

## Annual Title IX Training for all Faculty, Staff, and Students 2020-2021

Title IX is a landmark federal civil rights that prohibits sex discrimination in education.

Members of the College community, guests and visitors have the right to be free from sexual discrimination, sexual harassment, domestic and dating violence, or stalking and are expected to conduct themselves in a manner that does not infringe upon the rights of others. NPC has a policy and procedures that are focused on a timely, consistent grievance process that respects the rights of both the alleged Complainant and the Respondent equitably. The procedures allow for a grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment and effectively implement remedies for victims.

Title IX prohibits any unwelcome conduct that is determined to be so severe, pervasive, and objectively offensive that it excludes or denies a person equal educational access to any educational program or activity; including quid pro quo harassment (A college employee explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual activity). by a school's employee; any instance of sexual assault, dating violence, domestic violence, or stalking.

This policy applies to all persons participating in or attempting to participate in NPC education programs or activities, both on and off-campus, within the United States.

The College will use the "preponderance of evidence" as the standard of proof.

A formal complaint must be filed in writing by the Complainant or the Title IX Coordinator to be accepted as a Title IX complaint. If the Complainant or parent or guardian of a minor complainant chooses to not file a formal complaint, the matter will be referred to the appropriate College entity, Student Conduct and/or Human Resources, or other entity.

## NPC Title IX Team

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## Responsibility to Report

Notice of sexual harassment or allegations of sexual harassment can be made to the school's Title IX Coordinator or any official of the school who has the authority to institute corrective measures on behalf of the school. Notice to either charges a school with actual knowledge and triggers the school's response obligation. Actual knowledge constitutes a "report" (that can be made by anyone) but does not constitute a "signed formal complaint" which can be made only by the complainant or signed by the Title IX Coordinator. Title IX only applies to complainants who are participating in or attempting to participate in the educational program or activity of the school with which the formal complaint is filed.

Any student, faculty member, staff member, administrator, or visitor to the campus who has experienced or witnessed sexual harassment is strongly encouraged to report it. The College must know about incidents of sexual harassment in order to stop them, protect victims, and prevent future incidents. SEE SOMETHING, SAY SOMETHING!

It is the responsibility of College faculty, administrators, supervisors, and any staff that a student could reasonably believe has the authority to report complaints of sexual harassment that they receive and of possible sexual harassment of which they become aware. WHEN IN DOUBT, REPORT.

A formal complaint must be filed in writing by the Complainant or the Title IX Coordinator to be accepted as a Title IX complaint. If the Complainant or parent or guardian of a minor complainant chooses to not file a formal complaint, the matter will be referred to the appropriate College entity.

When there is a relationship that involves legally recognized professional confidentiality between the complainant and the person to whom the harassment is reported, the report may be withheld at the request of the complainant.

## Standard of Evidence

The preponderance of Evidence: Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.

## Consent

“Affirmative Consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity. Affirmative consent is required for any sexual activity to occur between two or more individuals. It is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative consent of the other(s) to engage in the sexual activity. It shall not be a valid excuse to alleged lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances: (a) The Respondent’s belief in affirmative consent arose from the intoxication or recklessness of the Respondent, or (b) the Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

The following are essential elements of affirmative consent:

**Informed and reciprocal:** All Parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.

**Freely and actively given:** Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or by taking advantage of the incapacitation of another individual.

**Mutually understandable:** Communication regarding consent consists of mutually understandable words and/or actions that indicate a mutually unambiguous willingness to engage in sexual activity. Consent may not be inferred from silence, passivity, lack of resistance, or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.

**Not indefinite:** Affirmative consent must be ongoing throughout the activity. Consent may be withdrawn by any Party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed “no” or can be based on an outward demonstration that conveys that an individual is

hesitant, confused, uncertain, or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately, which means they must separate their bodies, and all Parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

Not unlimited: Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant. Even in the context of a current or previous intimate relationship, each Party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

Age: The State of Arkansas considers sexual intercourse with a person under the age of 16 to be unlawful. A person who engages in “unlawful” sexual intercourse as described in the Arkansas Penal Code does so without effective consent as defined by the College’s Sexual Misconduct Policy. Specifically, there is no consent under the College’s Sexual Misconduct Policy where one Party (the “minor”) is under the age of sixteen, and the other Party is more than three years older than the minor. Reports received that allege sexual contact with a person under the age of 16 will be reported to the Hot Springs Police Department, the Garland County Sheriff’s Department, or the appropriate law enforcement agency if the act occurred outside Garland County, Arkansas as this conduct could constitute sexual abuse of children.

## Formal Complaints

A **formal complaint** is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation. In the event that the complainant is a minor, the formal complaint can be signed by the parent or guardian.

- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the educational program or activity of the College with which the formal complaint is filed.

- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail.
- A complainant may choose to receive supportive measures and NOT file a signed formal complaint at the time. There is no statute of limitation on filing.

## Supportive Measures

Upon receipt of actual knowledge (a report that can be made by anyone but does not constitute a signed formal complaint), the Title IX Coordinator will offer supportive services to the Complainant. These supportive services can include, but not be limited to the following;

- Counseling
- Course-related adjustments
- Modifications of work or class schedules
- Campus escort services/ increased security
- Mutual no-contact directive
- Monitoring certain areas of campus
- Change in work location
- Change in parking spaces

## Confidential Resources

**Confidential Resources** are NPC employees who have been specially trained to provide affirming, empowering, and confidential support for complainants and those who have experienced gender violence, including sexual harassment, dating, and intimate partner violence, sexual assault, stalking, and sexual exploitation. They are not licensed counselors.

Anyone who has a concern may contact a confidential resource and the information that is shared will not automatically trigger a report to the Title IX office. The advocate will listen and explain options available while providing support.

It is the Complaining Party's decision to report an incident to the College or to law enforcement.

If a Complaining Party discloses an incident to a Confidential Resource but wishes that no investigation into the incident be conducted or disciplinary action taken, the Advocate must weigh that request against the college's obligation to provide a safe environment for everyone, including the Reporting Party.

## Retaliation

No school or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title Investigation, proceeding, or hearing.

- Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.
- The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.
- Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination that schools must adopt and publish.
- The exercise of rights protected under the First Amendment does not constitute retaliation.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement

## Informal Resolution

The College can choose to offer and facilitate informal resolution options such as mediation or restorative justice. The person who facilitates an informal resolution must be trained. These persons include, but are not limited to Title IX

Coordinators, investigators, or decision-makers. This training will be posted on the College website. The informal resolution requires that both parties give voluntary, informed, written consent for engaging in informal resolution.

- A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation, and adjudication of formal complaints of sexual harassment. Similarly, a school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.
- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
- Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

## Hearings

Live hearings are required for formal resolution of a Title IX complaint.

There is a requirement for involvement of the following persons:

- Title IX Coordinator
- Investigator
- Advisors
- Decision Maker
  - At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real-time by the party's advisor of choice and never by a party personally. At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.



- Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant.
- If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party. If either party presents with no advisor at the time of the hearing, the decision maker has the authority to declare a continuance.
- 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; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. The decision Maker determines relevance of questions.
- Live hearings may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.
- The College will create an audio or audiovisual recording, or transcript, of any live hearings.

## Appeal

There is equal access to appeal for both the Complainant and the Respondent.

Reasons for Appeal:

- Procedural irregularity
- New evidence
- Conflict of interest

The College has the discretion to offer additional ground for appeal.

## Pregnancy and Parenting

Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. §1681 *et seq.*, is a Federal civil rights law that prohibits discrimination on the basis of sex—including pregnancy and parental status—in educational programs and activities.

All public and private schools, school districts, colleges, and universities receiving any Federal funds (“schools”) must comply with Title IX.

Here are some things you should know about your rights:

### *Classes and School Activities* – your school MUST:

- Allow you to continue participating in classes and extracurricular activities even though you are pregnant. This means that you can still participate in advanced placement and honors classes, school clubs, sports, honor societies, student leadership opportunities, and other activities, like after-school programs operated at the school.
- Allow you to choose whether you want to participate in special instructional programs or classes for pregnant students. You can participate if you want to, but your school cannot pressure you to do so. The alternative program must provide the same types of academic, extracurricular and enrichment opportunities as your school’s regular program.
- Allow you to participate in classes and extracurricular activities even though you are pregnant and not require you to submit a doctor’s note unless your school requires a doctor’s note from all students who have a physical or emotional condition requiring treatment by a doctor. Your school also must not require a doctor’s note from you after you have been hospitalized for childbirth unless it requires a doctor’s note from all students who have been hospitalized for other conditions.
- Provide you with reasonable adjustments, like a larger desk, elevator access, or allowing you to make frequent trips to the restroom, when necessary because of your pregnancy.

### *Excused Absences and Medical Leave* – your school MUST:

- Excuse absences due to pregnancy or childbirth for as long as your doctor says it is necessary.
- Allow you to return to the same academic and extracurricular status as before your medical leave began, which should include giving you the opportunity to make up any work missed while you were out.
- Ensure that teachers understand the Title IX requirements related to excused absences/medical leave. Your teacher may not refuse to allow you to submit work after a deadline you missed because of pregnancy or childbirth. If your teacher's grading is based in part on class participation or attendance and you missed class because of pregnancy or childbirth, you should be allowed to make up the participation or attendance credits you didn't have the chance to earn.
- Provide pregnant students with the same special services it provides to students with temporary medical conditions. This includes homebound instruction/at-home tutoring/independent study.

*Harassment – your school MUST:*

- Protect you from harassment based on sex, including harassment because of pregnancy or related conditions. Comments that could constitute prohibited harassment include making sexual comments or jokes about your pregnancy, calling you sexually charged names, spreading rumors about your sexual activity, and making sexual propositions or gestures, if the comments are sufficiently serious that it interferes with your ability to benefit from or participate in your school's program.

*Helpful Tips for Pregnant and Parenting Students:*

- Ask your school for help—meet with your school's Title IX Coordinator or counselor regarding what your school can do to support you in continuing your education.
- Keep notes about your pregnancy-related absences, any instances of harassment and your interactions with school officials about your pregnancy, and immediately report problems to your school's Title IX Coordinator, counselor, or other staff.
- If you feel your school is discriminating against you because you are pregnant or parenting you may file a complaint:

- Using your school's internal Title IX grievance procedures
- Contact NPC Title IX Coordinator if you have any questions. We are here to help make sure all students, including pregnant and parenting students, have equal educational opportunities!

## Title IX and Athletics

Athletics programs are considered educational programs and activities. There are three basic parts of Title IX as it applies to athletics:

1. Participation: Title IX requires that women and men be provided equitable opportunities to participate in sports. Title IX does not require institutions to offer identical sports but an equal opportunity to play;
2. Scholarships: Title IX requires that female and male student-athletes receive athletics scholarship dollars proportional to their participation; and
3. Other benefits: Title IX requires the equal treatment of female and male student-athletes in the provisions of: (a) equipment and supplies; (b) scheduling of games and practice times; (c) travel and daily allowance/per diem; (d) access to tutoring; (e) coaching, (f) locker rooms, practice and competitive facilities; (g) medical and training facilities and services; (h) housing and dining facilities and services; (i) publicity and promotions; (j) support services and (k) recruitment of student-athletes.

## The Red Flag Campaign

To end sexual and intimate partner violence, we must work to make change on individual, relationship, community, and societal levels. That means, for example, changing how individuals think, how people relate to one another, how communities respond to violence, and how society values healthy over controlling behaviors.

No one campaign will solve the problem, but The Red Flag Campaign at NPC is a helpful tool in changing individual attitudes and behaviors, helping people learn about healthier ways to relate to one another, and shifting the social norms of our campus community into one that is less tolerant of abusive actions and more invested in establishing healthy norms.

We will have monthly events to highlight aspects of Title IX issues. Check the campus calendar for when and where these events are being held and look for the red flags!

## Resources

Your Title IX Team: Susan Millerd, Title IX coordinator, 501-545-7217, Social Sciences Division Room 105, <mailto:smillerd@np.edu>

[Arkansas Coalition Against Sexual Assault](#) (800) 977-5776

[Arkansas Coalition Against Domestic Violence](#)

Arkansas State Police Child Abuse (800) 482-5964

National Coalition Against Domestic Violence <https://ncadv.org/>

National Domestic Violence Hotline <https://www.thehotline.org/>

Ouachita Children, Youth, and Family Services [www.occnet.org](http://www.occnet.org)

Ouachita Family Center 24 hour hotline (501) 865-3939

Center for Healing Hearts and Spirits <https://www.hhscenter.org/>

National Human Trafficking Resource Center (888) 373-7888