

3349-10-75 Sexual harassment under Title IX.**(A) Purpose**

The university is committed to maintaining an environment in which students and employees of the university can work, learn, and participate in activities free from sexual harassment. Title IX of the education amendments of 1972 and its associated regulations prohibit discrimination on the basis of sex in any education program or activity receiving federal funds. The conduct outlined in this rule, committed against any students or employees of the university, are prohibited conduct under federal law.

(B) Scope

This rule applies to acts committed by students, employees, or visitors/vendors of the university regardless of gender identity or expression or sexual orientation. This rule defines prohibited conduct as it relates to sexual harassment under Title IX of the education amendments of 1972. Students and employees of the university may be victims of sexual harassment by individuals unaffiliated with the university.

Formal complaints of sexual harassment filed by a complainant or signed by the Title IX coordinator will be resolved in accordance with the university's Title IX grievance procedures set forth in this rule. The Title IX grievance procedures have been developed to provide an equitable process for determining whether a violation of this rule has occurred, as well as to remediate the effects, and prevent the occurrence of, prohibited conduct in violation of this rule.

(C) Definitions

(1) "Actual knowledge" refers to notice of sexual harassment or allegations of sexual harassment to the Title IX coordinator or any official with authority (OWA).

- (2) “Complainant” refers to an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Where the Title IX coordinator signs a formal complaint, the Title IX coordinator is not a complainant or otherwise a party in the matter.
- (3) “Coercion” for the purposes of this rule refers to the intimidation, threats of the physical or psychological nature, or pressure used to force another to engage in sexual acts.
- (4) “Consent” for the purposes of this rule, refers to permission or agreement to engage in sexual activity. Consent can be given by words or actions as long as those words or actions create mutually understandable permission and willingness to engage in sexual activity. Consent must be active; silence cannot constitute consent nor can consent to one form of sexual activity be implied as consent to another form of activity. Consent can be withdrawn at any time and previous consent for a sexual act cannot imply future consent. Consent for sexual activity is not present if an individual:
- (a) Is in a state of incapacitation (from alcohol or drug use or mental or physical impairment) whereas another individual knows or should have reasonably known of the incapacitation;
 - (b) Is coerced;
 - (c) Is subjected to the use of force or the threat of force;
 - (d) Is unconscious or unaware the act is being committed; or

- (e) Is unable to consent due to age.
- (5) “Course of conduct,” as it relates to stalking, means two or more acts, including, but not limited to, acts in which the stalker 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.
- (6) “Education program or activity” refers to locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the sexual harassment occurred, including any building owned or controlled by a student organization that is officially recognized by the university.
- (7) “Formal complaint” refers to a document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the university address the allegation of sexual harassment.
- (8) “Incapacitation” refers to the state of substantial impairment when an individual is unable to make reasonable, rational decisions because they lack the capacity to give knowing consent. For the purposes of this rule, incapacitation includes individuals whose impairment results from physical or mental disabilities, involuntary restraint, or the consumption of alcohol or other drugs. Incapacitation cannot be used in a defense for behavior that violates this rule.
- (9) “Official with authority” refers to an employee who has authority to institute corrective measures for sexual harassment on behalf of the university. For the purposes of this rule, OWAs include the

Title IX coordinator, vice president of human resources, senior executive director of academic affairs and student services, assistant dean of students in the college of medicine, assistant dean of student success in the college of pharmacy, and vice dean in the college of graduate studies.

- (10) “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.
- (11) “Respondent” refers to the person alleged to have engaged in conduct that could constitute sexual harassment as defined in this rule. A respondent is presumed not responsible for the alleged conduct until a determination is made in accordance with this rule.
- (12) “Retaliation” refers to intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or because an individual made a report or complaint, or participated or refused to participate in any Title IX grievance process.
- (13) “Sexual harassment,” for the purposes of this rule, refers to conduct on the basis of sex which occurs within the university’s education program or activity against a person in the united states, and satisfies one or more of the following:
- (a) “Sexual harassment by quid pro quo” is an employee of the university conditioning the provision of an aid, benefit, or service of the university on an individual’s participation in unwelcome sexual conduct;
- (b) “Sexual harassment by hostile environment” is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university’s education program or activity; or

- (c) Conduct that meets any of the following definitions:
- (i) “Sexual assault” includes conduct that meets any of the following definitions:
- (a) “Rape” means the carnal knowledge of a person, without the victim’s consent, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. “carnal knowledge” means the slightest penetration of vagina by the penis.
- (b) “Sodomy” means non-consensual oral or anal sexual intercourse with another person, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- (c) “Sexual assault with an object” means use an object or instrument (other than a person’s genitalia) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the victim’s consent, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- (d) “Fondling” means the touching of the private body parts of another person for the purpose of sexual gratification, without the

victim's consent, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

(e) "Incest" means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(f) "Statutory rape" means sexual intercourse with a person who is under the statutory age of consent.

(ii) "Dating violence" means an act of 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 by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(iii) "Domestic violence" refers to felony or misdemeanor crimes 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 receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

(iv) “Stalking” refers to engaging in a course of conduct directed at a specific person that would cause a reasonable person with similar characteristics under similar circumstances to:

(a) Fear for the person’s safety or the safety of others; or

(b) Suffer substantial emotional distress.

(D) Body of rule

(1) Jurisdiction. To meet the jurisdictional conditions of Title IX, alleged conduct must occur in the university’s education program or activity or within the scope of employment against a person in the united states. This includes alleged conduct which occurs on campus or as part of the university’s operations, including computer and online platforms owned and operated by, or used in the operations of the university.

(a) Complaints of alleged conduct that does not fall under the jurisdiction conditions set forth in paragraph (D)(1) of this rule will be dismissed for the purposes of Title IX. In situations where a complaint is dismissed under Title IX, the parties will be notified in writing and given a period of five business days to appeal the dismissal, in writing, to the vice president for human resources and diversity (or designee). Allegations dismissed under Title IX may still constitute a violation of other university rule and may be addressed using separate conduct processes.

(b) The university may dismiss a formal complaint or any allegations therein, if at any time during the grievance process, prior to reaching an informal or formal resolution:

- (i) The complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations it contains;
- (ii) The respondent is no longer enrolled or employed by the university; or
- (iii) Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations it contains.

(2) Reporting

- (a) Title IX coordinator. Reports of sexual harassment should be made to the Title IX coordinator, whose contact information can be found at <https://www.neomed.edu/diversity/title-ix/>. Reports may be made at any time, including during non-business hours.
- (b) Law enforcement. Reports may be made to the NEOMED police department at 330-325-5911 or to the Portage county sheriff's office at 330-296-5100 if a person believes the sexual harassment he/she experienced may constitute a crime. A report can be made to both law enforcement and university employees designed in this rule. Reports made to the NEOMED police department are not confidential.
- (c) Other reporting sources. Reports made to officials with authority are not confidential. These individuals are required to inform the Title IX coordinator of any such report made to them:
 - (i) Vice president of human resources;

- (ii) Senior executive director of academic affairs and student services;
 - (iii) Assistant dean of students in the college of medicine;
 - (iv) Assistant dean of student success in the college of pharmacy; and
 - (v) Vice dean in the college of graduate studies.
- (d) Confidential reports. Reports made to one of the licensed counselors in the center for student wellness and counseling services (CSWCS) are confidential and will not be reported to the Title IX coordinator.
- (e) Anonymous reports. Anonymous reports will be accepted; however, in these instances, the university's ability to provide supportive measures or investigate the alleged conduct may be compromised. The university will address anonymous complaints to the extent possible.
- (f) Consolidation of formal complaints. The university may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.
- (g) False complaints. Intentionally filing a false complaint of sexual harassment is a violation of this rule and could constitute a criminal act. Evidence of this nature will be referred to the university's general counsel.
- (h) Retaliation. Neither the university nor any other person may retaliate against an individual for the purpose of

interfering with any right or privilege secured by Title IX or because an individual made a report or complaint, or participated or refused to participate in any Title IX grievance process. Retaliation should be reported promptly to the Title IX coordinator. Evidence of retaliation is grounds for disciplinary action.

- (i) Limited amnesty. Individuals who make a report of sexual harassment or participate in any sexual harassment grievance procedure may not be subject to disciplinary action by the university for behavior that is otherwise considered a violation of the student conduct code or terms of employment. This includes the personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not place the health or safety of any other person at risk.

(3) Supportive measures

- (a) Supportive measures are non-disciplinary, non-punitive individualized services offered by the Title IX coordinator as appropriate and as reasonably available, without fee or charge, to the complainant or respondent. Supportive measures may be offered before or after the filing of a formal complaint, or where no formal complaint has been filed.
- (b) Supportive measures are designed to restore or preserve equal access to the university's education program or activity.
- (c) Supportive measures may include, but are not limited to:
- (i) Mutual no contact directives;
 - (ii) Counseling and health services;

- (iii) Course-related adjustments;
- (iv) Modifications of work or class schedules;
- (v) Campus escort services;
- (vi) Academic support;
- (vii) Consideration of leave requests; and
- (viii) Designated hours for use of shared facilities.

(4) Resources and support

(a) Confidential resources

- (i) The CSWCS is an on-campus confidential resource and can be reached at 330-325-6757. Making a report to CSWCS licensed counselors will not result in a report to law enforcement or other university personnel, including the Title IX coordinator.
- (ii) Off-campus, twenty-four/seven local crisis resources include townhall II, which can be reached at 330-678-4357(help), and coleman professional services, which can be reached at 330-296-3555.

(b) Treatment. Any person who has experienced an act of sexual violence is encouraged to go to the nearest emergency room or hospital for evaluation, treatment, and counseling. St. Thomas hospital in Akron, Ohio, offers specialized services for victims of sexual violence. Though a person who has experienced an act of sexual violence may choose whether to notify law enforcement authorities about the offense, filing a police report near in time will:

- (i) Ensure the person receives necessary medical treatment and tests at no expense;
 - (ii) Provide an opportunity for the time-sensitive collection of evidence helpful in the prosecution, such as collecting soiled clothes and advising the person to refrain from bathing or douching, washing his/her face, urinating, drinking liquids, eating, or brushing his/her teeth; and
 - (iii) Assure that the person has access to free confidential counseling from counselors specifically trained in the area of sexual assault crisis intervention.
- (5) Procedures for resolving formal complaints of sexual harassment
 - (a) Informal resolution
 - (i) Informal resolution is only available in situations where a formal complaint has been filed by the complainant.
 - (ii) After a formal complaint is filed, the respondent will be provided notice of the allegations of sexual harassment potentially constituting a violation of this rule. The respondent will be given sufficient time to prepare for any informal resolution.
 - (iii) In order to proceed with an informal resolution, both parties must provide voluntary, written consent to the informal resolution process. In situations where neither party, or only one of the parties, agrees to an informal resolution, the Title IX coordinator will proceed with the formal resolution process.

- (iv) In situations where the respondent is an employee of the university and the complainant is a student of the university, there is no option for informal resolution and the Title IX coordinator will proceed with the formal resolution process.
- (v) Any informal resolution will be conducted through a facilitator in a manner designed to provide a prompt, fair, and impartial resolution.
- (vi) Both parties have the right to be accompanied at any meetings as part of the informal process by an advisor of choice.
- (vii) The complainant and respondent are not required to address the formal complaint directly with one another if they choose to pursue an informal resolution.
- (viii) Both parties have the right to discontinue the informal resolution and initiate the formal resolution process at any time prior to both parties signing an informal resolution agreement.
- (ix) Both parties have the right to request an informal resolution prior to any hearings as part of the formal resolution process; however, both parties must agree, in writing, to proceed with an informal resolution.
- (x) Both parties will be asked to sign an informal resolution agreement within three business days of the conclusion of the informal resolution. If one or both of the parties does not sign the informal resolution agreement within the specified timeframe, the Title IX coordinator will proceed with the formal resolution process.

(xi) The case will be closed once both parties have signed an informal resolution agreement. There are no bases to appeal an informal resolution.

(b) Formal resolution

(i) Formal resolution is only available in situations where a formal complaint has been filed by the complainant or signed by the Title IX coordinator.

(ii) Any formal resolution will be conducted in a manner designed to provide a prompt, fair, and impartial resolution.

(iii) Both parties have the right to be accompanied at any meetings, interviews, or hearings as part of the formal process by an advisor of choice.

(iv) There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the formal resolution process.

(v) After a formal complaint is filed, the respondent will be provided notice of the allegations of sexual harassment potentially constituting a violation of this rule, along with adequate time to prepare for any initial interview.

(vi) A formal investigation into the allegations will include interview(s) with the complainant, interview(s) with the respondent, and interviews with any witnesses believed to possess relevant evidence regarding the allegations.

- (vii) Both parties will have an opportunity to examine any relevant evidence collected throughout the investigation and will have a period of ten business days to submit a written response.
- (viii) The investigator(s) will compile a final investigatory report, which will be provided to both parties and their advisors of choice no less than ten business days prior to any hearings on the matter.
- (ix) Live hearings will take place via video conference and will be closed to the public. During the live hearing, both parties will have the opportunity to cross-examine one another, as well as any witnesses, through an advisor of choice. If either party does not have an advisor of choice, an advisor will be provided by the university at no cost for the sole purpose of conducting the cross-examination.
- (x) If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.
- (xi) The preponderance of the evidence standard will be applied in any formal resolution process initiated by a formal complaint of sex-based harassment. A “preponderance of the evidence” is met if it is determined to be more likely than not, based on the evidence available, that the respondent’s behavior violated the sexual harassment under this rule.

- (xii) At the conclusion of the live hearing, the decision maker(s) issue a written decision, which shall include the following:
 - (a) A statement of the allegations made to support a claim of sexual misconduct;
 - (b) A description of the procedures followed throughout the process, starting from the formal complaint through the determination;
 - (c) The findings of fact to support the determination;
 - (d) A conclusion regarding whether the university rule was violated based on the factual findings;
 - (e) A statement of the result as to each allegation, including the rationale for the statement and a determination of responsibility;
 - (f) A statement of any disciplinary sanctions imposed upon the respondent or remedies put in place in to restore or preserve; and
 - (g) The procedure and available bases for appeal.

- (c) Appeals. Only formal resolutions may be appealed. Both parties have the right to submit a written appeal within five business days of receiving the written decision. Appeals should be submitted to the vice president for human resources and diversity or designee. Appeals can only be made on any one of the following grounds:

- (i) Procedural irregularity that affected the outcome of the matter;
- (ii) 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; and
- (iii) 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.

(6) Disciplinary sanctions

Sanctions may only be imposed as the result of disciplinary proceedings and may not be imposed prior to informal resolution or a finding of responsibility at the conclusion of the formal process. Possible sanctions include:

- (a) Suspension from or termination of further employment;
- (b) Suspension or dismissal from further matriculation;
- (c) Adjustments to work, living or learning situations;
- (d) No-contact directives;
- (e) Educational intervention; or
- (f) Restrictions from participating in co-curricular activities.

(7) Emergency removal and administrative leave. The university may remove a respondent from the university's education program or

activity on an emergency basis. Prior to removal, the university will conduct an individualized safety and risk analysis and must determine that an immediate threat to the physical health or safety of any student, employee, or other individual arising from the allegations of sexual harassment justifies removal. The university will provide notice of an emergency removal and give the respondent an opportunity to challenge the emergency removal decision immediately following the removal.

The university may place a non-student employee respondent on administrative leave while a grievance process is pending.

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Certification

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