

	Title: Northwest Indian College Title IX Policy	Policy # POL-325 Revision # 0.0
Prepared By:	Victoria Retasket/Dean of Students KLF, attorney review	Date Prepared: 5/12/2020
Approved By:	College President's Signature 	11/10/2020
Effective Date: mm/dd/yyyy	Board of Trustees President's Signature 	Date Approved: 01/13/2021

### 325.1 POLICY STATEMENT

It is the policy of that Northwest Indian College (NWIC) maintain a community as a place of work and study for staff, faculty, and students free of harassment, including sexual and gender harassment and all forms of sexual intimidation and exploitation. Northwest Indian College will address all incidents alleging sex discrimination and sexual harassment reported to the Northwest Indian College Title IX Coordinator in compliance with the Higher Education Opportunity Act, the Clery Act, and Title IX of the Education Amendments of 1972.

### 325.2 PURPOSE

The purpose of this policy is to ensure that sexual harassment and sexual discrimination by any faculty, staff, or student that is a violation of law and/or College policy will not be tolerated at NWIC. The college considers sexual harassment and sexual discrimination to be a very serious issue and shall subject the offender to dismissal or other sanctions following the College's Title IX investigation and substantiation of the complaint and compliance with due process requirements. In addition, comprehensive information is provided regarding the reporting of sex discrimination and sexual harassment and avenues to seek immediate assistance.

### 325.3 SCOPE

All students, staff and faculty should be aware that the College is concerned and prepared to take action to prevent and correct such behavior. NWIC must respond when sex discrimination and harassment occur in the school's education program or activity. Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus, including online instruction.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address listed for the Title IX Coordinator.

Individuals are responsible for immediately reporting any knowledge or information concerning sexual harassment to the NWIC Title IX Coordinator identified in this policy which covers unwelcome conduct

of a sexual or gender-based nature, whether committed on-campus, or off-campus where NWIC has control over the respondent or the context of the harassment.

#### 325.4 BACKGROUND

As a recipient of federal funds, Northwest Indian College is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. §1681 et seq. ("Title IX"), which prohibits discrimination on the basis of sex in educational programs or activities, admission, and employment. Under certain circumstances, Sexual Harassment (defined below) constitutes sexual discrimination prohibited by Title IX. Inquiries concerning the application of Title IX may be referred to Northwest Indian College's Title IX Coordinator or to the U.S. Department of Education's Office for Civil Rights. Northwest Indian College's Title IX Coordinator is Victoria Retasket, whose office is in Building 17, Center for Student Success at 2522 Kwina Road, Bellingham WA; Phone – (360)392-4255 – email [vretasket@nwic.edu](mailto:vretasket@nwic.edu)

#### 325.5 RESPONSIBILITY

The responsibility for carrying out this policy lies with the Dean of Students/Title IX Coordinator.

#### 325.5 DEFINITIONS

Northwest Indian College defines sex discrimination and sexual harassment broadly to include any of three types of misconduct on the basis of sex (or gender), all of which jeopardize the equal access to education that Title IX is designed to protect: Any instance of quid pro quo harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Offenses prohibited under NWIC's policy include, but are not limited to sex discrimination (including sexual orientation discrimination and gender identity or gender expression discrimination), sexual harassment, sexual violence to include non-consensual sexual contact, non-consensual sexual intercourse, sexual coercion, domestic/dating violence, stalking, and sexual exploitation.

- A. Sex Discrimination: includes sexual harassment and is defined as conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment, education, or institutional benefits, on account of sex or gender (including sexual orientation, gender identity, and gender expression discrimination). It may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.
- B. Sexual Harassment: is unwelcome and discriminatory speech or conduct undertaken because of an individual's gender or is sexual in nature and is so severe, pervasive, or persistent, objectively and subjectively offensive that it has the systematic effect of unreasonably interfering with or depriving someone of educational, institutional, or employment access, benefits, activities, or opportunities. Students and visitors who are subject to or who witness unwelcome conduct of a sexual nature are encouraged to report the incident(s) to the Title IX Coordinator or any NWIC employee. Employees who are subject to unwelcome conduct of a sexual nature are encouraged to report the incident(s) to the Title IX Coordinator or any NWIC employee. Employees who

witness or receive reports of unwelcome conduct of a sexual nature are required to report the incident(s) or reports received to the Title IX Coordinator and Human Resources.

1. Hostile Environment: Sexual Harassment includes conduct that is sufficiently severe, pervasive, or persistent, objectively and subjectively offensive that it alters the conditions of education or employment or institutional benefits of a reasonable person with the same characteristics of the victim of the harassing conduct. Whether conduct is harassing is based upon examining a totality of circumstances, including but not limited to:
  - The frequency of the conduct;
  - The nature and severity of the conduct;
  - Whether the conduct was physically threatening;
  - Whether the conduct was deliberate, repeated humiliation based upon sex;
  - The effect of the conduct on the alleged victim's mental or emotional state from the perspective of a reasonable person;
  - Whether the conduct was directed at more than one person;
  - Whether the conduct arose in the context of other discriminatory conduct;
  - Continued or repeated verbal abuse of a sexual nature, such as gratuitous suggestive comments and sexually explicit jokes; and
  - Whether the speech or conduct deserves constitutional protections.
  
2. Quid Pro Quo Sexual Harassment exists when individuals in positions of authority over the complainant:
  - Make unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and
  - Indicate, explicitly or implicitly, that failure to submit to or the rejection of such conduct will result in adverse educational or employment action or where participation in an educational program or institutional activity or benefit is conditioned upon the complainant's submission to such activity.

Examples of Harassment:

- An instructor insists that a student have sex with him/her in exchange for a good grade or other favorable treatment. This is harassment regardless of whether the student agrees to the request.
  - A student repeatedly sends sexually oriented jokes around in an email list he or she created, even when asked to stop, causing one recipient to avoid the sender on campus and in the dorms in which they both live.
  - The instructor probes a student for explicit details of a sexual nature, and demands that students respond to him or her, though they are clearly uncomfortable and hesitant.
  - An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to his clear discomfort.
  - A student teases or taunts another student for stereotypical characteristics insinuating the victim is homosexual (whether or not the teasing is true.)
- C. Sexual Violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give

consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties.

1. Non-Consensual Sexual Contact is any intentional touching, however slight, whether clothed or unclothed, of the victim's intimate body parts (primarily genital area, groin, inner thigh, buttock or breast) with any object or body part, without consent and/or by force. It also includes the touching of any part of a victim's body using the perpetrator's genitalia and/or forcing the victim to touch the intimate areas of the perpetrator or any contact in a sexual manner even if not involving contact of or by breasts, buttocks, groin, genitals, mouth or other orifice. This definition includes sexual battery and Sexual Harassment.
2. Non-Consensual Sexual Intercourse is defined as any sexual intercourse or penetration of the anal, oral, vaginal, genital opening of the victim, including sexual intercourse or penetration by any part of a person's body or by the use of an object, however slight, by one person to another without consent or against the victim's will. This definition includes rape and sexual assault, Sexual Harassment, and sexual violence.
  - a) Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes any gender of victim or perpetrator. Sexual penetration means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.
3. Sexual Coercion is the act of using pressure (including physical pressure, verbal pressure or emotional pressure), alcohol, medications, drugs, or force to have sexual contact against someone's will or with someone who has already refused. This includes rape, sexual assault, sexual exploitation and Sexual Harassment.
4. Dating violence is violence between individuals in the following circumstances:  
The party is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - The existence of such a relationship shall be determined based on a consideration of the following factors:
    - Length of the relationship
    - Type of relationship
    - Frequency of interaction between the persons involved in the relationshipThe existence of a current or past romantic or physically intimate relationship does not serve to imply consent.
5. Domestic Violence under NWIC policy means violence committed by a current or former spouse, significant other, or family member of the victim;
  - A person with whom the victim shares a child in common;

- A person who is cohabitating with or has cohabitated with the victim as a spouse;
  - A person similarly situated to a spouse of the victim under Washington domestic or family violence laws;
  - Any other person against whom an adult or youth victim is protected from that person's acts under Washington domestic or family violence laws.
6. Stalking "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- Fear for his or her safety or the safety of others; or
  - Suffer substantial emotional distress.
- D. Advisor: A person who has agreed to assist a complainant or respondent during the Title IX process. The advisor may be a person of the student's choosing, including but not limited to a NWIC faculty or staff member, a friend or an attorney. The specific role of an Advisor is defined under Title IX procedures.
- E. Complainant: an individual who is alleged to be the victim of conduct that could constitute a violation of Title IX and/or college policy.
- F. Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination or sexual harassment.
- G. Formal complaint: a document filed by a complainant, a witness to the actions that give rise to the complaint, or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment and stating the date, time, place, name(s) of person(s) involved (e.g. the accused, witnesses) and sufficient detail to make a determination regarding basic elements of the formal complaint process. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.
- H. Supportive measures - individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.
- I. Consent - Consent is the act of willingly agreeing to engage in sexual contact or conduct. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and the absence of "No" may not mean "Yes".

Consent is informed, 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 permission regarding the conditions of sexual activity.

- a. Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
- b. Previous relationships or consent does not imply consent to future sexual acts.

- c. Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity.
- d. In order to give effective consent, one must be of legal age and have the capacity to consent. Incapacity may result from mental disability, intellectual disability, unconsciousness/sleep, age, or use of alcohol, drugs, medication, and/or other substances. Consent given by someone who one should know to be, or based on the circumstances, reasonably should have known to be, mentally or physically incapacitated, is a policy violation. Incapacitation is a state where someone cannot make rational, reasonable decisions because he or she lacks capacity to give knowing consent. Note: indications of consent are irrelevant if the initiator knows or should reasonably have known of the incapacity of the other person.
- e. Examples of when a person should know the other is incapacitated include, but are not limited to:
  - The amount of alcohol, medication or drugs consumed,
  - Imbalance or stumbling,
  - Slurred speech,
  - Lack of consciousness or inability to control bodily functions or movements, or vomiting, or
  - Mental disability or incapacity.
- f. Use of alcohol, medications, or other drugs will not excuse behavior that violates this policy.

## 325.6 GUIDELINES

### **Reporting**

Individuals who are aware of or have been subjected to sexual harassment are encouraged to promptly contact the Title IX Coordinator, Victoria Retasket, Dean of Students at (360) 392-4255, [vretasket@nwic.edu](mailto:vretasket@nwic.edu). If an individual is not able to report to the Title IX Coordinator for any reason, that individual may report to the Human Resources.

All NWIC employees are responsible for taking all appropriate action to prevent sex discrimination or sexual harassment, to correct it when it occurs, and to promptly report it to the Title IX Coordinator. Failure to do so may result in disciplinary action up to and including termination. All NWIC employees are considered responsible employees with a duty to report any incident to the Title IX Coordinator.

Because Sexual Harassment may in some instances constitute both a violation of NWIC policy and criminal activity, and because the NWIC grievance process is not a substitute for instituting legal action, the College encourages individuals to report alleged Sexual Harassment promptly to campus officials and to law enforcement authorities, where appropriate.

Individuals may, however, choose not to report alleged Sexual Harassment to such campus officials and/or law enforcement authorities. NWIC respects and supports the individual's decision with respect to reporting; nevertheless, NWIC may notify appropriate law enforcement authorities if required or warranted by the nature of the allegations at issue.

Individuals may file a Complaint at any time, but we strongly encourage individuals to file Complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding.

Individuals may file a complaint directly with local law enforcement agencies by dialing 911. Individuals may inform law enforcement authorities about Sexual Harassment and discuss the matter with a law enforcement officer without making a formal criminal complaint (or an NWIC Complaint). Individuals who make a criminal complaint may also choose to pursue an NWIC Complaint simultaneously. A criminal investigation into the matter does not preclude NWIC from conducting its own investigation (nor is a criminal investigation determinative of whether Sexual Harassment has occurred for purposes of this Policy,). However, the College's fact-finding aspect of the investigation may be delayed temporarily while the criminal investigators are gathering evidence. If that occurs, NWIC will promptly resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process. In the event of such a delay, the College may take interim measures when necessary to protect the alleged victim and/or the College community. Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate the matter is determinative of whether Sexual Harassment, for the purposes of this Policy, has occurred.

Individuals may choose not to report alleged Sexual Harassment to campus officials. The College respects and supports the individual's decision with respect to reporting; however, if information about Sexual Harassment comes to the attention of NWIC, NWIC may (1) start an investigation even in the absence of a filed Complaint and/or (2) notify appropriate law enforcement authorities if required or warranted by the nature of the information of which it becomes aware.

Anyone wishing to make a Complaint under this policy should contact one of the following individuals or offices:

- i. Title IX Coordinator: Victoria Retasket – [vretasket@nwic.edu](mailto:vretasket@nwic.edu) – (360) 392-4255
- ii. Campus Security: Lavonne Ballew – [lcballew@nwic.edu](mailto:lcballew@nwic.edu) – Cell: (360) 303-5581 Office: (360) 392-4429
- iii. Human resources office: Darcilynn Bob – [dbob@nwic.edu](mailto:dbob@nwic.edu) – (360) 392-4268

NWIC employees have a duty to immediately report all the details of an incident of Sexual Harassment (including the identities of both the victim and alleged perpetrator, any witnesses, and other relevant facts, including date, time, and specific location of alleged incident) to the Title IX Coordinator. A report to these employees constitutes a report to the College and generally obligates NWIC to investigate the incident and take appropriate steps to address the situation. When a victim reports an incident of Sexual Harassment, the victim has the right to expect the College to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

To the extent possible, information reported to an employee will be shared only with people responsible for handling the College's response to the report and will not be shared with law enforcement without the victim's consent unless the College is required to report under applicable law, or unless the victim has also reported the incident to law enforcement. If the victim requests

confidentiality, the employee will consider the request, but cannot guarantee that the College will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the employee will inform the Title IX Coordinator of the victim's request for confidentiality.

An individual may report alleged Sexual Harassment to a faculty or staff member other than those referenced above. No member of the NWIC community may discourage an individual from reporting alleged incidents of Sexual Harassment. A faculty or staff member with any knowledge (including firsthand observation) about a known or suspected incident of Sexual Harassment (other than health-care professionals and others who are statutorily barred from reporting) must immediately report the incident to the NWIC Security Department or the NWIC's Title IX Coordinator. No employee is authorized to investigate or resolve Complaints without the involvement of NWIC's Title IX Coordinator.

Although NWIC encourages victims to talk to someone, NWIC provides an opportunity for Darci Lynn anonymous reporting. Individuals wishing to report anonymously can email either campus security or the Title IX coordinator. Individuals who choose to file anonymous reports are advised that it may be very difficult for the College to follow up or take action on anonymous reports, where corroborating information is limited. Anonymous reports may be used for Clery Act data collection purposes. All forms of sexual harassment should be reported, no matter the severity. In addition, NWIC should be made aware of possible threats to the campus community in order to issue timely warnings. The report can be made any time, even during non-business hours.

After receiving a report or notice of an incident, the Title IX Coordinator will promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. A complainant's wishes with respect to whether NWIC investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

NWIC will promptly take necessary steps to protect the complainant and ensure safety as necessary, including taking interim steps before the final outcome of any investigation once a report or knowledge of sex discrimination or sexual harassment has occurred. Periodic updates on the status of the investigation will be provided to the complainant. If the school determines that the sexual violence occurred, NWIC will continue to take these steps to protect the complainant and ensure his or her safety, as necessary. NWIC will provide the complainant with any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, and assistance in reporting a crime to local law enforcement.

### **Written Notice of Complaint**

Upon receipt of a formal complaint, NWIC will provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview. Written notice includes:

- a. Notice of the complaint process, including any informal resolution process;
- b. Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response;
- c. A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the complaint process;
- d. Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- e. Notice that knowingly making false statements or providing false information in the complaint process is a violation of the code of conduct and subject to disciplinary

### **Investigation**

- A. Overview.** The Title IX Coordinator will be responsible for conducting, or in some circumstances delegating, the prompt, fair, and impartial investigation of Complaints filed with NWIC.
- B. Conflicts.** If any administrator or employee that is designated by this Policy to participate in the investigation or resolution of a Complaint is the Respondent (including, but not limited to, the Title IX Coordinator), then the President will appoint another NWIC administrator to perform such person's duties under this Policy.
- C. Timing.** NWIC will make every reasonable effort to ensure that the investigation and resolution of a Complaint occurs in as timely and efficient a manner as possible. NWIC's investigation and resolution of a Complaint (not including an appeal, if applicable) will generally be completed within 60 calendar days of the receipt of the Complaint, absent extenuating circumstances. Hearings, if any, will take place after the conclusion of the investigation. If hearings have taken place, both the Complainant and the Respondent generally will receive a Final Outcome Letter within seven (7) business days of the conclusion of the hearings.
  - a. Any party may request an extension of any deadline by providing the Title IX Coordinator with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request. The Title IX Coordinator may modify any deadlines contained in this Policy as necessary and for good cause. Both parties will be notified if and when a modification is made with a brief explanation of the need for the modification.
- D. Interim Measures.** If at any point during the complaint, investigative or disciplinary processes, the Title IX Coordinator reasonably believes that a Respondent who is a member of NWIC community poses a substantial threat of harm to any member of the campus community; threatens or endangers NWIC property; or disrupts the stability and continuance of normal NWIC operations and functions, the Title IX Coordinator may take actions such as the following:
  - a. For student Respondents:

- i. summarily suspend the Respondent from campus housing on an interim basis and/or restrict his or her movement on campus; or b. suspend the Respondent from campus.
    - ii. Limit Respondent's interaction with the Complainant by restricting his or her class or activity that Complainant may be involved in.
  - b. For employee Respondents' request that the individual authorized to make personnel decisions regarding the employee at issue:
    - i. take such steps as are reasonable, appropriate, and necessary to restrict the Respondent's movement on campus; or
    - ii. reassign the Respondent or place him or her on paid or unpaid administrative leave.

Northwest Indian College will follow all legal requirements related to restraining or no-contact orders.

- E. **Complainant's Initial Meeting with the Title IX Coordinator.** As soon as is practicable after receiving notice of a Complaint, the Title IX Coordinator will contact the Complainant to schedule an initial meeting. At this initial meeting, the Title IX Coordinator, as applicable:
  - a. Provide the Complainant a copy of this Policy;
  - b. Provide the Complainant with an Incident Report Form on which the Complainant may, if he or she agrees to disclose the information, provide details regarding the allegation, including the name of the accused individual and the date, location, and general nature of the alleged Sexual Harassment (the Complainant may either complete the form him or herself or he or she may choose to dictate the information to the Title IX Coordinator, who will confirm the accuracy of his or her documentation with the Complainant);
  - c. Explain avenues for formal resolution and informal resolution (mediation) of the Complaint;
  - d. Explain the steps involved in a Sexual Harassment investigation and how the standards for the investigation determine the outcome (differ from legal standards);
  - e. Discuss confidentiality standards and concerns with the Complainant;
  - f. Determine whether the Complainant wishes to pursue a resolution (formal or informal) through NWIC, or no resolution of any kind;
  - g. Refer the Complainant to the Student Counseling Program or other resources, as appropriate; and
  - h. Discuss with the Complainant, as appropriate, possible interim measures that can be provided to the Complainant, at no cost, during the pendency of the investigative and resolution processes. NWIC may implement such measures if requested, appropriate, and reasonably available, whether a formal Complaint has been filed (with either the Title IX Coordinator or law enforcement agencies) or whether an investigation has commenced (by either the Title IX Coordinator or law enforcement agencies). Interim measures which prioritize Complainant safety may include, but are not limited to:
    - issuing no-contact orders to prevent any contact between the Complainant, the Respondent, witnesses and/or third parties;

- providing the Complainant an escort to ensure that he or she can move safely between classes, work, and/or activities;
  - providing assistance from NWIC support staff in completing the relocation;
  - arranging to dissolve campus housing and offering a pro-rated refund;
  - changing work arrangements;
  - rescheduling class work, assignments, and examinations without penalty;
  - arranging for the Complainant to take an incomplete in a class; or
  - moving the Complainant or the Respondent from one class to another without penalty;
  - permitting a temporary withdrawal from NWIC;
  - providing alternative course completion options without penalty;
  - providing counseling services;
  - suspension of Respondent's school travel or participation in school activities;
  - taking reasonable disciplinary action against the Respondent before resolution of the Complaint;
  - providing academic support services such as tutoring.
- i. A Complainant will receive written notification of the availability of the interim measures set forth in section 8 above whether or not the Complainant chooses to report the incident to NWIC Public Safety Department or local law enforcement.

Following the initial meeting with the Complainant, the Title IX Coordinator, will determine the interim measures to be provided to the Complainant. Such determination will be communicated to the Complainant and the Respondent.

- F. **Respondent's Initial Meeting with the Title IX Coordinator.** If the alleged victim wishes to pursue a formal or informal resolution through NWIC or if NWIC otherwise deems that a further investigation is warranted, as soon as is reasonably practicable after the Title IX Coordinator's initial meeting with the Complainant, the Title IX Coordinator will schedule an initial meeting with the Respondent. During the initial meeting with the Respondent, the Title IX Coordinator or will, as applicable:
- Provide Respondent with a copy of the Complaint;
  - Provide Respondent with a copy of this policy;
  - Explain NWIC's procedures for formal resolution and informal resolution (mediation) of the Complaint;
  - Explain the steps involved in a Sexual Harassment investigation and how the standards for the investigation determine the outcome (differ from legal standards);
  - Discuss confidentiality standards and concerns with the Respondent;
  - Discuss non-retaliation requirements with the Respondent;
  - Inform the Respondent of any interim measures already determined and being provided to the Complainant that directly affect the Respondent (e.g. changing his or her class schedule);

- Refer the Respondent to the Student Counseling Program or other resources, as appropriate; and;
- Discuss with the Respondent, as appropriate, possible interim measures that can be provided to the Respondent during the pendency of the investigative and resolution processes. NWIC may implement such measures if requested, appropriate, and reasonably available, whether a formal Complaint has been filed or whether an investigation by either campus administrators or law enforcement agencies has commenced.

### **The Investigation**

Upon receipt of the Complaint, the Title IX Investigator (Dean of Students) will promptly begin the investigation, taking steps such as:

- A. Conducting interviews with the Complainant, the Respondent, and third-party witnesses and summarizing such interviews in written form;
- B. Visiting, inspecting, and taking photographs at relevant sites; and
- C. Collecting and preserving relevant evidence (this step may be coordinated with law enforcement agencies).

Through the investigation, the Title IX Investigator will remain neutral. The Title IX Coordinator and Title IX Investigators will receive annual training on issues related to sexual harassment, sexual assault, intimate partner violence, and stalking.

The Title IX Coordinator and Title IX Investigators should obtain the written consent of any witnesses to the disclosure of any Personally Identifiable Information contained in the Complaint, the Investigative Report, and/or any other documents in order to further the resolution of this Complaint.

The Title IX Investigator will complete a written investigative report that includes items such as summaries of all interviews conducted, photographs, and descriptions of relevant evidence, summaries of relevant electronic records, and a detailed report of the events in question (“the Investigative Report”). The Title IX Investigator will provide the Investigative Report to the Title IX Coordinator. The Title IX Coordinator will provide the Investigative Report to the Deputy Title IX Coordinator who will distribute the Investigative Report to the alleged victim and the Respondent.

The investigation of complaints will be thorough, fact-based and impartial. The investigation process can take up to 60 days, or more in special circumstances. When investigating a complaint and throughout the complaint grievance process, NWIC must: (1) ensure that the burden of proof and of gathering evidence rests on NWIC rather than the parties; (2) provide an equal opportunity for the parties to present witnesses and evidence (3) not restrict either party’s ability to discuss the allegations or gather and present evidence; (4) provide the parties with the same opportunities to have others present during interviews or related proceedings, including an Advisor; (5) provide, to a party who is invited or expected to attend, written notice of the date, time, participants, purpose, and location of any investigative interview, hearing or other meeting with enough time to allow the party to prepare and

participate; (6) provide both parties and their Advisors an equal opportunity to review all evidence directly related to the allegations in the formal complaint (both exculpatory and inculpatory) at least 10 days prior to the completion of the final investigation; and (7) prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to both parties and their advisors for review and written response at least 10 days before a hearing or determination of responsibility. NWIC will determine if a Title IX hearing is necessary.

If it is determined that NWIC will proceed with a hearing, the complainant and the respondent will be notified in writing of the hearing date.

### **Mandatory or Permissive Dismissal**

Mandatory dismissal must occur when determined in the course of the investigation that allegation in a formal complaint: (1) did not occur in NWIC's program or activity; (2) did not constitute sexual harassment as defined; or (3) did not occur against a person within the US. Both parties must receive written notice of a mandatory dismissal and reasons.

Permissive dismissal may occur at any time during the investigation or hearing when: (1) a complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Complaint; or (2) the respondent is no longer enrolled or employed by NWIC; or (3) specific circumstances prevent NWIC from gathering evidence sufficient to reach a determination. Both parties must receive written notice of a permissive dismissal and reasons.

NWIC may still address allegations of misconduct under the Student Code of Conduct.

### **Institutional Action**

#### **Formal Versus Informal Resolution**

At any time before the notice of hearing is delivered, the alleged victim may elect to resolve his or her Complaint through the informal resolution (mediation) process, provided that:

- a. Both the Respondent and the Complainant agree to such resolution;
- b. The alleged victim and the Respondent are both students or are both employees of the College;
- c. The Title IX Coordinator determines that informal resolution is an appropriate mechanism for resolving the complaint; and;
- d. The Complaint does not involve Sexual Assault or Domestic Violence.

Otherwise, a Complaint will proceed to formal resolution in accordance with this Policy.

#### **Informal resolution (Mediation)**

Informal resolution is only appropriate if (1) the alleged victim requests it, (2) Both the Respondent and the Complainant agree to such resolution, (3) the alleged victim and the Respondent are both students or are both employees of NWIC, (4) the Title IX Coordinator determines that informal resolution is an

appropriate mechanism for resolving the Complaint, and (5) the Complaint does not involve Sexual Assault. Informal Resolution is not a prerequisite to pursuit of a formal resolution.

Informal resolution may not be selected for less than all of the misconduct alleged in the Complaint (for example the parties may not choose to resolve a claim of Sexual Assault according to the formal resolution process but mediate all other claims). If the parties agree to informal resolution (and informal resolution is appropriate for all of the claims at issue), then all of the claims must be resolved according to the informal resolution process. The alleged victim has the right to terminate the informal resolution process at any time and proceed with formal resolution. Furthermore, the Title IX Coordinator may, where appropriate, terminate or decline to initiate informal resolution, and proceed with formal resolution instead. In such cases, statements or disclosure made by the parties in the course of the informal resolution process may be considered in the subsequent formal resolution proceeding. Because the outcomes of voluntary resolution conversations are mutually developed and agreed upon by parties involved, an appeal of the process and its result is not permitted.

Northwest Indian College will document any informal resolution. The documentation will be retained by the Title IX Coordinator. The documentation will be kept confidential to the extent permitted by law and so long as maintaining confidentiality does not impede protecting the safety and well-being of NWIC students. If a complaint is filed in a faculty or staff's permanent record, the faculty or staff member must be notified. An informal resolution meeting is not a precondition for filing a formal written complaint.

### **Formal Resolution**

In the case of formal resolution, the Title IX Hearing Board will conduct a hearing in which it will question the Complainant, the alleged victim (if not the Complainant), the Respondent, and any witnesses or other third parties whose testimony the Hearing Board deems relevant. The Title IX Hearing Board will determine whether there has been a violation of the Sexual Harassment Policy, and if there has been, will determine the sanction to be imposed on the Respondent.

#### **A. Respondent's Acknowledgment of Responsibility Prior to Hearing**

At any time prior to the date of his or her designated hearing, the Respondent may elect to acknowledge his or her actions and take responsibility for the alleged Sexual Harassment. In such a situation, the Title IX Coordinator will propose sanction(s). If the victim and the Respondent agree to such proposed sanction(s), then the Complaint will be resolved without a hearing and without any further rights of appeal by any party. If either the victim or the Respondent objects to such proposed sanction(s), then the Sexual Harassment Hearing Board will convene for the exclusive purpose of determining a sanction, which determination may be subject to appeal

#### **B. The Title IX Hearing Board**

The Title IX Hearing Board shall have three members. The composition of the Hearing Board will be two faculty/staff members and will be chaired by someone other than the Title IX Coordinator. The Human Resources Director shall appoint faculty and staff members to serve as Title IX Hearing Board members for a period of one year. Each member of the Hearing Board will receive training annually.

### C. Hearing Policies and Procedures

The Title IX Coordinator will determine if a hearing is necessary; mediation is never appropriate in sexual violence cases. If it is determined that NWIC will proceed with a hearing, the complainant and the respondent will be notified in writing of the hearing date, the alleged policy violation and issued a notice to appear at the hearing. The written notice will be hand delivered directly to the student(s) or mailed to the local address as filed in the Registrar's Office. Students are responsible for providing and maintaining a current local address in the Registrar's Office.

The hearing members shall include at least one trauma trained individual in sex discrimination or sexual harassment adjudication to include a trained hearing members. The selection of the hearing members will be made by the Human Resources Director. Criteria for the hearing committee will include: 1) have received all appropriate training, 2) not a current instructor or have a familial or close personal connection of either party involved, 3) have no previous substantive or direct knowledge of the incident, and 4) have no other perceived conflict of interest as determined by interview process with the Title IX Coordinator.

Description of the duties of the Title IX Hearing Members will include but not limited to the following:

- Read and understand the Title IX Policy and Procedures, which include the hearing process.
- Read and understand all of the information of the Title IX case provided by the Coordinator prior to the hearing as part of a hearing packet.
- Read and understand the procedures of the Title IX hearing provided by the Coordinator prior to the hearing as part of a hearing packet.
- Have a clear understanding of the incident in question before going into deliberations for a decision.
- Decide the outcome (majority vote) and sanctions if needed based on the information presented, hearing notes, and the NWIC Title IX Policy.
- Provide copies of notes, if made, to the hearing officer. The hearing officer will inform the parties of the decision at the hearing and send a letter as described in this policy.

Complainant's Rights:

- Be given a written explanation of the allegations and the hearing process;
- Have access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Be accompanied by an Advisor during the hearing. The Advisor is limited to advising the student and may not present the case, or make statements during the proceedings. Students must provide NWIC with the name and contact information for the student's Advisor as soon as practical but at least three (3) days prior to the

hearing (if the advisor is an attorney, NWIC's attorney will also be present for the hearing in a capacity similar to that of the Advisor);

- Be given a timely hearing;
- Exclude evidence of the victim's past sexual history from discussion during the hearing. The past sexual history of the victim with persons other than the respondent shall be presumed irrelevant;
- Clarifying that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual harassment;
- Written notification of the outcome of the hearing including any sanctions; remedies/accommodations for the complainant; additional remedies for the school community;
- Written notification of any external counseling services that may be available;
- Written notification of options for changing academic, living, transportation, and work site situations if reasonable;
- Written notification of an avenue for appeal.

#### Respondent's Rights:

- Be given written notice of the allegations and the hearing process;
- Have access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Have no violation presumed until found responsible;
- Be given a timely hearing;
- Be accompanied by an advisor during the hearing. The advisor is limited to advising the student and may not present the case, or make statements during the proceedings. Students must provide NWIC with the name and contact information for the student's advisor as soon as practical but at least three (3) days prior to the hearing (if the advisor is an attorney, NWIC's attorney will also be present for the hearing in a capacity similar to that of the Advisor);
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- Written notification of the outcome of the hearing including any sanctions; remedies/accommodations for the complainant; additional remedies for the school community;
- Written notification of any external counseling services that may be available;
- Written notification of options for changing academic, living, transportation, and work site situations, if reasonable;
- Written notification of an avenue for appeal.

The hearing will include opening statements, presentation of each party's evidence and witnesses, and closing statements. Complainant and Respondent are permitted to be present during the hearing, except during deliberations of the panel. Complainant and Respondent are permitted to make statements, present witnesses and present evidence

during the hearing which has been previously collected and approved during the investigation process. Witnesses and evidence need to be directly related to the incident. The standard of proof used in NWIC Title IX Hearings is the preponderance of the evidence, which means the determination to be made is whether it is more likely than not a violation occurred. This is significantly different than proof beyond a reasonable doubt, which is required for a criminal conviction. In-person hearings are preferred, but videoconference hearings where the Complainant and Respondent can see the entire proceedings may be conducted if the hearing officer determines that the health, safety and welfare of all participants is better served by the alternate hearing mode.

#### **D. Outcome**

- a. The Decision of the Hearing Board.** Following the conclusion of the hearing, the Hearing Board will confer and by majority vote determine whether the evidence establishes that it is more likely than not that the Respondent violated the Sexual Harassment Policy. The deliberation portion of the hearing is closed to all but the Hearing Board members.
- b. Sanctions**
  - 1. Generally.** Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct. Sanctions may include expulsion or suspension from the College, disciplinary probation, expulsion from campus housing, mandated counseling, and/or educational sanctions deemed appropriate by the Hearing Board or Human Resources office. The Hearing Board will determine sanctions, giving consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the discriminatory effects of the violation of the Complainant, and if applicable, the NWIC community at large.
  - 2. Implementation of Sanctions.** Sanctions imposed do not take effect until the resolution of any timely appeal below. However, if it is advisable that in order to protect the welfare of the victim or the NWIC Community, the Hearing Board may recommend that any precautionary sanctions be effective immediately and continue in effect until such time as the appeal process is exhausted.
- c. Final Outcome Letter.** Within seven (7) business days following the conclusion of the hearing, the Hearing Board will issue a written decision letter to the Respondent, the Complainant, and the Title IX Coordinator.

#### **E. Appeals**

The Complainant or the Respondent may appeal, in writing, the decision of the Hearing Board and/or the sanction imposed on the Respondent within seven (7) business days from the date of the Final Outcome Letter. The decision of the Hearing Board and the sanction imposed on the Respondent may be appealed simultaneously. The only basis for appeal shall be:

- a. Alleged failure of the Hearing Board to follow the procedures set forth in the Sexual Harassment Policy or Title IX procedural requirements; or

- b. Consideration of new evidence that was not reasonably available at the time of the hearing before the Hearing Board. Students should appeal to Vice President of Student Services and Instruction. Employees should appeal to Director of Human Resources.

### **Report of Findings and Recommendation**

Both parties will be notified of the outcome in writing by certified mail or other agreed upon form of notice within five business days after the hearing at the same time. Both parties have the right to appeal the decision reached through the hearing proceedings within five days after the hearing.

### **Filing of a False Complaint**

Individuals whose complaint is found to be both false and to have been made with malicious intent will be subject to disciplinary action, which may include, but not limited to, demotion, transfer, suspension, expulsion, or termination of employment.

### **Prevention and Education**

#### **A. Education**

NWIC requires all employees to take an educational- training courses on an annual basis. Employees may be required to be recertified on demand. Failure to have a certification of this required training may result in appropriate disciplinary action. Additional in-person trainings are also offered periodically and on request.

#### **B. Bystander Intervention**

If you witness a policy violation, or behaviors that may lead to a policy violation, there are a variety of things you can do as a bystander:

- Divert the intended victim (e.g. “help me out of here; I don’t feel well”)
- Distract the perpetrator (e.g. “looks like your car is being towed”)
- Delegate to a person of authority (e.g. if at a nightclub let the bartender/bouncer know of the situation)
- Direct, confront the perpetrator (e.g. “don’t speak to him/her in that manner; you are going to get yourself into trouble”)
- Call 911 for law enforcement assistance.

#### **C. Risk Reduction Tips**

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to blame victims, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you reduce your risk of experiencing a non-consensual sexual act.

- Make your limits known as early as possible.
- Be aware of your alcohol intake. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends or colleagues and ask that they take care of you.

#### **D. Potential Aggressor**

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go; or about whether they are physically and/or mentally able to consent.
- If there are any questions or ambiguity, then you DO NOT have consent.

Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. You must respect the timeline for sexual behaviors with which they are comfortable.

- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size or your relationship (instructor, supervisor, etc.).
- Don't abuse that power. Understand that consent to one form of sexual behavior does not automatically imply consent to other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent.
- Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

### **Training**

Training on sexual misconduct: discrimination, harassment, and violence is included in NWIC's education program.

In-person training for student groups and students will be conducted through a variety of presentations, student orientation, and other meetings. In-person training for Active Bystander Intervention skills may include: On-going campus campaigns and information at a variety of events concerning the policy and appropriate behaviors, including Bystander Intervention. Informational website and brochures devoted to educating students will be presented at prevention workshops. When in-person training is neither practical nor safe, alternative modes of training shall be utilized.

Mandatory training for employees will be provided through in-person training on sexual misconduct: discrimination, harassment, and violence and mandatory reporting through new employee orientations and other periodic training opportunities and upon request. In-person training for Active Bystander Intervention skills may include: ongoing campus campaigns and information at a variety of events, concerning the policy and appropriate behaviors, including Bystander Intervention. Informational website and brochures devoted to educating employees. When in-person training is neither practical nor safe, alternative modes of training shall be utilized.

Available Resources to all of the NWIC Community:

**Lummi Victims of Crime (LVOC)- LVOC MAIN: (360)312-2015**

24-Hour Hotline: (360)312-2015

**Lummi Police: (360)312-2274 (Non-Emergency)**

**Emergencies: 911**

**Domestic Violence and Sexual Assault Services (DVSAS) - 1-877-715-1563 - 24-HOUR HELPLINE**

### **Retaliation**

The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual harassment or filing a sexual harassment complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an Office of Civil Rights or school's investigation or proceeding. Therefore, if a student, parent, teacher, sponsor coach, or other individual complains formally or informally about sexual harassment or participates in an OCR or school's investigation or proceedings related to sexual harassment, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating against the individual) because of the individual's complaint or participation. Individuals who, apart from official associations with NWIC, engage in retaliatory activities will also be subject to NWIC's policies insofar as they are applicable to third party actions.

NWIC will take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses. Complaints of retaliation will follow the same process of investigation, hearing, and appeal.

If it is determined under the preponderance of the evidence standard (more likely than not to have occurred) that a student is responsible for retaliation the following sanction will be imposed.

- Suspension – Exclusion from enrollment in classes and other privileges or activities for a definite period of time not to exceed three years and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from NWIC are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Dean of Student Affairs. Conditions to conclude a suspension and reinstatement process will be stated in the written notification. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student's record. Any refund of tuition or fees will be subject to NWIC's normal withdrawal policy.

If it is determined under the preponderance of the evidence standard (more likely than not to have occurred) that an NWIC employee is responsible for retaliation, will be subject to the NWIC Personnel Policy Manual related to retaliation.

### **Free Speech and Academic Freedom**

Members of the NWIC community enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution. This policy is intended to protect members of the NWIC community from discrimination and is not designed to regulate protected speech. No provision of this policy shall be interpreted to prohibit conduct that is legitimately related to course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational,

political, artistic or literary expression of students in classrooms and public forums. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

### **Availability of other Complaint Procedures**

In addition to seeking criminal charges through local law enforcement, members of the NWIC community who believe they may have been the subject of discrimination prohibited by state and/or federal law(s) may contact one or more of the following agencies for advice, assistance, and explanation of filing deadlines:

Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline: (800) 421-3481  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Office of Civil Rights:  
U.S. Department of Education Office for Civil Rights  
Seattle Office 915 Second Ave, Room 3310 Seattle, WA 98174-1099  
Phone: 206-607-1600  
<http://www.ed.gov/ocr/complaintprocess.html>

Equal Employment Opportunity Commission  
Seattle Field Office, Federal Office Building 909 First Avenue, Suite 400 Seattle, WA 98104-1061  
Phone: 1-800-669-4000 TTY: 1-800-669-6820  
<http://www.eeoc.gov/contact/>

Washington State Human Rights Commission  
711 South Capitol Way, Suite 402, P.O. Box 42490 Olympia, WA 98504-2490  
Phone: 1-800-233-3247  
<http://www.hum.wa.gov/discrimination-complaint>

### **325.7 RELATED INFORMATION**

NWIC Student Handbook  
NWIC Student Athletic Handbook

### **325.7 REVIEW DATE**

This policy will be reviewed every three (3) years.