

# RP-2.1.8 Sexual Misconduct Policy

## A. Statement of Policy

1. The University of Nebraska does not discriminate based on race, color, ethnicity, national origin, sex, pregnancy, sexual orientation, gender identity, religion, disability, age, genetic information, veteran status, marital status, and/or political affiliation in the education program or activity that the University operates. The University is required by Title IX of the Education Amendments of 1972 (Title IX) and the accompanying regulations not to discriminate in such a manner. This requirement not to discriminate extends to admission and employment. Inquiries about the application of Title IX and the accompanying regulations may be referred to a University Title IX Coordinator or the Assistant Secretary for Civil Rights of the Department of Education or both.
2. Beginning with the University of Nebraska charter in 1869, Nebraska law has provided that no person shall be deprived of the privileges of this institution because of sex. Discrimination on the basis of sex is also prohibited by federal law. All members of the University community are expected to conduct themselves in a manner that maintains an environment free from sexual misconduct. Sexual misconduct, which includes domestic violence, dating violence, sexual harassment, sexual assault, sexual exploitation, and stalking, is unacceptable behavior under University of Nebraska policy and against the law. The University of Nebraska has programs to promote awareness of and to help prevent sexual misconduct, and to assist members of the university community who are affected by such behavior.
3. Sexual harassment, a type of sex discrimination, is specifically prohibited by this Policy as well as federal laws such as Title VII of the Civil Rights Act of 1964 (Title VII) and Title IX.
  - a. Under Title IX, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
    - i. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
    - ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
    - iii. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
  - b. Under Title VII, which applies to employees only, sexual harassment also means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably

## B. Scope of Policy

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participate in any manner in an investigation, proceeding, or hearing under this Policy.







- iii. How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable,
    - iv. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias, and
  - b. Decision-makers will also receive training on
    - i. Any technology to be used at a live hearing and
    - ii. Issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.
  - c. Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- 4. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of sexual harassment.
- 5. The University will make these training materials publicly available on its website, or if the University does not maintain a website the University will make these materials available upon request for inspection by members of the public.

## G. Confidentiality

The University shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of sexual misconduct, any Complainant, any Respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA) or as required by law, or to carry out the purposes of Title IX, including conducting any investigation, hearing, or judicial proceeding arising thereunder. The University may be required to share information with other individuals in accordance with FERPA, Title IX, or other applicable law, including lawfully issued subpoenas in criminal, administrative, and civil matters.

## H. Resources

1. The President and Chancellors shall disseminate information about University programs and resources available to assist persons who have been subjected to sexual misconduct and about agencies outside the University located throughout the state that provide related services.
2. In addition to identifying resources available to provide counseling, advocacy, and medical treatment, University sexual misconduct programs must provide instruction on the importance of preserving evidence as proof of sexual misconduct, and on the availability of protection orders and other remedies that may be afforded to persons who have been subjected to sexual misconduct.
3. A person who has or had been involved in a dating relationship, or who has or had a marital, shared residential, or familial relationship with the actor may obtain either a harassment or domestic protection order. Persons who have not been involved in a dating relationship may qualify for a harassment protection order. Violation of harassment or domestic protection orders issued by courts of this or another state or tribal courts can result in a violator's arrest and subject the violator to criminal penalties.
4. The Protection from Domestic Abuse Act makes the Nebraska Department of Health and Human Services (DHHS) responsible to provide victims of domestic abuse emergency services, support programs, limited medical help and legal assistance in obtaining a protection order.

## I. Supportive Measures

The University will offer supportive measures to Complainants whether or not a Formal Complaint is filed. Supportive measures are available for both the Complainant and Respondent.

## J. Administrative Leave and Emergency Removal

The University may remove a Respondent from the University's education program or activity on an emergency basis. The University may place a non-student employee Respondent on Administrative Leave or the equivalent during the pendency of the procedures. A Respondent will be presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.





## M. Retaliation

No member of the University community may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Policy or because the 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. Intimidation, threats, coercion, or discrimination, including charges against an individual for Student Code of Conduct violations that do not involve sex discrimination or sexual misconduct, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual misconduct, for the purpose of interfering with any right or privilege secured by this Policy, constitutes retaliation.

## N. Record Keeping

1. The University will maintain for a period of seven years records of –
  - a. Each sexual misconduct investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required by the Policy, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
  - b. Any appeal and the result therefrom;
  - c. Any informal resolution and the result therefrom; and
  - d. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The University will make these training materials publicly available on its website.
2. For each response to sexual misconduct when the University has actual knowledge, as defined by federal law, the University will create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in r3(t a)4(n)-21(y)1-21(y)1-21(y)1-21(y)1-21(y)1-21(y)1-21(y)1-

- a. First, the Provost of the University of Nebraska must approve the amendment.
  - b. Second, the General Counsel of the University of Nebraska must approve the amendment.
  - c. Third, the amendment must be reported to the Board of Regents at the next regularly scheduled meeting of the Board.
3. The Provost and the General Counsel may approve an amendment only if each of them separately determines that:
  - a. the content of the amendment is appropriate and reasonably necessary and
  - b. the subject matter of the amendment either requires prompt action or involves minor changes that correct errors or omissions in a manner consistent with the purpose and scope of the Policy. An amendment takes effect when both the Provost and the General Counsel have approved the amendment. The Board has the authority to rescind any such amendment when the amendment is reported to the Board.

## P. Periodic Review

This Sexual Misconduct Policy will be reviewed at least every two (2) years. The Provost will initiate this review.

### Reference:

BRUN, Minutes, 72, p. 36 (May 30, 2014).

BRUN, Minutes, 76, p. 28 (August 14, 2020).