



**BOV POLICY # 05 (2021) TITLE IX: SEXUAL AND GENDER-BASED HARASSMENT
AND OTHER FORMS OF INTERPERSONAL VIOLENCE**

POLICY APPLICABILITY

1. This policy applies to situations where (1) acts complained of occurred **on or after Mar 19, 2021** and (2) a complaint was filed with the Title IX Coordinator **on or after Mar 19, 2021**. The procedural provisions of the policy also apply where (1) acts complained of occurred **before Mar 19, 2021**, but a complaint was filed with the Title IX Coordinator **after Mar 19, 2021**.
2. The previous version of BOV Policy #5 applies to situations where both (1) acts complained of occurred **before Mar 19, 2021**; and (2) a complaint was filed with the Title IX Coordinator **on or before Mar 19, 2021**.
3. The substantive provisions of the previous policy also apply where (1) Acts complained of occurred **before Mar 19, 2021**, but a complaint was filed with the Title IX Coordinator **after Mar 19, 2021**.

Questions regarding the applicability of this policy should be referred to the Office of Institutional Equity.



**BOV POLICY # 05 (2021) TITLE IX: SEXUAL AND GENDER-BASED HARASSMENT
AND OTHER FORMS OF INTERPERSONAL VIOLENCE**

Policy Title:	Title IX; Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence
Policy Type:	Board of Visitors
Policy No.:	BOV Policy # 05 (2021)
Approval Date:	March 19, 2021
Responsible Office:	Operations & Institutional Effectiveness
Responsible Executive:	Vice President for Operations & Chief Strategist for Institutional Effectiveness
Applies to:	University Community

POLICY STATEMENT & PURPOSE

The Norfolk State University (NSU) is committed to maintaining an environment that is free of unlawful harassment and discrimination. Pursuant to NSU’s commitment to a fair and open campus environment and in accordance with federal law, Norfolk State University cannot and will not tolerate discrimination against or harassment of any individual or group based upon race, color, religion, sex, ethnic or national origin, gender, genetic information, age, disability, sexual orientation, gender identity, gender expression, veteran’s status, or any factor that is a prohibited consideration under applicable law. Norfolk State University welcomes and promotes an open and genuinely diverse environment.

Title IX of the Educational Amendments of 1972 protects people from sex discrimination in educational programs and activities at institutions that receive federal financial assistance. Norfolk State University fosters a safe learning and working environment that supports academic and professional growth of students, staff, and faculty. Accordingly, Norfolk State University does not tolerate sexual misconduct in its community and will take prompt action when misconduct occurs.

This policy prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 (“Title IX”); Title VII of the Civil Rights Act of 1964 (“Title VII”); and/or the [Virginia Human Rights Act](#). Such behavior also requires NSU to fulfill certain obligations under the Violence Against Women Reauthorization Act of 2013 (“VAWA”), Family Educational Rights and Privacy Act (FERPA), and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”).

Norfolk State University takes seriously every allegation or report of sexual misconduct received. Its response is intended to ensure that all parties involved receive appropriate support and fair



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treatment, and that allegations of sexual misconduct are handled in a prompt, thorough, and equitable manner.

TITLE IX COORDINATOR AND DEPUTY TITLE IX COORDINATORS

Under Title IX: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

The Title IX Coordinator is charged with monitoring NSU's compliance with Title IX; ensuring appropriate education and training; coordinating NSU's investigation, response, and resolution of all reports under this policy; and ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator is available to meet with any student, employee, or third party to discuss this policy or the accompanying procedures. NSU has also designated one or more Deputy Title IX Coordinators who may assist the Title IX Coordinator in the discharge of these responsibilities. The Title IX Coordinator and Deputy Title IX Coordinators receive appropriate training to discharge their responsibilities.

Concerns about NSU's application of Title IX, VAWA, Title VII, the Clery Act, or the Virginia Human Rights Act may be addressed to the Title IX Coordinator; the United States Department of Education, Clery Act Compliance Division (at clery@ed.gov); the United States Department of Education, Office for Civil Rights (at OCR@ed.gov or (800) 421-3481); and/or the Equal Employment Opportunity Commission (at info@eeoc.gov or (800) 669-4000).

The Title IX Coordinator and Deputy Title IX Coordinators can be contacted by telephone, email, or in person during regular office hours:

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TO WHOM THIS POLICY APPLIES

The Norfolk State University (NSU) Title IX Coordinator, or their designee, monitors and oversees NSU’s compliance with federal regulations concerning sexual harassment and discrimination. Upon receipt of a report of alleged sexual misconduct, the University Title IX Coordinator, or their designee will monitor responsive action to ensure that the educational environment at NSU is free of discrimination and discriminatory harassment. Additionally, the University Title IX Coordinator, or their designee monitors the actions taken, as appropriate, to remedy the effects of the sexual misconduct on the Complainant. This may include commencement of disciplinary proceedings against a Respondent.

This policy applies to sexual misconduct that occurs in connection with all NSU academic, educational, extracurricular, athletic, and other programs of, whether those programs take place in NSU facilities, at a program sponsored by NSU at another location, or elsewhere.

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CONTACTS

The Title IX Coordinator officially interprets this policy and is responsible for matters pertaining to this policy as it relates to the University Community. The President's Office is responsible for obtaining approval for any revisions as required by BOV Policy # 01 Creating and Maintaining Policies through appropriate governance structures. Questions regarding this policy should be directed to the Title IX Coordinator.

The Title IX Coordinator, who may have University roles other than those related to Title IX, is appointed by the President, and reports either directly to the President, or as the President otherwise directs.

As used in this policy, the term "Title IX Coordinator" means the appointed Title IX Coordinator, a Deputy Title IX Coordinator, a Title IX Investigator, or another person designated by the appointed Title IX Coordinator, unless under context it is clear that reference is to the appointed Title IX Coordinator.

DEFINITIONS:

Advisor – The principal role of an advisor is to serve as a representative or advocate in interactions with Norfolk State University officials as well as to provide support to a Complainant or Respondent.

Affirmative Consent – Affirmative consent is a knowing, voluntary, clear, and mutual agreement among all participants to engage in specific sexual activity.

- a. Affirmative consent can be given by words or actions, if those words or actions express willingness to engage in the sexual contact or activity. It is important not to make assumptions. If there is confusion or ambiguity, participants in sexual activity should stop and verbally clarify each person's willingness to continue. A person who wants to engage in a specific sexual activity is responsible for obtaining affirmative consent for that activity.
- b. Affirmative consent to one form of sexual activity does not imply affirmative consent to other forms of sexual activity.
- c. Affirmative consent to engage in sexual activity with one person does not imply affirmative consent to engage in sexual activity with another person.
- d. Silence or the lack of resistance, in and of itself, does not demonstrate affirmative consent. Again, it is important not to make assumptions; if confusion or ambiguity arises during a sexual interaction, each participant should stop and verbally clarify the other's willingness to continue engaging in the sexual contact or activity.
- e. Affirmative consent may be initially given but can be withdrawn at any time. When affirmative consent is withdrawn, or can no longer be given, sexual activity must stop.

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- f. Previous relationships or previous affirmative consent for sexual activity is not affirmative consent to sexual activity on a different occasion.
- g. The definition of affirmative consent does not vary based upon a participant's sex, sexual orientation, gender identity, gender expression or relationship status.
- h. Affirmative consent cannot be procured using physical force, compulsion, threats, intimidating behavior, coercion, or from a person who is incapacitated.

Aiding, Facilitating, Encouraging, Concealing, or Otherwise Assisting – Aiding, facilitating, encouraging, concealing, or otherwise assisting in a violation (or attempted violation) of this Policy is prohibited by this Policy.

Coercion – Conduct that would reasonably place an individual in fear of immediate or future physical, emotional, or other harm and that is used to pressure someone to engage in sexual contact. Coercion can include manipulation, intimidation, and unwanted contact, express or implied threats of harm. Coercion is more than an effort to persuade, entice or attract another person to engage in sexual activity. In evaluating whether coercion was used, the University will consider whether pressure was applied and, if so, the frequency, intensity, and duration of them pressure, as well as the degree of isolation of the person being pressured. Sexual activity that is coerced is nonconsensual.

Complainant – The person(s) reporting or making an allegation or complaint of sexual misconduct. Where a third-party has reported alleged sexual misconduct, the person alleged to have been subjected to sexual misconduct also will be referred to as the Complainant. The legal rights of the parents can also initiate a report on behalf of the complainant.

Complaint – A communication or statement lodged with the Office of Institutional Equity alleging a violation under this Policy; a complaint filed by a party, which can be verbal or written, including by electronic mail or in person, indicates that the party would like to initiate formal or informal Title IX proceedings as per this Policy. The document must be signed by the Title IX Coordinator, or their designee. By signing the Title IX complaint, the Title IX Coordinator, or their designee cannot be a party during the grievance process and must comply with requirements to be free from conflicts and bias.

Dating Violence –The use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, psychological, sexual, technological, or economic abuse directed toward a person with whom one is or has been in a social relationship of a romantic or sexually intimate nature that does not constitute domestic violence. Whether there is or was such a relationship will be determined based on, among other factors, the parties' statements, and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the parties involved in the relationship. Dating violence includes behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, or physically injure someone. Dating violence can be a single act or a pattern of behavior in relationships. Dating violence is sometimes called intimate partner violence.

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Domestic Violence – The use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, psychological, sexual, technological, or economic abuse directed toward (1) a current or former spouse or intimate partner; (2) a person with whom one shares a child; or (3) anyone who is protected from the Respondent’s acts under the domestic or family violence laws of Virginia. This includes behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, or physically injure someone. Domestic violence can be a single act or a pattern of behavior in relationships. Domestic violence is also sometimes called intimate partner violence.

Evidentiary Standard – The standard of proof used in the grievance process whether student or employee is the preponderance of evidence, i.e., it is more likely than not that sexual misconduct occurred, to determine responsibility.

Gender-Based Harassment – Includes harassment based upon gender, sexual orientation, gender identity or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s academic, co-curricular, or campus life activities;
- b. Submission to or rejection of such conduct by an individual is used as the basis for academic or student life decisions affecting that individual;
- c. The conduct is so severe and/or pervasive that it unreasonably interferes with a person’s University employment, academic performance, or participation in University programs or activities; or
- d. The conduct is so severe and/or pervasive that it creates an intimidating, hostile, demeaning, or offensive campus or living environment.

Hearing Process – Is defined as a live presentation of the evidence by the complainant, respondent, decision-maker, and each party’s advisor. Witnesses called by both parties will be subject to cross-examination by the advisors both parties. The hearing process will be an audio or audiovisual recording, or transcript of the hearing.

Incapacitation – Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. A person who is incapacitated lacks the ability to understand a decision to participate in sexual activity.

- a. Incapacitation may be associated with a person’s lacking consciousness or awareness; being asleep; being involuntarily restrained; having a disability that impedes affirmative consent; or if an individual otherwise cannot affirmatively consent due to other forms of mental or physical helplessness. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to provide affirmative consent.



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- b. Individuals should be aware of, and carefully consider, the potential consequences of the use of alcohol or drugs. Alcohol and drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. It is the responsibility of each party to be aware of the intoxication level of the other party before engaging in sexual activity. If there is any doubt as to the level or extent of the other individual's intoxication, it is safest to forgo or cease any sexual contact or activity. Being intoxicated, impaired, or incapacitated by alcohol or other drugs is never an excuse for sexual misconduct and does not diminish anyone's responsibility to obtain affirmative consent. The use of alcohol or other drugs never makes someone at fault for experiencing sexual harassment/misconduct.

Intimidation – The use of implied or overt threats that menace or cause reasonable fear to overcome an individual's freedom of will to choose whether to participate in sexual activity or provide affirmative consent. Affirmative consent obtained by intimidation is not valid.

Mandatory Reporter (also called a "Responsible Employee") – A responsible employee is any University employee who has the authority to take action to redress the harassment; who has the duty to report sexual harassment or any other misconduct by students or employees to school officials; or an individual who a student could reasonably believe has this authority or responsibility. At Norfolk State University, mandatory employees include all faculty and staff members who are not considered to be confidential.

Non-Consensual Sexual Contact – Any intentional sexual touching, without a person's affirmative consent. Intentional sexual touching includes deliberate contact, under or over clothing, with the breasts, buttocks, groin, or genitals, or conscious and willful touching another with any of these body parts; making another person touch any of these body parts under or over clothing; and the emission of ejaculate on the clothing or body of another person.

Non-Consensual Sexual Intercourse – Any form of vaginal, anal, or oral penetration by a penis, object, tongue, or finger without a person's affirmative consent; or oral copulation (mouth-to-genital contact or genital-to-mouth contact) without a person's affirmative consent, no matter how slight the penetration or contact.

Report – A report of sexual misconduct is when a party notifies the Office of Title IX of alleged misconduct and requests support and resources, but where there has not yet been a decision about whether to proceed through the Title IX process.

Respondent – The respondent is the individual who have alleged to have committed or perpetrated the sexual misconduct. Respondents are entitled to a presumption that there is no violation of this Policy throughout the disciplinary process unless the Respondent chooses to accept responsibility for a violation or until they are found responsible for a violation of this Policy via the hearing process.

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Retaliation – Any adverse action or threatened action, taken or made, personally or through a third party, against someone who has filed a sexual harassment/misconduct complaint (a Complainant), has been the subject of a sexual harassment/misconduct complaint (a Respondent), or any other individual who engages with the University in connection with a sexual harassment/misconduct complaint. All individuals and groups of individuals, not just a Respondent or Complainant, are prohibited from engaging in retaliation.

- a. Retaliation includes directly or indirectly threatening, intimidating, harassing, or any other conduct that would discourage a reasonable person from engaging in activity protected under this Policy, such as seeking services; receiving protective measures and accommodations; reporting sexual harassment/misconduct; and/or participating in an investigation or adjudication.
- b. Retaliation includes maliciously and purposefully interfering with, threatening, or damaging the academic or professional career of another individual before, during or after the investigation and resolution of a report of sex- and gender-based harassment/misconduct under this Policy.
- c. Retaliation may be present even where there is a finding of “no responsibility” on the allegations.
- d. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are determined not to be accurate. Filing a counter complaint, counter appeal, or conduct complaint through processes established by University policy does not in itself constitute retaliation, unless it is determined that the filing was without a reasonable basis and made in bad faith.

Sexual Exploitation – Non-consensual abuse or exploitation of another person’s sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other purpose. Examples of sexual exploitation may include, but are not limited to the following:

- Invasion of sexual privacy;
- Prostituting an individual;
- Non-consensual video- or audio-recording of sexual activity or circulation of such recorded material (i.e., revenge pornography);
- Non-consensual photographing individuals who are partly undressed, naked, or engaged in sexual acts and transmitting or posting those photographs without an individual’s consent;
- Observing unsuspecting individuals who are partly undressed, naked, or engaged in sexual acts;
- Knowingly transmitting a sexually transmitted disease (STD); exposing one’s breasts, buttocks, or genitals without affirmative consent or inducing another to do the same; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

Sexual Harassment – Defines sexual harassment broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect:



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- a. Any instance of quid pro quo harassment by a school's employee
- b. Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access
- c. Any instance of sexual assault (as defined in Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA)

Supportive Measures – Defined as services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to either party, complainant, or respondent, while designed to ensure equal educational access, protect safety, or deter sexual harassment.

Stalking – Engaging in a course of conduct directed at a specific person (or persons) that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer significant mental suffering or anguish. Course of conduct means two or more acts, including acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Stalking does not require an overt threat.

Student – The term student means any person pursuing academic studies at the University. The term also includes:

- a. A person who, while not currently enrolled, was previously enrolled at NSU and who is reasonably anticipated to seek enrollment at a future date, or
- b. A person who has applied to or been accepted for admission to NSU and has accepted an offer of admission or may reasonably be expected to enroll, or
- c. A person enrolled in an NSU program on a credit or non-credit basis.

Title IX Coordinator – The Title IX Coordinator, or their designee, is charged with monitoring NSU's compliance with Title IX; ensuring appropriate education and training; coordinating NSU's investigation, response, and resolution of all reports under this policy; and ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator, or their designee, is available to meet with any Student, Employee, or Third Party to discuss this policy or the accompanying procedures. NSU has also designated one or more Deputy Title IX Coordinator, or their designees who may assist the Title IX Coordinator, or their designee in the discharge.



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5.2.1. REPORTING SEXUAL MISCONDUCT

5.2.1(a) REPORTING TO THE POLICE

Because sexual misconduct may constitute both a violation of NSU policy and criminal activity, persons having knowledge of a possible violation are strongly encouraged to report alleged sexual misconduct promptly to the NSU Police Department (NSUPD), or to local law enforcement authorities for incidents that occur off campus. NSU strongly encourages complainants to report the incident, to seek assistance, and to pursue judicial action for their own protection and that of the entire campus community.

Confidential reporting (providing information without your name attached to it) with NSUPD through their **Anonymous Reports** line (757-823-2148) is an available option for NSU students, staff and faculty; however, investigative or criminal enforcement activity can be significantly limited in the case of anonymous reports. (*Note: NSUPD anonymous report is a non-emergency telephone number; in the event of an emergency, please call 911*). Regardless of whether a complainant pursues a criminal complaint, NSU will investigate the incident in question and take appropriate responsive action to ensure that the educational environment is free of harassment, to prevent the recurrence of a hostile environment, and, as appropriate, to remedy the effects of the harassment.

When an individual is unable to or elects not to report an incident of sexual misconduct, NSU encourages other individuals with knowledge of the incident to make a prompt and accurate report to the NSUPD. If it is known that a complainant wishes to remain anonymous/confidential, their wishes should be respected in making such a report.

NSU requires all faculty, staff, students, as well as third-parties, to report suspected child abuse of which they are made aware in their capacity of employment or duties. Child abuse includes sexual abuse or exploitation of a person who is under the age of eighteen. Any uncertainty about whether reporting is required should always be resolved by making a report to NSUPD.

5.2.1(b) REPORTING SEXUAL MISCONDUCT FOR UNIVERSITY ACTION

Every NSU employee who is informed about an allegation of sexual misconduct involving any student, staff, or faculty member, is required to notify a Title IX Coordinator, or his or her designee either directly or through an appropriate reporting mechanism such as email or by phone. Employees who serve in a professional role in which they maintain a confidential status under the law (e.g., medical providers, therapists, and professional and pastoral counselors) are not bound by this requirement. However, these employees, consistent with their ethical and legal obligations, may be required to report limited information about incidents without revealing the identities of the individuals involved, to a Title IX Coordinator, or their designee or Deputy Title IX Coordinator, or their designee. At NSU, mandatory employees include all faculty and staff



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members who are not considered confidential. All members of the NSU community are encouraged to promptly report incidents of sexual harassment and discrimination.

At NSU, mandatory employees include all faculty and staff members who are not considered confidential. Complaints under this sexual misconduct policy may be filed with the following:

- (1) The Title IX Coordinator or their designee
- (2) The Deputy Title IX Coordinator for Students or their designee
- (3) The Deputy Title IX Coordinator for Employees, their designee, or their designee
- (4) Deputy Title IX Coordinator for Athletics or their designee

Retaliation Prohibited

Federal regulations and NSU policy protect against retaliation directed at any individual who files a complaint, is involved, in good faith, in the adjudicatory process under this Policy, or participates in an investigation of a complaint. A complaint of retaliation may be initiated with the Title IX Coordinator, or their designee for any retaliatory actions resulting from the filing of a complaint under this Policy. Retaliation is adjudicated under the guidelines of this Policy.

5.2.2. INVESTIGATION AND ADJUDICATION

The Title IX Coordinator, or their designee, is primarily responsible for coordinating responses to complaints of possible violations of this Policy, including directly overseeing the investigation and adjudication of complaints, and coordinating possible remedial actions or other responses designed to reasonably minimize the recurrence of the alleged conduct as well as mitigate the effects of the harassment. The Title IX Coordinator, or their designee, will ensure prompt, fair, and impartial investigations and resolutions of complaints alleging violations of this Policy. NSU will complete the investigation and resolution of a complaint in a prompt and timely manner; the office will keep the parties apprised of the status of their case on a periodic basis.

The procedures for institutional disciplinary action will be conducted by an appropriate NSU administrator, authorized to make and implement decisions, receives annual training on this Policy, and has the skills necessary to complete their roles in the Title IX process. These trained individuals will handle matters under this policy promptly and equitably.

When conducting the investigation, NSU's primary focus will be to address the sexual misconduct. NSU encourages reporting sexual misconduct and seeks to remove any barriers to reporting. NSU recognizes that a student who has potentially been involved in other policy violations not related to sexual misconduct may be hesitant to make a report because of potential consequences

An individual, who reports sexual misconduct, either as a complainant or a third-party witness, will not be subject to disciplinary action by the University for personal consumption of alcohol or drugs at or near the time of the incident, if any such violations did not and do not place the health or safety of any other person at risk. At the conclusion of the investigation, the Title IX Coordinator, or their designee may initiate an educational discussion or recommend other educational or therapeutic remedies regarding alcohol or other drugs for the reporting student(s).



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An advisor of their choice may assist the complainant and respondent during any investigative or other meeting that an NSU official schedules with a complainant or respondent. The principal role of an advisor is to serve as a representative or advocate in interactions with Norfolk State University officials as well as to provide support to a Complainant or Respondent.

The filing of a sexual misconduct complaint under this Policy is independent of any criminal investigation or proceeding. In cases where it is determined that a sexual misconduct proceeding might impede a criminal investigation or may otherwise not be in the best interests of the law enforcement agency, a Complainant, or NSU. The University will not wait for the conclusion of any criminal proceedings to commence its own investigation and implement necessary supportive measures.

Investigation of a Complaint and Notice of Charges of Alleged Policy Violation

The Title IX Coordinator, or their designee, will appoint an investigator to examine each complaint received. A notice of investigation will be sent to both the complainant and the respondent. The investigator will conduct a prompt, thorough, and impartial investigation of the complaint. The investigation may involve the following:

- Interviews with complainants, respondents, a witness or witnesses
- Collection of documents or other physical/electronic information
- Other appropriate steps as needed.

Individuals who are interviewed during the investigation will be advised that the matter is confidential and that retaliation is prohibited by this policy. All evidence directly related to the allegations will have to be sent to the complainant, respondent, and their advisor for review in either hard copy or electronic format. They will have ten business days to review and respond to the evidence. A complainant and respondent may both provide information and suggestions to the investigator, but the investigator have independent authority to conduct the investigation using their best judgment.

After the investigation, the investigator will submit a written Report of Investigation to the Title IX Coordinator, or their designee, detailing the information that was collected. The Title IX Coordinator, or their designee, may ask the investigator further clarifying questions of the Complainant, Respondent, or witness to supplement the Report of Investigation.

A draft of the Report of Investigation to the parties. The parties will be provided an opportunity to submit written statements responding to or clarifying information found in the report prepared by the investigator; any material submitted by the parties will be attached to the Report of Investigation as appendices, and the Report of Investigation will be finalized. The complainant and respondent will have ten business days to respond to the investigator regarding the investigative report.



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The Title IX Coordinator, or their designee, shall review the finalized Report of Investigation and determine whether there is sufficient information to support forwarding the case to the hearing process and assigning an appropriate administrator or body to determine violation of this policy. If a determination is made that the information available is not sufficient to support a finding of responsibility for a violation, the respondent will not be charged, and the case will be considered closed. A written notice for a disposition of closed and the reasons for closing the case will be provided to the complainant and the respondent.

Input from the Complainant Regarding the Method of Resolution

Early in the investigation, the Title IX Coordinator, or their designee, will seek to determine if the complainant wishes to pursue a formal resolution, or an informal resolution, or does not wish to pursue resolution of any kind.

- A. If the complainant wishes to proceed with a formal resolution and the Title IX Coordinator, or their designee determines, that there is sufficient information to proceed with the sexual misconduct disciplinary process, a hearing will be conducted as outlined in Section 5.2.3 (Hearing Procedures) of this Policy.
- B. If the complainant wishes to proceed with an informal resolution, the Title IX Coordinator, or their designee may elect to initiate an informal resolution process. However, a complainant: (1) should never be required to work out a problem or resolve an issue directly with the Respondent without school involvement; and (2) must be advised of the right to end the informal process at any time and to begin to pursue a formal complaint process. Additionally, a complainant and respondent must mutually consent to an informal resolution process. The Title IX Coordinator, or their designee, may elect not to pursue an informal resolution process if it is deemed not in the best interest of the involved parties or in Norfolk State University's best interest.

If the complainant does not wish to pursue resolution, requests that no action be taken, or requests that the complaint remain confidential or elects not to participate in the process, NSU has an obligation to respond to reports of sexual misconduct. NSU's ability to respond may be limited if a complainant wishes to remain anonymous. While no guarantee can be made to a complainant regarding confidentiality, the Title IX Coordinator, or their designee, will consider every request for confidentiality and significant efforts will be taken to honor the request of confidentiality in determining a response to the report of sexual misconduct. In all cases, information will be treated with discretion and privacy but cannot always be handled confidentially.

A request for confidentiality will be considered in conjunction with NSU's legal obligation to ensure a living and learning environment free from sexual misconduct and ensure the due process rights of the respondent to be informed of the allegations and their source. The complainant's request may be weighed against the following factors in considering how to respond:

- The seriousness of the alleged sexual misconduct
- The age of the complainant

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- Whether there have been other complaints of sexual misconduct against the same respondent
- The Respondent's right to receive information about the allegations if the information is maintained by Norfolk State University as an "education record" under Family Educational Rights and Privacy Act (FERPA).

NOTE: in cases involving a pattern of conduct by the respondent, the use of weapons, or drugs to limit a complainant's capacity, NSU is required to move forward with a formal process.

Authority to Impose Supportive Measures and Provide Accommodations

During the investigation and until resolution of allegations, the Title IX Coordinator, or their designee, may issue supportive measures, including, but not limited to the following:

- No contact order (NCO) between the complainant and the respondent;
- Interim suspension;
- Temporary exclusion from areas of campus
- Removal from or relocation to another residence hall, changes in academic/course schedules
- Limiting participation in certain events, gatherings, or activities, among other measures.

Supportive measures should not be construed to suggest that any decision has been made about the merits or facts of the case. Appeals of supportive measures must be submitted in writing to the Title IX Coordinator, or their designee, within 7 business days of the date that the parties were notified about the supportive measure. The University will review the materials within 5 business days of receipt of the appeal and may affirm the original measure; modify the measure, which may be of greater or lesser severity; or dismiss the original measure. The Title IX Coordinator, or their designee's determinations on any appeal of supportive measure are final and not subject to further appeal. Both parties shall receive simultaneous written notice of the outcome of the appeal.

Accommodations may be provided to individuals involved, regardless of whether formal conduct proceedings are instituted, or supportive measures implemented including academic/course schedule changes; housing reassignments; safety escorts; safety/crime prevention briefings, and other protective or safety measures. Both supportive measure and accommodations are considered on a case-by-case basis by the Title IX Coordinator, or their designee.

Acceptance of Responsibility

Within five business days after receipt of the "Notice of Charges," the respondent has an opportunity to accept or not accept responsibility for the charge(s). If a respondent is charged with a violation and accepts responsibility for having violated this policy, the Title IX Coordinator, or their designee, in accordance with the Dean of Students or the Office of Human Resources, will determine the appropriate sanction within 5 business days and send written notification of the sanction imposed and the appeal process to the complainant and respondent. The sanction



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determination is appealable to the Title IX Coordinator, or their designee, within 10 calendar days of the notice of sanction. The Title IX Coordinator, or their designee's, appeal determination shall be final and not appealable.

5.2.3. HEARING PROCEDURES

If the respondent does not accept responsibility for the alleged conduct, the Title IX Coordinator, or their designee, will appoint a university administrator with appropriate knowledge and training, to serve as a hearing officer and determine if the respondent is responsible for violations in the Notice of Charges. The hearing will be scheduled and will occur within ten business days of the respondent's denial of responsibility. The hearing officer, in coordination with Title IX Coordinator, or their designee, will select a date, time, and location of the hearing. A notice will be provided to all parties. All parties shall be given notice of no less than ten business days in advance of the hearing date, absent agreement by the parties to shorten the time period or extraordinary circumstances as determined by the decision-maker.

In hearings conducted in adherence to this policy:

1. Both parties shall have an advisor of choice. If either party does not have an advisor one will be provided for them. Information, via the Report of Investigation, pertaining to the case will be distributed simultaneously to both parties. This information will be used at the hearing and each party will be given the equivalent opportunities to present relevant evidence and witnesses.
2. The proceedings shall be non-adversarial in nature. Before any cross-examination of either party or witness, hearing officer must first determine whether the question is relevant. The determination of relevance is explained to the party's advisor asking the cross-examination question on decision to exclude a question as not relevant. If a party does not submit to cross-examination at the live hearing, the hearing officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The presence from the live hearing cannot draw a conclusion one way or the other by the decision-maker.
3. Both parties must be at the live hearing for the duration of the hearing, except for deliberations or recesses for the hearing board to discuss procedural issues.
4. Either party is required to be physically present in the same geographic location or at the discretion of the hearing officer; electronic participation virtually by either party may constitute presence for purposes of any hearing.
5. There shall be a single verbatim record, such as audio-recording or audiovisual recording, or transcript of the hearing (not including deliberations). The recording shall be the property of NSU. Documentation of sexual misconduct proceedings, including written findings of facts, transcripts, and any audio recordings, are maintained in accordance with the applicable NSU's document retention records.
6. For all cases, the standard that shall be used to determine whether a violation was committed is "preponderance of the evidence" (i.e., it is more likely than not that sexual misconduct occurred).

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7. After all admissible evidence has been reviewed, the hearing officer, or hearing board when applicable, shall deliberate and review all the information presented during the hearing, in conjunction with the Report of Investigation, and make a determination of responsibility or no responsibility.

The respondent shall be found responsible or not responsible for each charge by the hearing officer. The hearing officer will submit a written report to the Title IX Coordinator, or their designee containing the determination and rationale within ten business days of the conclusion of the hearing. If the hearing officer concludes that, under a preponderance of the evidence standard, the respondent violated this Policy, the hearing officer will recommend disciplinary sanction(s) and whether remedies will be provided to the complainant. Both parties shall receive simultaneous written notice of the outcome of the hearing, sanctions and remedies imposed, and the process and deadline for submitting an appeal by either party. NSU may impose a range of sanctions and protective measures following a final determination of a violation of this Policy. Factors used in determining sanctions include but are not limited to the following factors:

- The degree to which the behavior was intentional, irresponsible, or without knowledge.
- The nature of the conduct at issue,
- Any prior disciplinary history of the respondent (shared with a hearing officer or hearing board only upon a finding of responsibility for the allegation),
- The Respondent's willingness to accept responsibility for their actions
- Previous University responses to similar conduct
- The interests of the University including the health and safety of the University community.

Sanctions for Students:

The broad range of sanctions includes but is not limited to the following:

- Expulsion – The permanent of a student from the University (Students found responsible for engaging in actual or attempted nonconsensual sexual intercourse, or who are found responsible for repeated sexual misconduct, should be prepared to be permanently separated from Norfolk State University);
- Suspension – Separation from the University for an identified time frame or until satisfaction of certain conditions, or both
- Disciplinary Probation – Disciplinary probation is for a specific length of time (minimum—semester; maximum—until graduation)
- Temporary or permanent separation of the parties (e.g. change in classes, reassignment of residence, no contact orders, limiting geography where parties may go on campus) with additional sanctions for violating orders
- Successful completion of sexual or relationship sensitivity training/awareness education program /bystander intervention training
- Successful completion of alcohol and other drug awareness and abuse prevention program
- Counseling or mentoring
- Volunteering / community service requirements

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- Educational programs
- Loss of NSU
- Delays in obtaining administrative services and benefits from NSU (e.g. holding transcripts; delaying registration, graduation, or receipt of diploma)
- Additional academic requirements relating to scholarly work or research on sexual misconduct or sexual misconduct on university campuses
- Financial restitution (payments) to any individual(s) who were injured or impacted by the Respondent's conduct
- Any other discretionary sanctions that are directly related to the violation or conduct and that are aimed at eliminating sexual misconduct, preventing its recurrence, and addressing its effects

5.2.3.(1) APPEALS

Both parties shall have the right to appeal the outcome based on any of the following grounds:

1. To consider new information, sufficient to alter the decision of the case, or other relevant information not disclosed in the original hearing, because such information was not available to the appellant during the time of the hearing.
2. To allege a procedural error within the hearing process that may have substantially impacted the fairness or impartiality during the hearing process.
3. To allege that finding was inconsistent with the information.
4. The Title IX Coordinator, or designee, or any other personnel involved in the case, had a conflict of interest or bias that affected the outcome of the matter.

Appeals must be submitted in writing to the Title IX Coordinator, or their designee within seven business days of the day the parties are notified about the outcome of the case. Upon receipt of an appeal, the Title IX Coordinator, or their designee will appoint an appeals panel consisting of three members from a pool of trained faculty, staff, and graduate/professional students. The appeals panel will review the materials within ten business days of receipt of the appeal. The panel will examine all documentation of the hearing to determine if there is a reasonable basis for changing the outcome. The panel will issue a written determination of the appeal, or may request that the University Title IX Coordinator, or their designee take appropriate steps in the appeal, which may include the following:

- Affirming the original finding and sanction
- Affirming the original finding but issuing a new sanction, which may be of greater or lesser severity
- Remanding the case to a new hearing panel to correct a procedural or factual defect; or, dismissing the case if there was a procedural or factual defect that cannot be remedied by remand.



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The panel's determinations are final and not appealable. However, the outcome of a remanded case may again be appealed under this provision. Both parties shall receive simultaneous written notice of the outcome of the appeal.

5.2.4. SUPPORT SERVICES AND OPTIONS FOR STUDENTS GOING THROUGH THE SEXUAL MISCONDUCT PROCESS.

A variety of support resources are available on campus and in the community to assist students in dealing with sexual misconduct, whether it happened recently or in the past. A full listing of support services, including healthcare, counseling, advocacy or peer support, and other resources may be found at:

<http://www.nsu.edu/Campus-Life/Services-Resources> or
<https://www.familyjusticecenter.org/resources/>

5.2.5. UNIVERSITY POLICE CONTACT INFORMATION AND ANONYMOUS REPORTING LINE

- All Emergencies (any campus/location): 9-1-1
- Norfolk State University Police Department: 757-823-9000
- Norfolk State University Police Department: (non-emergency number): 757-823-8102
- Norfolk State University Anonymous Line: 757-823-2148

EMPLOYEE COMPLAINTS

5.2.6. Adjudication Process for Formal Complaints against Classified Employees Adjudication of alleged violations of sexual misconduct for classified employees will be handled under procedures published on the [Human Resources DHRM Grievance Procedure Manual](#).

5.2.7. Adjudication Process for Formal Complaints against Wage Employees Adjudication of alleged violations of sexual misconduct for wage employees will be handled under procedures published on the [Human Resources DHRM Grievance Procedure Manual](#).

5.2.8 Adjudication Process for Formal Complaints against A&P Faculty without Tenure Adjudication of alleged violations of sexual misconduct for A&P faculty without tenure will be handled under procedures published on the [Human Resources DHRM Grievance Procedure Manual](#).

5.2.9. Adjudication Process for Formal Complaints against Instructional Faculty and A&P Faculty with Tenure Adjudication of alleged violations of sexual misconduct for faculty will be handled under procedures published in the [Faculty Handbook](#).



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5.3.0. DISCIPLINARY ACTIONS FOR EMPLOYEES

5.3.1. A classified employee who is found to have violated this policy may be disciplined or discharged under the terms of [Human Resources DHRM Grievance Procedure Manual](#).

5.3.2. A wage employee who is found to have violated this policy may be disciplined or discharged under the terms of [Human Resources DHRM Grievance Procedure Manual](#).

5.3.3. An A&P faculty member without tenure who is found to have violated this policy may be disciplined or discharged under the terms of [Human Resources DHRM Grievance Procedure Manual](#).

5.3.4. A faculty member who is found to have violated this policy may be disciplined or discharged under the terms of the [Faculty Handbook](#).

PUBLICATION

This policy shall be widely published and distributed to the NSU community. To ensure timely publication and distribution thereof, the Responsible Office will make every effort to:

- Communicate the policy in writing, electronic or otherwise, to the NSU community within 14 days of approval;
- Submit the policy for inclusion in the online Policy Library within 14 days of approval;
- Educate and train all stakeholders and appropriate audiences on the policy's content, as necessary. Failure to meet the publication requirements does not invalidate this policy.

REVIEW SCHEDULE

- Next Scheduled Review: Annually in October
- Approval by Board of Visitors, date: March 19, 2021
- Revision History: March 19, 2021
- Supersedes policies: *See* "Policy Applicability" statement below.

RELATED LINKS

Previous Version of this Policy: <https://www.nsu.edu/policy/bov-05.aspx>
BOV Policy #4: Equal Opportunity: <https://www.nsu.edu/policy/bov-04.aspx>