

**Sexual Misconduct Procedure Governing Students and Employees**

**Contents**

1. Introduction ..... 4

    1.1. Definitions ..... 5

        1.1.1. Complainant ..... 5

        1.1.2. Respondent ..... 5

        1.1.3. Party ..... 5

        1.1.4. Confidential Resources ..... 5

        1.1.5. Title IX Coordinator ..... 6

        1.1.6. Investigator ..... 6

        1.1.7. Decision-Maker ..... 6

        1.1.8. Title IX Personnel ..... 6

        1.1.9. Mandatory Reporters ..... 6

        1.1.10. Advisor of Choice ..... 7

        1.1.11. Campus Security Authority (CSA) ..... 8

    1.2. Scope and Jurisdiction ..... 8

    1.3. Sexual Misconduct at The District and Title IX ..... 9

2. Prohibited Conduct ..... 9

    2.1. Definitions of Prohibited Conduct ..... 10

        2.1.1. Quid pro quo Sexual Harassment ..... 10

        2.1.2. Hostile Environment Sexual Harassment ..... 10

        2.1.3. Non-Consensual Sexual Penetration ..... 11

        2.1.4. Non-Consensual Sexual Contact ..... 11

        2.1.5. Incest ..... 11

        2.1.6. Statutory Rape ..... 11

        2.1.7. Domestic Violence ..... 11

        2.1.8. Dating Violence ..... 12

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

2.1.9.	Stalking.....	12
2.1.10.	Sexual Exploitation.....	13
2.1.11.	Retaliation.....	13
2.2.	Definition of Consent.....	13
3.	Reporting.....	15
3.1.	Confidential Reporting Options.....	15
3.2.	Law Enforcement and Campus Safety.....	17
	Sheridan Police Department Dispatch:.....	19
	Gillette Police Department Dispatch:.....	19
	Buffalo Police Department Dispatch:.....	19
3.2.	Title IX Coordinator.....	19
3.3.	Other Available Resources.....	19
3.4.	U.S. Department of Education, Office For Civil Rights.....	21
3.5.	Anonymous Report.....	21
3.6.	Online Report.....	21
3.7.	Mandatory Reporting.....	22
4.	District Response to Reports.....	23
4.1.	Privacy and Confidentiality.....	23
4.2.	Supportive Measures.....	24
4.2.1.	Interim Removal.....	25
4.3.	Rights and Options.....	26
4.4.	Amnesty/Immunity.....	27
4.5.	Timely Warning.....	27
4.6.	Options for Proceeding Through District Process.....	27
4.6.1.	Informal and Formal Complaints.....	27
4.6.2.	No Complaint.....	28
4.6.3.	District -Initiated Complaints.....	28
4.6.4.	Dismissals.....	28
4.6.5.	Consolidations.....	29
5.	Informal Resolution Process.....	29
5.1.	Notice of Allegation And Assignment to an Investigator.....	30

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

5.2.	Overview of Investigation .....	30
5.2.1.	Timeframe .....	30
5.2.2.	Investigation Overview .....	31
5.2.3.	Participation .....	32
5.2.4.	Inspection of Evidence and the Investigative Report .....	32
5.2.5.	Assignment to Grievance Procedures .....	33
5.3.	Determination Regarding Responsibility .....	32
5.3.1.	Non-Title IX Grievance Procedures—STUDENTS .....	33
5.3.2.	Non-Title IX Grievance Procedures—EMPLOYEES .....	35
5.3.1.	Title IX Grievance Procedures For Students And Employees.....	35
5.4.	Findings .....	37
5.4.1.	Standard of Evidence .....	37
5.4.2.	Written Determination of Responsibility.....	37
5.4.3.	Sanctions and Remedies .....	38
5.4.4.	Appeals.....	39
6.	Record-Keeping and Annual Reports .....	41
7.	Education Programs and Training Of Title IX Personnel .....	42
7.1.	Training for the District Community .....	42
7.2.	Training of Title IX Personnel .....	43
8.	Disability Accommodations and Interpretive Services .....	43
9.	Revision and Interpretation .....	43
10.	1st Amendment Considerations .....	44
11.	Related Policies .....	44
11.1.	Students: .....	44
11.2.	Employees: .....	44

Adoption Date: Aug. 14, 2020  
Review Dates:  
Revision Dates: Sept. 21, 2021

## 1. INTRODUCTION

Northern Wyoming Community College District (“NWCCD” or “the District”) serves approximately 5,000 students per year. The District offers educational opportunities in a variety of locations, as determined by need and space.

The District is committed to cultivating a diverse and inclusive community that recognizes the value of each individual and allows persons to learn and work in an environment free from harassment and discrimination. As part of this effort, NWCCD will respond to sex-based harassment and discrimination through clear policies and grievance procedures, educational programming, rigorous employee training, and sanctioning those found to have violated this Procedure. The District commits itself to maintaining a safe and healthy educational and employment environment. This comprehensive Procedure is created and implemented by NWCCD to address allegations of sexual harassment, sexual assault, domestic violence, dating violence, and stalking in addition to other prohibited misconduct as identified and defined herein.

NWCCD prohibits all forms of sex and gender-based harassment, as well as the offenses of sexual assault, dating violence, domestic violence, and stalking (collectively referred to in this Procedure as “Sexual Misconduct” and also constitutes “Prohibited Conduct” under this Procedure.) These offenses may also be prohibited by Title IX of the Higher Education Amendments of 1972, 20 U.S. C. § 1681 et seq. (“Title IX”), by the Clery Act and Section 304 of the Violence Against Women Reauthorization Act of 2013 (“VAWA”), Title VII of the Civil Rights Act of 1964, and other applicable statutes. This Procedure prohibits a broad continuum of behaviors, some of which are not prohibited under Title IX or other laws. Their inclusion in this Procedure reflects the District’s standards and expectations for a respectful working and learning environment where everyone is free to work and learn safely so they might become the best version of themselves. However, complaints alleging discrimination based on pregnancy, different treatment based on sex or other forms of discrimination do not fall under this Procedure but may still be addressed through either the Student Code of Conduct for complaints involving student Respondents or the Employee Handbook for complaint involving Respondents who are employees.

NWCCD will investigate and attempt to resolve all Complaints of Prohibited Conduct in a prompt, fair, and impartial manner. The District will treat all individuals involved with dignity and respect. All processes are driven by objective fact-finding and approached from a neutral standpoint, including the presumption that a Respondent is not responsible for a violation of this Procedure prior to a finding that supports that.

With this in mind, members of the Colleges’ communities are expected to conduct themselves in a manner that respects the inherent dignity of all people and refrains from any form of harassment or discriminatory practices, including all forms of Prohibited Conduct as defined in this Procedure. **This Procedure has been developed to reaffirm these principles, to provide explicit information regarding when and how the District will respond to allegations of sex-based Prohibited Conduct, and to provide accountability for conduct that violates this Procedure.**

In addition to discrimination on the basis of sex, NWCCD prohibits discrimination in employment, educational programs, and activities on the basis of race, national origin, color, creed, religion, age, disability, veteran status, sexual orientation, gender identity, and associational preference. The District also affirms its commitment to providing equal opportunities and equal access to its facilities.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

Inquiries concerning Title VI, Title VII, Section 504, and the Americans with Disabilities Act may be referred to the Assistant Vice President for Human Resources, Jennifer McArthur, NWCCD's Title VII, Title IX and Section 504 Coordinator, Sheridan College, Griffith Memorial Building, Room GMB 141, 1 Whitney Way, Sheridan, WY 82801; (307) 675-0571. Inquiries also may be made to the Office for Civil Rights, U.S. Department of Education, Federal Building, Suite 310, 1244 Speer Boulevard, Denver, CO 80204-3582; 303-844-3417; or TDD 303-844-3417.

NWCCD may make changes to this procedure on an as-needed basis in order to ensure compliance with federal and/or state regulatory updates, changes, and/or modifications.

## **1.1. DEFINITIONS**

### **1.1.1. COMPLAINANT**

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual misconduct.

### **1.1.2. RESPONDENT**

"Respondent" means an individual who has been reported to be the engaged in behavior that could constitute sexual harassment.

### **1.1.3. PARTY**

"Party" means either the Complainant(s) or Respondent(s) in an investigation or action relating to a report of Prohibited Conduct.

### **1.1.4. CONFIDENTIAL RESOURCES**

"Confidential Resources" are designated by the District to provide to Complainants emergency and ongoing support and to advise the Complainant on options for reporting suspected violations of this Procedure.

NWCCD considers all employees as mandatory reporters, except health professionals and those covered by statute (i.e. licensed mental health professional). Mandatory Reporters must report sexual misconduct reported or witnessed by them within 24 hours to the Title IX Coordinator.

On campus health and counseling professionals are designated by the institution as persons with whom students may speak confidentially concerning sexual harassment, sexual assault, domestic violence, dating violence or stalking. These employees who receive information regarding an incident under circumstances that render the employee's communications confidential or privileged shall not provide any identifying information regarding the reporter, including to the institution's Title IX Coordinator, without explicit consent from such reporter unless there is an imminent threat of serious harm to the individual or to others, or a legal obligation to reveal such information (e.g., if there is suspected abuse or neglect of a minor).

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

Confidential Resources may submit non-identifying information about violations of this Procedure to the Risk Manager for purposes of the anonymous statistical reporting under the Clery Act. Employees can ensure confidentiality by utilizing non-District confidential resources.

#### **1.1.5. TITLE IX COORDINATOR**

The “Title IX Coordinator” is responsible for overseeing the District’s response to reports of Sexual Misconduct on campus and oversees the District’s centralized response to sexual misconduct and certain additional prohibited acts to ensure compliance with Title IX and the Clery Act (VAWA). The Title IX Coordinator is also responsible for coordinating the effective implementation of supportive measures and remedies. The Title IX Coordinator or the President may delegate responsibilities under this Procedure to a designee, who will be appropriately trained per the requirements of Title IX and VAWA. For purposes of this Procedure, any reference to the Title IX Coordinator should be read as the “Title IX Coordinator or other designee.”

#### **1.1.6. INVESTIGATOR**

The “Investigator” is the person assigned to conduct the investigation upon the signing of a Complaint and a request for a Formal Resolution Process. The Investigator may be a Title IX Coordinator, an employee, or a contracted service provider.

#### **1.1.7. DECISION-MAKER**

The “Decision-Maker” is the person or persons that will make the determination of responsibility at the conclusion of an Informal or Formal Resolution Process or following an appeal. The Decision-Maker will provide the determination in writing and cannot be the same person as the Title IX Coordinator or the Investigator. In the case of an Appeal, the Decision-Maker will be different from the person or persons who made the initial determination. The Decision-Maker may be an employee or a contracted service provider. The District retains the right to establish a pool of cross-trained individuals who may serve in the capacity as an Investigator or one of the Decision-Makers, however, would never hold more than one position during a particular complaint.

#### **1.1.8. TITLE IX PERSONNEL**

“Title IX Personnel” include all individuals whose duties include resolution of reports and complaints of student and employee violations of this Procedure. All Title IX personnel shall receive annual training as required by Title IX and the Clery Act as amended by VAWA. Employees falling under this description include without limitation the Title IX Coordinator(s), Investigators, Decision-Makers, members of campus safety, whether permanent or contract employees, and any other contracted service providers of NWCCD with any of the responsibilities outlined herein.

#### **1.1.9. MANDATORY REPORTERS**

All faculty and staff members who are not Confidential Resources are “Mandatory Reporters.” A Mandatory Reporter who witnesses or receives information regarding the occurrence of an incident that

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

the employee believes could constitute an offense as defined in this Procedure shall promptly report such information to the institution's Title IX Coordinator in person or via email. A report to a faculty or staff member does not result in a Complaint for purpose of triggering an investigation or Informal or Formal Resolution Processes, however the reporting of that information by the Mandatory Reporter to the institution's Title IX Coordinator is required by Wyoming law.

Wyoming has both civil and criminal laws to protect children from abuse and neglect and all employees of the District are mandatory reporters of child abuse and neglect as well as the suspected abuse of other vulnerable persons. This means that all employees have a duty to immediately report whenever they "suspect that a child has been abused or neglected." Immediate reports should be made to the nearest location of the Wyoming Department of Family Services. Please use the locator found at the following link based on where the incident occurred or is occurring: <https://dfs.wyo.gov/about/contact-us/>. If there is an immediate need for intervention, please call 9-1-1 and request that law enforcement respond.

#### 1.1.10. ADVISOR OF CHOICE

An "Advisor of Choice" means the person of the Complainant or Respondent's choosing who accompanies them to any meeting, interview, or disciplinary proceeding in which they are required to be present. This person can provide support, advise and/or counsel. During the investigatory stage of the process, the Advisor is not permitted to act on behalf of their Party with regard to answering questions or providing evidence on behalf of a Party. They may not actively participate or be disruptive, nor may they unnecessarily delay the investigation due to their personal availability. During the Live Hearing portion of the Title IX process, the Advisor of Choice is responsible for conducting the cross-examination. Cross-examination in this setting is limited to the other Party and witnesses. The Advisor cannot make opening or closing statements, ask questions of their own advisees, object to questions, or engage in advocacy other than that permitted herein. An Advisor is permitted in a Non-Title IX grievance process; however, their role is restricted to that during the investigatory stage as described above.

For both Title IX and Non-Title IX meetings, interviews, and disciplinary proceedings, the advisor may talk quietly with the student or pass notes in a non-disruptive manner. In addition, while advisors may provide guidance and assistance throughout the process, all written submissions must be authored by the student.

The District will not restrict the choice of an Advisor and the Advisor can be anyone of the Party's choosing, although the District may remove an Advisor if they become disruptive or otherwise hinders a fair and equitable process. The involvement of an Advisor may not result in undue delay of any meeting or proceeding. During the live hearing for the Title IX grievance procedures, if a Party does not have an Advisor, the District will appoint one on behalf of the Party without fee, i.e., free of charge. In this capacity, the Advisor will be appointed for the sole purpose of conducting cross examination of the other Party and witnesses. While any person may serve in an Advisor capacity, a member of the District community is free to decline to serve in this capacity.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

### 1.1.11. CAMPUS SECURITY AUTHORITY (CSA)

A “Campus Security Authority” (“CSA”) is a designated District official who has an obligation to report certain crimes reported to them to the reporting structure of the institution as required by the federal Jeanne Clery Disclosure of Campus Security Procedure and Campus Crime Statistics Act (Clery Act). In some cases, it is possible for a CSA to fulfill his or her responsibilities while still maintaining victim confidentiality. Except in reference to a report to the Title IX Coordinator, a report to a CSA does not result in a Complaint for purpose of triggering an investigation or Informal or Formal Resolution Process.

### 1.2. SCOPE AND JURISDICTION

This Procedure governs the conduct of: District students, regardless of enrollment status; faculty; staff; and third Parties (i.e., non-members of the District community, such as vendors, alumni/ae, visitors, or local residents).

Third Parties are both protected by and subject to this Procedure. A third-party may make a report of a suspected violation of this Procedure committed by a member of the District community. A third-party may also be permanently barred from the District or subject to other restrictions for failing to comply with this Procedure.

This Procedure applies to conduct that occurs on District property (i.e., on campus). This Procedure also applies to conduct that occurs off District property (i.e., off campus) when the conduct is associated with a District -sponsored program or activity, such as travel, research, wellness programing, or internship programs or when such conduct may have a continuing adverse effect or could create a hostile environment on campus. Judgements about these matters will depend on facts of an individual case.

All actions by a member of the District community that involve the use of the District’s computing and network resources from a remote location, digital platforms, and computer hardware or software owned and operated by, or used in the operations of the school, including but not limited to accessing email accounts, will be deemed to have occurred on campus. On-line and/or social media conduct may violate this Procedure if it meets the definition of Prohibited Conduct. Online postings are in the public sphere and are not private. These postings may subject an individual to allegations of Sexual Misconduct or other misconduct. The District does not regularly search for this information nor does it monitor any particular social media site, but it may take action if and when such information is brought to its attention. The District will view any Report of online Sexual Misconduct with the Respondent’s free speech rights in mind.

Individuals are encouraged to report any violation of this Procedure as soon as possible in order to maximize the District’s ability to respond promptly and effectively. Reports and Complaints may be made at any time without regard to how much time has elapsed since the incident(s) in question.

If the Respondent is no longer a student or employee at the time of the Report or Complaint, the District may not be able to take disciplinary action against the Respondent, but it will still seek to meet its Title IX or other legal obligations by offering supportive measures for the Complainant and taking steps, if

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

necessary and possible, to end the prohibited behavior, prevent and address its recurrence, and address its effects.

For Title IX to apply, the incident must be reported while the Parties are all associated with the District (as current students or employees), must have occurred on property owned or operated by the District, and must have occurred within the United States. Additionally, during the time the misconduct is reported to have occurred, the District must have had substantial control of the Respondent and the context in which the misconduct occurred.

### **1.3. SEXUAL MISCONDUCT AT THE DISTRICT AND TITLE IX**

This Procedure governs Prohibited Conduct that constitutes sex-based harassment; however, the government and state law define “sexual harassment” differently in certain settings. Additionally, this Procedure covers behaviors that fall outside of the jurisdiction required for response by Title IX. The District will determine whether an allegation should proceed utilizing the grievance processes mandated by Title IX or the District’s grievance process for non-Title IX Sexual Misconduct, based on the constellation of facts and circumstances surrounding the Report or Complaint and the following factors:

- a. applicable law
- b. what is reported to have occurred
- c. the status of the Complainant as student, employee, or third-party
- d. the status of the Respondent as student, employee or third-party
- e. the context in which the harassing behavior is reported to have occurred
- f. whether or not the reported behavior occurred within the United States; and/or
- g. whether there are continuing effects of such reported behavior on campus or within the District’s educational programs or associated activities.

The Title IX Coordinator is the District official designated to evaluate reports to determine which law(s) attach, what threshold each law holds under the various laws, and which grievance process to utilize to resolve such reported behavior.

As stated above, complaints alleging discrimination based on pregnancy, different treatment based on sex, or other forms of sex discrimination will be adjudicated under the Student Code of Conduct for complaints involving student Respondents and the Employee handbook for complaints involving employee Respondents.

## **2. PROHIBITED CONDUCT**

As outlined above, the District prohibits behaviors that fall outside the scope of conduct prohibited by Title IX. If a report constitutes behavior as described below, the District will determine which grievance process to utilize to resolve the Complaint.

For purposes of this Procedure, all of the following definitions constitute conduct to be “on the basis of sex.” The District will treat attempts to commit any Sexual Misconduct as if those attempts had been completed for purposes of providing notice, opportunity to respond, and in reaching a finding.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

## 2.1. DEFINITIONS OF PROHIBITED CONDUCT

### 2.1.1. QUID PRO QUO SEXUAL HARASSMENT

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such conduct is made implicitly or explicitly a term or condition of instruction, employment, or participation in any District activity or benefit; or
- Submission to or rejection of these behaviors by an individual is used as a basis for evaluation in making academic or personnel decisions.

To reach the threshold for a claim under Title IX, the person conditioning the provision of the aid, benefit, or service must be an employee of the District. Employee shall mean any regularly employed faculty member, all classified staff members and all administrative staff.

### 2.1.2. HOSTILE ENVIRONMENT SEXUAL HARASSMENT

Any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal, electronic or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance; i.e. it is sufficiently serious, pervasive and persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and an objective standard.

Gender-based harassment may constitute a form of sexual harassment that includes verbal, written, or physical behavior, directed at someone, or against a particular group, because of that person's or group's sex, gender identity, actual or perceived sexual orientation, or based on gender stereotypes, when that behavior is unwelcome and has the purpose or effect of substantially interfering with the individual's work or educational performance by creating an intimidating, hostile, or demeaning environment for employment, education or associate activities of the District.

Such conduct does not need to be directed at or to a specific individual in order to constitute sexual harassment but may consist of generalized unwelcome and inappropriate behaviors or communications based on sex, gender identity, actual or perceived sexual orientation, or gender stereotypes.

Determination of whether alleged conduct constitutes sexual harassment requires consideration of all the circumstances, including the context in which the alleged incidents occurred.

To reach the threshold for a claim under Title IX, the conduct must be determined to be unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity as well as meet the required jurisdictional elements.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

**An evaluation of when an offense meets the definition for Title IX will be determined by the Title IX Coordinator based on the constellation of facts and circumstances surrounding the report or Complaint.**

### **2.1.3. NON-CONSENSUAL SEXUAL PENETRATION**

Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.<sup>1</sup>

### **2.1.4. NON-CONSENSUAL SEXUAL CONTACT**

The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of his/her temporary or permanent mental incapacity. Private body parts for purposes of this Procedure are breast, buttocks, groin, and mouth.<sup>23</sup>

### **2.1.5. INCEST**

For purposes of this Procedure, incest means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. In Wyoming, this includes sexual contact between persons who are brothers and sisters, parents, and children, including stepparents, stepchildren, and adopted persons, as well as aunts/uncles with nieces/nephews and between grandparents and grandchildren.<sup>4</sup>

### **2.1.6. STATUTORY RAPE**

Sexual intercourse with a person who is under the statutory age of consent, which in Wyoming is 17 years of age.<sup>5</sup>

### **2.1.7. DOMESTIC VIOLENCE**

A felony or misdemeanor crime of violence committed

- by a current or former spouse or intimate partner of the victim.
- by a person with whom the victim shares a child in common.
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner.
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;

---

<sup>1</sup> For criminal definitions in Wyoming associated with this offense, see Wyoming statute § 6-2-302 through § 6-2-304.

<sup>2</sup> The touching of non-private body parts could constitute “Sexual Harassment”. See Sections 2.1.1 and 2.1.2 of this Procedure.

<sup>3</sup> For criminal definitions in Wyoming associated with this offense, see Wyoming statute § 6-2-304.

<sup>4</sup> For criminal definitions in Wyoming associated with this offense, see Wyoming statute § 6-2-301.

<sup>5</sup> See Wyoming statute § 6-2-316.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

- 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 jurisdiction in which the crime of violence occurred.

According to Section 16 of title 18 of the United States Code, the term “crime of violence” means

- an offense under Wyoming State law<sup>6</sup> that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- any other offense that is a felony in Wyoming and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Domestic violence, as defined by Title IX, is considered relationship violence and must be “on the basis of sex.” For purposes of this Procedure, Domestic Violence does not include acts that may meet the definition of domestic violence under Wyoming laws that are based solely on cohabitation (e.g. roommates) or family relationship (e.g. parent/child). While non-relationship violence would not be addressed using this Procedure, it could still be counted for purposes of Clery Act reporting and may be addressed under other District policies or grievance procedures.

### 2.1.8. DATING VIOLENCE

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting Party’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.

### 2.1.9. STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or suffer substantial emotional distress.<sup>7</sup>

- i. *For the purposes of this definition—*
  - A. *Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third Parties, by any action, method, device, or means*

---

<sup>6</sup> Wyoming State law (State Statute § 35-21-102) defines domestic abuse as the occurrence of one (1) or more of the following acts by a household member but does not include acts of self-defense:

- Physically abusing, threatening to physically abuse, attempting to cause or causing physical harm or acts which unreasonably restrain the personal liberty of any household member;
- Placing a household member in reasonable fear of imminent physical harm; or
- Causing a household member to engage involuntarily in sexual activity by force, threat of force or duress.

<sup>7</sup> See Wyoming statute § 6-2-506.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

*follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.*

- B. *Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.*

*Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.*

To reach the threshold for a claim under Title IX, the stalking behavior must be determined to be based on sex. Non-sex-based stalking complaints will be resolved using this Procedure's definitions but under the Non-Title IX Resolution Procedures by status of the Respondent as Student or Employee.

#### **2.1.10. SEXUAL EXPLOITATION**

Any act whereby one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another who has not provided consent, and that does not constitute another offense as defined above. Examples may include acts such as recording, photographing, streaming or otherwise transmitting, viewing or distributing intimate or sexual images or sexual information without the knowledge and consent of all Parties involved; voyeurism (i.e., spying on others who are in intimate or sexual situations), knowingly transmitting a sexually transmitted infection to another, or facilitating the sexual harm/abuse of another person.<sup>8</sup>

#### **2.1.11. RETALIATION**

Retaliation is any attempt to seek retribution against an individual or group of individuals involved in making a good faith report, filing a Complaint, participating in a disciplinary process, or opposing in a reasonable manner an action believed to constitute a violation of this Procedure. Retaliation can take many forms, including abuse or violence, threats, coercion, and intimidation. Actions in response to a good faith report or response under this Procedure are considered retaliatory if they have a materially adverse effect on the working, academic or District-controlled living environment of an individual or if they hinder or prevent the individual from effectively carrying out their District responsibilities. Any individual or group of individuals can engage in retaliation and will be held accountable under this Procedure.

Allegations of Retaliation will proceed under the non-Title IX process.

### **2.2. DEFINITION OF CONSENT**

Consent means voluntary, informed, uncoerced agreement through words and/or actions freely given, which a reasonable person would interpret as a willingness to participate in mutually agreed-upon

---

<sup>8</sup> See Wyoming statute § 6-4-303.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

sexual acts. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate and is in a position to exercise independent judgement about the matter.<sup>9</sup>

Indications that consent is not present include:

- when physical force is used or there is a reasonable belief of the threat of physical force, including when one person overcomes the physical limitations of another person.
- when coercion is present. Coercion means the improper use of pressure to compel another individual to initiate or continue sexual activity against the individual's will. Coercion may include intimidation, manipulation, and/or blackmail. Words or conduct may constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether to engage in sexual activity.
- when a person is incapable of making an intentional decision to participate in a sexual act, which could include instances in which the person is in a state of incapacitation, which could be permanent or temporary. Evaluations of capacity will be viewed in hindsight using a reasonable person standard.

Important points regarding consent include:

- Consent to one act does not constitute consent to another act.
- Consent on a prior occasion does not constitute consent on a subsequent occasion.
- The existence of a prior or current relationship does not, in itself, constitute consent.
- Consent can be withdrawn or modified at any time.
- Consent is not implicit in a person's manner of dress.
- Accepting a meal, a gift, or an invitation for a date does not imply or constitute consent.
- A person's lack of verbal or physical resistance or submission resulting from the use or threat of force does not constitute consent.
- Silence and passivity do not necessarily constitute consent.
- Initiation by someone who a reasonable person knows or should have known to be deemed incapacitated is not consent.
- A person's consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.

A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation when a person is incapacitated or not of legal age.

A person who is asleep or unconscious is considered incapacitated and unable to consent. Additionally, a person may be incapacitated due to a temporary or permanent mental or physical disability.

In the context of this Procedure, incapacitation is the state in which a person's perception or judgement is so impaired that they lack the cognitive capacity to make or act on conscious decisions. The use of

---

<sup>9</sup> *Wilson v. State*, 655 P.2d 1246 (Wyo. 1982).

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

drugs or alcohol can cause incapacitation, which is a state beyond mere intoxication. An individual who is incapacitated is unable to consent to a sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where a person knows or ought reasonably to have understood that the individual is incapacitated, constitutes Sexual Misconduct and is a violation of this Procedure.

### 3. REPORTING

Any person may report an incident of Sexual Misconduct as defined by this Procedure however, Employees must report. The District encourages anyone who experiences or becomes aware of Sexual Misconduct to immediately contact one of the options listed in this section including law enforcement, school administrators and confidential options. Reports may be made by the person who experienced the Sexual Misconduct or by a third-party, including, but not limited to, a friend, family member, advisor, or instructor. Reports to the Title IX Coordinator may be made in person, by mail, by telephone, or by electronic mail, using the contact information listed in this section, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the listed telephone number or electronic mail address, or by physical mail to the office address.

A Complainant may pursue some or all of these reporting options at the same time (e.g., one may simultaneously pursue a Formal Resolution Process with the District and a criminal complaint). When initiating any report, a Complainant does not need to know whether they wish to request any particular course of action, nor how to label what happened. Before or during any grievance process, Complainants and other reporting persons are encouraged to consult a Confidential Resource.

#### 3.1. CONFIDENTIAL REPORTING OPTIONS

Several campus professionals are designated Confidential Resources. An individual who is not prepared to make a report, or who may be unsure how to label what happened, but still seeks information and support, is strongly encouraged to contact a Confidential Resource.

Upon receipt of a report from a Complainant, a campus Confidential Resource will provide information on the following:

- a. Possible next steps regarding the Complainant's reporting options and possible outcomes, including, without limitation, reporting pursuant to the District resolution processes and local law enforcement
- b. Student services available on campus and through community-based resources, including, without limitation, sexual assault crisis centers, medical treatment facilities, counseling services, legal resources, medical forensic services, and mental health services
- c. The District's responsibilities regarding orders of protection, no contact orders, or similar lawful orders issued by the higher education institution or a criminal or civil court

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

- d. Liaise as requested and appropriate with campus officials, law enforcement and community-based resources including assisting with supportive measures.

**Campus Confidential Resources:**

<b>Counseling Services</b>	
<p>Any student in need of immediate emotional support should contact Counseling Services and request to speak with a confidential counselor (after hours, contact your housing staff to access the counselor on call). You may also access the Counseling Services website, <a href="https://www.sheridan.edu/academics/support-services/counseling/">https://www.sheridan.edu/academics/support-services/counseling/</a>. Survivors (employees or students) may also contact off campus resources to speak with a confidential advocate 24 hours a day, 7 days a week. See the section of this Procedure entitled “Additional Off-Campus Resources/Supports” for contact information.</p>	
<p><b>NWCCD Sheridan Campus</b>            Shelby Garstad, MSW, PCSW            Coordinator of Counseling and ADA Services            EA Whitney Academic Center, Rm. 156E            1 Whitney Way            Sheridan, WY 82801  <u>307-675-0122</u>  <u>sgarstad@sheridan.edu</u></p>	<p><b>NWCCD Gillette Campus</b>            Susan Serge, M.A., LPC, NCC            Director of Student Affairs, Counseling &amp; ADA Services            Gillette Campus Main Building, Rm. 206D            300 West Sinclair            Gillette, WY 82718  <u>307-681-6082</u>  <u>sserge@sheridan.edu</u></p>

**Other On-Campus and Off-Campus Resources/Supports:**

Community Police	Community Hospital Emergency Room	Community Advocacy Resources	Other Community Health Related Services
<b>9-1-1 (Emergency)</b>	<b>9-1-1 (Emergency)</b>	<b>CONFIDENTIAL REPORTING</b>	
Sheridan Police Dept (307) 672-2413 45 W 12th St Sheridan, WY 82801  Gillette Police Dept (307) 682-5155 201 E 5th Street Gillette, WY 82716  Buffalo Police Dept (307) 684-5581 639 Fort Street Buffalo, WY 82834	Sheridan Memorial Hospital 1401 W 5th Street Sheridan, WY 82801 (307) 672-1000  Campbell County Health 501 S Burma Ave Gillette, WY 82716 (307) 688-1000  Johnson Cty Healthcare Ctr 497 W Lott St Buffalo, WY 82834 (307) 672-3473	Advocacy Resource Center 136 Coffeen Ave Sheridan, WY 82801 (307) 672-7471  Gillette Abuse Refuge Fdn 910 E 3rd Street Gillette, WY 82716 (307) 686-8071  National Domestic Violence Hotline: 1-800-799-7233	Sheridan Cty Public Health 297 S Main St Sheridan, WY 82801 (307) 672-5169  Campbell Cty Public Health 2301 S 4-J Road Gillette, WY 82718 (307) 682-7275  Johnson Cty Public Health 85 Klondike Drive Buffalo, WY 82837 (307) 684-2564

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

WY State Highway Patrol Capt. Jason Green (307) 674-2317 Lt. Erik Jorgensen (307) 674-2390	Sheridan VA Medical Ctr 1898 Fort Road Sheridan, WY 82801 (307) 672-3473	National Poison Control: 1-800-222-1222	Legacy Pregnancy Center 847 Coffeen Avenue Sheridan, WY 82801 (307) 673-4757  Women's Resource Center 706 W 8th Street Gillette, WY 82716 (307) 685-2211
<b>Campus Safety</b>	<b>Office for Civil Rights</b>	<b>College Counseling</b>	<b>Mental Health Services</b>
<b>9-1-1 (Emergency)</b>  SC & SC JC After Hours: (307) 675-0250  GC After Hours: (307) 681-6250  SC Campus Safety Director Business Hours, M-F   8-5 (307) 675-0250 Sheridan, WY 82801  GC Campus Safety Director Business Hours, M-F   8-5 (307) 681-6050 Gillette, WY 82718	Office for Civil Rights <i>Denver Office</i> US Dept of Education Cesar E. Chavez Memorial Bldg 1244 Speer Blvd, Ste 310 Denver, CO 80204-3582 Phone: (303) 844-5695 Fax: (303) 844-4303 OCR.Denver@ed.gov	<b>CONFIDENTIAL REPORTING</b>  SC Counseling Services Shelby Garstad (307) 675-0122 Whitney 156 1 Whitney Way Sheridan, WY 82801  GC Counseling Services Susan Serge (307) 681-6082 GCMN 206D 300 W Sinclair St Gillette, WY 82718	In addition to the Community Hospitals listed, <b>dial 4-1-1</b> for additional resources, such as:  Wyoming Counseling, Inc. 323 W Loucks Street #1 Sheridan (307) 674-1520  Aspire Counseling, LLC 201 W Lakeway Rd, Ste 311 Gillette (307) 363-4400  North Wyoming Mental Health 521 W Lott Street Buffalo (307) 684-5531
<b>Title IX Coordinator</b>	<b>Financial Aid Services</b>	<b>Additional Campus Resources for Assistance in Reporting</b>	<b>Legal Assistance / VISA &amp; Immigration Assistance</b>
Jennifer McArthur AVP, Human Resources GMB 141 (307) 675-0571  jmcarthur@sheridan.edu	NWCCD Financial Aid (307) 675-0200  SC Foundation - Scholarships (307) 675-0700  GC Foundation - Scholarships (307) 681-6400	SC Campus Life & Housing TRCC 106 (307) 675-0510  GC Campus Life & Housing Inspiration Hall 114 (307) 681-6502  <u>Online Report:</u> <a href="https://goo.gl/kfKdbG">https://goo.gl/kfKdbG</a>	Legal Aid of Wyoming, Inc. Cheyenne, WY (307) 432-0807 <b>Dial 4-1-1 for more listings</b>  * <b>2-1-1 Wyoming</b> provides links to all kinds of community services: Dial 2-1-1 or 1-888-425-7138  <i>Updated: 08-11-2020</i>

### 3.2. LAW ENFORCEMENT AND CAMPUS SAFETY

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

Emergency medical assistance and campus safety assistance are available both on and off campus. Individuals are encouraged to contact 9-1-1 for an immediate need or the non-emergency numbers for a situation not requiring emergency response from law enforcement and to seek medical treatment as soon as possible following an incident that poses a threat to safety or physical well-being or following a potential criminal offense.

At the Complainant's request, the Title IX Coordinator will assist the Complainant in contacting local law enforcement and will cooperate within the extent permitted by law with law enforcement agencies if a Complainant decides to pursue the criminal process. Please contact the Title IX Coordinator during business hours if you need assistance in filing a police report.

**Immediate Health and Safety:**

NWCCD does not employ law enforcement officers.  
Please contact 9-1-1 to have local law enforcement dispatched to take a report of a crime and/or to obtain emergency medical assistance.

Adoption Date: Aug. 14, 2020  
Review Dates:  
Revision Dates: Sept. 21, 2021

**Local Law Enforcement:**

<b>Sheridan Police Department Dispatch:</b>  For non-emergency situations, call the Sheridan Police Department Dispatch at <u>307-672-2413</u> .  For emergencies, dial 911	<b>Gillette Police Department Dispatch:</b>  For non-emergency situations, call the Gillette Police Department Dispatch at <u>307-682-5155</u> .  For emergencies, dial 911	<b>Buffalo Police Department Dispatch:</b>  For non-emergency situations, call the Buffalo Police Department Dispatch at <u>307-684-5581</u> .  For emergencies, dial 911
---	---	---

**3.2. TITLE IX COORDINATOR**

Any individual who may have been subjected to a violation of this Procedure, and who is considering making a Complaint under this Procedure, is encouraged to contact the Title IX Coordinator.

In light of the District’s obligation to make reasonable efforts to investigate and address conduct prohibited by this Procedure, District community members who are not designated Confidential Resources are required to notify the Title IX Coordinator of suspected violations and cannot guarantee the confidentiality of a report under this Procedure.

The Title IX Coordinator will be informed of all reports of potential violations of this Procedure.

**Title IX Coordinator:**

Jennifer McArthur  
AVP of Human Resources  
Location/Address: Griffith Memorial Building Room 141  
1 Whitney Way, Sheridan, WY 82801  
307-675-0571  
Email: [jmcarthur@sheridan.edu](mailto:jmcarthur@sheridan.edu)

**3.3. OTHER AVAILABLE RESOURCES**

Any individual may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in interfacing with the criminal justice system. If accessing these resources, individuals are encouraged to clarify whether the

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

resources are confidential. Off-Campus and Other Community Resources are listed in the chart under 3.1.

### Medical Resources

#### Forensic Medical Exams and Physical Health Services

Victims of sexual assault, domestic violence and human trafficking may have a forensic exam with or without reporting it to law enforcement. In the State of Wyoming, you may have the sexual assault forensic exam up to 120 hours after the sexual assault. You may report to law enforcement if you choose to. Please proceed to the closest emergency room. The area hospitals that serve the campus are listed below.

#### **Sheridan Memorial Hospital**

1401 West 5th Street  
Sheridan, WY 82801  
(307) 672-1000

#### **Johnson County Healthcare Center**

497 West Lott Street  
Buffalo, WY 82834  
(307) 684-5521

#### **Campbell County Memorial Hospital**

501 South Burma Avenue  
Gillette, WY  
(307) 688-1000

In circumstances of sexual assault, if a Complainant does not opt for forensic evidence collection, health care providers still can treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted infection. It is important that a survivor of sexual assault not bathe, douche, smoke, change clothing or clean the bed/linen/area where they were assaulted within 120 hours after the incident occurred so that evidence may be preserved. Complainants of sexual assault, domestic violence, dating violence, or stalking also are encouraged to preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if any exist that may be useful to District investigators, local law enforcement, or to assist the victim in qualifying for a protection order/protection from abuse order/restraining order.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

### Additional Off-Campus Resources/Supports

<p style="text-align: center;"><b>If you are in need of emergency medical services, please call 9-1-1.</b></p> <p>Gillette Abuse Refuge Foundation Hotline (Domestic violence/sexual assault crisis line: 307-686-8070)</p> <p><b>Johnson County Emergency Contacts</b> Johnson County Mental Health Crisis Line: 307-674-4405 Johnson County Family Crisis Center (Domestic violence/sexual assault crisis line): 1-800-684-2030</p> <p><b>National Emergency Contacts</b> <u>National Suicide Prevention Lifeline:</u> 1 (800) 273-8255(TALK) <u>Crisis Text Line:</u> Text 741-741</p>
---

### 3.4. U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS

All members of the District community may also contact the Office for Civil Rights (a division of the United States Department of Education) to file a complaint pertaining to Title IX.

<b>OFFICE FOR CIVIL RIGHTS U.S. DEPARTMENT OF EDUCATION</b>
<b>Headquarters</b> 400 Maryland Avenue, SW, Washington, DC 20202-1100 Customer Service Hotline #: (800) 421-3481   Facsimile: (202) 453-6012 TTY#: (800) 877-8339   Email: <a href="mailto:OCR@ed.gov">OCR@ed.gov</a>   Web: <a href="http://www.ed.gov/ocr">http://www.ed.gov/ocr</a>
<b>Denver Office</b> U.S. Department of Education Cesar E. Chavez Memorial Building 1244 Speer Boulevard, Suite 310 Denver, CO 80204-3582 Phone: (303) 844-5695 Fax: (303) 844-4303 <a href="mailto:OCR.Denver@ed.gov">OCR.Denver@ed.gov</a>

### 3.5. ANONYMOUS REPORT

An individual may report an incident without disclosing their name, identifying the Respondent, or requesting any action. Please note that choosing to make an anonymous report can significantly limit the ability of the District to respond. This information will be used for statistical purposes as well as for enhancing understanding of our campus climate so that we may strengthen sexual misconduct response

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

and prevention efforts. Persons may use this form to report anonymously:  
<https://publicdocs.maxient.com/incidentreport.php?NorthernWyomingCCD>

### 3.6. ONLINE REPORT

An individual may report an incident via an online reporting form. The online form will not be considered a complaint that would trigger a full investigation. An online report will result in electronic communication of resources or outreach from the Title IX Coordinator within two (2) business days within receipt. For emergency assistance, please dial 9-1-1. To report online, visit <https://publicdocs.maxient.com/incidentreport.php?NorthernWyomingCCD>

**IX Incident Reporting Form**  
<https://publicdocs.maxient.com/incidentreport.php?NorthernWyomingCCD>

### 3.7. MANDATORY REPORTING

All members of the District community are encouraged to report any suspected violation of this Procedure (after consulting a Confidential Resource as appropriate).

In emergency situations, if there is a suspected crime in progress, or imminent or serious threats to the safety of anyone, faculty and staff members of the District should immediately dial 911 from an on-campus telephone whenever possible.

In non-emergency situations, faculty and staff members who are not Confidential Resources must promptly report all information known to them regarding an allegation of sexual harassment, sexual assault, domestic violence, dating violence and stalking to the institution's Title IX Coordinator.

Adoption Date: Aug. 14, 2020  
Review Dates:  
Revision Dates: Sept. 21, 2021

## **Procedure 3003.1 Sexual Misconduct Procedure Governing Students and Employees**

### **4. DISTRICT RESPONSE TO REPORTS**

The District is committed to responding to all alleged violations of this Procedure. When a Complaint or Report of sexual harassment is made under this Procedure, the Title IX Coordinator (or designee) will: (1) confidentially contact the Complainant to offer supportive measures, consider the Complainant's wishes with respect to supportive measures, and inform them of the availability of supportive measures with or without filing a formal complaint; (2) explain the process for how to file a formal complaint; (3) inform the Complainant that any report made in good faith will not result in discipline; and (4) respect the Complainant's wishes with respect to whether to investigate unless the Title IX Coordinator determines it is necessary to pursue the complaint in light of a health or safety concern for the community.

The Coordinator will also explain if Informal Resolution is an option if a Formal Complaint is filed. \*A Complainant must file a Formal Complaint to access available Informal Resolution options.

Choosing to make a report, file a formal complaint, and/or meet with the Title IX Coordinator after a report or formal complaint has been made, and deciding how to proceed, can be a process that unfolds over time. Complainants do not have to decide whether to pursue a formal complaint or to name the other Party/ies at the time of the report. Reports are separate from formal complaints, and reporting does not mean that Complainants wish to pursue a formal complaint—it may mean that Complainants would like help accessing resources and supportive measures. Complainants do not have to pursue a formal complaint to take advantage of the supportive measures.

#### **4.1. PRIVACY AND CONFIDENTIALITY**

Issues of privacy and confidentiality play important roles in this Procedure and may affect individuals differently. Privacy and confidentiality are related but distinct terms. "Confidentiality" refers to the circumstances under which information will or will not be disclosed to others. "Privacy" refers to the discretion that will be exercised by the District in the course of any investigation or disciplinary processes under this Procedure.

Requests for confidentiality or use of anonymous reporting may limit the District's ability to conduct an investigation or resolve an allegation using the District's disciplinary proceedings.

Individuals involved in investigations or disciplinary proceedings under this Procedure are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation. While discretion regarding the process is important, Complainants and

Adoption Date: Aug. 14, 2020  
Review Dates:  
Revision Dates: Sept. 21, 2021

Respondents are not restricted from discussing and sharing information with others who may support or assist them in presenting their case.

In some circumstances, the reporting responsibilities of District employees, or the District's responsibility to investigate, may conflict with the preferences of the Complainant and/or Respondent with regard to privacy and confidentiality. Therefore, all individuals are encouraged to familiarize themselves with their options and responsibilities, and make use of Confidential Resources, if applicable, in determining their preferred course of action.

Medical and counseling records are privileged and confidential documents that the Parties will not be required to disclose. If one Party chooses to provide written consent regarding the disclosure, all Parties will have access to those records.

The District has an obligation to make reasonable efforts to investigate and address Complaints or reports of violations of this Procedure. In all such proceedings, the District will take into consideration the privacy of the Parties to the extent possible.

In cases involving students, the Title IX Coordinator may notify other District employees of the existence of the Complaint for the purpose of overseeing compliance with this Procedure and addressing any concerns related to educational and District sponsored events. While not bound by confidentiality, these individuals will be discreet and will respect the privacy of those involved in the process.

Any additional disclosure of information related to the Complaint or report may be made if consistent with the Family Educational Rights and Privacy Act (FERPA), or the Title IX requirements.

#### 4.2. SUPPORTIVE MEASURES

Upon receipt of a complaint or report of a violation of this Procedure, the District will provide reasonable and appropriate supportive measures. Supportive measures mean individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent, and as appropriate, other witnesses or impacted individuals. before or after the filing of a complaint or where no complaint has been filed. Such measures are designed to restore or preserve equal access to the District's program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the District's educational environment, or deter sexual harassment.

Supportive measures may include:

- Access to counseling services and assistance in arranging an initial appointment;
- Extensions of deadlines or other course-related adjustments;
- Rescheduling of exams and assignments;
- Change in class schedule, including the ability to transfer course sections or withdraw from a course;
- Change in work schedule or job assignment;
- Campus escort services;

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

- Leaves of absences;
- Increased security and monitoring of certain areas of the campus;
- Imposition of a mutual on-campus "no contact order," an administrative remedy designed to curtail contact and communications between two or more individuals; and/or
- Any other remedy that can be used to achieve the goals of this Procedure.

The District will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. In cases that meet the definition and jurisdiction of Title IX, Supportive Measures will also be non-punitive and non-disciplinary.

Any supportive measures will not disproportionately impact the Respondent. Requests for supportive measures may be made by or on behalf of the Complainant to any District official, including the Title IX Coordinator. The Title IX Coordinator is responsible for ensuring the implementation of supportive measures and coordinating the District's response with the appropriate offices on campus.

Supportive measures are meant to be short-term in nature and will be re-evaluated on a periodic basis. To the extent that there is a continuing need for supportive measures after the conclusion of the resolution process, the Title IX Coordinator will work with appropriate school resources to provide continued assistance in the process.

All individuals are encouraged to report concerns about the failure of another to abide by any restrictions imposed by a Supportive Measure. The District will take immediate action to enforce a previously implemented measure and disciplinary sanctions can be imposed for failing to abide by a District-imposed measure utilizing the disciplinary process deemed appropriate by the Title IX Coordinator.

#### 4.2.1. INTERIM REMOVAL

In connection with this Procedure, in circumstances seriously affecting the health or well-being of any person, or where physical safety is seriously threatened, or where the ability of the District to carry out its essential operations is seriously threatened or impaired, the President or an authorized representative may summarily suspend, dismiss, or bar any person from the District. Prior to taking action against a student in response to an allegation that arises from a complaint under the jurisdiction of Title IX, the District will undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal, and provide written notice to the Party. In all such cases involving students, actions taken will be reviewed promptly, typically within one week, by the appropriate District authority. Removals subject to Title IX will include an opportunity for redress (appeal) by the Respondent.

Complaints involving employees as the Respondent will be subject to the leave provisions that rest within Human Resources and could involve placing the employee on administrative leave (with or

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

without pay) depending on the nature of the reported offense, the determination of an ongoing risk to public safety, and/or other factors as determined by Human Resources.

#### 4.3. RIGHTS OF THE PARTIES

The Title IX Coordinator will ensure that the Complainant receives an explanation of rights and options written in plain language with concise information. The written notification of rights and options will include the following:

- The importance of obtaining and preserving forensic and other evidence;
- The right to report or not report the alleged incident to the District, law enforcement or both, including information about the Complainant's right to privacy and which reporting methods are confidential;
- The right to request and receive assistance from campus authorities in notifying law enforcement;
- The right to request and receive assistance in obtaining and enforcing a campus-issued order of protection or no contact order;
- The right to speak to and receive assistance from on and off campus Confidential Resources and other organizations that provide support and services to victims and survivors;
- The right to assistance from the District in accessing and navigating campus and local health and mental health services, counseling, advocacy services, legal assistance, financial aid services and immigration/Visa assistance;
- The right to Supportive Measures with or without the filing of a formal Complaint, no matter where the incident is reported to have occurred and that the District will consider the Complainant's wishes with respect to available supportive measures including without limitation changes to academic, living, dining, working, and transportation situations;
- The right to request a Formal or Informal Resolution Process if cause is found to proceed under this Procedure and a summary of the appropriate complaint resolution procedures;
- Contact information for all of the people and organizations listed herein; and
- Complainants have the right to request an end to the process except as set forth in this Procedure.

In the event that a Complaint is filed, the Complainant and the Respondent will receive a written notification of rights and options regarding the adjudication process, to include the following:

- The right for Complainants and Respondents to be treated equitably by the District which includes providing remedies to a Complainant where a determination of responsibility for sexual harassment has been made against the Respondent, and by following a grievance process that complies with this Procedure;
- The right to a fair, impartial, proceeding that begins promptly and is completed within reasonably prompt timeframes;

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

- The right to a resolution process that is consistent with the District’s policies, transparent to the Complainant and Respondent, and in which the burden of proof and of gathering evidence rests with the District and not the Parties;
- The right to a Support Person of the Party’s choosing during the grievance process and to an Advisor of the Party’s choosing for any hearing under the Title IX Grievance process. If a Party does not have an Advisor present at the hearing, the District will provide without fee or charge, an Advisor of the District’s choice for purposes of conducting cross examination;
- The right to reasonable accommodations during any hearing, such as not being in the same room as the other Party;
- The right to an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations will not be based on a person’s status as a Complainant, Respondent, or witness;
- The right to a determination regarding responsibility made at the conclusion of the resolution process and that the District makes no prior presumption of responsibility; and
- The right not to be retaliated against for filing a Complaint and/or for participating in an Informal or Formal Resolution Process.

#### 4.4. AMNESTY/IMMUNITY

In order to encourage reports of conduct that are prohibited under this Procedure, the District may offer leniency with respect to other violations which may come to light as a result of such reports, depending on the circumstances involved. The Title IX Coordinator will make the determination on behalf of the District.

#### 4.5. TIMELY WARNING

If the District Risk Manager becomes aware of a serious and continuing threat to the campus community, the District Risk Manager, in coordination with the Public Information Office and members of the Cabinet, will issue a timely notification to the specific College community. In all cases of sexual misconduct, the Title IX Coordinator will be notified. The Risk Manager, as required by law, may also be required to complete an incident report, and publicly disclose the reported incident of sexual misconduct in the annual security report less personally identifying information. In addition, the District may also share non-identifying information, including data about outcomes and penalties, in aggregate form. At no time will the District release the name or other personally identifiable information of the Complainant to the general public without the express consent of the Complainant or as otherwise permitted or required by law.

#### 4.6. OPTIONS FOR PROCEEDING THROUGH DISTRICT PROCESS

##### 4.6.1. INFORMAL AND FORMAL COMPLAINTS

To initiate the informal resolution process or formal resolution process, a Complainant must file a Complaint. A Complaint means a written statement filed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct against a Respondent and requesting resolution of the alleged

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

behavior. A complaint may be completed by the Complainant in person or submitted by email, mail or by phone to the Title IX Coordinator.

#### 4.6.2. NO COMPLAINT

Complainants have the right not to file a complaint, yet they are highly encouraged to seek medical attention and counseling. Complainants who wish to file a complaint at a later date, may do so by utilizing any of the options outlined in this Procedure. However, please note that a delay in reporting could create obstacles to the District's process for stopping harassment and/or discrimination, remedying its effects, and preventing recurrence as well as potentially weakening evidence that could be useful in determining whether Prohibited Conduct occurred, in obtaining an order of protection or for the State in being able to proceed with a criminal proceeding.

#### 4.6.3. DISTRICT-INITIATED COMPLAINTS

In limited cases, the Title IX Coordinator may initiate a complaint without a request by the Complainant upon receipt of a report of Sexual Misconduct. The Title IX Coordinator will sign the formal complaint when the Title IX Coordinator, in his or her discretion, determines that a grievance process is warranted given the reported behavior. A Complainant retains standing as a Complainant even in cases where the Title IX Coordinator initiates the complaint. If the Title IX Coordinator initiates a complaint, they will advise the Complainant that they have done so and will provide the rationale to the Complainant regarding why they proceeded.

#### 4.6.4. DISMISSALS

If the Complainant files a Formal Complaint, the Title IX Coordinator will review the complaint. The Title IX Coordinator must dismiss the Formal Complaint for the following reasons:

1. The Respondent is not a current student or employee;
2. The Complainant is not a current student or employee;
3. The conduct alleged does not meet the definition of Sexual Harassment;
4. The alleged conduct did not occur in the District's education program or activity; or,
5. The alleged conduct did not occur in the United States.

However, a dismissal of a case for purposes of Title IX, does not preclude the District from utilizing this Procedure for non-Title IX Sexual Misconduct and referring the matter for Non-Title IX Resolution.

If at any time during the investigation or hearing, a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal resolution process or withdraw any allegations therein; the Respondent is no longer enrolled or employed by the District; or specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations, the District may dismiss the complaint and end the formal resolution process. The decision as to whether to dismiss the complaint will be determined by the Title IX Coordinator based on the stated goals of this Procedure. Upon a dismissal permitted pursuant to this

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

section, the District will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the Parties.

Either Party may appeal the District's dismissal of a Complaint or any allegations by submitting a written appeal within 7 business days of the dismissal. Appeals may follow the grounds outlined in the Appeals section of this Procedure. If the appeal is denied, the dismissal of the complaint will remain in effect.

#### 4.6.5. CONSOLIDATIONS

The Title IX Coordinator has the discretion to consolidate multiple complaints or reports into a single investigation if evidence relevant to one incident might be relevant to the others. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular "Party," "Complainant," or "Respondent" include the plural, as applicable.

If a case involves violations of other NWCCD policies, the Title IX Coordinator, in consultation with other school officials, will determine which grievance process to use or if different grievance processes would be more appropriate.

### 5. INFORMAL RESOLUTION PROCESS

Informal resolution is available only after a formal complaint has been filed, the Complainant and Respondent have been sent the Notice of Allegations, prior to a determination of responsibility, and if the Complainant and Respondent voluntarily consent to the process in writing. Informal resolution is not available in cases in which an employee is alleged to have sexually harassed a student.

The Title IX Coordinator will determine whether it is appropriate to offer the parties informal resolution in lieu of a formal investigation of the complaint. In the event that the Title IX Coordinator determines that informal resolution is appropriate, the parties will be provided written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared. Both parties must provide voluntary, written consent to the informal resolution process.

With the voluntary consent of the parties, informal resolution may be used to agree upon disciplinary sanctions. Disciplinary action will only be imposed against a Respondent where there is a sufficient factual foundation and both the Complainant, and the Respondent have agreed to forego the additional procedures set forth in this school's Procedure and accept an agreed upon sanction.

Any person who facilitates an informal resolution will be trained and free from conflicts of interest or bias for or against either Party.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

Informal Resolutions may include, but are not limited to;

- Placing a Respondent on notice that, if such behavior has occurred or is occurring, such conduct should cease immediately;
- A written warning;
- Education and/or training for a Respondent and/or department;
- Permanent Supportive Measures for Complainant;
- Mediation or other informal communication between the Complainant and Respondent;
- Messaging to the campus community;
- Events and/or trainings offered to the campus community or particular departments;
- Referral and/or collaboration with another District department in order to address the allegations and eliminate any potential sexual misconduct; and/or
- other forms of resolution that can be tailored to the needs of the parties

### 5.1. NOTICE OF ALLEGATION AND ASSIGNMENT TO AN INVESTIGATOR

Upon filing a complaint requesting a Formal Resolution, the Complainant and Respondent will receive written notice from the Title IX Coordinator of the allegations of sexual misconduct, including sufficient details known at the time with sufficient time to prepare before any initial interview. The Parties will receive written simultaneous notification of additional allegations as appropriate.

Amendments and updates to the notice may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

The Title IX Coordinator will assign one or more Investigators to the case and/or will conduct the investigation personally. The Parties will be provided with the name(s) of the Investigator(s) and allowed three (3) business days to request the removal and replacement of an Investigator based on bias or conflict of interest. Any request for a change in an Investigator must be accompanied by supporting information and the decision to assign a new Investigator will be made to the Title IX Coordinator.

Throughout the grievance process, the Title IX Coordinator will provide a Party, whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of meetings, investigative interviews, and hearings, with sufficient time for the Party to prepare to participate as well as advise the Party of the opportunity to present evidence and witness information, if applicable.

### 5.2. OVERVIEW OF INVESTIGATION

#### 5.2.1. TIMEFRAME

The Title IX Coordinator will seek to complete the investigation and any resulting disciplinary process, excluding appeals, within 45 business days after receipt of the complaint.

There may be circumstances that require the extension of timeframes for good cause, including extension beyond 45 business days. Timeframes may be extended to ensure the integrity and

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

completeness of the investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, or accommodate delays by the Parties; or for other legitimate reasons, including the complexity of the investigation and the severity and extent of the alleged misconduct. The District will notify the Parties in writing of any extension of the timeframes for good cause, and the reason for the extension.

Although cooperation with law enforcement may require the District to temporarily suspend the fact-finding aspect of a Title IX investigation, the District will promptly resume its investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The District will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide interim measures for the Complainant.

Investigations will proceed according to the aforementioned timeframes during the summer and at other times when the District is not in session. The Title IX Coordinator will work with the Parties to balance the need for promptness and the preference for in-person meetings regarding the investigation.

Timeframes for all phases of the disciplinary process, including the investigation, any related disciplinary proceedings, and any related appeal, apply equally to both Parties.

### 5.2.2. INVESTIGATION OVERVIEW

During the investigation, the parties will have an equal opportunity to be heard, to submit information and other inculpatory and exculpatory evidence, to identify witnesses including fact and expert witnesses, and to submit questions that they believe should be directed by the investigator to the other Party or to any witness. Typically, evidence that is readily available, but not provided during the course of the investigation, is not considered to be new information and will not be allowed to be submitted at the hearing or as a basis for appeal.

The investigator will notify and seek to meet separately with the parties and third-party witnesses and will gather other relevant and available information including, without limitation, electronic or other records of communications between the parties or witnesses, photographs, and written documentation.

The District will not require, allow, rely upon, or otherwise use questions or evidence during the investigation, hearing, or determination of responsibility that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The District will not allow questions or evidence, during the investigation, hearing, or determination of responsibility, about the Complainant's sexual predisposition or prior sexual behavior. This line of questioning or submission of evidence is not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

The District will not restrict either Party from discussing allegations under investigation or from presenting relevant evidence.

### 5.2.3. PARTICIPATION

A Complainant, Respondent, or witness may decline to participate in the hearing. The Decision-Maker will not draw an inference about the responsibility determination based solely on a party's or witness's absence from the Hearing or refusal to submit to questions.

### 5.2.4. INSPECTION OF EVIDENCE AND THE INVESTIGATIVE REPORT

Prior to completion of the investigative report, the Title IX Coordinator will send to each Party a preliminary investigative report containing the evidence subject to inspection and review, redacted of personally identifiable information as necessary, in an electronic format or a hard copy. The Parties will have 10 (ten) business days to submit a written response, to meet again with the Investigator, and/or to request the collection of additional evidence by the Investigator. The evidence subject to inspection and review includes any evidence obtained as part of the investigation that is directly related to the allegation, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a Party or other source. The evidence subject to inspection and review will not contain any privileged or inadmissible information as defined in this Procedure.

Following the opportunity to review the preliminary investigative report, the Investigator will create a final investigative report that incorporates any written response or new information from the Parties or collected by the Investigator. The final investigative report will also fairly summarize the relevant evidence. The Investigator has the discretion to determine the relevance of any proffered evidence.

The Title IX Coordinator will send to each Party the final investigative report in an electronic format or a hard copy, for their review and the parties will have ten (10) business days to submit a written response.

If there is significant, substantive, new information and/or evidence provided in the written response, the Investigator will make the final determination regarding whether a revised Final Investigative Report will be issued to both Parties. As stated above, information that was reasonably available during the course of the investigation will not be allowed to be introduced at the hearing. The Final Investigative Report and any written responses will be provided to the Decision-Maker and the Parties at least three (3) business days prior to the date of the hearing.

For cases that meet the threshold for Title IX, the Title IX Coordinator will secure written permission from the Parties to share the preliminary and final investigative reports with the Party's Advisor. Reports will not be shared by the District with any support person not acting in the role of the Advisor of Choice.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

### 5.2.5. ASSIGNMENT TO GRIEVANCE PROCEDURES

If at the conclusion of the investigation, if not previously determined, the District has not previously determined if the case meets the threshold and jurisdiction for Title IX, the Title IX Coordinator will make a final determination as to whether to proceed under the Title IX or Non-Title IX Grievance Procedures. If the case does not meet the threshold and jurisdiction for Title IX, the Title IX Coordinator will dismiss the case for purposes of Title IX and proceed under the Non-Title IX Grievance Procedures.

### 5.3. GRIEVANCE PROCEDURES/DETERMINATION REGARDING RESPONSIBILITY

At the conclusion of the Investigation, the Parties will be provided with the name(s) of the Decision-Maker(s) and will be allowed three (3) business days to request the removal and replacement of a Decision-Maker based on bias or conflict of interest. Any request for a change in a Decision-Maker must be accompanied by supporting information and the decision to assign a new Decision-Maker will be made by the Title IX Coordinator. At that time, either Party may also request that the Parties not to be in the same room for any hearing or meeting in which both may attend. The District will determine the appropriate use of technology to satisfy the request.

#### 5.3.1. NON-TITLE IX GRIEVANCE PROCEDURES--STUDENTS

For Non-Title IX cases in which the Respondent is a student, the determination regarding responsibility will be made at a live hearing utilizing the procedures outlined in this section.

##### ***Pre-hearing Requirements***

At least five (5) business days prior to the hearing, the Parties must submit names of witnesses they would like to appear at the hearing and any relevant questions to be asked of the witnesses and the other Party. The Parties may ask additional relevant questions at the hearing, but pre-submitted questions will be vetted in advance for relevancy and admissibility and ruled on during the live proceeding. Questions at the hearing are limited to those assessing credibility and relevant questions that have not previously been asked and answered in the final investigative report.

##### ***Pre-hearing Conference***

In order to promote a fair and expeditious hearing, the Title IX Coordinator may request that the parties and their advisors attend a pre-hearing conference. The pre-hearing conference assures that the parties and their advisors understand the hearing process and allows for significant issues to be addressed in advance of the hearing.

##### ***Hearing Procedures***

All hearings will be conducted in a live hearing format which means all parties and the Decision-Maker may be physically present in the same geographic location, or at the request of either Party or the District,

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

the parties may be located in separate rooms with technology enabling the Decision-Maker and parties to simultaneously see and hear the Party or the witness answering questions.

At the hearing, the Decision-Maker is responsible for maintaining an orderly, fair, impartial, and respectful hearing. Participants at a live hearing are expected to abide by the Decision-Maker's directions and determinations, maintain civility, and avoid emotional outbursts and raised voices. The Decision-Maker has broad authority to respond to disruptive or harassing behaviors, including taking a break in the hearing, the length of which will be determined by the Decision-Maker. Additionally, the Decision-Maker may exclude any offending person.

All hearings are closed to the public. A recording will be made by the District, but all other recordings are prohibited.

### ***Evidentiary Considerations at the Hearing***

Any evidence that the Decision-Maker determines is relevant may be considered. The parties will have the opportunity to present the evidence they submitted, subject to any exclusions determined by the Decision-Maker. Generally, in the absence of good cause, the parties may not introduce evidence, including witness testimony, at the hearing that they did not identify during the pre-hearing process. However, the Decision-Maker has discretion to accept or exclude additional evidence presented at the hearing. In addition, the parties are expected not to spend time on undisputed facts or evidence that would be duplicative.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. The Decision-Maker will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### ***Advisor Role at Hearing***

The Parties may have an Advisor of Choice to accompany them to the hearing. The Advisor of Choice may not actively participate but may confer with the Party as is reasonably necessary. If the Advisor of Choice violates the rules or engages in behavior or advocacy that harasses, abuses, or intimidates either Party, a witness, or the Decision-Maker, that Advisor of Choice may be prohibited from further participation.

### ***Participation***

A Complainant, Respondent, or witness may decline to participate in the hearing. The Decision-Maker will not draw an inference about the responsibility determination based solely on a Party's or witness's absence from the Hearing or refusal to submit to questions.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

### 5.3.2. NON-TITLE IX GRIEVANCE PROCEDURES—EMPLOYEES

For Non-Title IX cases in which the Respondent is an employee, the determination regarding responsibility will be made by the Decision-Maker based on the final investigative report (there is no live hearing.) The Decision-Maker is responsible for maintaining an orderly, fair, and impartial process. The Decision-Maker, in his or her discretion, may pose additional questions to the Parties or to witnesses in writing or in person. A Complainant, Respondent, or witness may decline to further participate and if asked additional questions, retains the right to their Advisor of choice. The Decision-Maker will not draw an inference about the responsibility determination based solely on a party's or witness's refusal to submit to additional questions.

In the absence of good cause, as determined by the Decision-Maker, information, witnesses, and other evidence discoverable through the exercise of due diligence that is not provided to the Investigator during the investigation will not be considered at the hearing.

### 5.3.1. TITLE IX GRIEVANCE PROCEDURES FOR STUDENTS AND EMPLOYEES

For cases that have been determined by the Title IX Coordinator to meet the threshold for Title IX Sexual Harassment as well as the Title IX jurisdictional requirements, the determination regarding responsibility will be made at a live hearing utilizing the procedures outlined in this section.

For cases that have been determined to meet the threshold to be adjudicated under the Title IX Adjudication Proceedings, hearings are typically scheduled no less than 10 days following the sending the investigative report to the Parties and their Advisors.

#### ***Pre-Hearing Conference***

In order to promote a fair and expeditious hearing, The Title IX Coordinator may request that the Parties and their Advisors attend a pre-hearing conference. The pre-hearing conference assures that the Parties and their Advisors understand the hearing process and allows for significant issues to be addressed in advance of the hearing.

#### ***Hearing Procedures***

All hearings will be conducted in a live hearing format which means all Parties and the Decision-Maker(s) may be physically present in the same geographic location, or at the request of either Party or the District, the Parties may be located in separate rooms with technology enabling the Decision-Maker(s) and Parties to simultaneously see and hear the Party or the witness answering questions.

While the hearing is not intended to be a repeat of the investigation, the Parties will be provided with an equal opportunity for their advisors to conduct cross-examination of the other Party and of relevant witnesses. A typical hearing may include: brief opening remarks by the Decision-Maker; questions posed by the decision-maker to one or both of the Parties; cross-examination by either Party's Advisor of the other Party and relevant witnesses; and questions posed by the Decision-Maker to any relevant witnesses.

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

At the hearing, the Decision-Maker is responsible for maintaining an orderly, fair, impartial, and respectful hearing. Participants at a live hearing are expected to abide by the Decision-Maker's directions and determinations, maintain civility, and avoid emotional outbursts and raised voices. The Decision-Maker has broad authority to respond to disruptive or harassing behaviors, including taking a break in the hearing, the length of which will be determined by the Decision-Maker. Additionally, the Decision-Maker may exclude any offending person.

All hearings are closed to the public. A recording will be made by the District, but all other recordings are prohibited.

### ***Evidentiary Considerations at the Hearing***

Any evidence that the Decision-Maker(s) determines is relevant may be considered. The Parties will have the opportunity to present the evidence they submitted, subject to any exclusions determined by the Decision-Maker. Generally, in the absence of good cause, the Parties may not introduce evidence, including witness testimony, at the hearing that they did not identify during the pre-hearing process. However, the Decision-Maker has discretion to accept or exclude additional evidence presented at the hearing. In addition, the Parties are expected not to spend time on undisputed facts or evidence that would be duplicative.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. The Decision-Maker will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### ***Cross-Examination and the Advisor***

The Parties may have an Advisor of Choice at the hearing. The Advisor is responsible for conducting the cross-examination which includes asking the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. The Advisor is not to represent a Party, but only to relay the Party's cross-examination questions that the Party wishes to have asked of the other Party and witnesses. Advisors may not raise objections or make statements or arguments during the live hearing. If a Party does not have an Advisor, the District will appoint one on behalf of the Party free of charge. In this capacity, the Advisor will be appointed for the sole purpose of conducting cross examination of the other Party and witnesses.

When a Party's Advisor is asking questions of the other Party or a witness, the Decision-Maker will determine whether each question is relevant before the Party or witness answers it and will exclude any that are not relevant or unduly repetitive, and will require rephrasing of any questions that violate the

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

rules of conduct. If the Decision-Maker determines that a question should be excluded as not relevant, they will explain their reasoning.

If the Advisor violates the rules or engages in behavior or advocacy that harasses, abuses, or intimidates either Party, a witness, or the Decision-Maker, that Advisor or Support Person may be prohibited from further participation. The District will then provide that Party with a District appointed Advisor of the District's choosing.

### **Participation**

A Complainant, Respondent, or witness may decline to participate in the hearing. The Decision-Maker will not draw an inference about the responsibility determination based solely on a Party's or witness's absence from the Hearing or refusal to submit to questions.

## **5.4. FINDINGS**

### **5.4.1. STANDARD OF EVIDENCE**

The Decision-Maker shall use a preponderance of the evidence standard to determine whether the alleged violation of the Procedure occurred. The preponderance of the evidence means a standard of proof in which the totality of the evidence offered in support of a fact is greater or more convincing than the evidence which is offered in opposition to it; given the totality of information the version of events that is more likely than not. Preponderance of the evidence is understood to require more than 50 percent certainty to determine responsibility for a Procedure violation (51% or greater).

### **5.4.2. WRITTEN DETERMINATION OF RESPONSIBILITY**

The Complainant and Respondent will simultaneously receive a written determination regarding responsibility applying the preponderance of the evidence standard typically within five (5) business days of the determination of responsibility. The written determination letter, drafted by the Decision-Maker, will include:

- The allegations constituting sexual misconduct;
- A description of the procedural steps taken during the grievance process including any notifications to the Parties, interviews with Parties and witnesses, site visits, and methods used to gather evidence; findings of fact supporting the determination;
- Conclusions regarding the application of the Procedure to the facts;

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

- A statement, and rationale for the result of each allegation including findings, sanctions, and remedies; and
- Procedures and permissible bases for the Parties to appeal the determination for appeal.

The determination of responsibility becomes final either on notification of the results of the appeal, or the date on which an appeal would no longer be considered timely.

Remedies and supportive measures that do not impact the Respondent should not be disclosed in the written determination; rather the determination should simply state that remedies will be provided to the Complainant.

### 5.4.3. SANCTIONS AND REMEDIES

If there is a finding of responsibility based on a preponderance of the evidence, the determination of sanctions and remedies will be made by the Decision-Maker in consultation with a Student Affairs representative for cases in which the Respondent is a student, and in consultation with the Human Resources or other District Administrators for cases in which the Respondent is an employee.

Sanctions will be determined based on the severity and circumstances of the misconduct and the Respondent's previous disciplinary history (if any). NWCCD will disclose to the Complainant the sanctions imposed on the Respondent that directly relate to the Complainant when such disclosure is necessary to ensure equal access to their educational programs and activities.

Remedies are designed to restore or preserve equal access to the District's education program or activity. Such remedies may include Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. Remedies that do not impact the Respondent will not be disclosed in their written determination; rather the determination will simply state that Remedies were provided.

Whatever the outcome of the investigation, hearing, or appeal, the Complainant and Respondent may request ongoing or additional supportive measures. Ongoing supportive measures that do not unreasonably burden a Party may be considered and provided even if the Respondent is found not responsible.

The following are types of disciplinary action which may be imposed, singly or in combination for student Respondents who are found to have violated this Procedure:

1. **Warning:** An official written notice that the student has violated NWCCD policies and/or rules and that more severe conduct action will result should the student be involved in other violations while the student is enrolled at NWCCD.
2. **Restitution:** Compensation owed for damage caused to NWCCD or any person's property. This could also include situations such as failure to return a reserved space to proper

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

condition – labor costs and expenses. This is not a fine but, rather, a repayment for labor costs and/or the value of property destroyed, damaged, consumed, or stolen.

3. **Fines:** Reasonable fines may be imposed.
4. **Fees:** Cost of educational activities.
5. **Community/NWCCD Service Requirements:** For a student or organization to complete a specific supervised service to NWCCD or the community.
6. **Loss of Privileges:** The student will be denied specified privileges for a designated period of time.
7. **Confiscation of Prohibited Property:** Items whose presence is in violation of NWCCD Procedure will be confiscated and will become the property of NWCCD. Prohibited items may be returned to the owner at the discretion of the conduct officer and/or Campus Risk Manager in consultation with the Vice President for Administration for employees or in consultation with the Vice President for Student Affairs for students.
8. **Behavioral Requirement:** This includes required activities including, but not limited to, seeking academic counseling or substance abuse screening, writing a letter of apology, etc.
9. **Educational Program:** Requirement to attend, present and/or participate in a program related to the violation. It may also be a requirement to sponsor or assist with a program for others on campus to aid them in learning about a specific topic or issue related to the violation for which the student or organization was found responsible. Audience may be restricted.
10. **Restriction of Visitation Privileges:** May be imposed on a resident or non-resident student. The parameters of the restriction will be specified.
11. **NWCCD Housing Probation:** Official notice that should further violations of housing or NWCCD policies occur during a specified probationary period, the student may be immediately removed from NWCCD housing. Regular probationary meetings may also be imposed.
12. **NWCCD Housing Suspension:** Removal from NWCCD housing, for a specified period of time, after which the student is eligible to return. Conditions for re-admission to NWCCD housing may be specified. Under this sanction, a student is required to vacate NWCCD housing within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Director of Campus Life & Housing or designee. This sanction may be enforced with a trespass action if deemed necessary. Prior to reapplication for NWCCD housing, the student must gain permission from the Director of Campus Life & Housing or designee. This sanction may include restrictions on visitation to specified buildings or all College housing during the suspension.
13. **NWCCD Housing Dismissal:** The student's privilege to live in or visit any NWCCD housing structure is revoked indefinitely. This sanction may be enforced with a trespass action if deemed necessary.
14. **NWCCD Conduct Probation:** The student is put on official notice that should further violations of NWCCD policies occur during a specified probationary period, the student may face suspension or expulsion. Regular probationary meetings may also be imposed.
15. **Eligibility Restriction:** The student is deemed to be "not in good standing" with NWCCD for a specified period of time. Specific limitations or exceptions may be granted by the Vice

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

President for Student Affairs (VPSA), and terms of this conduct sanction may include, but are not limited to the following:

- a. Ineligibility to hold any office in any student organization recognized by NWCCD or hold an elected or appointed office at NWCCD; or
- b. Ineligibility to represent NWCCD to anyone outside NWCCD community in any way including participating in the study abroad program, attending conferences, or representing NWCCD at an official function, event, or intercollegiate competition as a player, manager, or student coach, etc.

**16. NWCCD Suspension:** Separation from NWCCD for a specified minimum period of time, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension. The student is required to vacate the campus within 24 hours of notification of the action, though this deadline may be extended upon application to and at the discretion of the VPSA. During the suspension period, the student is banned from NWCCD property, functions, events, and activities without prior written approval from the VPSA. This sanction may be enforced with a trespass action if deemed necessary. This sanction will be noted as a *Conduct Suspension* on the student's official academic transcript. (*Procedure 5035.5: Transcript Notation.*)

**17. NWCCD Dismissal:** Permanent separation from NWCCD. The student is banned from NWCCD property and the student's presence at any NWCCD-sponsored activity or event is prohibited. This action may be enforced with a trespass action if deemed necessary. This sanction will be noted as a *Conduct Dismissal* on the student's official academic transcript. (*Procedure 5035.5: Transcript Notation.*)

**18. Other Sanctions:** Additional or alternate sanctions may be created and designed as deemed appropriate to the offense with the approval of the VPSA or designee.

NOTE: If a student withdraws from NWCCD in the midst of the conduct process, a transcript notation "Withdrew with conduct charges pending" will be noted on their transcript until the procedure is complete. (*Procedure 5035.5: Transcript Notation.*)

The following are types of disciplinary action which may be imposed, singly or in combination for employee Respondents who are found to have violated this Procedure:

- Verbal Warning
- Written Warning
- Work Improvement Plan
- Preventative Education
- Administrative Leave with Pay
- Administrative Leave without Pay
- Change in job assignment
- Demotion
- Mandatory EAP program
- Termination

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

#### 5.4.4. APPEALS

Appeals are available after a complaint dismissal or after a final determination is made. The Complainant and the Respondent have equal rights to an impartial appeal. All appeals will be referred to an Appellate Decision-Maker appointed by the President. The Decision-Maker for the appeal will not have served as Investigators or Decision-Maker in the previous steps of the process.

A Complainant or Respondent may file a written appeal with the Title IX Coordinator on the grounds that:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) 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;
- (C) The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
- (D) The sanction(s) imposed are substantially outside the parameters or guidelines set by the District for this type of offense or the cumulative conduct record of the responding student or employee.

The purpose of an appeal is not to initiate a review of substantive issues of fact or a new determination of whether a violation of District rules has occurred. The appellate Decision-Makers may decide to uphold the original decision, to alter the imposed penalty, or to return the case for additional proceedings or other action.

The deadline for filing a written appeal is seven (7) business days from the date the Parties are provided the written determination of responsibility. The submission of an 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 Title IX Coordinator 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 will be decided by an individual, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or Decision-Maker in the same matter.

The Title IX Coordinator will have primary responsibility for interactions with the Parties, for the gathering of information needed for the appeal, and for notifying both Parties in writing of the outcome of any appeal. The written decision regarding the appeal will be provided simultaneously within seven (7) business days after the conclusion of the review and will describe the results of the appeal and the rationale for each result.

## 6. RECORDKEEPING AND ANNUAL REPORTS

The District will keep for seven (7) years, the following:

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

- All information obtained as part of each Sexual Misconduct investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript; any disciplinary sanctions and/or remedies; any appeal, including the result of the appeal; and any informal resolution and the result therefrom.
- All information regarding any action taken, including supportive measures, and a rationale as to why a Complaint was not filed. If a Complainant was not provided supportive measures, a rationale must be provided as to why supportive measures were not provided.
- All training materials used to train Title IX Coordinators, Investigators, Decision Makers, and those who facilitate the informal resolution process.

Generally, information from a student’s discipline file is not released without the written consent of the student. However, certain information may be provided to individuals within or outside the District who have a legitimate legal or educational interest in obtaining it. Typically, the information that is released to those outside of the District is limited to information associated with findings of “in violation” which resulted in a suspension or expulsion (discipline file). Please refer to the federal Family Educational Rights and Privacy Act of 1974 (FERPA).

Personnel files are the property of the District and will not be shared without a subpoena.

## 7. EDUCATION PROGRAMS AND TRAINING OF TITLE IX PERSONNEL

### 7.1. TRAINING FOR THE DISTRICT COMMUNITY

The District engages in comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to reduce and eliminate sexual misconduct or other forms of prohibited conduct which:

- are culturally relevant, inclusive of diverse communities and identities, are responsive to community needs, and informed by research, or assessed for value, effectiveness, or outcome;
- consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels; and
- include primary prevention and awareness programs directed at incoming students and ongoing prevention and awareness campaigns directed at current students.

Risk Reduction means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence. Experiencing Sexual Misconduct or other forms of prohibited conduct is never the victim’s fault. Only abusers are responsible for the abuse they perpetrate. However, the following are some strategies to reduce risk of victimization. For example, The [Rape, Abuse, & Incest National Network](https://www.rainn.org/safety-prevention) (RAINN) has created a list which can be find by clicking here: <https://www.rainn.org/safety-prevention>.

Bystanders play a critical role in the prevention of sexual and relationship violence. The District promotes a culture of community accountability where bystanders are actively engaged in the

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

prevention of violence without causing further harm. Individuals may not always know what to do even if they want to help. Below is a list of some ways to be an active bystander. If you or someone else is in immediate danger, dial 911, if a person is yelling at or being physically abusive towards another and it is not safe for you to interrupt.

- Watch out for your friends and fellow students/employees. If you see someone who looks like they could be in trouble or need help, ask if they are ok.
- Confront people who seclude, hit on, attempt to make out with, or have sex with people who are incapacitated.
- Speak up when someone discusses plans to take sexual advantage of another person.
- Believe someone who discloses sexual assault, abusive behavior, or experience with stalking.
- Refer people to on or off campus resources listed in this Procedure for support in health, counseling, or with legal assistance.

## 7.2. TRAINING OF TITLE IX PERSONNEL

The District will require that the Title IX Coordinator, Investigators, and Decision Makers and any person who facilitates an informal resolution process receive annual training per the requirements of Title IX, the Clery Act-VAWA and Wyoming law, and do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

The annual training provided includes but is not limited to the following: the definition of sexual harassment, including an understanding of educational program or activity; how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes; how to serve impartially, including avoiding prejudgement about the facts at issue, conflicts of interest, and bias; the technology to be used at a live hearing; issues of relevance, including questioning, and investigative reports.

## 8. DISABILITY ACCOMMODATIONS AND INTERPRETIVE SERVICES

Students with a disability who desire an accommodation regarding this Procedure must request an accommodation to the Title IX Coordinator. The Title IX Coordinator will make a determination regarding the request after consultation with Disability Services and notify the appropriate Parties. An Individual will not be considered to have a disability allowing for an accommodation unless and until the student has fulfilled the obligation of providing the necessary and appropriate documentation with Disability Services and met the requirements for being provided with an accommodation(s).

Employees with a disability who desire an accommodation regarding this Procedure must request an accommodation with Human Resources.

Similarly, those in need of interpretive services are encouraged to contact the Title IX Coordinator.

## 9. REVISION AND INTERPRETATION

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021

NWCCD reserves the right to review and update the Procedure in accordance with changing legal requirements and specific needs of the District.

Any questions of interpretation regarding the Procedure shall be referred to the Title IX Coordinator. The Title IX Coordinator's determination is final.

All reports received by the District after this date will be administered in accordance with the procedures described under this Procedure.

## **10. 1ST AMENDMENT CONSIDERATIONS**

The District is committed to protecting, maintaining, and encouraging both freedom of expression and full academic freedom of inquiry, teaching, service, and research. Nothing in this Procedure shall be construed to penalize a member of the community for expressing an opinion, theory, or idea in the process of responsible teaching and learning. Accordingly, any form of speech or conduct that is protected by the principles of academic freedom or the First Amendment to the United States Constitution is not subject to this Procedure.

## **11. RELATED POLICIES**

### **11.1. STUDENTS:**

- Family Education and Privacy Act (FERPA)
- Student Code of Conduct
- False statements (Student Code of Conduct, Section 5, Page 9)

### **11.2. EMPLOYEES:**

- Employee Handbook, Board Procedure Series 4000/4001

Adoption Date: Aug. 14, 2020

Review Dates:

Revision Dates: Sept. 21, 2021