

Gender-Based & Sexual Misconduct Discrimination Policies and Procedures

Approved by: Northeastern State University Executive Cabinet Responsible Official: Student Affairs (918) 444-2120 X 2120	History: Adopted – October 22, 2013 Revised – August 17, 2015 Related Policies: Family Educational Rights and Privacy Act Title IX Tips & FAQ's (Student) Additional References: Complaint Form Title IX of the Education Amendments of 1972 Campus Security Report Federal "Clery" law
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The following policy and procedures are written for students. There are slight differences between the student policies and procedures and employee policies and procedures due to influencing variables related to employment laws and regulations.

STATEMENT ON NON-DISCRIMINATION

Northeastern State University (NSU) does not discriminate on the basis of race, creed, color, national origin, sex, age, religion, disability, genetic information, or status as a veteran, and to the extent allowed by Oklahoma law, marital status, sexual orientation and gender identity in its programs and activities. These protections extend to employment with and admission to NSU, as well as, participant in university sponsored programs. The following person has been designated to handle inquiries regarding the non-discrimination policies:

Title IX Coordinator
Alan Ford
Administration Building,
209601 N. Grand Avenue
Tahlequah, OK 74464
ford40@nsuok.edu

918.444.2120

Fax: 918.458.2340

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NSU is committed to providing learning, working, and living environment that promotes personal integrity, civility, and mutual respect in an environment free of discrimination on the basis of sex, which includes all forms of sexual misconduct. Sex discrimination violates an individual's fundamental rights and personal dignity. NSU considers sex discrimination in all its forms to be a serious offense. This policy refers to all forms of sex discrimination committed against members of the NSU community, including but not limited to: sexual misconduct that includes harassment, consensual, exploitation and violence; unfair treatment based on sex; and, other misconduct offenses when gender-based.

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. To ensure compliance with Title IX and other federal and state civil rights laws, NSU has developed policies and procedures that address prohibit sex discrimination in all of its forms.

INTRODUCTION

Members of the NSU community, guests and visitors have the right to be free from gender-based discrimination, sexual misconduct, and violence. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. NSU believes in a zero-tolerance policy for gender-based misconduct. When an allegation of misconduct is brought to an appropriate employee(s) attention, and a respondent is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

Policy

NSU students, employees, guests and visitors are to conduct themselves in a manner that does not impose on the rights of others and does not discriminate as outlined in NSU Statement on Non-Discrimination.

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission.

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Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence--without actions demonstrating permission--cannot be assumed to show consent.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS

Sexual Misconduct Offenses Include, but are not Limited to:

1. Sexual Harassment
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Non-Consensual Sexual Intercourse (or attempts to commit same)
4. Sexual Exploitation

Sexual Harassment:

Sexual Harassment is

- A. unwelcome, gender-based verbal or physical conduct that is,
- B. sufficiently severe, persistent or pervasive that it,
- C. unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the NSU' educational program and/or activities, and is
- D. based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual

attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

Non-Consensual Sexual Contact:

Non-Consensual Sexual Contact is

- A. sexual touching,
- B. however slight,
- C. with any object,
- D. by a man or a woman upon a man or a woman,
- E. that is without consent and/or by force

Sexual Contact includes:

Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

Non-Consensual Sexual Intercourse:

Non-Sexual Intercourse is

- A. any sexual intercourse
- B. however slight,
- C. with any object,
- D. by a man or woman upon a man or a woman,
- E. that is without consent and/or by force.

Intercourse includes:

Vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

Sexual Exploitation

Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- A. Invasion of sexual privacy;
- B. prostituting another student;

- C. non-consensual video or audio-taping of sexual activity;
- D. going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- E. engaging in voyeurism;
- F. knowingly transmitting an STD or HIV to another student;
- G. Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- H. Sexually-based stalking and/or bullying may also be forms of sexual exploitation

ADDITIONAL APPLICABLE DEFINITIONS:

- *Consent*: Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- *Force* is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent ("Have sex with me or I'll hit you. Okay, don't hit me, I'll do what you want.").
- *Coercion* is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

NOTE: There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

- In order to give effective consent, one must be of legal age.
- Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.

- Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
- This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>
- Use of alcohol or other drugs will never function as a defense to a violation of this policy.
- The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy.

SANCTION STATEMENT

- Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from conduct review to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations. *
- Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion. *
- Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from conduct review to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations. *

*The student conduct officer reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN GENDER-BASED)

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;

2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the NSU community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1st Amendment).
6. Violence between those in an intimate relationship to each other;
7. Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.

GUIDANCE ON REPORTING

NSU encourages students who have experienced any form of gender-based discrimination and/or sexual misconduct to report the incident promptly, to seek all available assistance, to pursue Student Conduct Code charges, and where appropriate, pursue criminal prosecution of the offender. NSU takes complaints very seriously and will work with complaining parties to ensure their safety and to remedy the situation.

OFFICES WHERE A COMPLAINT OR REPORT MAY BE FILED

NSU encourages those who have experienced sex discrimination to report these offenses to the Title IX Coordinator. Sexual misconduct offenses may also be reported to the NSU Police Department.

Title IX Coordinator Alan Ford

ford40@nsuok.edu

918.444.2120

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Student Affairs Administrative Office

Tahlequah

Administration Building, Office 209
(918) 444-2120

Broken Arrow

Administration Building, Office 211
(918) 449-6122

Human Resources

Administration Building, Office 115
(918) 444-2230

Northeastern State University Police Department

On-campus ext. 2468

Off-campus (918) 458-2111 or (918) 444-2468
830 North Grand Avenue Tahlequah, OK 74464

Broken Arrow campus ext. 6248

Broken Arrow off-campus (918) 449-6248

Muskogee campus ext. 5010

Muskogee off-campus (918) 683-5010

In case of emergency, call 911.

Guidance on Taking Immediate Action

Tell a trusted person about the incident. Depending on the nature of the offense, you may contact the:

Northeastern State University Police Department at
(918) 458-2111 or (918) 444-2468

Title IX Coordinator at (918) 444-2120

Local Police at 911

Or, go directly to local hospital

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Other helpful resources include:

Hawk Reach Student Services at (918) 444-2042
NSU Violence Outreach and Prevention at (918) 444-2042

NSU Behavior Intervention Team at (918) 444-2120

In the event that sexual assault or violence occurred, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. (The decision to press charges does not have to be made at this time. However, following these procedures will help preserve this option for the future.) Complaining parties should not bathe, urinate, douche, brush teeth, or drink liquids. Clothes should not be changed; but if they are, bring all the original clothing to the hospital in a paper bag, as plastic bags may damage the evidence.

When necessary, seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after the medical examination.

STATEMENT ON PROCEDURE

In student conduct hearings, legal terms like “guilt,” “innocence” and “burdens of proof” are not applicable, but the NSU never assumes a student is in violation of NSU policy. Campus hearings are conducted to take into account the totality of all evidence available, from all relevant sources.

NSU reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students’ rights and personal safety. Such measures include, but are not limited to, modification of living arrangements, interim suspension from campus pending a conduct conference, and reporting the matter to the local police. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and NSU reserves the right to impose different sanctions, ranging from written warning to expulsion, depending on the severity of the offense. NSU will consider the concerns and rights of both the complainant and the person accused of sexual misconduct.

GRIEVANCE PROCEDURE

All incidents of sex discrimination, including sexual misconduct or retaliation, should be reported to the Title IX Coordinator. The Title IX Coordinator will provide for the adequate, reliable, and impartial investigations on all complaints.

Procedure

Once a complaint of sex discrimination is made, an investigation of the report shall be pursued within seven calendar days.

To ensure a prompt and thorough investigation, the complainant should provide as much of the following information as possible:

- The name, department, and/or position of the person or persons allegedly causing the sex discrimination (which includes: sexual misconduct, sexual violence, and harassment) or retaliation;
- A description of the incident(s), including the date(s), location(s), and the presence of any witnesses;
- The names of other students or employees who might have been subject to the same or similar sex discrimination or retaliation;
- Any steps the complainant has taken to try to stop the sex discrimination or retaliation; and
- Any other information the complainant believes to be relevant to the sex discrimination, harassment, or retaliation. Individuals are encouraged to utilize the university's "Complaint Form" available online at <http://offices.nsuok.edu/studentaffairs/Forms.aspx>.

An investigation into the report shall be conducted. The Title IX Coordinator will assign investigators. All investigations will be conducted by at least two investigators who have received appropriate training approved by the Title IX Coordinator. This may include but is not limited to the Title IX Coordinator, other appropriate NSU administration, etc. The investigation shall be concluded as quickly as possible, typically within seven calendar days or within a reasonable amount of time required to complete the investigation. The investigation will be conducted in a manner so that it is adequate, reliable and impartial.

The investigation may include any of the following: interviews of the parties involved, including witnesses, and the gathering of other relevant information.

Parties to the complaint may present witnesses and other evidence. At any time during the investigation, the investigators may recommend that interim protections or remedies for the parties involved or witnesses be provided by appropriate NSU officials. These protections or remedies may include

separating the parties, placing limitations on contact between the parties, temporary suspension, or making alternative, classroom, workplace or student housing arrangements. Failure to comply with the terms of interim protections may be considered a separate violation(s) of the Student Conduct Code.

Once the investigation is concluded, a written investigative report shall be submitted to the Title IX Coordinator within three (3) days. The investigation report is a written report describing the factual findings gathered from the investigation with description of all the interviews and any other documents reviewed. The Title IX Coordinator will determine whether further action is needed pursuant to NSU policy and/or state or federal law, and respond accordingly. If further action is deemed necessary informal resolution process or disciplinary procedures will be initiated.

NSU shall take reasonable steps to prevent the recurrence of sex discrimination or retaliation in any form. If the reoccurrence takes place, those responsible for such behavior may be subject to disciplinary action under the Student Conduct Code or Employee Handbook if the person is an employee or third party.

NSU will take all necessary steps to remedy the discriminatory effects on the victim(s) and others. Examples of such remedies may include: order of no contact, residence hall relocation, classroom re- assignment, or other appropriate remedies.

PROCEDURAL CONSIDERATIONS

Jurisdiction

This policy applies to any allegation of sex discrimination against members of the NSU community on NSU property, in NSU programs, on land NSU leases or controls, or at events NSU sponsors. NSU may address off-campus or out-of-school harassment, including but not limited to public forums (Internet speech, Facebook, etc.), only when those off-campus or out-of-school acts have a demonstrable and significant on-campus or in-school disruptive impact.

Confidentiality

Those who have experienced sex discrimination should know that all NSU employees (i.e. Resident Assistants, University Police, faculty, staff members, etc.) must report incident to NSU officials, specifically Title IX Coordinator or NSU Police Department.

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If you would like to report an incident or speak to someone about something that happened and you desire that details of the incident be kept confidential, you should speak with staff members of the Hawk Reach Student Services, and/or off-campus rape crisis resources, who will maintain confidentiality. NSU counselors are available to help you free of charge, and can be seen on an emergency basis.

All inquiries, complaints, and investigations are treated with discretion. Information is revealed as law and policy permit. However, the identity of the complainant is usually revealed to the person(s) accused of such conduct and any witnesses with consent of the complainant. Publicizing information about alleged sex discrimination or retaliation is strictly prohibited and may be considered a violation of NSU policy and Student Conduct Code.

The Title IX Coordinator shall maintain all information in secure files pertaining to a complaint or investigation.

Federal Statistical Reporting Obligations:

Certain campus officials (campus security officials) have a duty to report violations of this policy for federal statistical reporting purposes. All personally identifiable information is kept private, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given), for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety.

Federal Timely Warning Reporting Obligations:

Victims of sex discrimination should also be aware that NSU administrators must issue timely warnings for certain types of incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community under Federal "Clery" law. NSU will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

Cooperation with Law Enforcement

NSU will implement appropriate interim steps during the law enforcement agency's investigation period to provide for the safety of the victim(s) and the campus community and the avoidance of retaliation.

SPECIAL PROVISIONS

NSU as Complainant

As necessary, NSU reserves the right to initiate a student conduct complaint, to serve as complainant, and to initiate conduct proceedings without a formal complaint by the victim or complainant.

Good Samaritan

The welfare of students in our community is of paramount importance. At times, students on and off-campus may need assistance. NSU encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, as student who has been drinking underage might hesitate to help take a victim of sexual misconduct to NSU Police). NSU pursues a policy of limited immunity for students who offer help to others in need. While Student Conduct Code violations cannot be overlooked, NSU will take into consideration the positive actions of those who offer their assistance to others in need.

Parental Notification

NSU reserves the right to notify parents/guardians of dependent students regarding any health or safety emergency, change in student status or conduct situation, particularly alcohol and other drug violations. NSU may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not-dependent, NSU will contact parents/guardians to inform them of situations in which there is a health and/or safety risk. NSU also reserves the right to designate which NSU officials have a need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act.

Notification of Outcomes

The outcome of a Title IX investigation involving students is part of the education record of the student parties involved, and is protected from release under a federal law, FERPA. However, NSU observes the legal exceptions that allow for notification of the parties involved and others whom NSU determines to inform based on the law and this policy.

Students who bring any sort of sex discrimination complaint against faculty or staff may be informed of the outcome of the investigation and the resolution.

NSU may release publicly the name, nature of the violation and the sanction for any student who is found in violation of NSU policy that is a "crime of violence," including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction. The will release this information to the complainant in any of these offenses regardless of the outcome.