

TITLE: Glossary - Title IX Sexual Harassment Policy & Grievance Procedure

POLICY OWNER: Title IX Coordinator

Definitions

For purposes of this Policy, the following have been identified as key definitions. All offense definitions encompass actual and/or attempted offenses. Acts of Sexual Harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Actual Knowledge means notice of Sexual Harassment or allegations of Sexual Harassment to the Title IX Coordinator or any NWTC official who has authority to institute corrective measures on behalf of the institution

Advisor. Any person chosen by a party, or appointed by the institution, to accompany the party to all meetings related to the Resolution Process and advise the party on that process, and to conduct questioning for the party at the hearing, if any.

Appeal Decision-maker. The person who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs correction action, accordingly.

Business Day means a business day is defined as a weekday in which normal business operations are conducted.

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

Confidential Employee is an employee of NWTC whose communications are privileged or confidential under federal or state Law. The employee's confidential status, for purposes of this Policy, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies. NWTC's Licensed Professional Counselors and healthcare professionals within Campus Care are Confidential Employees. That means that what you tell them cannot be shared (except in limited circumstances including suspected child abuse or threat of harm to others). Confidential Employees who receive notice within the scope of their confidential role, however, do need to submit an anonymous statistical information report for Clery Act purposes.

Consent is a mutual agreement to engage in sexual activity. It is informed, knowing, and voluntary. Consent must be informed, knowing, and voluntary (freely given) and active (not passive). Consent creates mutually understandable permission regarding the conditions of sexual activity. Silence,

passivity, or lack of resistance alone does not constitute consent. To be valid, consent must be given immediately prior to

or contemporaneously with the sexual or intimate activity. Consent can be withdrawn at any time, so long as it is clearly communicated verbally or non-verbally. Consent to one form of sexual activity does not necessarily imply consent to other forms of sexual activity. Prior sexual engagements between individuals does not provide consent for any future activity.

Credibility is the process of weighing the accuracy and veracity of evidence within the Title IX process.

Decision-maker. The person who hears evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.

Disciplinary Sanction means consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient's prohibition on Sexual Harassment.

Education Program or Activity. Locations, events, or circumstances where NWTC exercises substantial control over both the Respondent (defined below) the context in which the Sexual Harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by NWTC.

Employee refers to anyone who works for NWTC as an exempt, non-exempt, full-time and/or part-time employee, including student employees, when acting within the scope of their employment.

Final Determination. A conclusion by the standard of proof that the alleged conduct did or did not violate Policy.

Finding. A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a "finding of fact").

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 NWTC investigate the allegation of Sexual Harassment.

A Formal Complaint requires:

- An allegation of Sexual Harassment against an identified or identifiable Respondent; and
- A request that the Recipient initiate an investigation into the alleged conduct.
- At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the Recipient's Education Program or Activity.
- A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, and must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the complaint.

- A Complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a Formal Complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances. The Title IX Coordinator may sign a Formal Complaint to initiate the grievance process when doing so is not clearly unreasonable in light of the known circumstances. In such cases, the Title IX Coordinator is not a Complainant or otherwise a party to the matter.

Formal Grievance Process means a method of formal resolution designated by NWTC to address conduct which complies with the requirements of the Title IX regulations.

Informal Resolution. A resolution agreed to by the Parties and approved by the Title IX Coordinator or its designee that occurs prior to a Final Determination in the Resolution Process.

Initial Assessment means the preliminary review conducted by the Title IX Coordinator or designee upon receipt of a report or Formal Complaint to determine whether the Recipient has jurisdiction under Title IX and whether the allegations, if true, would constitute Sexual Harassment as defined by Title IX.

Investigator. The person(s) authorized by NWTC to gather facts about an alleged violation of this Policy, assess relevance and Credibility, synthesize the evidence, and compile this information into an Investigation Report.

Investigation Report. The Investigator's summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.

Mandated Reporter. A NWTC employee who is obligated to share notice, and/or reports of Sexual Harassment with the Title IX Coordinator or its designee.

Party. Meaning a complainant(s), respondent(s), or both collectively.

Relevant. Meaning related to the allegations of Sexual Harassment under investigation as part of these grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged Sexual Harassment occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged Sexual Harassment occurred.

Relevant Evidence. Evidence that may aid a Decision-maker in determining whether the alleged Sexual Harassment occurred, or in determining the credibility of the Parties or witnesses.

Remedies means measures provided, as appropriate, to a Complainant or any other person identified as having had their equal access to the College's Education Program or Activity limited or denied. These measures are provided to restore or preserve that person's access to the College's Education Program or Activity after it determines that Sexual Harassment occurred.

Resolution Process. The investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution, or Formal Hearing Resolution.

Respondent. An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

Retaliation means intimidation, threats, coercion, discrimination, or any materially adverse action taken by NWTC or any individual acting on behalf of or within the Recipient's education program or activity against a person for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or because the person has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

- Retaliation includes actions that would deter a reasonable person from engaging in protected activity. Charging an individual with a code of conduct violation that does not involve Sexual Harassment, but arise out of the same facts or circumstances as a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith during a grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that a party made a materially false statement in bad faith.

Sanction. A consequence imposed on a Respondent who is found to have violated this Policy.

Sexual Harassment refers to any instance of *quid pro quo* harassment by a NWTC employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault, dating violence, domestic violence, or stalking.

1) Quid Pro Quo:

- a) an employee of the recipient,
- b) conditions the provision of an aid, benefit, or service of the recipient,
- c) on an individual's participation in unwelcome sexual conduct.

2) Sexual Harassment (Hostile Environment):

- a) unwelcome conduct,
- b) determined by a reasonable person,
- c) to be so severe, and
- d) pervasive, and,
- e) objectively offensive,
- f) that it effectively denies a Complainant equal access to the Recipient's education program or activity.

3) Sexual Assault, Rape:

- a) Penetration, no matter how slight,
 - Of the vagina or anus of a person
 - With any body part or object, OR
- b) Oral Penetration
 - Of a sex organ of the complainant, or
 - By the Respondent's sex organ
- c) Without the consent of the Complainant
- d) Including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity

4) Sexual Assault, Fondling

- a) The touching of the private body parts (breasts, groin, buttocks) of the Complainant by the Respondent, or
- b) The Respondent's private body parts touching the Complainant, or
- c) The Respondent causing the Complainant to touch the Respondent's or their own private body parts,
- d) For the purpose of sexual gratification
 - i) Without the consent of the Complainant
 - ii) Including instances where the Complainant is incapable of giving consent because of their age or because of temporary or permanent mental incapacity

For the purpose of this definition – Sexual Gratification:

- Contact with private body parts is considered to be done for the purpose of sexual gratification unless the contact:
 - Can be proven inadvertent
 - Is for a legitimate medical (or other privileged) purpose and thus is conduct for which consent should have been sought and obtained by the provider
 - Involves a Respondent who cannot developmentally (due to maturity/age or disability) understand sexual contact or that their contact is sexual, or
 - Is something like butt-slapping on a team and is both minimal and unlikely to have sexual motivation or purpose, as shown by the context of the act(s).

5) Sexual Assault: Incest and Statutory Rape

- a) Incest
 - i) Sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by law

- b) Statutory Rape
 - i) Sexual intercourse, with a person who is under the statutory age of consent of 18 years of age in the State of Wisconsin.
- c) Or as defined in Wisconsin state statute 940.225.

6) Dating Violence, defined as:

- a) violence,
- b) committed by a Respondent
- c) who is in or has been in a social relationship of a romantic or intimate nature with the Complainant
 - i) The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition—

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

7) Domestic Violence, defined as:

- a) violence,
- b) committed by a Respondent who is a current or former spouse or intimate partner of the Complainant,
- c) by a person with whom the Complainant shares a child in common, or
- d) by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- e) by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Wisconsin, or
- f) by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Wisconsin.
- g) Or as defined in Wisconsin State Statute 968.075.

8) Stalking, defined as:

- a) A Respondent engaging in a course of conduct,
- b) on the basis of sex,
- c) directed at the Complainant, that
 - i) would cause a reasonable person to fear for the person's safety, or the safety of others or
 - ii) Suffer substantial emotional distress.
- d) Or as defined in Wisconsin State Statute 940.32.

Student. A person enrolled or seeking enrollment in an Education Program or Activity at NWTC.

Supportive Measure. Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter Sexual Harassment.

Title IX Coordinator. At least one official designated by NWTC to ensure ultimate oversight of compliance with Title IX and NWTC's Title IX program. References to the Coordinator may also encompass a designee of the Coordinator for specific tasks.

Violence: Violence includes situations where the Respondent intentionally or recklessly causes the Complainant serious physical, emotional, or psychological harm.

- Intent is evidenced when a reasonable person would be more likely to act with the purpose of causing serious harm rather than for any other reason
- Recklessness is evidenced by a disregard of obvious risk to the safety of the Complainant
- Violence in self-defense is not chargeable under the Policy if the purpose is safety, not harm
- Consensual use of violence, such as in kind relationships, would not meet this definition
- Threats to seriously harm the Complainant or people they care about may be chargeable under this definition if doing so causes serious emotional or psychological harm
- Threats to harm oneself, even if made to cause emotional or psychological harm, are not considered violence under this definition (but may be addressable under a threat policy).