean of Students or designee may decide that the charges can be disposed of administratively by mutual consent of the parties involved on a basis acceptable to them. If an administrative resolution is not achieved, the Dean of Students or designee shall issue a decision which determines whether the alleged conduct occurred; whether the conduct violated the Code of Conduct or College procedures; and impose a sanction(s) if appropriate.

In cases of domestic violence, dating violence, sexual assault, and stalking, the complainant and the respondent will be notified simultaneously in writing of the outcome of any disciplinary proceeding, as well as any changes to those results or disciplinary actions prior to the time that such results become final and shall be given the rationale for the discipline decision.

The student shall receive written notice of the decision and be advised of his/her right to appeal the decision, subject to the grounds below, by filing a written appeal with the Vice President of Student Services or designee within seven (7) days of service of the decision.

## *Appeal*

In the event of an appeal, the Vice President of Student Services or designee shall give written notice to the other party (e.g., if the accused student appeals, the appeal is shared with the complainant who may also wish to file a response), and then the Vice President of Student Services or designee will draft a response memorandum (also shared with all parties). All appeals and responses are then forwarded to the appeals officer or committee for initial review to determine if the appeal meets the limited grounds and is timely.

The original finding and sanction will stand if the appeal is not timely or substantively eligible, and the decision is final. If the appeal has standing, the documentation is forwarded for consideration. Because the original finding and sanction are presumed to have been decided reasonably and appropriately, the party appealing the decision must specifically cite the error(s) in the original determination on which the appeal is based. The ONLY grounds for appeal are as follows:

1. A material procedural or substantive error occurred that significantly impacted the outcome of the hearing (e.g., actual conflict of interest, substantiated bias, material deviation from established procedures); which must be explained in the written appeal; or
2. To consider new evidence, unavailable during the investigation or hearing that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included in the written appeal, as well as the reasons the new evidence was not available during the original proceeding.
3. Excessiveness of the sanction. Disciplinary sanction imposed is grossly disproportionate to the violation(s) committed, consider the relevant aggravating and/or mitigating factors.

If the appeals officer or committee determines that a material procedural or substantive error occurred, it may return the complaint to the Dean of Students or designee with instructions to reconvene to cure the error. In rare cases, where the procedural or substantive error cannot be cured by the Dean of Students or designee in cases of bias, the appeals officer or committee may order a new hearing be held by a different individual acting in the place of the Dean of Students or designee. The results of a reconvened hearing cannot be appealed. The results of a new hearing can be appealed, once, on the two applicable grounds for appeals.

If the appeals officer or committee determines that new evidence should be considered, it will return the complaint to the Dean of Students or designee to reconsider in light of the new evidence, only. If the subject matter pertains to discrimination and/or harassment, the appeals officer or committee will return the complaint to the Title IX/EO Coordinator to reconsider in light of the new evidence only. The reconsideration of the Dean of Students, designee, or Title IX/EO Coordinator is not appealable.

The procedures governing the hearing of appeals include the following:

- All parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision.
- If the appeals officer or committee determines there is new evidence or error in the original proceeding, every opportunity to return the appeal to the Dean of Students or designee for reconsideration (remand) should be pursued.

- Appeals are not intended to be full re-hearings of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for an appeals officer or committee to substitute their judgment for that of the Dean of Students or designee merely because they disagree with its finding and/or sanctions.
- Appeals decisions are to be deferential to the original decision, making changes to the findings only where there is clear error and a compelling justification to do so.
- Sanctions imposed are implemented immediately unless the Dean of Students or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The appeals officer or committee will render a written decision on the appeal to all parties within seven (7) days from receiving the appeal request. The appeals officer or committee's decision to deny appeal requests is final.

### **Special Discipline Process Provisions**

- The student may have the opportunity to be advised by a personal advisor (1) of their choice, at their expense, at any stage of the process and to be accompanied by that advisor at any meeting or hearing. An advisor may only consult and advise her/his advisee, but not speak for the advisee at any meeting or hearing. These procedures are entirely administrative in nature and are not considered legal proceedings. The Dean of Students or designee may remove or dismiss an advisor who becomes disruptive or who does not abide by the restrictions on their participation.
- The student is responsible for presenting his/her own case and, therefore, advisors are not permitted to speak or to participate directly in any hearing except when the student is incapacitated.
- The student shall have the right to identify documents, witnesses, and other material he/she would like the Dean of Students, designee, or applicable investigator to review before making a final decision.
- The student shall be asked if he/she has any questions he/she would like to be asked of complainant/respondent/relevant witnesses.
- Any hearing held shall be conducted in private unless all parties agree otherwise.
- A written record of the hearing should be maintained by the Dean of Students or designee.
- The College, at its discretion, may audio record any meeting throughout the process. Should an audio recording exist, the student may request a copy at the end of the process. No other audio recording will be allowed.
- If the student has a disability and would like to request an accommodation to assist him/her through the discipline process, they may do so by informing the Dean of Students or his/her

designee. The Dean of Students or designee will then work with the Disability Services Officer to accommodate the request.

- Proceedings under this procedure may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus.
- Standard of Proof: The College will use the preponderance of evidence standard in the disciplinary proceedings, meaning, the College will determine whether it is more likely than not a conduct code was violated.
- All sanctions imposed by the original decision maker will be in effect during the appeal. A request may be made to the Dean of Students or designee for special consideration in exigent circumstances, but the presumptive stance of the institution is that the sanctions will stand. Graduation, study abroad, internships/externships/clinical placements, etc. do not in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.
- The procedural rights afforded to students above may be waived by the student.
- All timelines may be extended as agreed upon by both parties.

### **Retaliatory Acts**

It is a violation of this procedure to engage in retaliatory acts against any employee or student who reports an incident(s) of code of conduct violations or any employee or student who testifies, assists, or participates in the discipline proceeding, investigation, or hearing related to such allegation(s) of code of conduct violations.

### **Revising this Procedure**

This Administrative Procedure supersedes any prior WNCC policy, procedure, guideline, or handbook on this subject matter.

WNCC reserves the right to revise this procedure, as necessary, or as new laws require attention.

**Original Adoption Date:** November 25, 2019  
**Revision Date:** August 30, 2022  
**Sponsoring Division:** Student Services