

North Arkansas College  
Title IX Sex Discrimination  
Policy and Procedures  
2024-2025



North Arkansas College

**Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations**

August 6, 2020, updated December 2024

**Table of Contents**

<b>1. Introduction and Title IX Grievance Policy</b>	page 2
a) General Rules of Application	page 3
b) Covered Sexual Harassment Definitions	page 4
c) Other Prohibited Conduct	page 5
<b>2. Title IX Campus Officials</b>	page 7
a) Interim Supportive Measures	page 8
<b>3. The Title IX Grievance Process</b>	page 10
a) Filing a Formal Complaint	page 10
b) Investigations	page 14
c) Hearing	page 16
d) Determination Regarding Responsibility	page 19
e) Appeals	page 21
<b>4. Additional Resources</b>	page 23
<b>5. Policy Definitions and Violations</b>	page 23

# 1. Introduction and Title IX Grievance Policy

## What is the purpose of the Title IX Grievance Policy?

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

*See*, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

Based on the Final Rule, North Arkansas College will implement the following Title IX Grievance Policy, effective August 14, 2020.

## How does the Title IX Grievance Policy impact other campus disciplinary policies?

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, North Arkansas College must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. ***Only*** incidents falling within the Final Rule's definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

North Arkansas College (the College) remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has:

- A **Code of Conduct** that defines certain behavior as a violation of campus policy, including **{identify sections addressing Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, and related sex-based offenses}**

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Student Code of Conduct Policy #1300.07 through a separate grievance proceeding. [1300.07 -- Student Code of Conduct.pdf](#)

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

### **How does the Title IX Grievance Policy impact the handling of complaints?**

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will handle different types of reports arising from sexual misconduct, as detailed in full throughout Section 2.

## **The Title IX Grievance Policy**

### **a. General Rules of Application**

#### **Effective Date**

The Title IX Grievance Policy will become effective on August 14, 2020 and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.<sup>1</sup>

#### **Revocation by Operation of Law**

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of

this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing Code of Conduct/ Sexual Misconduct Policy.

### **Non-Discrimination in Application**

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

#### **b. Definitions**

##### **Covered Sexual Harassment**

For the purposes of this Title IX Grievance Policy, "covered sexual harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;
3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any 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 Arkansas domestic or family violence laws 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 Arkansas.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Student Code of Conduct Policy #1300.07.

### **c. Other Prohibited Conduct**

**Relationships with individuals involving disproportionate:** Supervisors, faculty, and staff members must recognize that their positions necessarily embody unequal power relationships with their subordinates and students. Because of the inherent power differences in these relationships, the potential exists for the less powerful to perceive a coercive element in suggestions relative to activities outside those appropriate to the professional relationship. It is the responsibility of supervisors, faculty, and staff members to behave in such a manner that their words or actions cannot reasonably be perceived as coercive.

**A sexual or romantic relationship between students and faculty/staff and between employees in a supervisory/subordinate relationship** (one individual being directly or indirectly supervised or evaluated by the other) is strongly discouraged. There will be a strong presumption that sexual activity between students and faculty/staff members and between employees in a supervisory/subordinate relationship is unwelcome and nonconsensual.

**In the event a sexual or romantic relationship develops between a faculty/staff and a student or employees in a supervisory/subordinate relationship, such relationship must be reported to the Human Resources office as soon as possible.**

Furthermore, such interactions may constitute violations of other College policies and professional standards.

#### **Consent**

For the purposes of this Title IX Grievance Policy, “consent” means consent to engage in sexual activity must exist from beginning to end of each instance of sexual activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in a specific sexual activity. Silence alone, without actions evidencing permission, does not demonstrate consent.

Consent must be knowing and voluntary. To give consent, a person must be of legal age. Assent does not constitute consent if obtained through coercion or from an individual whom the respondent knows or reasonably should know is incapacitated.

Coercion is the use of express or implied threats, intimidation, or physical force which places an individual in fear of immediate harm or physical injury or causes a person to engage in unwelcome sexual activity. Coercion also includes administering a drug, intoxicant, or similar substance with the intent to impair that person’s ability to consent prior to engaging in sexual activity.

An individual is considered to be incapacitated if, by reason of mental or physical condition, the individual is manifestly unable to make a knowing and deliberate choice to engage in sexual activity. Someone who is drunk or intoxicated is not necessarily incapacitated. Individuals who are asleep, unresponsive or unconscious are incapacitated. Other indicators that an individual may be incapacitated include, but are not limited to, inability to communicate coherently, inability to dress/undress without assistance, inability to walk without assistance, slurred speech, loss of coordination, vomiting, or inability to perform other physical or cognitive tasks without assistance.

An individual’s use of alcohol or drugs does not diminish that individual’s responsibility to obtain consent.

Consent to engage in sexual activity may be withdrawn by any person at any time. Once withdrawal of consent has been expressed, the sexual activity must cease. Consent is automatically withdrawn by a person who is no longer capable of giving consent.

A current or previous consensual dating or sexual relationship between the parties does not itself imply consent or preclude a finding of responsibility for misconduct.

#### **Education Program or Activity**

For the purposes of this Title IX Grievance Policy, North Arkansas College’s “education program or activity” includes:

- Any on-campus premises
- Any off-campus premises that North Arkansas College has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of North Arkansas College’s programs and activities over which the North Arkansas College has substantial control.

### **Formal Complaint**

For the purposes of this Title IX Grievance Policy, “formal complaint” means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within North Arkansas College’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

### **Complainant**

For the purposes of this Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

### **Relevant evidence and questions**

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).
- *See the College’s Relevancy Policy*

### **Respondent**

For the purposes of this Title IX Grievance policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

## **Privacy vs. Confidentiality**

Consistent with the Student Code of Conduct references made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean North Arkansas College offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. North Arkansas College will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

## **Disability Accommodations**

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

## **Making a Report Regarding Covered Sexual Harassment to the Institution**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

## **2. Contact Information for Title IX Campus Officials**

Title IX Coordinator: Tavonda Brown, Vice President Student Services

Office Address: Room M184c, South Campus, 1515 Pioneer Drive, Harrison AR

Email Address: [tbrown@northark.edu](mailto:tbrown@northark.edu)

Telephone Number: 870-391-3331

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator. The College's Title IX Coordinator is responsible for overseeing all reports of sex discrimination and identifying and addressing any patterns or systemic problems that arise during review of such reports. The Title IX Coordinator can answer questions and provide information concerning this Policy, available resources and support services, and external criminal and legal options. The Title IX Coordinator may issue no-contact



orders. The Student Services Advising Office may arrange other accommodations in consultation with the Title IX Coordinator.

The following Officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

Title IX Coordinator or designee

**Coach Bobby Howard, Athletic Director, Title IX Athletic compliance**  
South Campus Room G200A (870)391-3343 [robert.howard@northark.edu](mailto:robert.howard@northark.edu)

**Kelsea Lowery, Human Resources, Title IX Investigator**  
South Campus, Room M125 (870)391-3353 [kelsea.lowery@northark.edu](mailto:kelsea.lowery@northark.edu)

**Michelle Byler, EOC Academic Advisor, Title IX Investigator**  
2<sup>nd</sup> Floor, Room C207 (870)391-3130 [michelle.byler@northark.edu](mailto:michelle.byler@northark.edu)

**Mandy Moore, Assistant Registrar, Title IX Investigator**  
South Campus, Admissions Office (870)391-3531 [mmoore@northark.edu](mailto:mmoore@northark.edu)

**Mandy Kilbourn, Director Institutional Effectiveness, Title IX Investigator**  
South Campus, (870)391-3148 [amanda.kilbourn@northark.edu](mailto:amanda.kilbourn@northark.edu)

**Brandon Cone, Media Specialist, Title IX Investigator**  
South Campus, (870)391-3556 [brandon.cone@northark.edu](mailto:brandon.cone@northark.edu)

**Seychelle Mahoney, Faculty, Coach, Title IX Athletics Training**  
South Campus, Room G102 (870)391-3286 [smahoney@northark.edu](mailto:smahoney@northark.edu)

**Amy Roberts, Asst Director Adult Ed, Title IX Investigator**  
North Campus, Adult Ed Office (870)391-3196 [amy.roberts@northark.edu](mailto:amy.roberts@northark.edu)

The following Officials may provide confidentiality:

**Kris Greening, Director Human Resources, Title IX Policy & Investigation Coordinator**  
1515 Pioneer Drive, South Campus, Room M, Harrison, AR 72601  
(870) 391-3215, (870) 365-6120 [kgreening@northark.edu](mailto:kgreening@northark.edu)

### **Non-Investigatory Measures Available Under the Title IX Grievance Policy**

#### **a) Interim Supportive Measures**

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from North Arkansas College regardless of whether they desire to file a complaint, which may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on

contact between the parties, leaves of absence, increased security and monitoring of certain areas of the campus as appropriate. Supportive measures are non-disciplinary and non-punitive.

The Interim Measure Team may limit a student's access to certain College facilities or activities pending resolution of the matter. The Interim Measure Team may impose an interim suspension on the respondent pending the resolution of an alleged violation when the Interim Measure Team determines, in the Interim Measure Team sole discretion, that it is necessary in order to protect the safety and well-being of members of the College community, to protect the respondent's own physical or emotional safety and well-being, or if the respondent poses an ongoing threat of disruption of or interference with the normal operation of the College. Failure to comply with the terms of these interim remedies or protections may constitute a separate violation of the **North Arkansas College Title IX Policy**.

### **Emergency Removal**

North Arkansas College retains the authority to remove a respondent from North Arkansas College's program or activity on an emergency basis, where North Arkansas College (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If North Arkansas College determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. North Arkansas College emergency removal procedure includes a committee of three who will make the decision; Vice President Academic Affairs, Vice President Technical and Workforce, and Campus Police or another individual appointed by the Title IX Coordinator. These individuals are not otherwise involved in any decision regarding responsibility or appeal of that decision regarding responsibility. See North Arkansas College Emergency Removal Policy.

### **Administrative Leave**

North Arkansas College retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with the Employee Conduct and Discipline Procedure.

### **Employee Conduct and Discipline Procedure**

College employees are expected to conduct themselves with professionalism as they perform the responsibilities of their positions to the best of their ability. Conduct that violates College and work area policies and procedures and/or the law, and which may be considered unsafe, imprudent, disruptive, and not in the best interests of the College may result in disciplinary action.

The College wishes to administer consistent and fair discipline for unsatisfactory performance and/or conduct in the workplace. The primary purpose of employee discipline is to correct the problem, prevent recurrence, and prepare the employee for satisfactory service.

The College may take a number of actions, including but not limited to the following:

**Verbal warning; Written warning; Final written warning; Suspension/Administrative leave with or without pay; Termination of employment**

These actions are not necessarily progressive in nature and may be used as needed. Employee discipline is the responsibility of the supervisor and is coordinated through the Office of Human Resources.

In the event that disciplinary or dismissal action is taken that the employee feels is unjust, they may file a formal appeal through the College's *Employee Grievance Procedure*.

### **3. The Title IX Grievance Process**

#### **(a) Filing a Formal Complaint**

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than ninety (90) school/calendar/business days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of North Arkansas College, including as an employee. For complainants who do not meet this criteria, the College will utilize existing policy in the Student Code of Conduct.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. North Arkansas College will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Grievance Policy or the Student Code of Conduct prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

**Bad Faith Complaints: While the College encourages all good faith complaints of sex discrimination, the College has the responsibility to balance the rights of all parties. Therefore, if the College's investigation reveals that a complaint was knowingly false, the complaint will be dismissed and the person who filed the knowingly false complaint may be subject to discipline.**

#### **Informal Resolution**

At its discretion, the College may choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. The College will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. The College will not require the parties to participate in an informal resolution process and will not offer an informal resolution process unless a formal complaint is filed. At any time prior to agreeing to an informal resolution, any party has the

right to withdraw from the process and resume the grievance process with respect to the formal complaint.  
*See the College's Informal Resolution Policy*

### **Multi-Party Situations**

The institution may consolidate Formal Complaints alleging covered 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 covered sexual harassment arise out of the same facts or circumstances.

### **Determining Jurisdiction**

The Title IX Coordinator will determine if the instant Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in the College's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, the College will investigate the allegations according to the Grievance Process.

### **Allegations Potentially Falling Under Two Policies:**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied to investigation and adjudication of only the allegations that constitute covered sexual harassment.

## **RELATED MISCONDUCT AND LIMITED IMMUNITY**

The College considers **the reporting and adjudication of sexual misconduct cases on campus to be of paramount importance**. The College does not condone underage drinking or drinking on campus; however, the College may extend limited immunity from punitive sanctioning in the case of illegal alcohol use to victims, witnesses, and those reporting incidents and/or assisting the victims of sexual misconduct, provided they are acting in good faith in such capacity.

### **Mandatory Dismissal**

If any one of these elements are not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below.

### **Discretionary Dismissal**

The Title IX Coordinator may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by the College; or,
- If specific circumstances prevent the College from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

### **Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, the institution will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

### **Notice of Removal**

Upon dismissal for the purposes of Title IX, the College retains discretion to utilize the Student Code of Conduct to determine if a violation of the Student Code of Conduct Policy has occurred. If so, the College will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the conduct process.

### **Notice of Allegations**

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, but no more than seven (7) days after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

### **Contents of Notice**

The Notice of Allegations will include the following:

- Notice of the College’s Title IX Grievance Process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered 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 conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv);
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi);

**Bad Faith Complaint While the College encourages all good faith complaints of sex discrimination, the College has the responsibility to balance the rights of all parties. Therefore, if the College’s investigation reveals that a complaint was knowingly false, the complaint will be dismissed and the person who filed the knowingly false complaint may be subject to discipline.**

### **Ongoing Notice**

If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Policy, the institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

### **Advisor of Choice and Participation of Advisor of Choice**

North Arkansas College will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

The College has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the College.

The College will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

The College’s obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and the College cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The College will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the College.

## **Notice of Meetings and Interviews**

The College will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

## **Delays**

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of Student Conduct, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator or designee shall have sole judgment to grant further pauses in the Process.

## **b. Investigation**

### **General Rules of Investigations**

The Title IX Investigation Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

The College and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the College and does not indicate responsibility.

The College cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. The College will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

### **Inspection and Review of Evidence**

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
2. inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.
3. All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

The College will send the evidence made available for each party and each party's advisor, if any, to inspect and review through an electronic format or a hard copy. The College is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report. Parties may request a reasonable extension as their designated extension request.

The institution will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

The institution will provide the parties five (5) business days after the initial inspection and review of evidence, and before the investigator completes their Investigative Report, to provide additional evidence in response to their inspection and review of the evidence, and then provide the parties five (5) business days to inspect, review, and respond to the party's additional evidence through a written response to the investigator. Those written responses will be disclosed to the parties. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

The parties and their advisors agree not to photograph or otherwise copy the evidence. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

**Inclusion of Evidence Not Directly Related to the Allegations:**

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30438 (May 19, 2020).



## **Investigative Report**

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence, and will provide that Report to the parties at least ten (10) business days prior the hearing in an electronic format or a hard copy for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

### **c. Hearing**

#### **General Rules of Hearings**

The College will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing unless otherwise resolved through an informal resolution process.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through remote video conferencing (Teams or Zoom). This technology will enable participants simultaneously to see and hear each other. At its discretion, the College may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audio recording, audiovisual recording and/or transcript. That recording or transcript will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

#### **Continuances or Granting Extensions**

The College may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the College will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

#### **Newly-discovered Evidence**

As a general rule, no new evidence or witnesses may be submitted during the live hearing.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Decision-maker will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the Decision-maker answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

### **Participants in the live hearing**

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

#### *Complainant and Respondent (The Parties)*

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party. 85 Fed. Reg. 30026, 30361 (May 19, 2020).
  - For example, A verbal or written statement constituting part or all of the sexual harassment itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>
- The College will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party’s participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
- If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a “statement” by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).
- The parties shall be subject to the College’s Rules of Decorum.

#### *The Decision-maker*

- The hearing body will consist of a panel of five (5) decision-makers.
- No member of the hearing body will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.

- No member of the hearing body will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### *Advisor of choice*

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- If neither a party nor their advisor appear at the hearing, the College will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).
- Advisors shall be subject to the College's Rules of Decorum, and may be removed upon violation of those Rules. See the College's Rules of Decorum.

#### *Witnesses*

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing. 85 Fed. Reg. 30026, 30347 (May 19, 2020).
- Witnesses shall be subject to the College's Rules of Decorum.

### **Hearing Procedures**

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- Administrative Hearing Officer will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;

- Decision-maker will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after Decision-maker conducts its initial round of questioning; During the Parties' cross-examination, the decision-maker will have the authority to pause cross-examination at any time for the purposes of asking decision-maker's own follow up questions; and any time necessary in order to enforce the established rules of decorum.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision-maker. A Party's waiver of cross-examination does not eliminate the ability of the Decision-maker to use statements made by the Party.

### **Live Cross-Examination Procedure**

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the decision-maker will determine if the question is relevant. See Northark's Relevance Policy. Cross-examination questions that are duplicative of those already asked, including by the decision-maker may be deemed irrelevant if they have been asked and answered.

### **Review of Transcript/Recording**

The recording and/or transcript of the hearing will be available for review by the parties within ten (10) business days, unless there are any extenuating circumstances.

## **d. Determination Regarding Responsibility**

### **Standard of Proof**

North Arkansas College uses the *preponderance of the evidence* for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determines to a neutral decision maker whether it is more likely than not that a violation of the Policy occurred.

### **General Considerations for Evaluating Testimony and Evidence**

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker.

Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that the College allow parties to call "expert witnesses" for direct and cross examination. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that the College allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that the College admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the {Decision-maker} may draw an adverse inference as to that party or witness' credibility.

### **Components of the Determination Regarding Responsibility**

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their institution email account, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;

4. Conclusions regarding which section of the Student Code of Conduct, if any, the respondent has or has not violated.
5. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility;
  - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
  - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").

### **Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the College within ten (10) business days of the completion of the hearing.

### **Finality**

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

### **e. Appeals**

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the institution will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals may be no longer than 6,000 words or three (3) pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12 point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by Institutional Standards and Appeals Committee, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter.

Outcome of appeal will be provided in writing simultaneously to both parties and include rationale for the decision.

### **Retaliation**

The College will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual 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 Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

Complaints alleging retaliation may be filed in writing according to the Student Code of Conduct.

## 4. ADDITIONAL RESOURCES

**Campus Police**: 870-715-7553, or 870-302-5453 (emergency) 870-391-3559 (non-emergency)  
South Campus, JPH lower level, Room  
Harrison, AR 72601  
[smartin@northark.edu](mailto:smartin@northark.edu)

**Harrison Police Department** (24 hours): 911 (emergency) 870-741-5463 (non-emergency)  
116 S. Spring  
Harrison, AR 72601

**Boone County Sheriff's Office**: (24 hours): 911 (emergency) 870-741-8404 (non-emergency)  
5800 Law Drive  
Harrison, AR 72601

**Human Resources**: 870-391-3215, 870-391-3353  
303 N. Main, Center Campus, Room 401, Harrison, AR 72601

[kgreening@northark.edu](mailto:kgreening@northark.edu)

**\*\*Vice President Student Affairs**  
For Alleged Victims & Respondents  
Tavonda Brown, 870-391-3331  
[tbrown@northark.edu](mailto:tbrown@northark.edu)

### **\*\*Academic Resources**

\*\* These resources will protect privacy and confidentiality to the extent possible and allowed by law, but they are required to inform the Title IX Coordinator of any reports of sexual misconduct or relationship violence. The Title IX Coordinator will evaluate any request for confidentiality in the context of the College's responsibility to the College community and to Title IX.

## 5. POLICY DEFINITIONS & VIOLATIONS

### A. SEX DISCRIMINATION DEFINITIONS

North Arkansas College is committed to providing an educational and work environment for its students, faculty, and staff that is free from sex discrimination which for the purposes of this Policy includes sexual harassment, sexual assault, sexual violence, stalking, domestic violence, or dating violence. No form of sex discrimination will be tolerated. Covered sexual harassment includes any conduct on the basis of sex that satisfies one or more of the following:

**Sexual Misconduct** is a form of sex discrimination and encompasses the conduct described below:

**Sexual Harassment** is defined as unwelcome gender-based verbal or physical conduct that occurs when:

1. Sex-based misconduct in a manner consistent with the First Amendment. *Quid pro quo* harassment and Clery Act/VAWA offenses are not evaluated for severity, pervasiveness, offensiveness, or denial



of equal educational access, because such misconduct is sufficiently serious to deprive a person of equal access.

2. Submission to, or rejection of, unwelcome sex-based conduct that consists of speech or expressive conduct, that is severe *and* pervasive *and* objectively offensive conduct, effectively denying a person equal educational access.
3. Such conduct has the effect of unreasonably interfering with an individual's education or employment performance or creating an intimidating, hostile, or offensive college environment.

**Sexual assault** occurs when a person is subjected to an unwanted sexual act by force or threat without consent. Sexual acts occur without consent when they are perpetrated against a person's will or where a person is incapable of giving consent due to minority, intellectual impairment, or use of mind-altering substances such as drugs or alcohol.

**Sexual violence** includes sexual assault but may also consist of an attempt to obtain a sexual act or sexual advances using coercion which do not result in a completed sexual act.

**Stalking** is defined as 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.

**Non-Consensual Fondling:** The touching or attempted touching of another's breasts, genitals, or buttocks (over or under clothes), for the purpose of sexual gratification, without consent. Non-consensual fondling also includes forcing or attempting to force another to touch the breasts, genitals or buttocks for the purpose of sexual gratification, without consent.

**Sexual Exploitation:** The abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, but are not limited to, non-consensual observation of individuals who are undressed or engaging in sexual acts, non-consensual audio- or videotaping of sexual activity, prostituting another person, allowing others to observe a personal consensual sexual act without the knowledge or consent of all involved parties, and knowingly exposing an individual to a sexually transmitted infection without that individual's knowledge.

**Domestic Violence** is defined as felony or misdemeanor crimes of violence committed by a current or former spouse 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, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Arkansas, 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 the State of Arkansas.

**Dating Violence** is defined as violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, and (iii) the frequency of interaction between the persons involved in the relationship.

**Complicity:** Assisting, facilitating, or encouraging the commission of a violation of this Policy.

**Retaliation:** Acts or attempted acts for the purpose of interfering with any report, investigation, or proceeding under this Policy, or as retribution or revenge against anyone who has reported sex discrimination (including sexual misconduct), relationship violence or stalking or who has participated (or is expected to participate) in any manner in an investigation or proceeding under this Policy. Prohibited retaliatory acts include, but are not limited to, intimidation, threats, coercion, or discrimination. Title IX prohibits retaliation.

## **B. OTHER DEFINITIONS**

**Alleged Victim:** Any individual who has allegedly experienced a violation of this Policy.

**Appellant:** A party appealing a decision of the investigative team.

**Appellee:** A party opposing an appeal.

**Complainant:** An individual who invokes the College's processes to determine whether this Policy has been violated. The complainant is normally the alleged victim.

**Decision-maker:** A person in authority, who is not the Title IX Coordinator, who will review the investigation and live hearing, if applicable, and make a decision on the findings.

**Disability Accommodations:** This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

**Education Program or Activity** includes:

- Any on-campus premises
- Any off-campus premises that North Arkansas College has substantial control over.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Northark's programs and activities over which the College has substantial control.

**Formal Complaint:** a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within Northark's education program or activity and requesting initiation of the procedures consistent with the Title IX Policy to investigate the allegation of sexual harassment.

**Hearing Panel:** The five-member panel charged with adjudicating an alleged violation of this Policy when requested by one or both of the parties. The Hearing Panel is typically drawn from the Hearing Panel Pool and comprised of three College employees. The Title IX Coordinator has sole discretion to make exceptions to this composition to ensure a timely hearing, including by appointing other available members of the College community to serve on that panel. A member of the Hearing Panel shall be appointed to serve as the Hearing Panel Chair.

All members of a Hearing Panel will receive training on i) issues related to sex discrimination, including sexual misconduct, relationship violence, and stalking; ii) the purpose and implementation of this policy; and iii) how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

**Hearing Panel Pool:** The group of College employees from which members of a Hearing Panel is selected. The Title IX Coordinator has ultimate discretion and approval authority with regard to all individuals nominated to serve. The Title IX Coordinator may also appoint additional College employees to the Hearing Panel Pool. Likewise, the Title IX Coordinator may remove a member of the Hearing Panel Pool for any reason.

**Hostile Environment:** Alleged discrimination that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the College's educational program.

In evaluating whether a hostile environment has been created, the College will consider the alleged conduct from both a subjective and objective perspective. Specifically, it will evaluate the alleged conduct from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances. If the College determines that a hostile environment exists, it will take steps to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

**Investigation:** An investigation of a complaint, which may include a hearing.

**Investigative Team:** A team of Deputy Title IX Coordinators or other College employees trained to conduct a sex discrimination investigation. All members of an Investigative Team will receive annual training on i) issues related to sex discrimination, including sexual misconduct, relationship violence, and stalking; ii) the purpose and implementation of this policy; and iii) how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

**Party or Parties:** A term referring individually or collectively to the complainant and/or respondent.

**Relevant evidence and questions:** "Relevant" evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

"Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the Title IX Grievance Procedure:

- Evidence and questions about the complainant's sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - They concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege.
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

**Respondent:** Anyone alleged to have violated this Policy.

**Responsible Employee:** Any regular full or part-time College employee.

**Supportive Measures:** 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.

**Investigative Report:** A report prepared by the investigator for the purpose of resolving a complaint.

**Witness:** Any individual who has seen, heard, or otherwise knows or has information about facts related to an alleged violation or attempted violation of this Policy. Expert witnesses are not permitted unless the expert has specific, factual information related to an alleged violation or attempted violation of this Policy. Individuals identified to provide information about a Party's character may not serve as witnesses. The Investigator's role is not that of a witness, and the Investigator may not be questioned by the complainant or respondent.