

## **APPENDIX A-1.2-14**

### **Sexual Misconduct Complaint Procedures**

Western Nebraska Community College strictly prohibits all acts of sexual misconduct including sexual assault, domestic violence, dating violence, and stalking. In addition to facing criminal investigation and prosecution, students, employees, and other affiliates may also face action by WNCC once the College has notice that sexual misconduct has occurred.

When students or employees are accused of having engaged in sexual assault, domestic violence, dating violence, or stalking, the College may, depending on the facts alleged, issue interim safety measures and/or other accommodations prior to the resolution of the complaint. Such interim safety measures might include issuing no contact orders between the parties, altering an individual's work or class schedule or a student's on-campus housing assignment, placing an employee accused of misconduct on administrative leave, or placing a student accused of misconduct on an interim suspension.

WNCC 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 a formal complaint. Sexual misconduct by or against a student may be investigated by the College whether it is alleged to have been committed on or off campus.

#### **Complaints:**

Any person can complain of sexual misconduct against or by a student. Complaints of sexual misconduct may be made using the College's Sexual Misconduct Procedures at the same time criminal investigations or complaints are pursued by law enforcement or the County Attorney's Office. Internal investigations conducted by WNCC and/or College disciplinary proceedings are independent of any criminal investigation or court case. The College may pursue disciplinary action against a student at the same time the student is facing criminal charges for the same allegation, and even if criminal charges have been reduced or dismissed by the County Attorney.

Complaints of sexual misconduct against a student by a student should be made to the College's Title IX Coordinator or Title IX designate. Sexual misconduct complaints by or against employees should be made to the Human Resources Officer. WNCC's Title IX Coordinator will oversee all investigations of allegations of sexual misconduct.

#### **Notice and Options:**

Upon receipt of a complaint of sexual misconduct, the Title IX Coordinator should proceed under the following guidelines: Upon receipt of a sexual misconduct complaint or report, WNCC will provide the complainant a written notice describing the options of pursuing a criminal complaint with law enforcement and/or using the College's investigation and disciplinary processes. The complainant may go forward with one or both options at the same time, but the College's investigation will proceed unless needed / temporary delays are necessitated by an ongoing criminal investigation.

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 and/or makes a request that his or her identity remain anonymous, the Title IX Coordinator will make note of that request in the report. Whether or not the complainant wishes to pursue a formal complaint, the College is still required to investigate reports of sexual misconduct. The complainant must be informed of the College's obligation to investigate and that requests to maintain anonymity cannot be guaranteed.

In all investigatory and adjudication proceedings conducted by the College concerning charges of sexual misconduct, domestic violence, dating violence, or stalking, including any related meetings or hearings, both the complainant and the respondent will be afforded the same process rights, including equal opportunities to have others present. This includes the right to be accompanied by an advisor of their choice. Both the complainant and respondent will also be afforded an equal opportunity to introduce evidence and identify witnesses.

### **Investigation:**

When a student is accused of any violation of the sexual misconduct policy, including but not limited to charges that he or she engaged in sexual assault, domestic or dating violence, or stalking, the investigator (Title IX Coordinator or designee/trained deputy) shall conduct an investigation to determine (1) if a violation may have in fact occurred and (2) if so, what an appropriate sanction(s) might be, and (3) if a violation(s) and sanction(s) can be administratively resolved by mutual consent of the parties involved. The investigation will be decided using a preponderance of evidence standard. In other words, the evidence must show that it is more likely than not that the alleged misconduct occurred.

Investigations into allegations of sexual misconduct should be concluded within sixty (60) calendar days of the College's receipt of said report unless mitigating circumstances require the extension of time frames beyond sixty (60) days. Such circumstances may include the complexity of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, College breaks or vacations that occur during the pendency of an investigation, or other unforeseen circumstances. In these matters the complainant and the respondent shall be notified, provided an explanation, and given information about the amount of additional time required to conclude the process. When the investigator completes an investigation, both the complainant and the respondent shall simultaneously be informed in writing within seven (7) business days of the outcome of the investigation and any sanction(s) imposed. Both the complainant and respondent will be given the same procedures and timeframe to appeal the outcome of the proceeding, both parties will receive the same process rights if an appeal is granted, and the parties will both receive timely notice when the outcome becomes final.

### **Appeal:**

An appeal (unacceptance) of the decision of the Investigator may be made in writing to the Dean of Student Services no more than five (5) working days, excluding weekends or holidays, after the written decision by the investigator is received. The Dean of Student Services shall then convene a hearing of the College Judicial Board.

### **Composition of College Judicial Board:**

There shall exist one College Judicial Board to hear all appeals of the Sexual Misconduct Policy. Committee membership shall be composed of the following members of the College Community: Dean of Instruction, or designee, Dean of Students, or designee, and a Student Life Assistant Director, or designee. The investigator shall serve as the chairperson and non-voting member of the Judicial Board.

### **Chairperson of the College Judicial Board:**

It is the duty of the investigator to preside as chairperson of all meetings of the Judicial Board. The chairperson shall answer any questions concerning the interpretation of the Sexual Misconduct Policy which he/she deems advisable, applicable, and practical during the course of the hearing. The chairperson shall have the authority to remove any person from the hearing who is disruptive. The chairperson shall reserve the right to suspend and reconvene a hearing for any compelling reason as deemed appropriate by

him/her and the Judicial Board. The chairperson shall have the right to seek advice and assistance from College legal counsel and adopt any special procedures, as needed, provided these procedures are consistent with the Sexual Misconduct Policy and provided that these special procedures are fully explained to all persons immediately concerned in the hearing.

### **Notification Process:**

The respondent and the complainant shall be notified in writing of the date of the College Judicial Board hearing. The hearing shall not be less than five (5) nor more than fifteen (15) work days after an appeal has been filed with the Dean of Students.

### **Pre-Hearing Procedures:**

The parties to an appeal shall provide the following to the chairperson of the Judicial Board at least two (2) days prior to the hearing:

1. Names, addresses and phone numbers of all witnesses;
2. Names, addresses and phone numbers of the two (2) observers;
3. Name, address, phone number and status of the individual selected to serve as an advisor;
4. Original supporting documentation: pertinent records, exhibits, etc.

The chairperson shall then make available to the respondent and the complainant the list of witnesses, allowed visitors, selected advisor, and documentation.

### **Judicial Board Hearing Procedures:**

Hearings shall be conducted by the Investigator and the Judicial Board according to the following guidelines:

1. Hearings shall be conducted in private. Those in attendance shall include the investigator who serves as non-voting, chairperson, the Judicial Board members, the respondent and her/his selected advisor, and the complainant and her/his selected advisor. Both the respondent and complainant also may have up to two (2) observers present during the hearing. The observers shall not have the privilege of participating in the hearing.
2. The Judicial Board may accommodate concerns for personal well-being and/or fears of personal safety of the complainant, respondent and/or other witnesses at the hearing through seating arrangements, participation by video conferencing or other means determined by the chairperson to be appropriate as long as the ability for cross-examination of witnesses and a fair and impartial hearing is preserved.
3. The respondent and the complainant have the right to be assisted by any advisor, one (1), they choose at their own expense. The advisor may be an attorney. The respondent and the complainant are responsible for speaking on their own behalf. Advisors are not permitted to speak or to participate directly in any hearing before the Judicial Board. An appropriate advisor would be someone with sufficient knowledge of the College judicial process to be able to effectively assist the respondent and complainant through the hearing.
4. Pertinent records, documentation, exhibits, and written statements from the respondent and the complainant may be accepted as evidence for consideration by the Judicial Board

at the determination of the Judicial Officer. These materials must be submitted to the Judicial Officer in their original or hard copy form.

5. The respondent and the complainant shall have the privilege of presenting witnesses whose testimony is directly pertinent to the issues at hand, as determined in advance by the Chairperson. Witnesses may not serve as observers or advisors. The number of witnesses allowed by each person will be negotiated with the parties by the Chairperson. Witnesses will not be present in the hearing room during the hearing until such time as they are called in to testify. Witnesses will wait outside the hearing room and will be called in one by one. After the Judicial Board, the respondent, and the complainant have concluded the questioning of the witness, the witness will be excused from the room.
6. In hearings involving more than one respondent or complainant, the chairperson, in her/his discretion, may permit the hearings to be conducted either jointly or separately.
7. All procedural questions are subject to the final decision of the chairperson of the Judicial Board (i.e. the investigator).

#### **Hearing Protocol:**

1. The chairperson will state the date and time, and identify the particular hearing.
2. The chairperson will ask the Judicial Clerk/Recorder to confirm if all who have received notice of hearing are present.
3. The chairperson will explain the confidential nature of the meeting and that no materials distributed are to be taken from the room, and that there should be no discussion about the proceeding outside of the hearing.
4. The chairperson will state the purpose of the hearing and read the allegation to the Judicial Board.
5. The chairperson will identify the respondent(s).
6. The chairperson will explain the fundamental rights of the respondent. The following shall be included in the fundamental rights: (a) right to timely notification process; (b) right to have two (2) observers and one (1) advisor present under the terms and conditions set forth above; (c) right to introduce evidence and ask questions of all persons who appear for or against her/him in any proceedings of the Judicial Board, and (d) right to a fair hearing and opportunity to present a response to the allegations.
7. If the complainant or respondent, with notice, does not appear for a scheduled Judicial Board hearing, after having received written notice of said hearing, the information concerning the allegation shall be presented and considered even if said person is not present.
8. The chairperson shall present the evidence of the case to the Judicial Board and will ask the respondent if she/he admits the charges.

9. The complainant(s) is (are) identified and asked questions by the chairperson to present the relevant issues regarding her/his side of the case. This is to be done in the presence of the respondent unless safety measures are utilized which still preserve the right to cross-examination and a fair hearing.
10. The Judicial Board and the respondent will be given the opportunity to ask questions of the complainant. Questions will be addressed through the chairperson.
11. The chairperson will ask questions of the respondent to present the relevant issues regarding her/his side of the case.
12. The Judicial Board and the complainant will be given the opportunity to ask questions of the respondent. Questions will be addressed through the chairperson.
13. The chairperson will call the witnesses one at a time to testify. Witnesses will not be present in the hearing room during the hearing until such time as they are called in to testify. Witnesses will wait outside the hearing room and will be called in one by one. After the Judicial Board, the respondent, and the complainant have concluded the questioning of the witness, the witness will be excused from the room.
14. The Judicial Board, the respondent, and the complainant will be given the opportunity to question the witnesses.
15. The chairperson shall give the respondent and the complainant the opportunity to make a final statement.
16. The chairperson will give the deliberation directions to the Judicial Board.
17. The Judicial Board shall then meet in closed session and determine (by majority vote) whether the respondent has violated the Sexual Misconduct Policy. The Judicial Board's determination shall be made on the basis of whether it is more likely than not that the respondent has violated the Sexual Misconduct Policy and whether the sanction imposed was reasonable and appropriate for the violation.
18. All proceedings of the hearing are taped by the Judicial Clerk/Recorder, with the exception of the Judicial Board's private deliberation.
19. The Judicial Board shall prepare written findings to support the Board's determination.

These shall include:

- a. Concise statements of each factual finding;
- b. Brief explanations of whether factual findings justify a conclusion that the conduct violated the Sexual Misconduct Policy;
- c. Recommendations concerning appropriate sanctions;
- d. A copy of these findings shall be presented to the Dean of Student Services, and mailed to the complainant and the respondent within five (5) working days of the

determination.

20. The determination of the Judicial Board is final unless newly discovered information regarding the accusation is presented to the Chief Student Affairs Officer. If the Chief Student Affairs Officer determines that the newly discovered information is sufficiently material, relevant and credible that a new hearing would probably result in a different determination, the matter shall be referred back to the Judicial Board for further hearing. The decision of the Chief Student Affairs Officer on issues of newly discovered evidence shall be final.

### **Sanctions:**

The following sanctions may be imposed upon any student found to be in violation of Western Nebraska Community College's Sexual Misconduct Policy:

1. *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.
2. *Loss of privileges:* Denial of specified privileges for a designated period of time.
3. *Discretionary sanctions:* As needed to maintain a healthy and safe educational and work environment for students, visitors, faculty and staff and WNCC.
4. *Disciplinary probation:* A written plan addressing a student's violations of the Code of Conduct and posted WNCC rules. Probation shall include specified conduct guidelines for a designated period of time.
5. *On campus housing relocation:* Moving a student from one room to another and/or from one campus residence hall to another.
6. *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.
7. *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.
8. *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.
9. *College expulsion:* Permanent separation of the student from Western Nebraska Community College without the possibility of re-admission.

One or more of the sanctions listed above may be imposed by the College for any single violation of the College's Sexual Misconduct Policy. For additional information about student conduct proceedings please consult the Student Handbook on the Student Life section of the website. For additional

information about employee conduct please consult the WNCC Faculty and Staff Handbook on the Faculty & Staff section of the website.

## **INTERIM SAFETY / PROTECTIVE / REMEDIAL MEASURES**

No contact directives shall be issued in writing to persons involved in any alleged violations of the College's Sexual Misconduct Policy.

Students who have been subjected to sexual misconduct have access to other available College assistance in modifying or changing academic and living situations after an alleged incident. Accommodations may include, but are not limited to the following:

1. Counseling and mental health services;
2. Changes with on-campus housing;
3. Assistance for relocation;
4. Assistance in ending a College housing contract and/or adjusting a student account balance for refund;
5. Rescheduling assignments, papers, quizzes or examinations;
6. Options for taking an incomplete in a class;
7. Transfer options between class sections;
8. Temporary withdrawal from the College;
9. Alternative course completion options; and
10. Arranging to take a course or courses via distance education / technology methods.

## **RETALIATION**

The College's commitment to eradication of any sort sexual misconduct includes prohibiting actions taken in retaliation for complaining of violations of College policy. Retaliation includes taking any action which may have any adverse impact on the student's academic success or the learning environment of the student if such action is taken because of the student's filing of or participation in the review of a complaint, whether or not such complaint is determined to be valid; or taking any action which may have any adverse impact on the employment status of the work environment of the employee, if the action is taken because of the employee's filing of or participation in the review of a complaint, whether or not such complaint is determined to be valid. The complainant is assured that retaliation due to filing a complaint under the procedures addressing sexual misconduct is strictly prohibited by law and by college policy, and shall lead to discipline up to and including termination and expulsion. Any person believing that retaliation has taken or is taking place should immediately report the matter as provided herein. It shall be considered a violation of College policy for any individual to knowingly file a false or malicious complaint of sexual misconduct or retaliation. If the College believes that such a false or malicious complaint has been filed, the matter will be investigated by the College.