

North Central Missouri College

3.14. Sexual Misconduct Policy

3.14.1. General Statement of Policy: North Central Missouri College is committed to fostering a learning environment that is safe, inclusive, and fosters academic success. NCMC considers Sexual Harassment in all its forms to be a serious offense and a violation of this policy. Consistent with NCMC's Non-Discrimination Notice and the U.S. Department of Education's implementing regulations for Title IX of the Education Amendments of 1972 ("Title IX") (see 34 C.F.R. § 106 et seq.), NCMC prohibits Sexual Harassment that occurs within its education programs or activities.

For purposes of this policy, Sexual Harassment includes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

Administrators, faculty member, staff, students, contractors, guests, and other members of the NCMC community who commit Sexual Harassment are subject to the full range of NCMC discipline including verbal reprimand; written reprimand; mandatory training, coaching, or counseling; mandatory monitoring; partial or full probation; partial or full suspension; fines; permanent separation from the institution (that is, termination or dismissal); physical restriction from NCMC property; cancellation of contracts; and any combination of the same.

3.14.2. Scope of the Policy: This policy applies to Sexual Harassment that occurs within NCMC's Education Programs or Activities and that is committed by an administrator, faculty member, staff, student, contractor, guest, or other member of the NCMC community.

This policy does not apply to Sexual Harassment that occurs off-campus, in a private setting, and outside the scope of NCMC's Education Programs or Activities; such sexual misconduct may be prohibited by the Student Code of Conduct if committed by a student, the Faculty Handbook if committed by a faculty member, or other NCMC policies and standards if committed by an employee.

Consistent with the U.S. Department of Education's implementing regulations for Title IX, this policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in NCMC's Education Programs or Activities, such as a study abroad program. Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by the Student Code of Conduct if committed by a student, the Faculty Handbook if committed by a faculty member, or other NCMC policies and standards if committed by an employee, including but not limited to the Employee-Student Relationships policy.

3.14.3. Definitions

3.14.3.1. Complainant: “Sexual Harassment” is conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.

3.14.3.2. “Quid Pro Quo Sexual Harassment” is an employee of NCMC conditioning the provision of an aid, benefit, or service of NCMC on an individual’s participation in unwelcome sexual conduct.

3.14.3.3. “Hostile Environment Sexual Harassment” is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to NCMC’s Education Programs or Activities.

3.14.3.4. “Sexual Assault” includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.

3.14.3.4.1. “Rape” is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.

3.14.3.4.2. “Sodomy” is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

3.14.3.4.3. “Sexual Assault with an Object” is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.

3.14.3.4.4. “Fondling” is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

3.14.3.4.5. “Incest” is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Missouri law.

3.14.3.4.6. “Statutory Rape” is sexual intercourse with a person who is under the statutory age of consent as defined by Missouri law.

3.14.3.5. “Domestic Violence” is felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Missouri, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of Missouri.

3.14.3.6. “Dating Violence” is violence committed by a person –

Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

Where the existence of such a relationship will be determined based on a consideration of the following factors:

The length of the relationship;

The type of the relationship; and

The frequency of interaction between the persons involved in the relationship.

3.14.3.7. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

3.14.3.8. Consent: refers to words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. A person who is Incapacitated is not capable of giving Consent.

3.14.3.9. “Coercion” is direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person’s words or conduct cannot amount to Coercion for purposes of this policy unless they wrongfully impair the other’s freedom of will and ability to choose whether or not to engage in sexual activity.

3.14.3.10. “Incapacitated” refers to the state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep.

3.14.3.11. “Retaliation” is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

3.14.3.12. “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

3.14.3.13. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

3.14.3.14. “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that NCMC investigate the allegation of Sexual Harassment in accordance with this policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in NCMC’s

Education Programs or Activities. A “document filed by a Complainant” means a document or electronic submission (such as an email) that contains the Complainant’s physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.

3.14.3.15. “Supportive Measures” are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to NCMC’s Education Programs or Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or NCMC’s education environment, or to deter Sexual Harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

3.14.3.16. “Education Programs and Activities” refers to all the operations of NCMC, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by NCMC. It also includes off-campus locations, events, or circumstances over which NCMC exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by NCMC.

3.14.3.17. UNDERSTANDING HOSTILE ENVIRONMENT SEXUAL HARASSMENT In determining whether a hostile environment exists, NCMC will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. NCMC will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant’s position. A person’s adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

NCMC encourages members of the NCMC Community to report any and all instances of Sexual Harassment, even if they are unsure whether the conduct rises to the level of a policy violation.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact

Unwelcome kissing, hugging, or massaging

Comments of sexual nature

Sexual innuendos, jokes, or humor

Displaying sexual graffiti, pictures, videos, or posters

Using sexually explicit profanity

Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities

Email, internet, or other electronic use that violates this policy

Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin

Whistling or other sexually explicit sounds or gestures

Sending sexually explicit emails, text messages, or social media posts

Commenting on a person's dress in a sexual manner

Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship

Insulting, demeaning, or degrading another person based on gender or gender stereotypes

#### 3.14.4. UNDERSTANDING CONSENT AND INCAPACITATION

3.14.4.1.        Consent: Lack of consent is a critical factor in determining whether Sexual Harassment has occurred. As defined above, consent is a mutual, voluntary, and informed agreement to participate in specific sexual acts with another person that is not achieved through unreasonable manipulation or coercion—or any kind of physical force or weapon—and requires having cognitive ability to agree to participate. Consent requires a clear and unmistakable voluntary agreement, expressed in mutually understandable words or actions, to engage in sexual activity. A verbal “no” constitutes lack of consent, even if it sounds insincere or indecisive. Silence or absence of resistance does not imply consent.

Informed consent cannot be gained by force, coercion, threat, by ignoring or acting in spite of the objections of another, or by taking advantage of the incapacitation of another, where the Respondent knows or reasonably should have known of such incapacitation. Informed consent is also absent when the activity in question exceeds the scope of informed consent previously given, i.e. past consent does not imply future consent. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. When consent is withdrawn, sexual activity must immediately stop. In the state of Missouri, consent cannot be provided if the person lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor; or it is given by a person who by reason of youth, mental disease or defect, intoxication, a drug-induced state, or any other reason anyone under the age of seventeen cannot give informed consent.

In evaluating whether consent was given, consideration will be given to the totality of the facts and circumstances, including but not limited to the extent to which a complainant affirmatively uses words or actions indicating a willingness to engage in sexual contact, free from manipulation, intimidation, fear, or coercion; whether a reasonable person in the Respondent's position would have understood such person's words and acts as an expression of consent; and whether there are any circumstances, known or reasonably apparent to the Respondent, demonstrating incapacitation or fear.

3.14.4.2. Incapacitation. Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One’s own intoxication is not an excuse for failure to recognize another person’s incapacitation. Because incapacitation may be difficult to discern, students and employees are strongly encouraged to err on the side of caution; i.e., when in doubt, assume that another person is incapacitated and therefore unable to give consent.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual’s:

Decision-making ability

Awareness of consequences

Ability to make informed judgments

Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness

3.14.5. REPORTING SEXUAL HARASSMENT Any person may report Sexual Harassment to the Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. In-person reports must be made during normal business hours, but reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

The name and contact information for the Title IX Coordinator is:

Dr. Kristen Alley

Vice President of Student Affairs

NCMC Campus, Alexander Student Center

Office 12, 1204 Main Street, Trenton, MO

660-359-3948, ext. 1400

[kalley@mail.ncmissouri.edu](mailto:kalley@mail.ncmissouri.edu)

In addition to reporting to the Title IX Coordinator, any person may report Sexual Harassment to the Deputy Title IX Investigators or any NCMC employee with managerial authority over other employees, including cabinet members, deans, department heads, unit supervisors, and other managers (collectively “Reporting Officials”) who must promptly forward such report of Sexual Harassment to the Title IX Coordinator.

The Deputy Title IX Coordinators are:

Kristi Harris

Chief of Staff

NCMC Campus, President’s Office Frey

1213 Mabel Street, Trenton, MO

660-359-3948, ext. 1203

kharris@mail.ncmissouri.edu

Dr. Beth Caldarello

Director of Library Services

NCMC Campus, Geyer Hall Library

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NCMC employees who are not Reporting Officials are encouraged, but are not required to, forward reports of Sexual Harassment to the Title IX Coordinator.

**3.14.6. SPECIAL ADVICE FOR INDIVIDUALS REPORTING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING** If you believe you are the victim of Sexual Assault, Domestic Violence, or Dating Violence, get to safety and do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. For those who believe that they are victims of Sexual Assault, Domestic Violence, or Dating Violence, NCMC recommends the following:

Get to a safe place as soon as possible.

Try to preserve All physical evidence of the crime—avoid bathing, using the toilet, rinsing one’s mouth or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.

Do not launder or discard bedding or otherwise clean the area where the assault occurred- preserve for law enforcement

Preserve all forms of electronic communication that occurred before, during, or after the assault

Contact law enforcement by calling 911.

Get Medical attention - all medical injuries are not immediately apparent. This will also help collect evidence that may be needed in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, including shoes, for use after a medical examination.

Contact a trusted person, such as a friend or family member for support.

Talk with a professional licensed counselor, NCMC chaplain, or health care provider who can help explain options, give information, and provide emotional support.

Make a report to the Title IX Coordinator.

Explore this policy and avenues for resolution under the Title IX Grievance Process.

It is also important to take steps to preserve evidence in cases of Stalking, to the extent such evidence exists. Such evidence is more likely to be in the form of letters, emails, text messages, electronic images, etc. rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of Sexual Harassment investigations.

Once a report of Sexual Assault, Domestic Violence, Dating Violence, or Stalking is made, the victim has several options such as, but not limited to:

obtaining Supportive Measures

contacting parents or a relative

seeking legal advice

seeking personal counseling (always recommended)

pursuing legal action against the perpetrator

filing a Formal Complaint

requesting that no further action be taken

The Title IX Coordinator can assist individuals in obtaining a personal protection order ("PPO").

**3.14.7. AMNESTY** To encourage reporting, NCMC provides amnesty to victims who may be hesitant to report to College officials because they fear that they themselves may be accused of minor policy violations, such as underage drinking or visitation, related to the sexual misconduct incident. Amnesty means that the individual's conduct will not be subject to punitive conduct action, but may be addressed through education, assessment and/or treatment. No conduct proceedings or conduct record will result from conduct that falls under amnesty. The Title IX Coordinator will make decisions regarding amnesty. The College's commitment to amnesty in these situations does not prevent action by police or other legal authorities against an individual who has illegally consumed alcohol or drugs or has otherwise violated the law.

**3.14.8. PRELIMINARY ASSESSMENT** After receiving a report under "Reporting Sexual Harassment," the Title IX Coordinator will conduct a preliminary assessment to determine:



Whether the conduct as reported, falls or could fall within the scope of this policy (see “Scope”); and

Whether the conduct, as reported, constitutes or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of the policy, and/or could not constitute Sexual Harassment, even if investigated, the Title Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act (“FERPA”). The Title IX Coordinator may refer the report to other NCMC offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of the policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant (see “Contacting the Complainant”)

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if it is not apparent from the report.

**3.14.9. CONTACTING THE COMPLAINANT** If a report is not closed as a result of the preliminary assessment (see “Preliminary Assessment”), NCMC will offer and make available Supportive Measures to the Complainant regardless of whether the Complainant elects to file a Formal Complaint.

**3.14.10. Supportive Measures** If Contemporaneously with the Respondent being notified of a Formal Complaint, the Title IX Coordinator will notify the Respondent of the availability of Supportive Measures for the Respondent, and NCMC will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. NCMC will also offer and make available Supportive Measures to the Respondent prior to the Respondent being notified of a Formal Complaint, if the Respondent requests such measures.

NCMC will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair NCMC’s ability to provide the Supportive Measures in question.

**3.14.11. INTERIM REMOVAL** At any time after receiving a report of Sexual Harassment, the Title IX Coordinator may remove a student Respondent from one or more of NCMC’s Education Programs or Activities on an temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to meet with the Respondent within twenty-four hours and provide the Respondent an opportunity to challenge the interim removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, NCMC may place the Respondent on administrative leave at any time after receiving a report of Sexual Harassment, including during the pendency of the investigation and adjudication process (see “Investigation” and “Adjudication”).

For all other Respondents, including independent contractors and guests, NCMC retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

3.15. **FORMAL COMPLAINT** A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in “Reporting Sexual Harassment.” No person may submit a Formal Complaint on the Complainant’s behalf.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of NCMC if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the NCMC Community. Factors the Title IX Coordinator may consider include (but are not limited to): (a) was a weapon involved in the incident; (b) were multiple assailants involved in the incident; (c) is the accused a repeat offender; and (d) does the incident create a risk of occurring again.

If the Complainant or the Title IX Coordinator files a Formal Complaint, then NCMC will commence an investigation as specified in “Reporting Sexual Harassment” and proceed to adjudicate the matter as specified in “Adjudication,” below. In all cases where a Formal Complaint is filed, the Complainant will be treated as a party, irrespective of the party’s level of participation.

In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

At the time a Formal Complaint is filed, formal communication including but not limited to notices and other information pertaining to the Formal Complaint will occur through the college email system unless otherwise specified.

3.16. **CONSOLIDATION OF FORMAL COMPLAINTS** NCMC may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this policy to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable. A Formal Complaint of Retaliation may be consolidated with a Formal Complaint of Sexual Harassment.

3.17. **DISMISSAL PRIOR TO COMMENCEMENT OF INVESTIGATION** In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and must dismiss it if the Title IX Coordinator determines:

The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or

The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in “Scope” (that is, because the alleged conduct did not occur in NCMC’s Education Programs or

Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in “Appeal.” The Title IX Coordinator may refer the subject matter of the Formal Complaint to other NCMC offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination for purposes of this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

**3.18. NOTICE OF FORMAL COMPLAINT** Within five (5) days of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

A physical copy of this policy or a hyperlink to this policy;

Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);

A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;

Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice, as specified in “Advisor of Choice.”

Notifying the Complainant and Respondent of their right to inspect and review evidence as specified in “Access to Evidence.”

Notifying the Complainant and Respondent of NCMC’s prohibitions on retaliation and false statements specified in Sections “Bad Faith Complaints and False Information” and “Retaliation.”

Information about resources that are available on campus and in the community.

Should NCMC elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, NCMC will provide a supplemental written notice describing the additional allegations to be investigated.

### **3.19. INVESTIGATION**

**3.19.1. Commencement and Timing** After the written notice of Formal Complaint is transmitted to the parties, an investigator selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with NCMC and not with the parties. The investigation will culminate in a written investigation report, specified in “Investigation Report,” that will be submitted to the adjudicator during the selected adjudication process. Although the length of each investigation may vary depending on

the totality of the circumstances, NCMC strives to complete each investigation within thirty (30) to forty-five (45) days of the transmittal of the written notice of Formal Complaint.

3.19.2. Equal Opportunity During the investigation, the investigator will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant, as specified in "Sexual History." The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party's opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

3.19.3. Documentation of Investigation The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator's notes, audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator in the investigator's sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation.

3.19.4. Access to Evidence At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the Investigating Officer will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence NCMC may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) days in which to submit to the investigator a written response, which the investigator will consider prior to completing the investigation report.

The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to the public.

3.19.5. Investigation Report After the period for the parties to provide any written response as specified "Access to Evidence" has expired, the investigator will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator. The investigator will also transmit the investigation report to each party and their advisor, in either electronic or hard copy form.

3.20. **ADJUDICATION PROCESS SELECTION** After the investigator has sent the investigation report to the parties, the Title IX Coordinator will transmit to each party a notice advising the party of the two different adjudication processes specified in “Adjudication.” The notice will explain that the hearing process specified in “Hearing Process” is the default process for adjudicating all Formal Complaints and will be utilized unless both parties voluntarily consent to administrative adjudication as specified in “Administrative Adjudication (Optional)” as a form of informal resolution. The notice will be accompanied by a written consent to administrative adjudication and will advise each party that, if both parties execute the written consent to administrative adjudication, then the administrative adjudication process will be used in lieu of the hearing process. Parties are urged to carefully review this policy (including the entirety of “Adjudication”), consult with their advisor, and consult with other persons as they deem appropriate (including an attorney) prior to consenting to administrative adjudication.

Each party will have three (3) days from transmittal of the notice specified in this Section to return the signed written consent form to the Title IX Coordinator. If either party does not timely return the signed written consent, that party will be deemed not to have consented to administrative adjudication and the Formal Complaint will be adjudicated pursuant to the hearing process.

### 3.21. **ADJUDICATION**

3.21.1. **Hearing Process** The default process for adjudicating Formal Complaints is the hearing process specified in this Section (“Hearing Process”). The hearing process will be used to adjudicate all Formal Complaints unless both parties timely consent to administrative adjudication as specified in “Adjudication Process Selection.”

3.21.2. **Hearing Officer** After selection of the hearing process as the form of administrative adjudication, the Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the hearing process. The Title IX Coordinator will see that the hearing officer is provided a copy of the investigation report and a copy of all evidence transmitted to the parties by the investigator as specified in “Access to Evidence.”

3.21.3. **Hearing Notice and Response to the Investigation Report** After the hearing officer is appointed by the Title IX Coordinator, the hearing officer will promptly transmit written notice to the parties notifying the parties of the hearing officer’s appointment; setting a deadline for the parties to submit any written response to the investigation report; setting a date for the pre-hearing conference; setting a date and time for the hearing; and providing a copy of NCMC’s Hearing Procedures. Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this Section (“Hearing Notice and Response to the Investigation Report”).

A party’s written response to the investigation report must include:

To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;

Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in “Sexual History,” or for any other reason;

A List of any witnesses that the party contends should be requested to attend the hearing pursuant to an attendance notice issued by the hearing officer;

A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the hearing officer;

Any objection that the party has to NCMC’s Hearing Procedures;

Any request that the parties be separated physically during the pre-hearing conference and/or hearing;

Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing;

The name and contact information of the advisor who will accompany the party at the pre-hearing conference and hearing;

If the party does not have an advisor who will accompany the party at the hearing, a request that NCMC provide an advisor for purposes of conducting questioning as specified in “Hearing.”

A party’s written response to the investigation report may also include:

Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and

Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

3.21.4. Issuance of Notices of Attendance After the pre-hearing conference, the hearing officer will transmit notices of attendance to any NCMC employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

NCMC will not issue a notice of attendance to any witness who is not an employee or a student.

3.21.5. Hearing After the pre-hearing conference, the hearing officer will convene and conduct a hearing pursuant to NCMC’s Hearing Procedures. The hearing will be audio recorded. The audio recording will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the hearing officer, the parties, the advisors, witnesses, and other necessary NCMC personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

While the Hearing Procedures and rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:

Opportunity for each party to address the hearing officer directly and to respond to questions posed by the hearing officer;

Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility

Opportunity for each party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;

Opportunity for each party to submit evidence that the party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect;

Opportunity for each party to make a brief closing argument.

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors, the investigator, the hearing officer, the Title IX Coordinator, and other necessary NCMC personnel. With the exception of the investigator and the parties, witnesses will be sequestered until such time as their testimony is complete.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them pursuant to "Access to Evidence."

While a party has the right to attend and participate in the hearing with an advisor, a party and/or advisor who materially and repeatedly violates the rules of the hearing in such a way as to be materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing officer.

Subject to the minimum requirements specified in this Section ("Hearing"), the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The hearing officer will have discretion to modify the Hearing Procedures, when good cause exists to do so, and provided the minimal requirements specified in this Section (“Hearing”) are met.

3.21.6. Subjection to Questioning In the event that any party or witness refuses to attend the hearing, or attends but refuses to submit to questioning by the parties’ advisors, the statements of that party or witness, as the case may be, whether given during the investigation or during the hearing, will not be considered by the hearing officer in reaching a determination of responsibility.

Notwithstanding the foregoing, the hearing officer may consider the testimony of any party or witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered or in the case where neither party requested attendance of the witness at the hearing.

In applying this Section (“Subjection to Questioning”), the hearing officer will not draw an inference about the determination regarding responsibility based solely on a party or a witness’s absence from the live hearing and/or refusal to submit to questioning by the parties’ advisors.

3.21.7. Deliberation and Determination After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person’s status as a Complainant, Respondent, or witness. The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing conference, during the hearing, or by operation of “Subjection to Questioning.” The hearing officer will resolve disputed facts using a preponderance of the evidence (that is, “more likely than not”) standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

3.21.8. Discipline and Remedies In the event the hearing officer determines that the Respondent is responsible for violating this policy, the hearing officer will, prior to issuing a written decision, consult with an appropriate NCMC official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

3.21.9. Written Decision After reaching a determination and consulting with the appropriate NCMC official and Title IX Coordinator as required by “Discipline and Remedies,” the hearing officer will prepare a written decision that will include:

Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;

A description of the procedural steps taken by NCMC upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.



Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;

A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;

The discipline determined by the appropriate NCMC official as referenced in “Discipline and Remedies,

Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Title IX Coordinator; and

A description of NCMC’s process and grounds for appeal, as specified in “Appeal.”

The hearing officer’s written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal as specified in “Appeal.”

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, NCMC strives to issue the hearing officer’s written determination within fourteen (14) days of the conclusion of the hearing.

3.22. ADMINISTRATIVE ADJUDICATION (OPTIONAL) In lieu of the hearing process, the parties may consent to have a Formal Complaint resolved by administrative adjudication as a form of informal resolution. Administrative adjudication is voluntary and must be consented to in writing by both parties and approved by the Title IX Coordinator as specified in “Adjudication Process Selection.” At any time prior to the issuance of the administrative officer’s determination, a party has the right to withdraw from administrative adjudication and request a live hearing as specified in “Hearing Process.”

If administrative adjudication is selected, the Title IX Coordinator will appoint an administrative officer. The Title IX Coordinator will see that the administrative adjudicator is provided a copy of the investigation report and a copy of all the evidence transmitted to the parties by the investigator as specified in “Access to Evidence.”

The administrative officer will promptly send written notice to the parties notifying the parties of the administrative officer’s appointment; setting a deadline for the parties to submit any written response to the investigation report; and setting a date and time for each party to meet with the administrative officer separately. The administrative officer’s meetings with the parties will not be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this paragraph.

A party’s written response to the investigation report must include:

To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement

Any argument that a particular piece or class of evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in “Sexual History,” or for any other reason;

Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence;

Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

After reviewing the parties’ written responses, the administrative officer will meet separately with each party to provide the party with an opportunity make any oral argument or commentary the party wishes to make and for the administrative officer to ask questions concerning the party’s written response, the investigative report, and/or the evidence collected during the investigation.

After meeting with each party, the administrative officer will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence and ensure that any credibility determinations made are not based on a person’s status as a Complainant, Respondent, or witness. The administrative officer will take care to exclude from consideration any evidence that the administrative officer determines should be ruled inadmissible based on the objections and arguments raised by the parties in their respective written responses to the investigation report. The administrative officer will resolve disputed facts using a preponderance of the evidence (that is, “more likely than not”) standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

Thereafter, the administrative officer will consult with any NCMC official and the Title IX Coordinator, in the manner specified in “Deliberation and Determination” and will prepare and transmit a written decision in the manner as specified in “Written Decision” which shall serve as a resolution for purposes of informal resolution.

Transmittal of the administrative officer’s written determination concludes the administrative adjudication, subject to any right of appeal as specified in “Appeal”

Although the length of each administrative adjudication will vary depending on the totality of the circumstances, NCMC strives to issue the administrative officer’s written determination within twenty-one (21) days of the transmittal of the initiating written notice specified in this Section (“Administrative Adjudication”).

Other language in this Section (“Administrative Adjudication”) notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

**3.23. DISMISSAL DURING INVESTIGATION OR ADJUDICATION** NCMC shall dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that one or more of the following is true:

The Conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or

The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in "Scope" (that is, because the alleged conduct did not occur in NCMC's Education Programs or Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

NCMC may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);

The Respondent is no longer enrolled or employed by NCMC, as the case may be; or

Specific circumstances prevent NCMC from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator dismisses a Formal Complaint pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in "Appeal." The Title IX Coordinator may refer the subject matter of the Formal Complaint to other NCMC offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination as it pertains to this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

3.24. APPEAL Either party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

A procedural irregularity affected the outcome;

There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;

The Title IX Coordinator, investigator, hearing officer, or administrative officer, as the case may be, had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome.

No other grounds for appeal are permitted.

A party must file an appeal within seven (7) days of the date they receive notice of dismissal or determination appealed from or, if the other party appeals, within three (3) days of the other party appealing, whichever is later. The appeal must be submitted in writing to the Vice President of Academic Affairs, who serves as the appeal officer. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the appeal officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal is not timely, or that it fails to invoke a permitted

ground for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties.

If the appeal officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appeal officer will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) days. The appeal officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, NCMC strives to issue the appeal officer's written decision within (21) days of an appeal being filed.

**3.25. ADVISOR OF CHOICE** From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney.

Except for the questioning of witnesses during the hearing specified in "Hearing," the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with NCMC about the matter without the party being included in the communication. In the event a party's advisor of choice engages in material violation of the parameters specified in this Section and "Hearing," NCMC may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

In the event a party is not able to secure an advisor to attend the hearing specified in "Hearing," and requests NCMC to provide an advisor, NCMC will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. NCMC will have sole discretion to select the advisor it provides. The advisor NCMC provides may be, but is not required to be, an attorney.

NCMC is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing specified in "Hearing," and requests that NCMC provide an advisor.

**3.26. TREATMENT RECORDS AND OTHER PRIVILEGED INFORMATION** During the investigation and adjudication processes, the investigator and adjudicator, as the case may be, are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:

A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party; or

Information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege

Unless NCMC has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator, as the case may be, may consider any such records or information otherwise covered by this Section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense, as the case may be.

**3.27. SEXUAL HISTORY** During the investigation and adjudication processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this Section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this Section.

**3.28. INFORMAL RESOLUTION** At any time after the parties are provided written notice of the Formal Complaint as specified in "Notice of Formal Complaint," and before the completion of any appeal specified in "Appeal," the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties. Administrative Adjudication as specified in "Administrative Adjudication" is a form of informal resolution.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

Describes the parameters and requirements of the informal resolution process to be utilized;

Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another NCMC official, or a suitable third-party);

Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and

Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by NCMC, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to NCMC. Notwithstanding the forgoing if the form of informal resolution is Administrative Adjudication as specified in "Administrative Adjudication," there shall not be an agreed resolution requiring the parties' signatures; instead, the determination issued by the administrative officer shall serve as the resolution and conclude the informal resolution process, subject only to any right of appeal. With the exception of a resolution resulting from the Administrative Adjudication process specified in "Administrative Adjudication," all other forms of informal resolution pursuant to this Section are not subject to appeal.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) days. If an informal resolution process does not result in a resolution within twenty-one (21) days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

Other language in this Section notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

**3.29. PRESUMPTION OF NON-RESPONSIBILITY** From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

**3.30. RESOURCES** Any individual affected by or accused of Sexual Harassment will have equal access to support and counseling services offered through NCMC. NCMC encourages any individual who has questions or concerns to seek support of NCMC identified resources. The Title IX Coordinator is available to provide information about NCMC's policy and procedure and to provide assistance. A list of NCMC identified resources is located at the following link: <https://www.ncmissouri.edu/titleix/resources/>

3.31. **CONFLICTS OF INTEREST, BIAS, AND PROCEDURAL COMPLAINTS** The Title IX Coordinator, investigator, hearing officer, administrative officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these NCMC officials has a material conflict of interest or material bias must raise the concern promptly so that NCMC may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified in “Appeal,” or otherwise.

3.32. **OBJECTIONS GENERALLY** Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that NCMC may evaluate the matter and address it, if appropriate.

3.33. **CONSTITUTIONAL RIGHTS AND ACADEMIC FREEDOM** NCMC will construe and apply this policy consistent with the First Amendment to the U.S. Constitution and the principles of academic freedom specified in the Faculty Handbook. In no case will a Respondent be found to have committed Sexual Harassment based on expressive conduct that is protected by the First Amendment and/or the principles of academic freedom specified in the Faculty Handbook.

3.34. **RELATIONSHIP WITH CRIMINAL PROCESS** This policy sets forth NCMC’s processes for responding to reports and Formal Complaints of Sexual Harassment. NCMC’s processes are separate, distinct, and independent of any criminal processes. While NCMC may temporarily delay its processes under this policy to avoid interfering with law enforcement efforts if requested by law enforcement, NCMC will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.

3.35. **RECORDINGS** Wherever this policy specifies that an audio or video recording will be made, the recording will be made only by NCMC and is considered property of NCMC, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only NCMC is permitted to make audio or video recordings under this policy. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated under this policy is strictly prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the hearing officer.

3.36. **VENDORS CONTRACTORS AND THIRD PARTIES** NCMC does business with various vendors, contractors, and other third-parties who are not students or employees of NCMC. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, NCMC retains its right to limit any vendor, contractor, or third-party’s access to campus for any reason. And NCMC retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy.

3.37. **BAD FAITH COMPLAINTS AND FALSE INFORMATION** It is a violation of this policy for any person to submit a report or Formal Complaint that the person knows, at the time the report or Formal Complaint is submitted, to be false or frivolous. It is also a violation of this policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. Violations of this Section are not subject to the investigation and adjudication processes in this policy; instead, they will be addressed under the

Code of Student Conduct in the case of students and other NCMC policies and standards, as applicable, for other persons.

3.38. **RETALIATION** It is a violation of this policy to engage in Retaliation. Reports and Formal Complaints of retaliation may be made in the manner specified in “Reporting Sexual Harassment,” and “Formal Complaint.” Any report or Formal Complaint of Retaliation will be processed under this policy in the same manner as a report or Formal Complaint of Sexual Harassment, as the case may be. NCMC retains discretion to consolidate a Formal Complaint of Retaliation with a Formal Complaint of Sexual Harassment for investigation and/or adjudication purposes if the two Formal Complaints share a common nexus.

3.39. **CONFIDENTIALITY** NCMC will keep confidential the identity of any individual who has made a report or Formal Complaint of Sexual Harassment or Retaliation including any Complainant, the identity of any individual who has been reported to be a perpetrator of Sexual Harassment or Retaliation including any Respondent, and the identity of any witness. NCMC will also maintain the confidentiality of its various records generated in response to reports and Formal Complaints, including, but not limited to, information concerning Supportive Measures, notices, investigation materials, adjudication records, and appeal records. Notwithstanding the foregoing, NCMC may reveal the identity of any person or the contents of any record if permitted by FERPA, if necessary to carry out NCMC’s obligations under Title IX and its implementing regulations including the conduct of any investigation, adjudication, or appeal under this policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding NCMC’s general obligation to maintain confidentiality as specified herein, the parties to a report or Formal Complaint will be given access to investigation and adjudication materials in the circumstances specified in this policy.

While NCMC will maintain confidentiality specified in this Section, NCMC will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this policy.

Note that certain types of Sexual Harassment are considered crimes for which NCMC must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

3.40. **OTHER VIOLATIONS OF THIS POLICY** Alleged violations of this policy, other than violations of the prohibitions on Sexual Harassment and Retaliation, will be subject to review under the Student Code of Conduct for students, the Faculty Handbook for faculty, or other NCMC policies and standards for employees.

3.41. **SIGNATURES AND FORM OF CONSENT** For purposes of this policy, either a physical signature or digital signature will be sufficient to satisfy any obligation that a document be signed. Where this policy provides that written consent must be provided, consent in either physical or electronic form, containing a physical or digital signature, as the case may be, will suffice.



3.42. DEADLINES, TIME, NOTICES, AND METHOD OF TRANSMITTAL Where this policy specifies a period of days by which some act must be performed, the following method of calculation applies:

Exclude the day of the event that triggers the period;

Count every day, including intermediate Saturdays, Sundays, and legal holidays recognized by the federal government;

Include the last day of the period until 5:00 p.m. central time, but if the last day is a Saturday, Sunday, or legal holiday recognized by the federal government, the period continues to run until 5:00 p.m. central time on the next day that is not a Saturday, Sunday, or legal holiday recognized by the federal government

All deadlines and other time periods specified in this policy are subject to modification by NCMC where, in NCMC's sole discretion, good cause exists. Good cause may include, but is not limited to, the unavailability of parties or witnesses; the complexities of a given case; extended holidays or closures; sickness of the investigator, adjudicator, or the parties; the need to consult with NCMC's legal counsel; unforeseen weather events; and the like.

Any party who wishes to seek an extension of any deadline or other time period may do so by filing a request with the investigator, hearing officer, administrative officer, appeal officer, or Title IX Coordinator, as the case may be, depending on the phase of the process. Such request must state the extension sought and explain what good cause exists for the requested extension. NCMC officer resolving the request for extension may, but is not required to, give the other party an opportunity to object. Whether to grant such a requested extension will be in the sole discretion of NCMC.

The parties will be provided written notice of the modification of any deadline or time period specified in this policy, along with the reasons for the modification.

Where this policy refers to notice being given to parties "simultaneously," notice will be deemed simultaneous if it is provided in relative proximity on the same day. It is not necessary that notice be provided at exactly the same hour and minute.

Unless otherwise specified in this policy, the default method of transmission for all notices, reports, responses, and other forms of communication specified in this policy will be email using NCMC email addresses.

A party is deemed to have received notice upon transmittal of an email to their NCMC email address. In the event notice is provided by mail, a party will be deemed to have received notice three (3) days after the notice in question is postmarked.

Any notice inviting or requiring a party or witness to attend a meeting, interview, or hearing will be provided with sufficient time for the party to prepare for the meeting, interview, or hearing as the case may be, and will include relevant details such as the date, time, location, purpose, and participants. Unless a specific number of days is specified elsewhere in this policy, the sufficient time to be provided will be determined in the sole discretion of NCMC, considering all the facts and circumstances, including, but not limited to, the nature of the meeting, interview, or hearing; the

nature and complexity of the allegations at issue; the schedules of relevant NCMC officials; approaching holidays or closures; and the number and length of extensions already granted.

3.43. **OTHER FORMS OF DISCRIMINATION** This policy applies only to Sexual Harassment. Title IX also prohibits discrimination based on pregnancy, pregnancy-related conditions, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom and are governed by NCMC's Pregnant or Parenting Students policy. Complaints of other forms of sex discrimination are governed by NCMC's Non-Discrimination Policy.

3.44. **EDUCATION** Faculty, staff and students are provided with ongoing prevention and awareness campaigns and information related to sexual harassment, including sexual assault, dating violence, domestic violence, and stalking, and their role in reporting sexual harassment. Training is also provided to specific audiences, such as Resident Assistants, student athletes, and residential students on, at minimum, an annual basis. All new, full-time students attend mandatory orientation sessions and receive Title IX training. A Safety Awareness Week is also conducted on campus and sexual misconduct education is provided, as well as bystander intervention information. Passive programming is also provided on the NCMC website and portal. A variety of assessments are used to evaluate the effectiveness of training and education initiatives.

3.45. **OUTSIDE APPOINTMENTS, DUAL APPOINTMENTS, AND DELEGATIONS** NCMC retains discretion to retain and appoint suitably qualified persons who are not NCMC employees to fulfill any function of NCMC under this policy, including, but not limited to, the investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer.

NCMC also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer.

The functions assigned to a given NCMC official under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, hearing officer, administrative officer, informal resolution officer, and appeals officer, may, in NCMC's discretion, be delegated by such NCMC official to any suitably qualified individual and such delegation may be recalled by NCMC at any time.

3.46. **TRAINING** NCMC will ensure that NCMC officials acting under this policy, including but not limited to the Title IX Coordinator, investigators, hearing officers, administrative officers, informal resolution facilitators, NCMC provided advisors, and appeals officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

3.47. **RECORDKEEPING** NCMC will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in NCMC's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

3.48. **DEFINITIONS** Words used in this policy will have those meanings defined herein and if not defined herein will be construed according to their plain and ordinary meaning.

3.49. DISCRETION IN APPLICATION NCMC retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if NCMC's interpretation or application differs from the interpretation of the parties.

Despite NCMC's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case NCMC retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy and the Hearing Procedures referenced in "Hearing" are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, NCMC retains discretion to revise this policy and the Hearing Procedures at any time, and for any reason. NCMC may apply policy revisions to an active case provided that doing so is not clearly unreasonable.