

Navajo Technical University Title IX Policy

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Navajo Technical University Title IX Policy

I. Statement of Purpose

This policy prohibits Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Relationship and Interpersonal Violence, Stalking and includes a provision regarding Alcohol and/or Other Drugs for Purposes of Prohibited Conduct. This policy complies with applicable legal requirements including Title IX of the Education Amendments of 1972; Title VII of the Civil Rights Act of 1964; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable Navajo, Federal and New Mexico and Arizona state laws.

II. Statement of Non-Discrimination

Navajo Technical University does not discriminate on the basis of: employment opportunities, benefits or privileges; creating discriminatory work conditions; or using discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's ethnic identity, color, religion, national origin, age, disability status, gender identity, sexual orientation or gender expression, or any other category protected by applicable law, in the administration of its educational policies, admission policies, and scholarship programs, or other school administered programs. This type of discrimination is prohibited by a variety of tribal, federal, and state laws, including Title VII of the Civil Rights Act 1964, the Age Discrimination Act of 1975, and the American with Disability Act of 1990.

III. To Whom This Policy Applies

This policy applies to the entire Navajo Technical University personnel, including but not limited to: students of the University, those employed by Navajo Technical University as staff, faculty, affiliates, and visiting faculty, and all exempt and non-exempt staff.

IV. Title IX Officer

The Title IX Officer shall oversee and monitor compliance of Title IX; provide education and training; tracking and reporting annually on all incidents in violation of this policy; and coordinating Navajo Technical University's investigation, response, and resolution of all reports under this policy.

V. Privacy and Confidentiality

Navajo Technical University is committed to making reasonable efforts to protect the privacy interests of a complainant, a respondent and/or other individuals involved in a report under this policy.

Privacy: For the purposes of this policy, privacy will be generally defined as information related to a report of Prohibited Conduct that will be distributed with specific individuals assisting in the review, investigation, and resolution of the report, and related issues. All employees which are routinely involved in Navajo Technical University's Title IX response received specific training and guidance about safeguarding private information in accordance with applicable laws.

Confidentiality: For the purposes of this policy, designated campus or community professionals shall not reveal identifiable information shared by an individual to any other person without permission of the individual, or as otherwise permitted or required by law. Those campus and community professionals who have the ability to maintain information confidentiality include:

1. Counselors with Navajo Technical University
2. Mental Health professionals in Counseling and Psychologists Services

These specialized professionals are prohibited from breaking confidentiality unless (i) given permission to do so by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18; or (iv) as otherwise required under their professional duty to disclose or permitted by law or court order.

VI. Employee Responsibility to Report Allegations

There are (3) general classification of individuals on campus and the respective ability of these categories of individuals to maintain a complainant's confidentiality differs:

1. Confidential Resources: (individuals listed in Section V with legally protected confidentiality). Confidential Resources can maintain the confidentiality of a complainant's disclosure and will not share any information with Navajo Technical University, subject to the expectations listed above.
2. Responsible Employees: While able to maintain an individual's privacy, responsible employees are required to immediately share all known details of incidents of Prohibited Conduct with the Title IX Officer. "Responsible Employee" means those designated employees in a leadership or supervisory position, or who have significant responsibility for the welfare of Students or Employees. Responsible Employees include the Title IX Officer; the President, Vice President and Deans; Members of the President's Cabinet, Safety Officer, Directors, Coordinators in Residential, Student Activities, the Dean of the University, Human Resources, and Athletics; Academic Department Chairs, Center and Program Directors, faculty, and staff serving as academic advisors, Athletic team Coaches. Students serving in certain positions of leadership or authority, such as Peer Leaders of university clubs and organizations including the Student Senate.

Supervisors who receive reports of Prohibited Conduct from individuals they supervise are also required to share all known details with the Title IX Officer.

3. All other Employees: are encouraged to share information with the Title IX Officer. Unless designated above, faculty who do not exercise administrative responsibilities outside of the classroom and employees who do not exercise

supervisor or management responsibilities are generally not considered Responsible Employees.

Clery Act Reporting: Pursuant to the Clery Act and VAWA, Navajo Technical University includes statistics about certain offenses in its daily crime log and Annual Security Report and provides those statistics to the United States Department of Education in a manner that does not include any identifying information about persons involved in an incident. This includes numbers of incidents (with no detail or personally identifying information) disclosed to confidential ongoing threat, as outlined in the Annual Security Report.

VII. Sexual Harassment

Sexual harassment is a form of unlawful employment discrimination under Title VII of the Civil Rights Act of 1964 and is prohibited under Navajo Technical University's anti-harassment policy. *See Section 5, Employee Conduct, NTU Employee Handbook and Section 12, Other Prohibited Conduct, Student Handbook.* Sexual harassment is defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature." The University identifies two types of sexual harassment:

- "Quid pro quo" harassment, where submission to harassment is used as the basis for employment decisions. Employee benefits such as raises, promotions and better working hours are directly linked to compliance with sexual advances. Therefore, only someone in a supervisory role can engage in quid pro quo harassment. Examples: A male supervisor promising a female employee on a raise in her salary if she goes on a date with him; a manager telling an employee she will fire him if he does not have sex with her.
- "Hostile work environment," where the harassment creates an offensive and unpleasant working environment. A hostile work environment can be created by anyone in the work environment, whether it is supervisors, other employees or customers. Hostile environment harassment consists of verbiage of a sexual nature, unwelcome sexual materials or even unwelcome physical contact as a regular part of the work environment. Texts, emails, cartoons or posters of a sexual nature; vulgar or lewd comments or dirty jokes; or unwanted touching or fondling all fall in this category.

Sexual harassment takes many different forms. The following examples of sexual harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal sexual harassment includes innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats; requests for any type of sexual favor (this included repeated, unwelcome requests for dates); and verbal abuse or "kidding" that is oriented toward a prohibitive form of harassment, including that which is sexual in nature and unwelcome.

- Nonverbal sexual harassment included the distribution, display or discussion of any written or graphic materials, including calendars, posters and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex; suggestive or insulting sounds' leering; staring; whistling; obscene gestures; content in letters and notes, facsimiles, e-mail, photos, text messages, tweets and Internet postings; or other form of communication that is sexual in nature and offensive.
- Physical sexual harassment includes unwelcome, unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing and fondling and forced sexual intercourse or assault.

Courteous, mutually respectful, pleasant non-coercive interactions between employees, that are appropriate in the workplace and acceptable to and welcomed by both parties are *not* considered to be harassment, including sexual harassment.

VIII. Retaliation

Retaliation or attempted retaliation in response to lodging a complaint or invoking the complaint process is a violation of this policy. Any person who is found to have violated this aspect of the policy will be subject to disciplinary measures up to and including termination of employment.

No hardship, loss, benefits or penalty may be imposed on an employee in response to:

- Filing or responding to a bona fide complaint of discrimination or harassment.
- Appearing as a witness in the investigation of a complaint.
- Serving as an investigator of a complaint.

IX. Related Definitions; Consent, Coercion or Force, and Incapacitation

A. Consent

Consent is an affirmative and willing agreement to engage in specific forms of sexual contact with another person. Consent requires an outward demonstration, through mutually understandable words or actions, indicating that an individual has freely chosen to engage in sexual contact.

Silence, passivity, or the absence of resistance does *not* imply consent. It is important not to make assumptions; if confusion or ambiguity arises during a sexual interaction, it is essential that each participant stops and clarifies the other's willingness to continue.

Consent can be withdrawn at any time. When consent is withdrawn, sexual activity must cease. Prior consent does not imply to current or future consent even in the context of an ongoing relationship, consent must be sought and freely given for each instance of sexual contact.

An essential element of consent is that it be *freely given*. Freely given consent might not be present, or may not even be possible, in relationships of asexual or intimate

nature between individuals where one individual has power, supervision or authority over another.

In evaluating whether consent was given, consideration will be given to the totality of the facts and circumstances, including but not limited to the extent to which a complainant affirmatively uses words or actions indicating a willingness to engage in sexual contact, free from intimidation, fear, or coercion whether a reasonable person in the respondent's position would have understood such person's words and acts as an expression of consent; and whether there are any circumstances, known or reasonably apparent to the respondent, demonstrating incapacitation of fear.

B. Coercion or Force

Coercion is verbal and/or physical conduct, including manipulation, intimidation, unwanted contact, and express or implied threats of physical, emotional, or other harm, that would reasonably place an individual in fear of immediate or future harm and that is employed to compel someone to engage in sexual contact.

Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual contact.

C. Incapacitation

An individual who is incapacitated lacks the ability to make informed judgments and cannot consent to sexual contact. Incapacitation is the inability, temporarily or permanently, to give consent because an individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. Mentally helpless means a person is rendered temporarily incapable of appraising or controlling one's own conduct. Physically helpless means a person is physically unable to verbally or otherwise communicate consent or willingness to an act.

Where alcohol or other drugs are involved, incapacitation is a state beyond impairment or intoxication and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's: decision-making ability; awareness of consequences; ability to make informed rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspectives of a sober, reasonable person.

X. Prohibited Sexual or Intimate Relationships

Relationships of a sexual or intimate nature between individuals where one individual has *power, supervision* or *authority* over another are prohibited. Relationships of a sexual or intimate nature between individuals who are faculty and staff may be disclosed on a Conflict of Interest Form if the relationship creates a conflict of interest for either party. Any conflict of interest relationships shall require a Department/Management Plan to address the situation.

In the academic context, Prohibited Conduct under this policy often involves the inappropriate personal attention by an individual who is in a position to exercise professional power over another individual. This could include an instructor who determines a student's grade or who can otherwise affect the student's academic performance or professional future; a tenured professor whose evaluation of a junior colleague can affect the latter's professional life; or a coach who can affect the participation of a student-athlete. Taking advantage of one's power, supervision or authority over another is unacceptable and may create a hostile environment for the individuals involved and the community at large as it seriously undermines the atmosphere of trust essential to the academic enterprise.

Any member of Navajo Technical University with questions, concerns or doubts about the appropriateness of an actual, anticipated or suspected relationship should consult with the appropriate Deans and/or the Title IX Officer.

A. Prohibited Sexual or Intimate Relationships with Students

No Faculty, Staff or Employee shall request or accept sexual favors from or engage in a romantic, sexual or intimate relationship with any *Navajo Technical University student*. Fraternizing with a student by staff, faculty or other employees of NTU is prohibited whenever the employee has a professional position of authority with respect to the student in such matters as managing a department or service are or in otherwise evaluating, supervising, or advising a student as part of a university program. Should a consensual relationship develop, or appear likely to develop, while the employee is in a position of authority, the employee and/or the student shall terminate the position of authority. *See Section II: Policies and Procedures, Student/Staff Relationships (Fraternization), Student Handbook.*

B. Consensual Relationships Between Faculty, Staff and Employees

In cases where a consensual relationship exists between Faculty, Staff, and Employees who occupy inherently unequal positions of authority, it is important that the person in the position of greater authority does not exercise any supervisory or evaluate function over the other person in the relationship. Accordingly, the person in the position of greater authority must notify their supervisor(s) and Human Resources to evaluate the situation and, if applicable, fill out a Conflict of Interest Form.

XI. Reporting and Filing a Complaint

Navajo Technical University will handle all complaints swiftly and confidentially to the extent possible in light of the need to take appropriate corrective action. Lodging a complaint will in no way be used against the employee/student or have an adverse impact on the individual's employment status. However, filing groundless or malicious complaints is an abuse of this policy and will be treated as a violation.

Navajo Technical University has established the following procedure for lodging a complaint of harassment, discrimination or retaliation. Navajo Technical University will treat all aspects of the procedure confidentially to the extent reasonably possible. *See Section V, of this Policy.*

1. An individual who feels harassed, discriminated or retaliated against may initiate the complaint process by filing a complaint in writing with the Navajo Technical University Human Resource Director. No formal action will be taken against any person under this policy unless Human Resource (HR) has received **a written and signed complaint** containing sufficient details to determine if the policy may have been violated. The complainant (employee/student making the complaint) may obtain the complaint form from the HR department. If a supervisor or manager becomes aware that harassment or discrimination is occurring, either from personal observation or as a result of an employee's coming forward, the supervisor or manager should immediately report it to the Human Resource Director.
2. Upon receiving a complaint or being advised by a supervisor or manager that violation of this policy may be occurring, the HR director will review the complaint with University President and University's legal counsel.
3. Within five (5) working days of receiving the complaint, the HR director will notify the person(s) charged [hereafter referred to as "respondent(s)"] of a complaint and initiate the investigation to determine whether there is a reasonable basis for believing that the alleged violation of this policy occurred.
4. During the investigation, the HR director, together with legal counsel or other management employees will interview the complainant, the respondent and any witnesses to determine whether the alleged conduct occurred.
5. Within fifteen (15) business days of the complaint being filed (or the matter being referred to the HR director), the HR director or other person conducting the investigation will conclude the investigation and submit a written report of his or her findings to the University President.
6. If it is determined that harassment or discrimination in violation of this policy has occurred, the HR director will recommend appropriate disciplinary actions. The appropriate action will depend on the following factors:
 - a. The severity, frequency and pervasiveness of the conduct;
 - b. Prior complaints made by the complainant;
 - c. Prior complaints made against the respondent; and
 - d. The quality of the evidence.
7. If the investigation is *inconclusive* or is it is determined that there has been no violation of policy but potentially problematic conduct may have occurred, the HR director may recommend appropriate prevention action.

8. Within five (5) days after the investigation is concluded, the HR director will meet with the complainant and the respondent separately, notify them of the findings of the investigations, and inform them of the action being recommended.
9. The complainant and the respondent may submit written statements to the HR director challenging the factual basis of the findings. Any such statement must be submitted no later than five (5) working days after the meeting with the HR director in which the findings of the investigation are discussed.
10. Within ten (10) days from the date the HR director meets with the complainant and respondent, Navajo Technical University President will review the investigative report with recommendations and any statements submitted by the complainant or respondent, discuss results of the investigation with the HR director, legal counsel and other management staff as may be appropriate, and decide what action, if any, will be taken. The HR director will report the University President's decision to the complainant, the respondent and the appropriate management assigned to the department(s) in which the complainant and the respondent work. Navajo Technical University's decision will be in writing and will include findings of facts and a statement for or against disciplinary action. If disciplinary action is to be taken, the respondent will be informed of the nature of the discipline and how it will be executed.

XII. Sanctions

A student or employee determined to have committed an act of Prohibited Conduct in violation of this policy is subject to disciplinary action. Discipline action may include (but not limited to):

- a reprimand,
- probation,
- suspension,
- administrative-leave without pay
- or separation from the University.

Third parties or invitees who violate this policy may have their relationship with the University terminated. Navajo Technical University reserves the right to take action against any individuals or organization found to have committed a violation of this policy.

If a student *withdraws* from the University after the University has begun an investigation but prior to a finding or resolution, an entry may, in appropriate circumstances be made on their transcript that indicates the Student has withdrawn with a disciplinary investigation or Complaint pending.

If an Employee separates from the University after the University has begun an investigation but prior to disciplinary charges being filed, an entry may, in appropriate circumstances be made in their personnel file that indicates that employment terminated with an investigation pending. If an Employee separates after disciplinary charges have

been filed but prior to resolution, an entry may, in appropriate circumstances, may be made in their personnel file that indicates employment was terminated with disciplinary charges pending.

XIII. Academic Freedom and Integrity

Navajo Technical University is committed to the principles of free inquiry and expression. Discussion and debate are fundamental to this commitment, and this policy is not intended to restrict teaching methods. Offensiveness of conduct, standing alone, is not sufficient for the conduct to constitute Prohibited Conduct. The conduct must be sufficiently serious to unreasonably interfere with an individual's ability to participate in educational programs or employment and activities from both a subjective and objective perspective.

XIV. Conflict of Interest

Navajo Technical University Conflict of Interest Policy and its related guidelines apply to all members of NTU and to all processes and procedures, including investigations and disciplinary procedures in place to support and implement this policy. A conflict of interest may arise when a member of NTU may be able to use the authority of their position to influence a University decision, action or outcome with regard to the implementation and enforcement of this policy. It is the responsibility of all members of NTU involved in any aspect of a report to Prohibited Conduct to read the University's Conflict of Interest Policy and to disclose potential or actual conflicts as they arise to Title IX Officer or Human Resources.

XV. Review and Revision

The terms of this policy are subject to change upon recommendation of the University President to the Board of Regents.